



# THE URGENCY OF WAQF LAND CERTIFICATION AT THE SUNAN AMPEL SURABAYA FOUNDATION

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**Abstract:** In many parts of Indonesia, there is excessive land utilization by religious and communal groups for individual gain. This condition is caused by the lack of registration of land owned by religious and communal organizations in accordance with existing legal regulations. The Sunan Ampel Foundation filed a lawsuit at the Surabaya Religious Court regarding the Status of the Sunan Ampel Foundation Land and the Sunan Ampel Tomb Area with case number: 6345/Pdt.G/2021/PA/Sby, because the current management unilaterally changed the name of the foundation without the consent of the old nadzir. The process of waqf land certification at the Sunan Ampel Foundation Surabaya, where the Sunan Ampel Foundation officially had a certificate and was legally recognized in 1973, with the Decree number of the Ministry of Justice of the Republic of Indonesia Number: A-3508.HT.03.04.TH.1973 Minister of Justice of the Republic of Indonesia, represented by Notary Doerajad Moelyadi, S.H Number 1221 / DM / Not.SBY / V / 1973 dated October 21, 1973. The waqf process at the Sunan Ampel Surabaya Foundation is still not in accordance with the waqf procedures contained in the laws and regulations, because there are still disputes over management.

**Keywords:** Legal Certainty; Land Certification; Waqf Land; Sunan Ampel Foundation

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## I. INTRODUCTION

Waqf is a legal act in Islam in which a person called wakif voluntarily sets aside part or all of his property for public or religious purposes. Waqf aims to improve community welfare, social development, and religious interests while still applying sharia principles.<sup>1</sup> Waqf is a guideline for Islamic teachings regarding aspects of social life, especially in the context of prayer. This relationship gives importance to

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<sup>1</sup> Khoerudin, A. N. (2018). Tujuan dan Fungsi Wakaf Menurut Para Ulama dan Undang-Undang di Indonesia. *Tazkiya*, 19(02), p.1-10.

the role of Wakfland. In society, many places of worship, foundations, and religious proselytization centers are established on waqf land. Given the role and potential of waqf land, the government realizes the importance of providing legal certainty in the land sector. Waqf occupies a special place in the context of Islamic law, especially when compared to other forms of charity such as infaq and zakat. Waqf has a unique character because it involves the transfer of property or assets for public or social interests and the property must be used continuously for the welfare of the community.<sup>2</sup>

Waqf activities must be formalized and documented in an Akta Ikrar Wakaf (AIW) and then registered with the relevant organization for certification. In addition, the procedures must comply with waqf-related laws and regulations. Such measures are primarily aimed at establishing legal order and control of waqf with the aim of protecting waqf assets (UUD, 2007). Developing the function of waqf as a religious institution is considered crucial to advancing the welfare of society in a sustainable manner.<sup>3</sup> Waqf is not only beneficial in the religious and social spheres, but also contributes to the economy, helping to improve collective welfare. The importance of waqf being managed in accordance with sharia law is emphasized. In addition, the process of registering waqf land is vital to prevent fraud and land use that is not in line with its original purpose, as unregistered land is more vulnerable to abusive activities. Therefore, the management of waqf land must be considered to avoid such problems.<sup>4</sup>

The waqf land certification process is a registration step designed to guarantee the legal status of waqf land in accordance with the provisions stated in Government Regulation No. 42 year 2006. However, this certification process is often overlooked by the community. It is crucial to meet legal standards and property management in accordance with land law. The main purpose of waqf land titling is to avoid land conflicts, whether carried out by individuals or organizations, so that land designated for religious and social purposes of the community is not misused by unauthorized parties.<sup>5</sup> This land registration process is a crucial measure to counteract the occurrence of legal problems regarding land property rights that can be prolonged and urgent to resolve.<sup>6</sup>

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<sup>2</sup> Khusaeri, K. (2015). Wakaf produktif. *Al-A'raf: Jurnal Pemikiran Islam dan Filsafat*, 12(1), p.77-95.

<sup>3</sup> Rahman, M. F. (2009). Wakaf Dalam Islam. *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, 1(1).

<sup>4</sup> Medias, F. (2010). Wakaf Produktif Dalam Perspektif Ekonomi Islam. *La\_Riba*, 4(1), p.71-86.

