

## The Notary Authority in the Making of Land *Waqf* Prediction Deed

Rinaldy Bagus Febryan<sup>\*)</sup> and Achmad Sulchan<sup>\*\*)</sup>

<sup>\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: [renaldy96@gmail.com](mailto:renaldy96@gmail.com)

<sup>\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: [ach.sulchan@unissula.ac.id](mailto:ach.sulchan@unissula.ac.id)

**Abstract.** *Before donating the property of the Wakif, the Wakif must make his Waqf pledge first. Then it is poured into writing, carried out in the presence of the Official Making the Waqf Pledge Deed (PPAIW). The Wakif statement will then be stated in a form of Deed, which is called the Waqf Pledge Deed. The provisions of the requirements for a Notary to become PPAIW are explained in the Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects Other than Money. This study uses a normative juridical research approach, examining the implementation or implementation of positive legal provisions and factual contracts in each particular legal event. The results of this study are 1) Notary authority in making Waqf Pledge Deed (AIW) has been given by Article 37 PP No. 42 of 2006, but not all Notaries can be appointed as PPAIW. The main requirements for a Notary to become PPAIW must be Muslim, trustworthy and have a certificate of competence in the field of Waqf issued by the Ministry of Religion; 2) The inhibiting factor in the implementation of the Notary in making the Waqf Pledge Deed is that the people of Jepara Regency only know that PPAIW is the Head of the sub-district KUA in the Jepara Regency Legal area, because until now there has been no Notary in Jepara Regency who has obtained certification as PPAIW in relation to making AIW.*

*Keywords: Authority; Deed; Notary; Pledge; Waqf.*

### 1. Introduction

The procedure for implementing *Waqf* of Property Rights on Land must be done in writing, it is not enough just to make a verbal pledge. The aim is to obtain authentic evidence that can be used for various issues such as for registration

materials at the Regency/Municipal Agrarian Office and for the purposes of resolving disputes that may arise in the future regarding the *Waqf* land.<sup>1</sup>

In order to obtain legal force on the *Waqf* land, a *Waqf* pledge must be made with a deed by the Head of the KUA as the Official Making the *Waqf* Pledge Deed. The implementation of the *Waqf* pledge, as well as the making of the *Waqf* Pledge Deed is considered valid, if it is attended and witnessed by at least 2 witnesses, which is accompanied by proof of land ownership, village head certificate, land registration certificate. After the *Waqf* pledge agreement is made, then the land *Waqf* registration is carried out at the Regency/City Land Office to obtain a certificate. *Waqf* land certification is a national program as the responsibility of the government and society. Therefore, to know with certainty the number of *Waqf* lands throughout Indonesia, registration must be carried out completely.<sup>2</sup>

Before donating the *Wakif's* property to be handed over to Nazir, the *Wakif* must make his *Waqf* pledge first. Pronunciation of this *Waqf* pledge orally. Then it is poured into writing, carried out in the presence of the Official Making the *Waqf* Pledge Deed (PPAIW) which is attended by 2 (two) witnesses. The *Wakif* statement will then be stated in a form of Deed, which is called the *Waqf* Pledge Deed. The Official Making the *Waqf* Pledge Deed (PPAIW) is contained in Article 1 number 6 of Act No. 41 of 2004 concerning *Waqf*. The official authorized to make this *Waqf* Pledge Deed has been stipulated in Government Regulation Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning *Waqf*.

Article 37 paragraphs 4 and 5 state that it is possible for a Notary to have the opportunity to make a *Waqf* Pledge Deed. This includes the new authority of the Notary in making Deeds related to *Waqf*. In carrying out his position, a Notary is guided by Act No. 30 of 2004 concerning Notary Positions (LN No. 117 of 2004, TLN No. 4432) and Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions ( LN No. 3 of 2014, TLN No. 5491).

