

Analysis of Waqf Land Legalization

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Abstract—This study aims to determine the number and reasons for non-certified waqf assets in the city of Bandung and to find out the legal standing and legal consequences for land and buildings that are not certified. The research method used is a qualitative research method with a normative juridical approach using literature studies with related literature accompanied by interviews with waqf managers in the city of Bandung. The results of this study are various obstacles in managing certification, among others, because land ownership documents are lost, there is no certificate of waqf or waqf pledges that have passed away, making it difficult to access the heirs in handling the legality of waqf assets, so that the land and buildings have no legal certainty and loss of legal protection aspects in the event of various problems in the future.

Keywords—legal standing; waqf asset; Bandung City

I. INTRODUCTION

Waqf is a unique Islamic economic instrument that bases its function on the elements of virtue (*birr*), kindness (*ihsan*) and brotherhood (*ukhuwah*). The main characteristic of waqf that is very different from other Islamic voluntary sectors is that when waqf is fulfilled, there is a shift in private ownership towards the ownership of Allah SWT. which is expected to be eternal and provide sustainable benefits [1]. Waqf plays a pertinent role as an Islamic public finance instrument that has a great potential mechanism to play as a significant role in generating a prominent source of financing for the state and for the needs of the Muslim *ummah* who are complex and growing [2].

In Indonesia there are still a lot of waqf assets that have just been managed very much simple and even idle, so it doesn't have a significant impact for the wider community. This was stated by Juwaini citing the results of the survey conducted by the State Islamic University (UIN) which shows that in part Large waqf managers (*Nadzir*) have not been able to produce waqf assets [3].

The Potential of waqf in advancing the economy is increasingly enticing many parties, not only the private sector, but also recently the Indonesia government has targeted a number of potential such as waqf land o be used as underlying assets in waqf linked *sukuk* instruments. This is not without reason. Several sources indicate that there are many lands in Indonesia that have the potential to be developed even more [4]. In particular, for waqf lands located in the city of Bandung, the city has an area of 167.31 square kilometers and is the center of the administration of west java [5].

Given that public awareness in Indonesia is very high in representation, it can be seen from the data of the Indonesian Waqf Agency regarding the total area of waqf throughout Indonesia in 2016, amounting to 4, 35 billion square meters. And the special number of West Java provinces is 75 thousand square meters, including un-certified land of around 29 thousand square meters [6]. in the city of Bandung, waqf land that built a mosque of approximately 2000 mosques with different land area and not all certified [7]. In addition, the number of waqf land and buildings, such as Islamic boarding schools or public facilities that are still not yet certified as official waqf assets, have no legal force, which results in very vulnerable to waqf disputes and various other problems in the future.

Because the current condition of land use and value is increasing and expanding, the waqf land which is not legally clear has invited vulnerability and facilitated deviations from the legal nature and purpose of the representative, such as the existence of waqf land which is no longer known, waqf land which seems to have belonged to the wakif or *nadzir* heirs, a dispute and claim against waqf lands and various other cases of waqf land [8].

The land and building waqf certification program for the *nadzir* and *wakif* is an effort to increase public legal awareness about the importance of waqf recording as a preventive effort in avoiding waqf disputes later on. Recording and registration of waqf land and buildings has been regulated in Law No.41 of 2004 concerning Waqf, so that the procedure must be carried out by *Wakif* and *Nadzir* [9].

The formulation of the problem summarized in the purpose of this study was to find out the cause of the lack of certification of waqf buildings in the city of Bandung and to find out the legal position of waqf buildings that have not been certified in the city of Bandung.

II. METHOD

This study uses qualitative research methods, through a normative juridical approach and uses library research in collecting data, namely the type of qualitative research whose data is obtained from books, books, magazines, newspapers, journals and other records that have relevance to the issues to be discussed. As for the other supporting data in the field, especially related to waqf asset data that has not been certified, through purposive sampling techniques that deliberately take