<sup>5</sup> Supraptiningsih, U. (2012). Problematika implementasi sertifikasi tanah wakaf pada masyarakat. *NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam*, 9(1).

<sup>6</sup> Fadhilah, N. (2011). Sengketa Tanah Wakaf Dan Strategi Penyelesaiannya. *De Jure: Jurnal Hukum dan Syar'iah*, 3(1).

Donating land is a legal act that removes land from market circulation on the condition that the use or benefit of the land is intended for a specific individual or for a specific purpose. When land is removed from commerce, its status changes from that of a mere legal object to that of a legal entity. However, there is often a misunderstanding among the public regarding the function of religious and social organizations. There is an assumption in some circles that religious institutions are only supposed to manage property for worship activities, such as mosques, cemeteries and Islamic boarding schools. However, in Islamic law, there is leeway to donate land for a variety of purposes.<sup>7</sup> In many parts of Indonesia, there is over-utilization of land by religious and communal groups for individual gain. This is due to the lack of registration of land owned by religious and communal organizations in accordance with existing legal regulations. As a result, there is legal ambiguity regarding the ownership and utilization of waqf land.

For example, the case of the Sunan Ampel Foundation, which has long been known to dispute the ownership of the Sunan Ampel area, even KH was involved. Abdulrahman Wahid (Gus Dur) became an advisor, and disputes over ownership and management of waqf land became the main focus of the dispute. Since 1973, the Sunan Ampel Foundation has undergone several structural changes, including structural changes in 1979 and 1984. In 1998, after the death of the foundation chairman KH Nawawi, there was a change in the management structure involving Ampel. People like Habib As-Segaf, KH Imron Rozak, KH Abdulrahman Wahid. Gus Dur was also involved in determining the composition of the Foundation's management. In 2000, after KH Nawawi's death, a new achievement was born involving KH Nawawi's son, Gus Azmi and Gus Ubaid.

The complexity of the situation increased in 2016 when Gus Ubaid created the founding documents for the Sunan Ampel Great Jami Masjid Foundation by adding Gus Azmi's name. Three years later, in 2019, the Sunan Ampel Great Mosque Foundation Soerabaja received approval from the Ministry of Law and Human Rights despite objections to the addition of an unsynchronized name. The organization also challenged the Ministry's decision as well as the PTUN regarding the establishment of the Sunan Ampel Soerabaja Great Mosque Foundation. Currently, there are still arguments over the process to change the name on the foundation's land certificate. In addition, the foundation has filed a lawsuit at the Surabaya Religious Court regarding the ownership status of the Sunan Ampel Great Mosque land and the tomb at the site. This incident highlights the widespread problem of unregistered religious land without valid certificates. Additional investigation and research efforts are required to find a sustainable resolution.

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<sup>7</sup> Ramadhona, A. (2017). Pelaksanaan konsolidasi Tanah perkotaan untuk pembangunan jalan by pass di Kota Bukittinggi. *JCH (Jurnal Cendekia Hukum)*, 3(1), p.73-84.

These steps are necessary so that in the future the process of registering and certifying waqf land can be carried out correctly to avoid future land ownership and use problems. With the background of the problems previously described, the author feels the need to conduct focused research on “The urgency of waqf land certification at the Sunan Ampel Surabaya Foundation”.

The author uses a normative legal approach, conducted through a study of books, laws, regulations, and other documents related to the study. The purpose of analysis with a qualitative approach is a research method that refers to the legal norms contained in the legislation. This research uses a case approach model, application of legal norms and rules in legal practice. The controversial approach is carried out by examining cases related to the issue in question so as to cause court decisions that have lasting legal consequences.<sup>8</sup> This research was conducted in the form of an analysis of the urgency of waqf land certification at Sunan Ampel Foundation Surabaya. The descriptive method used aims to obtain a good and clear picture of the research subject and provide data that is as accurate as possible. In this context, descriptive research is used to describe in detail the process of implementing land waqf and the steps of granting waqf land certificates at Yayasan Sunan Ampel Surabaya.