From article 27 of the Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for *Waqf* of Immovable and Movable Objects Other than Money, it can be concluded that not all Notaries can become Officials for Making *Waqf* Pledge Deeds as described in that Article. Only a Notary who is Muslim can have the authority to make a *Waqf* Pledge Deed. The authority to make this *Waqf* Pledge Deed can be exercised by a Notary and the Head of the Office of

---

<sup>1</sup> Abdul Ghofur Anshor, (1991), *Potensi Hukum Wakaf dan Pembinaannya di Indonesia*, Yogyakarta: UGM, p.314

<sup>2</sup> Adrian Sutedi, (2012), *Sertifikat Hak Atas Tanah*, Jakarta: Sinar Grafika, p.170

Religious Affairs in their second position as the Official Making the *Waqf* Pledge Deed (PPAIW). The Notary Position Act, in the explanation of Article 15 paragraph 3 only explains that the other authorities of the notary are regulated in the legislation, one of which is making a *Waqf* pledge deed.

It can be formulated in this study: What is the authority of a notary in making a land *Waqf* pledge deed in Jepara Regency? What are the inhibiting factors and solutions for the Notary in making the land *Waqf* pledge deed in Jepara Regency?

## 2. Research Methods

This research uses normative juridical. Normative juridical law research examines the implementation or implementation of positive legal provisions (laws) and factual contracts in every particular legal event that occurs in society in order to achieve the predetermined goals.<sup>3</sup>

This research is descriptive analytical. Analytical descriptive research is a type of research to provide data that is as accurate as possible about a social phenomenon or phenomenon that occurs in people's lives by simply describing the facts systematically, according to the needs of the research.<sup>4</sup>

## 3. Results and Discussion

### 3.1. Authority of Notary in Making Land *Waqf* Pledge Deed in Jepara Regency

Notary is a profession that was formed and born based on the laws and regulations, namely Act No. 30 of 2004 concerning the Position of Notary. The existence of a Notary is increasingly needed by the community along with the development of a high level of public legal awareness. This is because a notary is a profession which by law is given the power to become an extension of the government in issuing authentic deeds as stated in Article 15 of the Law on Amendments to the Law on Notary Positions<sup>5</sup>.

---

<sup>3</sup>Muhammad, Abdulkadir, (2004), *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, p. 134.

<sup>4</sup>Mukti Fajar ND and Yulianto Achmad, (2010), *Dualisme Penelitian Hukum: Normatif & Empiris*, Yogyakarta: Pustaka Pelajar, p. 53.

<sup>5</sup> Deen, Taufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan

In Article 15 paragraph (3) of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, it is stated that "Other authorities regulated in laws and regulations" include the authority to certify electronic transactions, make *Waqf* pledge deeds and aircraft mortgages. The Notary's authority which has been determined by the Notary Position Act is especially in the making of the *Waqf* pledge deed.

In Indonesia, *Waqf* activities are known along with the development of Islam in this country. This is evident from the many historic mosques that were built on *Waqf* land. This *Waqf* teaching continues to develop in the archipelago, both pre-colonial, colonial period, and after Indonesia's Independence this thus encouraging the government to make regulations related to the *Waqf* mechanism, such as: Government Regulation Number 28 of 1977 concerning Ownership Land of *Waqf*, Minister of Religion Regulation Number 1 of 1978 concerning Implementing Regulations of Government Regulation Number 28 of 1977 concerning Property Rights Land of *Waqf*, Law of the Republic of Indonesia Number 41 of 2004 concerning *Waqf*, and Government Regulation of the Republic of Indonesia Indonesia Number 42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning *Waqf*<sup>6</sup>.

A notary as a public official who has a general authority as long as it is not excluded from other officials according to law. This kind of new authority needs to be seen in reality regarding the use of a Notary in carrying out his position other than as a general official as well as an Official Making *Waqf* Pledge Deed. The position of the Notary as the Official Making the *Waqf* Pledge Deed is administratively very important and strategic, namely for the sake of securing the *Waqf* property from a legal perspective, especially from disputes and acts of third parties who are not responsible for that PPAIW must always act trustworthy in carrying out their positions.<sup>7</sup>

In the Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for *Waqf* of Immovable Objects and Movable Objects Other than Money, that in order to implement the provisions of Article 37 paragraph (5) of

