

The Problem of Waqf Land Legality ini Sarmi Regency: A Sociological Perspective of Law

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Abstract:

The problem of legality and management of waqf land in the midst of Muslim community life in the realm of praxis, often triggers case problems, such as the withdrawal of the waqf land, the seizure of waqf land and others. This study intends to identify factors of ineffective regulation on waqf land certification in Sarmi District, Papua Province. This qualitative study is empirical legal research. SoerjonoSoekanto's theory of legal effectiveness became the theory of subject matter analysis. Data collection through observation techniques, interviews and documentation. Meanwhile, data analysis uses data reduction, presentation, and verification techniques. The results of this study show that the ineffectiveness of regulations related to certification of various waqf lands in Sarmi Regency is caused by the views of the community which is a weak legal culture, including the view that there will be no waqf land disputes, the view of the difficulty of the waqf land certification process, the view of the Wakf Pledge

Deed as the legality of waqf land. The theoretical implications and novelty of this study emphasize that to realize the effectiveness of the implementation of waqf land certification, massive and comprehensive socialization is needed related to understanding of the waqf land certification program and waqf land management management. The limitation of this study is that it has not examined the role of Islamic religious leaders in Sarmi Regency regarding the waqf land certification program.

Problem legalitas dan pengelolaan tanah wakaf di tengah kehidupan masyarakat muslim pada ranah praksisnya seringkali memicu problem kasus, seperti halnya penarikan kembali tanah wakaf tersebut, peneyerobotan tanah wakaf dan lainnya. Studi ini bermaksud untuk mengidentifikasi faktor tidak efektifnya regulasi tentang sertifikasi tanah wakaf di Kabupaten Sarmi, Provinsi Papua. Studi kualitatif ini merupakan penelitian hukum empiris. Teori efektifitas hukum dari Soerjono Soekanto menjadi teori analisis pokok bahasan. Pengumpulan data melalui teknik observasi, wawancara dan dokumentasi. Sementara itu, analisa data menggunakan teknik reduksi, penyajian, dan verifikasi data. Hasil studi ini menunjukkan tidak efektifnya regulasi terkait sertifikasi atas berbagai tanah wakaf di Kabupaten Sarmi disebabkan oleh pandangan masyarakat yang menjadi budaya hukum yang lemah, antara lain pandangan tidak akan terjadinya sengketa tanah wakaf, pandangan sulitnya proses sertifikasi tanah wakaf, pandangan terhadap Akta Ikrar Wakf sebagai legalitas tanah wakaf. Implikasi teoritis dan kebaruan studi ini menegaskan untuk merealisasikan efektifitas implementasi sertifikasi tanah wakaf dibutuhkan sosialisasi secara massif dan komprehensif terkait pemahaman terhadap program sertifikasi tanah wakaf dan manajemen pengelolaan tanah wakaf. Limitasi studi ini belum mengkaji peran tokoh agama Islam di Kabupaten Sarmi terkait program sertifikasi tanah wakaf.

Key words: *Problems, certification, waqf land, sarmi regency.*

Introduction

Polemics about the status of ownership and management of waqf land are still part of a crucial issue in the world of waqf in Indonesia.¹ This is the case in the Sarmi district of Papua Province, namely the large number of uncertified waqf land. According to data from the Islamic Bimas Section and Kekemenangan Education of Sarmi Regency, there are 19 waqf lands spread across Sarmi Regency. However,

¹RM Qudsi Fauzi et al., "The Challenges of Empowering Waqf Land in Indonesia: An Analytical Network Process Analysis," *International Journal of Ethics and Systems*, 2022, 42.

there are only 2 waqf lands that are certified. While the rest do not yet have a certificate of 17 waqf lands. The existence of uncertified waqf land status in Sarmi Regency in its praxis, also triggers problems, such as the case of withdrawal of waqf land back by the heirs of the waqf. This is because the land that has been entrusted is left alone without any physical development in the form of buildings or buildings as mandated by the waqf.²In addition to the case of withdrawal of waqf land, another case is the seizure of waqf land caused by the community assessing land that is not managed or utilized, then returned to customary rights or returned to customary land, so that the community has the right to use the land.³These cases confirm that in addition to public order, waqf land certification has a positive urgency for waqf land, both normatively, sociologically and juridically.⁴