The sources that have been collected are divided into 3, namely primary, secondary, and tertiary sources. The following are some primary sources that have been collected Law No. 41 of 2004 concerning Waqf; Law No. 5 of 1960 concerning Agrarian Principles; Government Regulation No. 24 of 1997 concerning Registration of Land Rights; Government Regulation No. 28 of 1977 concerning Perwakafan of Owned Land; Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf; Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia issued Regulation No. 2 of 2017 concerning Procedures for Registration of Waqf Land; Decision No. 6345/Pdt.G/2021/PA.Sby.

## **II. DISCUSSION**

The Sunan Ampel Great Mosque Foundation was established in 1973 and began with the name Ampel Mosque Foundation. Then there were changes to the same foundation in 1979 and 1984. It was at this point that the structure of the Sunan Ampel Foundation was formed consisting of Ampel statues from various elements.

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<sup>8</sup> Mujaddidi, S. Konstitusionalitas Pembatasan Hak Asasi Manusia dalam Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, Vol 18, No. 3. DOI: <https://doi.org/10.31078/jk1833>

So this happened from 1979 to 1988. The two changes after 1979 and 1988 were due to a different reason: the death of an executive.

Meetings of Ampel stakeholders were held here until 1998, when the chairman of the foundation, KH Nawawi, passed away. Discussing back and forth about the management team, it was decided that Habib (the actor Segaf), KH Imron Rozak, and KH Abdulrahman Wahid would join the management. Mr. Gus Dull became a reference in the management review and with approval through a signed fax letter, the composition of the Takmilan management is as follows: Mr. Nazir KH Ubaidilla who acted as Takmir, and Mr. KH consisted of ordinary people, including Mr. Ubaidilla as leader, including Mr. Azmi.

Prior to 1973, Takmil was traditionally managed by KH Nawawi Mohammad, but in 1978 a foundation was established. The first constitution was made in 1973 and an amendment was made in 1979, but the Nazir was KH Mohammad bin Yusuf and the president remained KH Nawawi. After Mohammad Yusuf died, Nadir and Nawawi served as president. Bakrul Amik added, strangely, a new certificate was re-issued in 2000, after the death of Mr. Nawawi, and did not fulfill the terms of the agreement with Mr. Gus Durr. But the president was Gus Azmi, KH Nawawi's son, and the Nazir was Gus Ubaid.

In 2016, there were significant changes in the Sunan Ampel Surabaya Grand Mosque Foundation led by Gus Ubaid:

- a. A new deed of the Sunan Ampel Jami Grand Mosque Foundation was made by Tris Nasari, a notary in Malang, with Gus Azmi's name on it.
- b. The foundation would manage the tomb, mosque and waqf.

In 2019, reforms took place with the approval of the Ministry of Law and Human Rights:

- a. La Nyala Mahmud Mattaritti and Gus Ubaid were involved in the reform of the foundation.
- b. Although Gus Hifni's name reappeared, he was not invited to coordinate the foundation's establishment.
- c. Sunan Ampel's land certificate was renamed the Sunan Ampel Soerabaja Great Mosque Foundation in 2020 under the leadership of his late son Gus Ubaid.

On January 21, 2020, there were complaints and lawsuits related to the corporate affairs of the Sunan Ampel Great Mosque Foundation Surabaya:

- a. The foundation filed a lawsuit against the Minister of Law and Human Rights of the PTUN.

- b. The status of the land is still in the form of a certificate of ownership in the name of the new foundation on the basis of the process of changing the name of the certificate.

The Sunan Ampel Great Mosque Foundation also filed a lawsuit with the Surabaya Religious Court regarding the land of the Sunan Ampel Great Mosque and Sunan Ampel Tomb located at 53 Ampel Street Mosque in Surabaya at case number 6345/Pdt.G/2021/PA/Sby. The applicant, who is the Director and Treasurer of the Sunan Ampel Great Mosque Foundation in Surabaya, confirmed the establishment of the foundation through the notarial deed of Retno Dewi Kartika on December 6, 2018, and received approval from the Minister of Law and Human Rights. This foundation is a continuation of the Sunan Ampel Foundation which was established in 1973, with the last amendment in 2020 through a notarial deed of Ien Suhesti and a decision of the Minister of Law and Human Rights.