---

Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>6</sup> Ong Argo Victoria, (2018) *Waqf Al-Nuqūd In Indonesia (In Law Perspective)*, Jurnal Pembaharuan Hukum Vol 5, No 1 Universitas Sultan Agung, <http://jurnal.unissula.ac.id/index.php/PH/article/view/2999>, see to Sukarmi, S., & Victoria, Argo. (2018). Cash Waqf in Sustaining of Indonesian Society "In Legal & Economic Perspective". *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES*, IRKHS-IIUM, Malaysia, 2(1), 83–97. <https://doi.org/10.31436/al-itqan.v2i1.43>

<sup>7</sup> Ministry of Religion of the Republic of Indonesia Directorate General of Islamic Community Guidance Directorate of Waqf Empowerment in 2013, Waqf Service Standards for Officials Making Waqf Pledge Deeds by, <http://papua.kemenag.go.id/file/file/Data/dvsu1457068454.pdf>, accessed 10 December 2021.

Government Regulation Number 42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning *Waqf*, the government to stipulate Regulation of the Minister of Religion concerning Procedures for *Waqf* of Immovable Objects and Movable Objects Other than Money.

Some of the powers of a Notary as PPAIW are generally the same as PPAIW in general (as the head of KUA) which can be described as follows:<sup>8</sup>

1. Checking the validity of the administration as a requirement for the implementation of the *Waqf* Pledge and the issuance of the *Waqf* Pledge Deed, including ownership of the property to be donated, the identity of the candidate *Wakif*, *Nazhir*, and witnesses, as well as other matters deemed necessary,
2. Refuse the implementation of the *Waqf* pledge that will be carried out by the *Wakif* if the administrative requirements and legal provisions have not been met as applicable laws and regulations, such as the property to be donated is still a dispute.
3. Provide input or attention to prospective *Wakif*, prospective *Nazhir*, and prospective witnesses during the implementation of the *Waqf* Pledge in order to fulfill the requirements and improvement of *Waqf*, both regarding the management plan and its designation (*mauquf alaih*) in order to provide more benefits for the general good.
2. PPAIW has the right to propose the replacement of *Nazhir*, either on his own initiative or at the suggestion of *Wakif* or his heirs if *Nazhir* within 1 (one) year since AIW is created does not carry out his duties properly.
3. Mediate if there is a conflict between *Nazhir* and other *Nazhir* members, between *Nazhir* and *Wakif*, between *Nazhir* and the community or other related parties.

### 3.2. Inhibiting Factors and Notary Solutions in Making Land *Waqf* Pledge Deed in Jepara Regency

The new authority of the Notary as the Official making the *Waqf* Pledge Deed in reality has not been able to be implemented effectively in Jepara Regency. The new authority of the notary in relation to being the Official Making the *Waqf* Pledge Deed is still very cloudy and cannot be widely addressed.<sup>9</sup> Based on the final conclusion in Jepara Regency, there is no notary who holds the position as an Official for Making *Waqf* Pledge Deeds, however, there are Notaries who are

---

<sup>8</sup> Ibid.

<sup>9</sup> Interview with Mr. Muh Habib, as Head of the Jepara Regency Ministry of Religion office, 10 December 2021.

used as respondents to explore data on factors that prevent a Notary from submitting an application as an Official Making *Waqf* Pledge Deed<sup>10</sup>.

Following are the conclusions from interviews of notaries in Jepara Regency, the factors that can be an obstacle to the Authority of Notaries as Officials for Making Land *Waqf* Pledge Deeds in Jepara Regency include:

1. There is no access that can be given as a further reference regarding the Notary in making this Land *Waqf* Pledge Deed. This form of socialization has never existed in Jepara Regency, the initial discussion in the Jepara Regency Branch Notary Association Forum has never existed.
2. In addition to socialization to the Notary there has never been, then automatically there is no socialization to the community either. Because as far as the public knows, only the Head of the Office of Religious Affairs can issue the related *Waqf* Pledge Deed as his position as the Official Making the *Waqf* Pledge Deed.
3. Another reason is that the notary is not a competent notary in the land *Waqf* midwife itself. So that it is not possible to make a *Waqf* Pledge Deed, especially land objects.
4. Until now, there has been no agreement between the parties, including: Understanding by a notary partner in the agreement to make a *Waqf* Pledge Deed whose capacity as a notary is not a Land Deed Making Officer, because many know that land is the duty of the Land Deed Maker Official, not a notary.

