



Legal Position on Waqf Land That Is Not Registered as Bank Credit Guarantee (Case Study of Decision No. 0534/Pdt.G/2018/PA. Lmg)

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Abstrak. The purpose of preparing this thesis writing The author will also discuss the legal position of waqf land that is used as credit collateral in banks? And what are the legal consequences for land with waqf land rights that are used as credit collateral? Both expected and unexpected aspects of individuals, legal entities, organizations, institutions and social systems of society. This research is a normative juridical research with a qualitative approach so that the data collection technique used in this thesis is a literature technique, while the analysis in this study is after all legal materials are collected both from primary legal materials and secondary legal materials then clarified. qualitative according to the problem Based on literature search, this research has never been used before, thus this research is original and academically accountable. Although there are previous researchers who have conducted research on issues surrounding waqf, the substance of the subject matter discussed is different from this study. This research has a formulation of problems regarding legal consequences on land on the basis of waqf land rights that are used as credit guarantees.

Keywords: Legal position of waqf statement, land used as bank credit guarantee

INTRODUCTION

The Unitary State of the Republic of Indonesia is an archipelagic country that has been recognized by the world and is also an agricultural country with various types of land rights and ownership. In Indonesia, people can obtain ownership rights over land, namely through buying and selling, exchanging, grants, infak, alms, zakat and waqf. Of the various ways that have existed and are ongoing in Indonesia, waqf is one way to obtain property rights over land which is one of the Islamic institutions that is estimated to have existed since hundreds of years ago, namely since Islam entered Indonesia.

In terms of its existence, land waqf comes from Islamic law which is interpreted as a way of releasing ownership of property that can be useful without reducing the objects to be handed over to individuals or groups to be used for purposes that do not contradict sharia, forever. . Waqf is an aspect that is very concerned in Islam, so waqf is categorized as a religious institution that is closely related to socio-economic, therefore waqf has helped

development as a whole, both in the development of human resources and social resources. 2003).

According to Islamic law, waqf occurs instantaneously with the existence of wakif which is ijab (giver) because the act of waqf dipresearcherng as unilateral legal act (Sari Kartika Elsi). The birth of Law Number 41 of 2004 concerning Waqf, among others, was motivated by the social reality that waqf as a legal act has long been institutionalized in the lives of our society, especially Muslims. Based on this background, the government has passed and enacted Law Number 41 of 2004 concerning Waqf as a researcher of juridical and legal implementation of waqf in Indonesia, as recorded in the State Gazette of 2004 Number 159, Supplement to the State Gazette Number 4459.

The definition of waqf based on Article 1 number (1) of Law Number 41 of 2004 is the legal act of waqf to separate and or hand over part of its property to be used forever or for a certain period of time in accordance with its interests for the purpose of worship and / or public welfare according to sharia (Law of the Republic of Indonesia, Law Number 41 of 2004 concerning Waqf).

The purpose of implementing waqf itself is to utilize waqf assets according to their functions (Law of the Republic of Indonesia, Law Number 41 of 2004 concerning Waqf). While the function of waqf is to realize the potential and economic benefits of waqf assets for the benefit of worship and promote general welfare (Law of the Republic of Indonesia, Law Number 41 of 2004 concerning Waqf). Parties who can consume their property are called wakif, which includes individuals, organizations or legal entities. The party who receives waqf property from the wakif to be managed and developed according to its designation in law number 41 of 2004 is called Nazhir. After the wakif stated that he would give away his property, Nazhir made a statement which was then stated in the Waqf Pledge Deed hereinafter abbreviated as AIW, which was made before the Waqf Pledge Deed Making Officer hereinafter abbreviated as PPAIW.

In the event that the right to land as immovable property will be granted, it must fulfill the pillars of waqf, namely the existence of wakif, nazhir, waqf property, waqf lien, allotment of waqf property and the period of waqf stipulated in Article 6 of the Law. Number 41 of 2004 (Law of the Republic of Indonesia, Law Number 41 of 2004 concerning Waqf) The procedures for transferring land rights to waqf land are regulated in Article 38 of Government Regulation Number 42 of 2006, namely (Government Regulation of the

Republic of Indonesia, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf).