### **Status of Waqf Land in Sunan Ampel Foundation Surabaya**

In everyday life. Because waqf land is created by Muslims, and Muslims in general. If waqf land is donated, then the one who owns the waqf land is Allah SWT, but its management is only limited to the Nazir who is trusted, according to the purpose and role attached to the corporate deed / deed of waqf plus connected. Various types of property, both movable and immovable, belong to Muslims and are used for the benefit of Muslims. There are many activities in Islam that are social in nature but have a high reward value in relation to property. These activities include zakat, infaq, sadaqah, subsidies and waqf.<sup>9</sup> Zakat is a form of alms given to the less fortunate. Each of these actions has a direct impact on one's financial situation and Allah (SWT) doubly rewards those who participate in such activities. In addition, each of these actions has its own legal consequences for the individuals involved in these activities. Some of these activities are obligatory for every capable human being, while others fall under the sunnah of Islamic thought.<sup>10</sup>

Since waqf generally refers to land in Indonesia, the issue of land waqf is regulated in Pasal 49(3) of the Basic Agricultural Law No. 5 of 1960 (UUPA), which states: Regulated by government regulation. "In addition, from a legal and lifestyle point of view, socializing economically, it can be said that there is no equivalent of the waqf

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<sup>9</sup> Muntaqo, F. (2015). Problematika dan Prospek Wakaf Produktif di Indonesia. AL-AHKAM, Volume 25, Nomor 1, April, p.83-108.

<sup>10</sup> Hafizd, J. Z. (2021). Keududukan Wakaf dalam Ekonomi dan Strategi Pengembangannya. Mahkamah: Jurnal Kajian Hukum Islam, Vol.6, No. 1, Juni, p.108-118.

system in common law life. Literature research has not uncovered any arguments that could explain the existence of the waqf institution, a form of institution organized under customary law. Case studies also show that many waqf disputes are brought to court and their resolution is always based on Islamic legal values alone.<sup>11</sup>

If the nature and form of the grant is communal and the object is related to personal property or collective property, it becomes very difficult to distinguish the characteristics of customary grants from grants. With the enactment of the Waqf Law dated 14 Year 2004, the government legitimized the existence of Waqf as an informal institution in the life of Indonesian Islamic society and implemented and developed it as a means to improve the welfare of society. Waqf land is basically organized by considering its status as social land. However, in reality, there are still a handful of people who want to register their waqf land immediately so that it can be recognized as legally binding land, along with other existing land rights in the community.<sup>12</sup>

According to state regulations, waqf can be used to improve outward and inward security and tranquility, which is the path to prosperity and truth based on faith, da'wah, and religious activities, especially Pancasila, the precepts of Islamic law. The emergence of this government regulation occurred because the old waqf legal guidelines and institutions were incomplete and unable to provide a good legal system to the community. The Indonesian government has adopted PP No. However, there are several obstacles in the actual implementation of waqf. Waqf has different styles and names, such as heir waqf, clan waqf, and others, making it difficult to understand the location of this waqf in daily life because there is no need to register the waqf land. As a result, the Nazir is able to control the lost waqf as if it were his own.<sup>13</sup>

Obtaining land registration and waqf land certificates is very important considering the risk of serious conflicts in the community related to land disputes that have recently hit the country, one of which is waqf land disputes. Land and foundation management. The following table shows the status of the waqf land of Sunan Ampel Foundation Surabaya.

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<sup>11</sup> Nurhayati. (2020). Wakaf dalam Perspektif Hukum Agraria Nasional dan Hukum Islam. Jurnal Warta Edisi 63, Volume 14 Nomor 1, p.115-121

<sup>12</sup> Hafizd, J. Z. (2021). Kedudukan Wakaf dalam Ekonomi dan Strategi Pengembangannya. Mahkamah: Jurnal Kajian Hukum Islam, Vol.6, No. 1, Juni, p.108-118.

<sup>13</sup> Nurhayati. (2020). Wakaf dalam Perspektif Hukum Agraria Nasional dan Hukum Islam. Jurnal Warta Edisi 63, Volume 14 Nomor 1, p.115-121.