The problem of legality of waqf land that occurs in Sarmi Regency is interesting to be studied in depth in the perspective of legal sociology. Because, the Indonesian government has actually issued various regulations in realizing the management and function of wakafan optimally in the midst of Indonesian society.⁵The initial argument built in this study states that the problem of legality of waqf land in Sarmi Regency shows that legal regulations on waqf land certification cannot work effectively. Such a statement is not an exaggeration. SoerjonoSoekanto, one of the Sociology of Law Professors at the University of Indonesia as quoted by Djaenab explained, that the success of the implementation of legal provisions in the community can be seen from its influence, namely the success or failure in building individual or community attitudes in line with the objectives of the legal provisions.⁶

This study intends to identify factors that waqf land certification cannot run effectively in the middle in Sarmi District. This qualitative study is empirical legal research. Data collection through observation, interview and documentation techniques. Meanwhile, data analysis uses data reduction, presentation, and verification techniques.

There are various previous studies that have a correlation with the subject matter of this study, among others, a study by Umi Supraptiningsih revealed that among the problems of waqf management in the community, namely the status of

²Abd Gani, Problem Legalitas Tanah Wakaf di Kabupaten Sarmi, July 18, 2022.

³Anwar, Problem Legalitas Tanah Wakaf di Kabupaten Sarmi, July 16, 2022.

⁴Saiful Anwar, "Urgency of Waqf Land Registration in the Context of Indonesian Land Reform," *Journal of Law and Legal Reform* 1, no. 3 (2020): 479.

⁵AripPurkon, "Regulations of Waqf Management in Contemporary Indonesia," *JurnalIlmiah Ekonomi Islam* 8, no. 2 (2022): 1237.

⁶Djaenab, "Efektifitas Dan Berfungsinya Hukum Dalam Masyarakat," *Ash-Shahbah :Jurnal Pendidikan Dan Studi Islam* 4, no. 2 (2018): 149-52.

waqf assets is not registered administratively, so it does not have a certificate.⁷ Then a study by Ahmad Muslich, explained that among the waqf management problems that nazhir often experienced, among others, the process of certifying waqf land which took a long time.⁸ Next, a study by Kamariah SukmanNirwana stated that in order for nazhir to work optimally and effectively, strict supervision is needed both by the government and the community, even urgent to ask for help from independent public accounting services.⁹ Furthermore, a study by Sudirman and Ramadhita said that the causes of uncertified waqf land include lack of legal awareness, expensive costs, and a long certification process.¹⁰ Furthermore, a study by Mesi Herawati, and Muhamad Mukhsin stated the importance of assistance funds from the government related to waqf land certification because it is very important for security and also legal strength over waqf land.¹¹ This is in line with a study by Ubaidillah and Maulana Saufi which states that waqf land certificates can be authentic evidence of the transfer of private ownership related to a private land into public ownership.¹² Furthermore, ElzaSyarif in her study emphasized that it is important to revitalize waqf land management in Indonesia through waqf land certification programs based on information and communication technology, as well as modern concepts in professional management.¹³

Unlike the previous studies above, this study focuses on identifying the problem factors of the effectiveness of waqf land certification in Sarimi Regency. This study is urgent, especially in the midst of the discovery of cases of waqf assets that are not registered administratively following regulations from the Indonesian government, causing many problems in the community.

⁷Umi Supraptiningsih, "Problematika Implementasi Sertifikasi Tanah Wakaf Pada Masyarakat," *NUANSA: Jurnal Penelitian Ilmu Sosial Dan Keagamaan Islam* 9, no. 1 (2012): 75.

⁸Ahmad Muslich, "Peluang Dan Tantangan Dalam Pengelolaan Wakaf," *Muaddib: Studi Kependidikan Dan Keislaman* 6, no. 2 (2017): 212-13.

⁹Kamariah Kamariah and NirwanaNirwana, "Problema Wakaf Di Indonesia," *Ats-Tsarwah: Jurnal Hukum Ekonomi Islam* 1, no. 1 (2021): 52.