The practice of waqf in Indonesia before the enactment of Law Number 41 of 2004 was accustomed to carrying out waqf with a customary system that prioritizes mutual trust, because basically waqf objects are trusts that need to be maintained (hamami). People who want to donate their property entrust it to religious leaders, such as kiai, ustadz, or traditional leaders. The concept of mutual trust makes the implementation of the waqf pledge only carried out orally in the presence of traditional or religious figures without having to be recorded. Given that most waqf objects are land, this has an impact on the issue of the legal status of the waqf land. With these conditions, in the end the waqf land has no legal basis, so that if in the future there are problems regarding the ownership of waqf land, then the resolution will encounter difficulties, especially in terms of proof which results in disputes over waqf land. soil.

Given that ethics is a legal act that develops and is carried out by the community but the arrangement is not optimal, the land to be entrusted must belong to individuals (clean) and there are no defects in terms of ownership. Waqf land disputes are not new in Indonesia, land is a very valuable item where at any time land prices always creep up while the need for land is increasing, especially in urban areas (Djunaidi and Al-Asyhar). In connection with the above, the author will tell about the case of waqf land that is not registered as bank credit guarantee as stated in Decree Number 0534 / Pdt.G / 2018 / PA.Lmg. Where there is a piece of land on the estate of the deceased H. Jaelan which is an inheritance for his heirs but the land has been controlled by one of the heirs where at the time of distribution of the estate one of the heirs said to donate some of the relics are the late Haji Jaelan.

On August 20, 1996 the heirs were handed over to the Chairman of the Islamic Boarding School Ma'arif Nurul Hidayah Banyubang Solokuro - Lamongan. With the waqf handover agreement between the owner and the head of the madrasah management witnessed by 24 witnesses and the Head of Banyubang Village, with the intention of the land granted as a waqf for the establishment of Madrasah Nurul Hidayah Banyubang with an area of approximately 80 M2 x 45 M2, After an agreement was made for the construction of the Madrasah but over time there were heirs who recalled the waqf objects by blocking the implementation of teaching and learning activities carried out at the location waqf objects and even certificates for these waqf objects have been used as credit guarantees at Bank Jatim.

So with the credit agreement that has been carried out by one of the heirs, in this case the defendant is said to violate the provisions of Law Number 41 of 2004 concerning Waqf. Where Law number 41 of 2004 concerning waqf article 40 states that waqf property that has been granted is prohibited from being used as credit collateral, confiscated, granted, sold, bequeathed, exchanged or transferred in other forms of transfer of rights. This raises the question of how it is possible that the waqf land that has been entrusted by the wakif to the nazhir turned out to be used as credit collateral by one of the wakif (Lamongan Religious Court). Based on the description above, it will be discussed in more depth how the legal consequences of waqf land that is not registered as bank loan collateral (Case Study of Decision No. 0534/Pdt.G/2018/PA. Lmg).

LITERATURE

The legal theory used in this study uses the theory of legal certainty from Jan Michael Otto and the theory of legal protection from Philipus M. Hadjon. (Hadjon, 1987)

In this study, the theory of legal certainty was used to analyze the first problem formulation. The theory of legal certainty is one of the important theories to be studied, because the focus of the study of this theory is on legal certainty given to the community. Certainty is a matter of certainty, terms or conditions. The law must in essence be certain and just. Of course, as a code of conduct and justice because the code of ethics must support an order that is considered reasonable. Only because it is fair and enforced with certainty can the law perform its function. The theory of legal certainty that guides this study is the theory of legal certainty proposed by Jan Michael Otto, according to him legal certainty is actually more juridical in dimension. However, Jan Michael Otto wanted to provide further limitations on legal certainty. To that end he defines legal certainty as the possibility that under certain circumstances (Otto, Investment Law):

These five conditions show that legal certainty can be achieved if the legal substance is in accordance with the needs of the community. This kind of legal certainty is called actual legal certainty, which requires harmony between the state and the people in orienting and understanding the legal system (Otto, 2010)

The relevance of the first problem formulation to this theory of legal certainty can be seen where the decision of the judge or court provides certainty in this case the land on the basis of waqf land rights has not been registered with the authorized official because the title certificate over the land is still controlled by one of the wakif, so that the process of implementing waqf and registering waqf cannot be carried out. So that land based on the

right to waqf land that is not registered does not have legal certainty because it does not have proof of ownership in the form of land certificates but in accordance with the theory of legal certainty according to Jan Michael Otto and Government Regulation Number 42 of 2006 article 58 paragraph 1 and because the judge sees the sighat waqf that has been carried out by a waqf, Therefore, waqf land that has not been registered can obtain legal certainty by registering the waqf land to obtain the waqf land certificate.