**Table 1: Legal Status of Waqf Land of Sunan Ampel Foundation Surabaya**

No	Yayasan Masjid Agung Sunan Ampel	Yayasan Masjid Agung Sunan Ampel Soerabaja
1.	Akta Nomor: 06, tanggal 6 Desember 2018, tentang Pendirian Yayasan "Masjid Agung Sunan Ampel".	Akta No. 61, tanggal 5 April 1973, tentang Anggaran Dasar Yayasan Sunan Ampel.
2	Akta Nomor : 19, tanggal 24 September 2019, tentang Berita Acara Rapat Gabungan Yayasan "Masjid Agung Sunan Ampel"	Akta No. 3, tanggal 1 Mei 1979, Tentang Pernyataan Keputusan Rapat.
3	Akta Nomor 14 tanggal 24 Juni 2021, Notaris Herru Pramudiarama, S.H., M.Kn.	Akta No. 65, tanggal 14 Mei 1988, tentang Pernyataan Keputusan Rapat Yayasan "Sunan Ampel".
4	-	Akta Nomor 51, tanggal 24 Oktober 2000, tentang Pernyataan Keputusan Rapat Pengurus "Yayasan Masjid Agung Sunan Ampel".
5	-	Akta Nomor : 14, tanggal 16 Januari 2020, tentang Perubahan Anggaran Dasar yayasan Masjid Agung Sunan Ampel.
6	-	Akta Nomor : 02, tanggal 07 April 2020, tentang Pernyataan Keputusan Pembina Yayasan Masjid Agung Sunan Ampel Soerabaja.

Source: Putusan 6345/Pdt.G/2021/PA/Sby

The process of obtaining a land certificate involves not only the registration of land ownership, but also involves additional steps relating to waqf. Landowners who intend to obtain a certificate must undergo a waqf registration process, where the land will be declared as an Undertaking Waqf (AIW) in accordance with the provisions stipulated in the laws and regulations governing Waqf. This step is important so that the ownership of the land can be legally recognized as a waqf by the authorized institution. The purpose of this process is not only to ensure the legality of land ownership, but also to maintain order and security in the overall management of waqf assets. Careful waqf administration is established with the primary objective of protecting waqf assets from potential misuse or disputes that may arise. In this context, the role of the Nazir is crucial in carrying out his duty to manage waqf assets properly and responsibly. Through proper preservation efforts, the Nazir ensures that the waqf assets are managed efficiently and in accordance with the applicable waqf principles, so that they can provide maximum benefits to the community or parties in need. Thus, the waqf administration process is not only a formal obligation, but also an important foundation in maintaining the integrity and sustainability of waqf assets as a source of sustainable benefits.

From the perspective of legal sociology, the Sunan Ampel Surabaya Foundation waqf land dispute can be seen in terms of the relationship between law and society and the social impact of the conflict. Here are some things to keep in mind:



- a. Social Interaction: Waqf land disputes can affect social interactions between Foundation members, the surrounding community, and other stakeholders. This can lead to tension, conflict and polarization within the community.
- b. Norms and Values: This conflict concerns the conflict between social norms and values and the applicable legal provisions. This may raise questions about how social norms and values are reflected in the resolution of these conflicts.
- c. Social justice: There are also concerns about the social justice implications of these conflicts. How is justice understood and sought in the resolution of these conflicts, and how does this affect public opinion of the law and the justice system?
- d. Uncertainty and Inequality: Waqf land disputes can also create uncertainty for local communities regarding the ownership, use, and benefits of waqf assets. This can lead to perceptions of unfairness in the treatment of waqf assets.
- e. Social Change: Waqf land disputes can also lead to social changes in the surrounding community, both in terms of social structure, interaction patterns, and perceptions of the law and justice system.

Therefore, from a legal sociology perspective, the Sunan Ampel Surabaya Foundation waqf land dispute can be viewed in terms of its impact on social interaction, norms and values, social justice, uncertainty, and social change in the communities involved. Because some waqf land is used solely for social purposes, waqf nazirs often do not consider the conditions that allow waqf assets to be brought to court. This is because there is waqf land that is only used for social purposes. This is because most Indonesians believe that waqf land will have a strong legal status in the eyes of the community, especially if it is used as a place of worship. This habit is the root cause of this phenomenon.