¹⁰Sudirman Hasan and RamadhitaRamadhita, "Kesadaran Hukum Masyarakat Dalam Akselerasi Sertifikasi Tanah Wakaf Di Kota Malang," *De Jure: Jurnal Hukum Dan Syari'ah* 12, no. 1 (2020): 35.

¹¹Mesi Herawati and Muhamad Mukhsin, "Pelaksanaan Sertifikasi Tanah Wakaf Dengan Pendekatan Fishbone Diagram Analysis (Studi Di Kecamatan Sewon Kabupaten Bantul)," *ZISWAF: Jurnal Zakat Dan Wakaf* 7, no. 1 (2020): 80.

¹²Ubaidillah and Maulana Saufi, "Sertifikasi Tanah Wakaf Dalam Mewujudkan Kepastian Hukum: Studi Kasus Di Kecamatan Klagenan," *Mahkamah: Jurnal Kajian Hukum Islam*, 2, no. 1 (2017): 104.

¹³ElzaSyarief, "Optimization of Waqf Land Management in Indonesia," *International Journal of Research in Business and Social Science* (2147-4478) 10, no. 2 (2021): 270-83.

Method

This study intends to identify factors of ineffective regulation on waqf land certification in Sarimi District, Papua Province. This qualitative study is empirical legal research. Soerjono Soekanto's theory of legal effectiveness became the theory of subject matter analysis. Five factors of legal effectiveness formulated by Soerjono Soekanto in the form of substance, structure, culture, facilities, and public awareness of the law will be used to identify and explore various causes of regulatory problems regarding waqf land certification in Sarimi Regency, Papua Province. Data collection through observation techniques, interviews and documentation. Meanwhile, data analysis uses data reduction, presentation, and verification techniques.

Discussion

Legal Effectiveness in the Middle of Community Life

The implementation of law in the midst of people's social life is actually as urgent as the making, discovery, and enforcement of the law itself. Because, the implementation of law in the midst of community life is expected to be able to apply its function, namely in order to bring order to life in the community.¹⁴ On this basis, in relation to social life the community is governed by various rules (laws) intended to realize the stability of security and social order.¹⁵

According to Soerjono Soekanto as quoted by Djaenab, the success of law implementation in the midst of social life can be seen from how its impact in building community behavior attitudes in line with the objectives of the law implementation.¹⁶ In terms of this effectiveness, there are five factors of legal effectiveness that are important to understand. Further description, as follows. First, the rule of law. There are 3 criteria related to the enactment of a rule of law as a rule, among others. (1) Legal rules can be applied juridically, that is, when they are based on higher level legal rules or formed based on established principles. (2) The rule of law can be applied sociologically, that is, when the rule is effective. In other words, it can have imperative power by the ruler even if it is not accepted by society (power theory), or this rule can be applied because there is recognition by society. (3) Legal rules can be applied philosophically, namely when they are in line with the ideal of law as the highest positive value in social life (state). Second, law enforcement. The existence of law enforcement is a person or legal entity that has

¹⁴Lalu M. Alwin Ahadi, "Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum," *Jurnal Usm Law Review* 5, no. 1 (2022): 113.

¹⁵Soerjono Soekanto, *Pengantar Sosiologi Hukum* (Jakarta: Bhaktara, 1973), 56.

¹⁶Djaenab, "Efektivitas Dan Berfungsinya Hukum Dalam Masyarakat," 149-52.

authority in the implementation of legal rules. Law enforcement here has a broad scope, namely both directly and indirectly in the field of law enforcement, among others, the Judiciary, Prosecutor's Office, Lawyers, and Prisons. Third, legal means or facilities. The existence of facilities (facilities) is very important in order to realize the effective implementation of legal rules. Fourth, public awareness. One of the things that can have implications for the effectiveness of a law implementation is public awareness. That is, public awareness to be able to comply with applicable laws.¹⁷ Fifth, legal culture. What is meant by legal culture here, which can be said to be an indicator that shows the form of acceptance and reciprocity to legal rules, which are applied in the community.¹⁸

Based on the explanation above, it can be concluded that the effectiveness of a legal provision in the midst of social life of the community can be identified through a variety of mutually contributive factors. Not just by a single factor. However, the five factors of legal effectiveness as described above are important to be realized properly. In this study, the five supporting factors for the effectiveness of the law above will be an analysis theory in the main discussion of this study, namely to identify the problem of land legality that occurs in Sarmi Regency.