The theory of legal protection is used to analyze the second formulation of the problem. The supporter of this theory of legal protection is Phillipus M. Hadjon who states that legal protection is the protection of dignity, as well as the recognition of human rights possessed by legal subjects based on arbitrary legal provisions or as a collection of regulations or rules that will be able to protect something from others (Hadjon, 1987) Means of legal protection according to Philipus M. Hadjon are divided into 2 kinds namely means of preventive legal protection and means of Repressive Legal Protection.

The relevance of the second problem formulation is to the theory of legal protection that the law provides protection for land that has been entrusted to be used as an educational institution managed and developed by Nazhir as a party who receives waqf property from something, which results in the land cannot be used in accordance with the designation of the land granted because the land has been used as a credit guarantee for legal protection that can be used, namely legal protection by means of repressive legal protection, such as credit guarantees that already exist on the waqf land must be immediately repaid by the defendant and complete the administrative process of waqf implementation so that the waqf land has proof of ownership in the form of a land certificate endowments. And the legal consequences of the waqf land used as credit collateral must be transferred from the waqf land to other immovable property belonging to the defendant.

Then the theory of land registration. Land registration comes from the word Cadaster or in Dutch is a technical recording term that applies to the area, value and ownership of a piece of land, thus the registrar is the right tool to provide information and identification of land as well as continuous recording of land rights (AP. Parlindungan, 2009).

According to Boedi Harsono, the definition of land registration is a series of activities carried out regularly and continuously to collect, process, store and present certain data about certain land parcels in a certain area with a specific purpose, process, store and present it, and for the benefit of the people to provide guarantees of legal certainty in the land sector, including the issuance of evidence and its management (Patrina Soesilo).

METODE

The research method used in writing this thesis is the Normative Juridical Method with descriptive analysis research specifications. Furthermore, Normative Legal research is one type of legal research methodology that bases its analysis on applicable laws and regulations and is relevant to the legal issues that are the focus of research. Data sources used in normative juridical research as secondary data. This research uses a normative juridical approach, so that the data collection technique used in this thesis is a literature technique, while the analysis in this study is after all legal materials are collected both from primary legal materials and secondary legal materials then clarified. qualitative according to the problem.

DISCUSSION

Researchers have given an overview of the importance of waqf regulation especially related to waqf land and how the government has issued regulations to protect and regulate waqf land. Here are some key points that can be taken from the explanation:

- a) Government Regulation No. 28 of 1977: This regulation is a law that regulates waqf on lands owned. This arrangement is guided by the principles of the Quran and the Sunnah of the Prophet, which provide the religious basis for the management of waqf land. The aim is to provide clear guidelines in managing and protecting waqf land.
- b) Administration Mechanism: Before this arrangement was issued, waqf land management did not have a clear administrative mechanism. Therefore, this regulation provides the necessary framework to regulate the number, form, use, and management of waqf land.
- c) Purpose of Waqf Arrangement: One of the main objectives of waqf regulation is to make waqf land a religious institution that can help the development of Muslim life. Waqf here is considered as a vehicle that supports the spread and education of the Islamic religion, including for special worship and public interest.
- d) Social and Sustainability Aspects: Waqf is an important asset in the development of social and religious life of the community. Waqf land derived from the Quran and Sunnah is considered to have high spiritual and social value, and plays a role in the spread of Islamic teachings.

Two Types of Worship: The explanation also distinguishes between mahdhoh worship and 'ammah worship in the context of waqf. Mahdhoh worship is concerned with

special places of worship such as mosques and prayer rooms, while 'ammah worship is concerned with the use of waqf land for the benefit of the wider community. Thus, the arrangement of waqf on land has a noble purpose in supporting the development of religion, social life, and community welfare. It also reflects the importance of religious values in aspects of daily life and the positive contribution that waqf land can make.