The dualism of waqf land status shows that the recognition of waqf land in Indonesia has not been in accordance with Gustav Radbruch's theory of legal certainty. His theory of legal certainty has four main points that are closely related to its meaning. What is meant here is 1) positive law, or positive law, and 2) factual law, or law based on reality. 3) The facts contained or contained in the law must be clearly stated so that there is no error in meaning or interpretation and easy to implement. 4) Positive law should not be easily changed.<sup>14</sup> Its legal position is absolute because it is permanent and not easily changed.<sup>15</sup>

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<sup>14</sup> Radbruch, G. (2006). Statutory Lawlessness and Supra-Statutory Law. *Oxford Journal of Legal Studies*, Vol. 26, No.1, p.1-11.

<sup>15</sup> Alexy, R. (2021). Gustav Radburch's Concept of Law. *Oxford Academic*, July, 1-14. doi:<https://doi.org/10.1093/oso/9780198796831.003.0008>

## **Waqf Land Certification Process at Sunan Ampel Foundation**

The first Nazir of the Sunan Ampel Great Mosque was the late KH Muhammad bin Yusuf, who was later replaced by KH Nawawi Muhammad and served until 1998. After that, the position of Nazir of Sunan Ampel Great Mosque has not been officially filled. Currently, KH Ubaydillah acts as Nazir, while H Muhammad Azmi Nawawi holds the responsibility as Takmir. The Great Mosque of Sunan Ampel has undergone renovations three or four times since 1992, which resulted in the expansion of the building to around 2,000 square meters and can now accommodate around 1,000 worshippers. Available facilities include worship facilities, offices, cooperatives, toilets, a multipurpose building, and a library. The mosque is also the center of daily activities, including fard prayers, religious education (TPA, madrasah, community learning center), Friday prayers, and da'wah activities as well as the management of zakat, infaq, sadaqah, and waqf.

In 1948, the Sunan Ampel Great Mosque, previously known as the Ampel Mosque, was managed with the Takmili system. However, between 1945 and 1948, the mosque was rebuilt by a committee led by Muhammad bin Chasbullah KH, and management moved from the duke to the community of the Unitary State of the Republic of Indonesia (NKRI) in Surabaya. In the early 1970s, the mosque began to be managed by a new Nazir and the Sunan Ampel Foundation officially received legal recognition through the Decree of the Minister of Justice of the Republic of Indonesia No. A-3508.HT.03.04.TH.1973, represented by Notary Doerajad Moelyadi, SH with No. 1221/DM/Not.SBY/V/1973 dated October 21, 1973.

Waqf land registration is carried out to avoid potential disputes over waqf land ownership, with the aim of increasing public legal awareness regarding the importance of obtaining waqf land certificates, both for individuals and groups. It aims to prevent waqf land from being misused or changing hands to unauthorized parties. This waqf land registration provides legal certainty and legal protection of land ownership, as stipulated in Article 19 paragraph (1) together with Article 3 letter a of Government Regulation No. 24 year 1997. The legal security includes physical land data as well as land-related legal guarantees. The legal information provided includes the status of the land, the identity of the right holders and other parties with legal interests, and the legal costs associated with the land.<sup>16</sup> Various regulations govern the process of waqf land certification in Indonesia, all of which aim to provide clear guidelines and standard procedures in the process of registering waqf land in Indonesia. In addition, the purpose of these regulations is to facilitate the management of waqf assets, as well as to ensure the legal protection of waqf land, so that the public can comprehensively understand the procedures to be followed in the process of waqf land certification and management. Land

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<sup>16</sup> Sutedi, Adrian. (2008). *Peralihan Hak Atas Tanah dan Pendaftarannya*, Jakarta; Sinar Grafika.

certificate regulations are essential as they provide clarity and legal protection of land ownership.