Legality of Waqf in Indonesia

It has been mentioned in the previous sub-chapter of discussion, that historically, the implementation of waqf in Indonesia has existed since the presence of Islamic syiar itself in Indonesia. In the context of Islamic society at that time, the management of waqf objects was simply handed over to religious leaders orally without written evidence or getting legality from certain institutions.¹⁹ In other words, at that time, there was no set of legality of waqf practices that existed as it is today in Indonesia. Unlike modern Indonesia, the institutionalization of Islamic law in Indonesia has been administrative by the Government.²⁰ Even the Islamic Religious Court has grown rapidly after independence in Indonesia. This condition is also supported by many regulations in the civil sector.²¹ With the regulation from

¹⁷Zaenuddin, "Efektivitas Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan Dalam Meminimalisir Problematika Perkawinan," *Tahkim, Jurnal Peradaban Dan Hukum Islam* 4, no. 1 (2021): 105-6.

¹⁸Muhammas Sudirman Sesse, "Budaya Hukum Dan Implikasinya Terhadap Pembangunan Hukum Nasional," *Jurnal Hukum Diktum* 11, no. 2 (2013): 177-78.

¹⁹Departemen Agama RI, *Paradigma Baru Wakaf di Indonesia* (Jakarta: Direktorat Pemberdayaan Wakaf, 2007), 97, [//pustaka.uinsu.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D23087%26keywords%3D](http://pustaka.uinsu.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D23087%26keywords%3D).

²⁰Asep Saepudin Jahar, "Bureaucratizing Sharia in Modern Indonesia: Te Case of Zakat, Waqf and Family Law," *Studia Islamika* 26, no. 2 (2019): 209

²¹Hasbuddin Khalid, "Absolute and Relative Competence in Religious Jurisdiction in Indonesia," *Al-Bayyinah* 7, no. 1 (2023): 131

the Government, it can avoid polemics on implementation around waqf law in the community. Because it is undeniable, the provisions of waqf law in classical jurisprudence literacy also have various rules that are the object of differences in *pandan huku* among jurists, such as *ṣīghah waqf*, whether limited in time or only limited to the context of eternal waqf.²²

Before explaining what is the basis for the legality of wakafan practice in Indonesia, it is important to first understand what the term legality means. The word legality comes from Latin, namely *lex* which means law or from the word *legais* which means valid or in accordance with the provisions of legislation.²³ On this basis, legality can be interpreted as a valid document for the ownership of property or objects that have a legal basis or are protected by the law that regulates them. For example, the existence of waqf land certificates as proof of ownership of the land being endowed. This is because the certificate is a certificate of record of an authorized officer intended for proof of ownership of an event.²⁴

The bases on which waqf legality in Indonesia are based include Law Number 5 of 1960, Law Number 41 of 2004 concerning Waqf, Government Regulation (PP) Number 42 of 2006 concerning the implementation of Law Number 41 of 2004 concerning Waqf, Government Regulation Number 28 of 1977 concerning Wakafan Tanah Milik, Regulation of the Minister of ATR / BPN Number 2 of 2017.²⁵

Based on the description above, it can be understood that the Indonesian government has implemented a set of regulations that regulate the legality of wakafan practices for the community. However, in the realm of praxis, it is undeniable that the habit of Muslims in the past in Indonesia who considered it unnecessary to carry out the waqf administration process because they thought no one would dare to question or challenge it became one of the waqf cultures that are still found. as well as the problem of legality of waqf land in Sarimi Regency which is the object of study in this study.

The Problem of Waqf Land Certification in Sarimi District and Its Impact

It has been mentioned in the previous sub-chapter of discussion, that historically, the implementation of waqf in Indonesia has existed since the presence

²² Muhamad Firdaus Ab. Rahman & Muhammad Amanullah, "Ta'bīd al-Waqf Wa Ta'qīṭuhu fī Wilāyāt Mukhtārah fī Malaysia," *Studia Islamika* 23, no. 3 (2016):562

²³ Moh Khasan, "Prinsip-Prinsip Keadilan Hukum Dalam Asas Legalitas Hukum Pidana Islam," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 25.