From the researcher's explanation, there are several key points related to waqf, the role of waqf in the welfare of the community, and the factors that cause waqf land disputes. The following is a summary of the information provided by the Researcher:

1. Government Regulation No. 42 of 2006: Article 13 of this regulation regulates the implementation of Law No. 41 of 2004 concerning Waqf. This shows the government's efforts to increase public awareness, especially Muslims, about the importance of waqf in prospering the ummah through wakafan.
2. Importance of Waqf: Waqf is often identified only as the means and infrastructure of worship of Muslims. However, waqf has a broader role, it can benefit all mankind without considering religion, race, or ethnicity. This is in accordance with the spirit of the waqf law which regulates waqf for the general welfare.
3. The Role of PPAIW (Management of Procurement and Inventory of Waqf Assets): Although the law has regulated aspects of waqf, the role of PPAIW in preventing waqf land disputes is still important. PPAIW has a direct role in going down to the community and has the opportunity to provide counseling and education about wakafan. This can help prevent potential disputes and ensure a correct understanding of waqf law.
4. Waqf Land Dispute Factors: Researchers also mentioned that there are factors that cause waqf land disputes in Banyubang, Solokuro, Lamongan Regency. Researchers did not provide further details about these factors. Such factors can relate to legal interpretations, ownership claims, conflicts of interest, or other matters that lead to disagreements about waqf land.
5. Overall, researchers have described the importance of waqf in the welfare of the community, the need for PPAIW's role in counseling and dispute prevention, as well as the factors that can cause waqf land disputes. This information provides an overview of how endowments have a social impact and how law and education play a role in safeguarding endowments from dispute.

Researchers have outlined several key points related to the lack of public knowledge about waqf, the importance of waqf socialization, and the role of waqf in the welfare of the people. Here is a summary of the information the researcher provided:

- a) **Lack of Knowledge about Waqf:** The majority of people still have limited knowledge about waqf. This results in ignorance of the potential solutions that can be provided by waqf in providing public space services and facilities in the midst of limited space. This understanding needs to be improved so that waqf is not only understood as religious worship, but also as a tool for the welfare of the people.
- b) **Waqf Socialization:** Waqf socialization is needed to change the general research on waqf. Waqf should not only be researched as worship, but also as a means to do social and prosper the community. This socialization helps people understand the benefits of waqf in a broader context, including in terms of providing benefits to others and society in general.
- c) **Changing Mindset:** Endowments can change the mindset of individuals from only prioritizing personal profit to being more concerned about the common good and the general welfare. The guidelines of the Qur'an and Hadith provide the ethical basis and values for waqf for the welfare of fellow human beings.
- d) **Role of Government and Officials:** The role of government and officials in motivating waqf awareness is crucial. They can provide examples and provide correct information regarding the benefits of endowments. The sustainability of waqf can also be improved if there is support from the government and relevant institutions.
- e) **Importance of Community Awareness:** Public awareness of endowments is related to ethics and lifestyle. When people understand the social and human values embodied in waqf, they tend to be more concerned about common interests and charity.

Lack of concern from the government for the community, scholars and PPAIW. Ulama and the government need cooperation in fostering and guiding the people, so that they know and understand the importance of waqf, its role is needed because they are the ones who know more in waqf issues, systematically, the institutionalization of waqf is good enough, it's just that the communication that occurs between the government and ulama is considered less than optimal. But it does not rule out the possibility that the government will also participate in the certification of waqf itself, so that it will be chaotic in the future.

The administrative system is not good at managing waqf objects. Until now, the management and management of waqf in Indonesia is still not optimal. As a result, quite a lot of waqf assets were abandoned in its management, and some waqf assets were even lost. One of the reasons is that Muslims in general only entrust school land and buildings, in this case the wakif does not think about the operational costs of the school, and the nazhir is less professional. Therefore, the study of waqf management is very important. The lack of role of waqf in empowering the economy of people in Indonesia because waqf is not managed productively. To overcome this problem, endowments must be managed productively using modern management.