This registration process not only helps in proving ownership in case of future disputes, but also plays a role in ensuring that waqf land is managed in accordance with the law and avoided from misuse. Thus, waqf land registration is a step that not only fulfills legal requirements but also supports the principles of transparency, accountability, and social justice in the management of assets devoted to the public good. The waqf land certification process to obtain a waqf land certificate from the BPN Office consists of three steps. The requirements include a valid application letter, survey, certificate of title or ownership, AIW or APAIW, and a statement from the Nazir that the land is not in dispute, as stipulated in Regulation No. 2 year 2017, Minister of Agriculture and Spatial Planning/Director of the National Land Company of the Republic of Indonesia on Procedures for Registration of Waqf Land.<sup>17</sup>

From the results of the research that has been carried out, it can be concluded that the process of implementing waqf at the Sunan Ampel Surabaya Foundation is still not fully in accordance with the procedures stipulated in the applicable laws and regulations. There are still a number of discrepancies that need serious attention. One of the problems that arise is related to mass management which seems to be an obstacle in the implementation of waqf in the foundation. Furthermore, it was found that the land certificate owned by one of the related parties was only a Certificate of Ownership (SHM) without including the supposedly agreed waqf status (AIW) in the document. This shows that the administrative process related to waqf in the foundation has not been implemented perfectly. In addition, it is also worth noting that in some cases, the consent of the descendants or guardians of the former Nazir is required to perform certain actions related to the management of the waqf assets. Therefore, comprehensive improvements in waqf administration and management need to be made immediately so that the waqf process can run in accordance with applicable legal provisions and achieve the desired goals.

In this regard, it is important to find solutions that respect the law and clarify the ownership and management of waqf land of Sunan Ampel Foundation Surabaya. Waqf land disputes can be an obstacle in achieving legal certainty. Therefore, to ensure the legal security of waqf land, it is necessary to establish a dispute resolution mechanism through legal and religious channels. Legal certainty regarding waqf land issues in Indonesia is very important because waqf land is property intended for public or religious interests. Waqf procedures and efforts to ensure compliance with relevant laws provide a strong foundation of legal certainty needed to properly protect, manage, and utilize Waqf assets in accordance with Waqf principles that are reliable and beneficial to society. Strong legal certainty ensures that parties involved in the management of waqf land, including waqf institutions, the government, and

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<sup>17</sup> Supraptiningsih, U. (2012). Problematika implementasi sertifikasi tanah wakaf pada masyarakat. NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam, 9(1).

the general public, fulfill their obligations and rights in relation to waqf land and that the state can be assured of them.

In addition, legal certainty provides confidence to donors and increases their willingness to participate in efforts to develop and sustainably utilize waqf land for public and religious purposes. Therefore, efforts to ensure compliance with the Waqf procedure and related laws provide a solid foundation for legal certainty in the management of Waqf resources in Indonesia, and ultimately lead to the realization of the Waqf's objectives that are beneficial and just for the performance of the entire community.<sup>18</sup> Radbruch distinguished between positive law (real law) and justice. According to him, positive law must be in harmony with the principles of justice, otherwise the law does not apply. Legal certainty requires efforts to regulate the law through legal norms created by the authorities, resulting in a legal dimension that provides certainty that the law functions as a rule that must be respected.<sup>19</sup>

### **III. CONCLUSION**

Waqf land in Sunan Ampel Surabaya Foundation has been legally valid since 1973. However, the foundation is currently experiencing internal disputes related to management and changing the name of the foundation without approval. This dispute has been brought to the Surabaya Religious Court with case number 6345/Pdt.G/2021/PA/Sby. Despite the dispute, the status of the land remains valid as waqf land and not individual property. The waqf land certification process at Sunan Ampel Foundation Surabaya requires several important documents such as application letter, measurement letter, proof of ownership, and statement letter from the nazir. However, this process is not fully in accordance with legal procedures due to management disputes and the land certificate owned is only in the form of SHM without the Waqf Pledge Deed (AIW) which should have been approved by the heirs of the previous nazir. Based on Decision Number 6345/Pdt.G/2021/PA.Sby, there are several obstacles in the certification of waqf land at Sunan Ampel Foundation Surabaya. First, the nazir changed the name of the foundation on the waqf land certificate. Second, the new nazir claimed to have a stronger decree. Third, there is dualism in management which becomes an obstacle in the certification process.

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<sup>18</sup> Surjanti. (2021). Pelaksanaan Peraturan Tentang Perwakafan. *Yustitiabelen*, Vol. 7, No. 1 Juli, p.1-19.

<sup>19</sup> Bix, B. H. (2011). Radbruch's Formula and Conceptual Analysis. *The American Journal of Jurisprudence*, Vol. 56, p.45-57.

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