²⁴ Departemen Pendidikan Nasional, "Kamus Besar Bahasa Indonesia Pusat Bahasa Edisi Ke Tujuh" (Jakarta: Gramedia Pustaka Utama, 2018), 1290.

²⁵ Nur Dyah Rahmawati, "Legalitas Perwakafan Tanah Hak Milik Masyarakat: (Study Kasus Di Kabupaten Boyolali)," *Dinamika Hukum* 12, no. 3 (2021): 105.

of Islamic syiar itself in Indonesia. In the context of Islamic society at that time, the management of waqf objects was simply handed over to religious leaders orally without written evidence or getting legality from certain institutions.²⁶ However, the habit of waqf practices is currently sometimes still found in various regions of Indonesia, and often causes various polemics related to the status of existing waqf, such as the phenomenon of swallowing the legality of waqf land in Sarmi Regency, Papua Province, which is the subject of this study.

It is undeniable that the habit of Indonesian people who entrust their property without going through administrative procedures from the government often causes problems with the status of the waqf property. For example, the handover of waqf land to a nazhir (waqf manager) without the Waqf Pledge Deed (AIW) and Waqf Land Certificate often triggers disputes in the future. In addition, the occurrence of waqf land problems in the realm of praxisnya is also often caused by nazhirs who lack or do not have the competence to manage waqf land properly, so that public benefits that are the goals of waqf are not achieved properly.²⁷ Such a case is truly regrettable. Because, waqf is a variant of worship in Islam that contains a message of high social teachings.²⁸ Moreover, the object of the waqf is in the form of land whose function can be used for various social needs in community life.²⁹

The problem legality of waqf land in Sarmi Regency is due to the absence of certification for these waqf lands. This then in the realm of praxis, has an impact on problems related to the status of the waqf land itself, including the withdrawal of waqf land, and the seizure of waqf land. Further explanation related to these two problems, as follows.

The occurrence of the case of withdrawal of land that has been entrusted is due to the negligence of the nazhir who did not manage the waqf land properly. This is as explained by the owner of the waqf land in Tafarewar Village, namely Mr. H. Abd Gani. He explained that the land had been entrusted by me for a long time, but because it was not managed properly according to the agreement with the nazhirs, I had better take the land back.³⁰

The land recall case as above was caused by the nazhir who was given the task of not being able to manage the waqf land properly. Moreover, the process of

²⁶Agama RI, *Paradigma Baru Wakaf di Indonesia*, 97.

²⁷Fahrurrozi, *Wakaf Kontemporer* (Jakarta: BWI, 2019), 21.

²⁸Moch Chotib, Martha Eri Safira, and AttabiulMuqorobin, "Wakaf Land Certification Problems Review from Management Theory of Wakf Management and Legal Sociology," *International Journal of Social Science Research and Review* 5, no. 5 (2022): 357.

²⁹T. Surya Reza, "Penyelesaian Sengketa Pelepasan Hak Atas Tanah Oleh Pemerintah Dalam Proses Pendaftaran Tanah," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 8, no. 2 (2021): 2.

³⁰Gani, Problem Legalitas Tanah Wakaf di Kabupaten Sarmi.

land waqf is still limited to an agreement between nazhir and wakif without being accompanied by legality from the authorized legal entity.

Then, in addition to the withdrawal of waqf land back by the waqf, the neglect of the legality of waqf land also led to cases of seizure of waqf land. This is also due to the improper management of waqf land by nazirs, as was the case with the sabotage of waqf land in Kumma Village. The waqf land was left unattended by nazhir, resulting in the seizure of waqf land by the community. This is as conveyed by Mr. Anwar, namely as a resident who is domiciled in the location of the waqf land in Kumma village. According to him, the land according to our understanding, is a waqf land that has been entrusted for a long time. But unfortunately the managers of the land just left it without any building on it, so it is natural that the local community claims it is vacant land that must be returned to the rights owner.³¹