To manage waqf productively, there are several things that need to be done beforehand. In addition to understanding the conception of waqf jurisprudence and laws and regulations, nazhir must be professional in developing the assets he manages, especially if the waqf assets are in the form of money. In addition, to develop waqf nationally, a special body is needed to coordinate and conduct nazhir formation. PPAIW as the party that makes the waqf pledge deed needs to administer all processes, reports and activities, especially in waqf, this is to anticipate that there will be no waqf disputes in the future. The Head of KUA who is also the Waqf Pledge Deed Making Officer spearheads the success of the productive waqf program. This has indeed been regulated in Law No. 41 of 2004 concerning Waqf that the Waqf Pledge Making Officer will play an important role in the waqf empowerment program so that it becomes more productive.

By increasing public knowledge about waqf, changing mindsets, and encouraging waqf awareness, the potential of waqf as a tool for the welfare of the people can be utilized more effectively. While from the point of terminology, lifestyle is the behavior that a person lives in everyday life, including using property and allocating his time.. Lifestyle or one's lifestyle is closely related to the concept and life that is adopted. Therefore, this lifestyle is usually a manifestation of one's way of life. For a Muslim, his lifestyle is certainly based on religious beliefs, namely Islam. In Islam, as stated above, there are teachings of worship that are believed to be very useful for establishing relationships with Allah SWT and at the same time knitting relationships with fellow humans. The relationship is in the form of worship called waqf worship. Waqf is ideal as a lifestyle of a Muslim. Because, waqf can add wealth (quantity and quality) and reward to people who practice it. While psychologically, endowments have a positive influence on people who are endowments. Because if waqf is used as a lifestyle, it will encourage the birth of work ethic

In relation to this prohibition, it turns out that there is a problem that occurs related to the prohibition of waqf land as credit collateral and bad debts, namely those contained in this study where credit agreements have been carried out 3 (three) times between the Defendant and Bank JATIM with details, namely the first credit agreement in 2009 amounting to Rp. 100,000,000.00 (One Hundred Million Rupiah), then the second credit agreement in 2010 amounting to Rp. 150,000,000.00 (One Hundred Fifty Million Rupiah) and the third agreement in 2011 amounting to Rp. 200,000,000.00 (Two Hundred Million Rupiah).

For the first and second credit agreements, there are no problems and can be repaid credit, but in the third credit agreement, over time, the defendant cannot pay credit installments as agreed, so the bank will auction the guarantees that have been given. When the bank came to see the collateral object, it was known from neighbors that the land had been entrusted to the Nurul Hidayah Foundation since 1996, so the bank called the defendant to conduct an auction but the defendant promised to still pay off the debt so the bank discouraged the land for auction. It is known in the Religious Court Decision Number 0534/Pdt.G/2018/PA.

Lmg that the land has not yet finished carrying out the administrative process of implementing waqf, so that the certificate used as collateral at the bank is still in the form of a title land certificate in the name of the defendant, if according to the procedure then the bank before giving credit will see the place of the collateral object and be photographed but it is known from witnesses who are employees of the bank do not know whether the previous credit agreement has been checked because at that time The witness had not worked at the bank and it was only learned from neighbours that the land had been entrusted.

Related to the above problem, the legal consequences arising from the credit agreement are that the credit agreement becomes invalid because the object that is collateral is not allowed to be a credit guarantee and the defendant who has pledged the waqf land must pay off the credit and transfer other immovable property to be used as credit collateral in place of the waqf land and to the land that is the object of dispute Adjustment will be applied for reason. With the existence of land with waqf land rights as credit collateral which has caused legal consequences, there are efforts to protect the waqf land. Based on Phillipus M. Hadjon's theory of legal protection, there are two kinds of legal protection, one of which is the means of Repressive Legal Protection, where the handling of repressive legal protection is carried out through courts, either general courts or state administrative courts.

So that repressive legal protection can be given to a dispute which has been resolved through a religious court as final protection, then based on the theory of legal protection and Article 67 paragraph (1) of Law Number 41 of 2004, the form of legal protection that can be given to waqf land is used as credit collateral in the form of criminal sanctions, namely imprisonment for a maximum of five years and or a maximum fine of Rp. 500,000,000.00 (Five Hundred Million Rupiah) to people who has pledged the waqf land but if it is related to decision number 0534/Pdt.G/2018/PA. LMG, the legal protection that can be provided in the form of the defendant who has pledged the waqf land is required to immediately pay off the credit and complete the administrative process of the waqf implementation so that the waqf land has proof of ownership in the form of a waqf land certificate and Nazhir as the manager of the waqf land can manage and continue teaching and learning activities in accordance with the original purpose of the waqf given by the wakif.

The cause of the a *quo* case factor over the waqf land of the heirs and which has been described above is because the estate of the deceased H. Jaelan which became an inheritance for his heirs which had been agreed upon by the heirs (wakif) to be used as a waqf and handed over to the Chairman of the Management of Ma'arif Ma'arif Nurul Hidayah Banyubang, Solokuro - Lamongan with a size of approximately $\pm 80 \text{ M}^2 \times 45 \text{ M}^2$ which was later used as credit collateral by one of its wakif (Defendant) which clearly violates because in Law Number 41 of 2004 concerning Waqf. Where Law number 41 of 2004 concerning Waqf article 40 states that waqf property that has been waqf is prohibited from being used as credit collateral, confiscated, granted, sold, bequeathed, exchanged or transferred in other forms of transfer of rights. There are several points that can be taken to be analyzed, namely:

1. Based on the lawsuit contained in decision No. 0534/Pdt.G/2018/PA. Lmg polemic is that the land used as a waqf has not been registered or registered with PPAIW or its successor APAIW (Deed in Lieu of Waqf Pledge Deed). The bad faith factor (bad faith) "*good will or good faith*" of the Defendant.
2. The Defendant (Zainuddin) took control of part of the land and his letter (SHM No.38 dated November 5, 1997) from the legacy of the late H. Jaelan which is still jointly owned.
3. Pledge the certificate and object of the land to Bank Jatim.

Negligence and disregard for the judge's decision in his decision Number 0534/Pdt.G/2018/PA. Lmg dated October 8, 2018 does not require that what is meant by

waqf must exist and be registered with PPAIW with an alternative physical form of AIW or APAIW (Act Alternate Waqf Pledge) certificate, not only a letter sealed with witnesses named in the case and also the criminal element, especially if there is an act of deprivation of letters or certificates in article 372 of the Criminal Code by pawning or pledging a third party in this case Bank Jatim without the permission and knowledge of the heirs Others still exist:

- 1 Tijarah bint H. Jaelan and Jazuli Bin H. Jaelan and PMH individuals commit unlawful acts The existence of an act;
- 2 Such acts are against the law;
- 3 The presence of errors;
- 4 The existence of losses and;
- 5 There is a causal relationship between actions and losses

It seems to be discussing a complex legal case and involves many aspects, including legal aspects, the interests of various parties, and the role of institutions and individuals in the case. Noting that the Defendant's actions in taking advantage unilaterally and harming other parties, including heirs and institutions that have waqf rights, cause losses and violations of legal norms.

In order to resolve the case, several things may need to be considered:

- 1) Evidence and Facts: Ensure that all relevant evidence and facts have been presented to the court and considered in judicial proceedings. This includes proof of ownership, the deed of pledge of waqf, as well as all aspects of the law and agreements involved.
- 2) Law and Procedure: Ensure that legal steps taken by all parties are in accordance with applicable laws and procedures. Included in this are provisions regarding endowments, land title rights, and agreements that may apply.
- 3) Consultation with a Legal Expert: In such a complex case, it is very important to obtain advice and assistance from a competent legal expert. Legal experts can assist in analyzing cases, providing legal advice, as well as assisting in deciding the most appropriate measures.
- 4) Interests of Various Parties: In resolving this case, it is necessary to consider the interests of various parties involved, including heirs,

educational institutions, and banks involved in this case. The solution should include justice for all parties involved.

- 5) Law Enforcement: If you feel that any violations of the law or fraud have occurred in this case, you may consider reporting it to the competent authorities, such as law enforcement officials or agencies authorized to regulate land and property matters.