The explanation above parallels the explanation given by Mr. H.Rustam Mansur as the nazhir of the waqf land in Kumma Village. He explained that the case of the seizure of the waqf land could not be separated from our negligence as nazhirs did not carry out our duties and responsibilities properly, so that the land was occupied by someone else.³²

Based on the explanation above, it can be understood that the factors causing cases of withdrawal and seizure of waqf land are also caused by nazhirs who do not perform their duties and functions properly, so that the existence of waqf land becomes abandoned. Even though the waqf land that has been waqf should be utilized as much as possible for the general benefit of people's lives, especially for Muslims. From this, it can be said that Nazhir's competence and responsibility are very important in managing the waqf land well, so that the purpose of the waqf land can be achieved.

Legal Culture: Causes of Waqf Land Certification Problems in Sarimi Regency

The sociological dialectic of the effectiveness of Islamic law in the midst of the social health of Muslim communities is part of a discourse that always receives attention and is interesting to be discussed and explored. This is nothing else, so that the existence of Islamic law can become a law that in its practical level can always be in a better direction.³³ This view, which then can also lead to the importance of understanding the various factors that become polemics in the

³¹Anwar, Problem Legalitas Tanah Wakaf di Kabupaten Sarimi.

³²Rustam Mansur, Problem Legalitas Tanah Wakaf di Kabupaten Sarimi, July 17, 2022.

³³Ismail Keri, Achmad Musyahid, and Kurniati Kurniati, "Sociological Aspects in the Determination of Islamic Law," *Al-Bayyinah* 6, no. 2 (2022): 152-53.

legality of waqf law in Indonesian society, not to mention the problem of the legality of waqf land in Sarimi Regency which is the core object of this study.

Various forms of problems related to the management of waqf assets are problems that are still found in the lives of Muslim communities in Indonesia. This phenomenon then encourages deep awareness of the urgency of managing waqf assets professionally and dynamically and administratively. In this context, modernization efforts on classical (traditional) waqf law occur in various modern countries, both regarding aspects of regulation, implementation and development, including the modernization of waqf law in Indonesia as contained in the Law (Law). No.41 of 2004 concerning waqf.³⁴

The problem of neglecting the legality of waqf land that occurs in Sarimi district is largely due to the weak legal culture of the community, both from the waqf and nazhir on the urgency of waqf land certification. In fact, a good legal culture in the midst of public life contributes greatly to the effectiveness of law as a means of social control. The urgency of developing a good legal culture in this legal system is of course.³⁵

In the main sub-chapter of this study, it will be described in more detail regarding what are the factors causing the absence of a certification process for waqf lands in Sarimi Regency. Further explanation, as follows.

1)The view that there will be no waqf land disputes

The first factor can be found from the waqf, some of the general public and also the nazhir who incidentally as the officer managing the waqf land in Sarimi Regency. They have the view that waqf land that does not have a certificate remains safe, that is, there will be no problems or disputes in the future from the family parties (heirs) of the waqf over the tanah that has been entrusted.

The above statement can be seen from the explanation of Mrs. Nurhaeda as the heir of the waqf land located in Neidam Village. He said that the waqf land that his parents had handed over for the construction of the mosque would not interfere with him anymore. The waqf land will be a charity of his parents, and all people already know that the land is a waqf land from his parents.³⁶

Apart from the waqf, the community also has a similar view as conveyed by Mahmud as a resident of Neidam Village. He said that if the waqf land that has

³⁴AthoillahIslamy, Alfiandri Setiawan, and Nuryasni Yazid, "Memahami Pola Ijtihad Dalam Modernisasi Hukum Wakaf Di Indonesia," *ASY SYAR'ITYAH: JURNAL ILMU SYARI'AH DAN PERBANKAN ISLAM* 6, no. 1 (2021): 68.

³⁵Arsyad Aldyan, "The Influence of Legal Culture in Society to Increase the Effectiveness of the Law to Create Legal Benefits," *International Journal of Multicultural and Multireligious Understanding* 9, no. 11 (2022): 322.