Remember that legal cases can be very complex and require in-depth knowledge of the law as well as the judicial process. Therefore, taking steps with guidance from a legal expert is highly recommended. Legal protection in agrarian law can be seen based on the provisions in the provisions of Article 3 letter (a) of Government Regulation No. 24 of 1997 concerning Land Registration which states that:

"The purpose of land registration is to create legal certainty and legal protection for owners of land rights and units of flats and other registered rights so that they can easily prove that they are the owners of the land rights concerned"

The arrangements mentioned in the Regulation of the Head of the National Land Agency Number 3 of 2011 and Article 4 paragraph (1) of Government Regulation No. 24 of 1997 have important relevance in the context of land issues and ownership of land rights. In general, a land use rights certificate is a legal document that proves ownership or title to land. This document presents important information about the legal status of the land, the identity of the owner, area, location, and boundaries of the land. By having a land use rights certificate, the owner can claim his rights more clearly and unequivocally. This helps avoid ambiguations or disputes that may arise regarding land ownership.

The importance of land use rights certificates covers several aspects: Legal Certainty: Land use rights certificates provide the owner with legal certainty about ownership and rights related to the land. Proof of Ownership: The certificate is a valid and legal proof of land ownership, which can be used in civil proceedings or in business transactions.

- 1) Dispute Prevention: With clear information in the certificate, the risk of ownership-related disputes or conflicts can be reduced.
- 2) Transaction Process: Land use rights certificates facilitate the process of buying and selling transactions or providing guarantees for land.
- 3) Implementation of Justice: The use of land use rights certificates also contributes to the administration of justice, because the rights of owners are more easily recognized and protected.

However, keep in mind that while land use rights certificates are an important tool in proving land ownership, this does not necessarily mean that all land-related disputes or disputes can be avoided. Sometimes, there are cases involving different interpretations of land rights, changes in ownership conditions, or other complex factors. In the context of land law, regulations governing the implementation of judicial proceedings and case resolution, such as the Regulation of the Head of the National Land Agency Number 3 of 2011, have an important role in ensuring that disputes or disputes related to land can be resolved fairly and in accordance with applicable law.

The evidentiary power regarding this certificate of land rights is regulated in the provisions of Article 32 paragraph (1) of Government Regulation No. 24 of 1997, namely:

"The certificate is a letter t proof of rights that applies as the strongest means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant measuring letter and land book."

In the context of land law in Indonesia, it has illustrated the difference between the positive publication system and the negative publication system and its impact on the evidentiary power in land rights transactions. The positive publication system shows that the state guarantees the correctness of the data contained in the land title certificate, while the negative publication system places the responsibility of proving the correctness of the data on other parties who want to prove its incorrectness.

It is important to note that in Indonesia's system of negative publicity, the existence of a land title certificate is not an absolute guarantee of legal ownership. For example, even if a person has obtained a land title certificate, that right can be canceled if the underlying legal action proves to be defective or committed by an unauthorized party. This is related to the principle of "nemo plus iuris" or "no more than he has", which indicates that a person cannot transfer rights greater than the rights he has.

In this context, land title certificates have value as proof of ownership, but do not replace the importance of ensuring the validity of legal acts that violate these rights. In the event of a dispute or dispute related to land ownership or transactions, the judiciary will consider the evidence presented by the parties to take a fair and lawful decision.

An important point to make is that land title certificates are only one element in ensuring legal ownership, and it is important to conduct a careful examination of the legitimacy of the transaction or legal act underlying the ownership. Thus, the principle of

"nemo plus iuris" and the principle of prudence in transacting with land rights remain relevant in maintaining the validity of land transactions in Indonesia

CONCLUSION

The author can conclude the inaccuracy and inattentiveness of the judge's decision in his decision No. 0534/Pdt. G/2018/PA. Lmg dated October 8, 2018 does not see a requirement that what is said to be a waqf must exist and be registered in PPAIW with the physical form of AIW certificate or its successor APAIW (Deed in Lieu of Waqf Pledge Deed), not just a seal letter with witnesses who have been mentioned in the Lawsuit and there is also a criminal element in it, namely where there is embezzlement of letters or certificates in article 372 of the Criminal Code by mortgaging or pledging to third parties in the case of this is Bank Jatim without the permission and knowledge of other surviving heirs.

So in this case it is clear that there is an unlawful mistake and also causes losses to other heirs, because the Defendant takes advantage unilaterally and harms many people besides other heirs also against the institution given waqf rights, namely the Management of Ma'arif Ma'arif Nuruh Hidayah Banyubang Madrasah, Solokuro - Lamongan.

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