³⁶Nurhaedah, Problem Legalitas Tanah Wakaf di Kabupaten Sarimi, July 2, 2022.

been used is in accordance with its function, then the heirs will not want to claim the waqf land, let alone the function of the waqf land used for the construction of this mosque.³⁷

Not only from the waqf and the general public, but also from the nazhir side, they also did not pay attention to the urgency of making waqf land certificates. Such a conclusion can be seen from H.Muh's explanation. Saade Pariama as the nazhir of Nurul Islam Sarmi Grand Mosque. He said that he believed that if the land that had been entrusted for the purposes of a place of worship, it would not be withdrawn by the family (descendants) of the waqf, even though the existence of the waqf land did not have legality (waqf certificate).³⁸

The explanation above shows that, both the waqf, some communities and nazhir themselves have the same view, namely waqf land that does not have a waqf land certificate will still be safe. This view is based on the argument that the heirs of the waqf will not intervene in the existence of the status of the land that has been waqfkan, so that in the realm of praxis, it will not cause problems in the future, such as withdrawals or disputes. Especially if the waqf land is used for places of worship facilities, such as mosques.

If viewed in the perspective of legal effectiveness in the community, it can be said that the ineffectiveness of regulations related to waqf land certification in Sarmin Regency, among others, is due to the lack or lack of good knowledge about the urgency of waqf land certificates from the community, both by the waqf, nazhir and the community.

This then becomes a legal culture which ultimately makes regulations related to waqf land certification not run effectively in the community. Such a phenomenon shows that the community has not paid great attention to the regulation and implementation of waqf land in accordance with waqf law regulations in Indonesia. The weak legal culture in the realm of praxis, has triggered unclear status of various waqf lands in Sarmi Regency, both juridically and administratively.³⁹ Such conditions, so it is not surprising that there are legality problems on various waqf lands in Sarmi Regency which cause cases of withdrawal by the waqf family and the seizure of waqf land from the community.

2)View on the Difficulty of Waqf Land Certification

In addition to the factors described earlier, the factor causing the phenomenon of no waqf land certification in Sarmi Regency is also caused by the

³⁷Mahmud, Problem Legalitas Tanah Wakaf di Kabupaten Sarmi, July 12, 2022.

³⁸Muh.SaadePariama, Problem Legalitas Tanah Wakaf di Kabupaten Sarmi, July 13, 2022.

³⁹Nur Fadhilah, "Sengketa Tanah Wakaf Dan Strategi Penyelesaiannya," *De Jure: Jurnal Hukum Dan Syar'iah* 3, no. 1 (2011): 71.

views of nazhirs who consider the process of certifying waqf land too difficult. In addition, there is also a view that the management of waqf certificates requires many requirements and incurs large costs. As for the daily necessities of life, there is still a shortage. On this basis, the nazhir did not care about the urgency of the waqf land certificate. In fact, from the National Land Agency (BPN) of Sarimi Regency as explained by Joselina Sipora Boray as the head of BPN, that actually from the government in this case BPN has socialized and ratified legalization related to making waqf land certificates, especially if the waqf land is used for places of worship facilities.⁴⁰

The explanation from BPN Sarimi Regency above shows that the government, namely from BPN, has actually supported the certification of waqf land, especially related to the land that is waqf to be used for places of worship. In addition, the implementation of the legality of waqf land in Sarimi Regency is free of charge, especially related to Houses of Worship. This should be a big concern by nazhir to respond to the importance of the certification process for waqf land.

When viewed through the perspective of legal effectiveness in the community, it can be said that the lack or lack of good knowledge about the waqf land certification process, from the waqf and nazhir has become part of the cause of waqf land certification regulations not running effectively in various cases of waqf land in Sarimi Regency. This phenomenon is unfortunate because the waqf land certification process has actually been maximally facilitated by BPN Kabupten Sarimi. Therefore, the view of the difficulty of the waqf land certification process is caused by the lack or absence of attention to the land certification program that has been facilitated by the government through the local BPN. In this context, it is important to have more massive socialization efforts by BPN Sarimi Regency related to the waqf land certification process. This is very urgent, namely to build a good legal culture through socialization of understanding the process of seretification of waqf land for the community, both as waqf and nazhir parties. Because, the existence of the certificate becomes written evidence of the land that has been entrusted.⁴¹With the existence of waqf land that has been certified, in the future it can avoid various problems with the status of the waqf land.

3)View of the Waqf Pledge Act as Legality

The factor causing the neglect of the legality of land endowments in Sarimi Regency is the absence of land certification, which is also due to the views of the

⁴⁰Wawancara dengan Ketua BPN Joselina Sipora Boray, Problem Legalitas Tanah Wakaf di Kabupaten Sarimi, July 1, 2022.

⁴¹Ubaidillah and Saufi, "Sertifikasi Tanah Wakaf Dalam Mewujudkan Kepastian Hukum: Studi Kasus Di Kecamatan Klungenan," 108-9.

community who assess the existence of the Waqf Pledge Deed (AIW) at the beginning of the waqf contract has become legality, so it does not require the management of waqf certificates. In fact, such a view is wrong. Because, the existence of AIW is only evidence stated by the wakif to entrust his property to be managed by the nazhir. While the certificate is a form of legality of waqf assets in the form of legally valid waqf land, namely related to the right to land that has been waqf.

There is a wrong view of the function of AIW as stated by Mr. Ismail Talib as the nazhir of the waqf land in Mararena. He said that he thought the existence of AIW was very strong as proof of the ownership of the waqf land, so there was no need to need the legality of the waqf land from BPN, let alone the waqf land was used as a means of worship.⁴²

If viewed in the perspective of legal effectiveness in the community, it can be said that the lack or lack of good knowledge about the function of AIW, both by the waqf and the nazhir is part of the ineffective regulation on the certification of several waqf lands in Sarimi Regency. They consider that the AIW evidence has become a legal legality for the existence of ownership of waqf land status, so they are of the view that they do not need a waqf land certificate. has become a legal culture that ultimately makes waqf land certification regulations ineffective. This is because the administration of waqf land does not just stop at making the Waqf Pledge Deed, but must be registered at the Office of the National Land Agency (BPN) to obtain a waqf land certificate. With this certificate, the waqf land has legal force and does not trigger legal problems in the future.⁴³

Based on three factors, the cause of the legality problem of several waqf lands in Sarimi Regency is the absence of waqf land certificates. These various factors in the review of legal effectiveness, it will show that good knowledge by the community about the ins and outs of the law is important to realize the effectiveness of law enforcement in the community. Because, this will be able to encourage the formation of patterns of behavior and attitudes of obedience and compliance with existing legal provisions, so as to lead to the realization of order in the community, as well as regulations related to the legality of waqf land which must be certified by the government through applicable regulations.

⁴²Ismail Thalib, Problem Legalitas Tanah Wakaf di Kabupaten Sarimi, July 15, 2022.

⁴³Faisal Faisal, "Akibat Hukum KetidadaanAktalkrar Wakaf Atas Perwakafan Tanah," *De Lega Lata: Jurnal Ilmu Hukum* 3, no. 2 (2018): 151-52.

Conclusion

Based on the main discussion of this study, it can be concluded that the ineffectiveness of regulations related to certificates for various waqf lands in Sarimi Regency, Papua Province, is caused by a weak legal culture. This is triggered by various factors. First, the view is that there will be no waqf land disputes. This is because there is no good knowledge about the urgency of waqf land titles, both from the waqf and nazhir. Second, the view of the difficulty of the waqf land certification process. This is due to the lack of attention of waqf and nazhir to the waqf land certification program facilitated by the government through the local National Land Agency. Third, the view of the Waqf Pledge Act (AIW) as the legality of waqf land. This is because, both waqf and nazhir consider the AIW evidence to have become a legal legality for ownership of waqf land status.

The theoretical implication of this study states that massive and comprehensive socialization efforts are needed related to community understanding of waqf land certification programs and waqf land management management. The limitation of this study is that it has not examined the role of Islamic religious leaders in Sarimi Regency, such as Kiai, ustad and mubaligh (preachers) in the succession of waqf land certification programs in Muslim communities in Sarimi Regency. This is urgent to be studied in depth. Because, the existence of Islamic religious figures has a role as well as an influence in the formation of religious attitudes in the community.

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