Another problem that caused questions from the Head of the Jepara Regency Religious Affairs Office and the Jepara Regency Religious Affairs Office was related to the administrative aspects that would be applied by a Notary, if there was a Notary who had become an Official Making *Waqf* Pledge Deed with a land object. There is no understanding between the Head of the Jepara Regency Religious Affairs Office, the Jepara Regency Ministry of Religion Office and all notaries in Jepara Regency, because so far the Head of the Religious Affairs Office has not spent any money on wakfi, *Nazhir* or related witnesses in making the Pledge Deed *Waqf*. It is hoped that the Notary will not charge any fees in its manufacture. So, the Official Making the *Waqf* Pledge Deed and the local Land Agency must cooperate or synergize in certifying *Waqf* land. The most possible forms of synergy are in the form of:

---

<sup>10</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

- a. Agreement on management requirements and procedures
- b. Clear and transparent fee terms
- c. Provisions for a certain period of management
- d. Open the widest access to the community
- e. Evaluating and monitoring the implementation of *Waqf* land certification

Solutions that can solve the obstacles to the Notary's Authority as Officials for Making Land *Waqf* Pledge Deeds in Jepara Regency, among others, are:

1. Organizing socialization related to Notaries in making *Waqf* Pledge Deeds in Jepara Regency together in the Jepara Regency Branch Notary Association Forum.
2. Dissemination to the public regarding the Notary can issue a Deed of *Waqf* Pledge, not only the Head of the Office of Religious Affairs who can issue the related *Waqf* Pledge Deed as his position as the Official Making the *Waqf* Pledge Deed.
3. An understanding by a notary partner in the agreement to make a *Waqf* Pledge Deed whose capacity as a notary is not a Land Deed Maker Officer, because many know that the land area is the duty of the Land Deed Maker Officer, not a notary.

#### **4. Conclusion**

The authority of the Notary in making the *Waqf* Pledge Deed (AIW) has been granted by Article 37 PP No. 42 of 2006. This authority does not conflict with the authority of a Notary as regulated in Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions but not all Notaries can be appointed as Officials for Making *Waqf* Pledge Deeds (PPAIW). The main requirement for a Notary to become PPAIW must be Muslim, trustworthy and have a certificate of competence in the field of *Waqf* issued by the Ministry of Religion. Inhibiting factors in the implementation of the Notary in making the *Waqf* Pledge Deed, there are several reasons that are crucial so that PPAIW is still being carried out by the Head of KUA. The people of Jepara Regency only know that PPAIW is the Head of the sub-district KUA in the Jepara Regency Legal area, because so far no Notary in Jepara Regency has yet been certified as PPAIW in relation to making AIW. There has been no socialization of the initial talks in the Jepara District Notary Association Forum, there has never

been. Apart from that there has never been a socialization, the understanding by a notary partner in the agreement to make a *Waqf* Pledge Deed has never been determined.

## 5. References

### Journals:

- [1] Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>
- [2] Deen, Taufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. JURNAL AKTA: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>
- [3] Ong Argo Victoria, (2018) *Waqf Al-Nuqūd In Indonesia (In Law Perspective)*, Jurnal Pembaharuan Hukum Vol 5, No 1 Universitas Sultan Agung, <http://jurnal.unissula.ac.id/index.php/PH/article/view/2999>
- [4] Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>
- [5] Sukarmi, S., & Victoria, Argo. (2018). Cash Waqf in Sustaining of Indonesian Society "In Legal & Economic Perspective". *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES*, IRKHS-IUM, Malaysia, 2(1), 83–97. <https://doi.org/10.31436/al-itqan.v2i1.43>
- [6] Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

### Books:

- [1] Abdul Ghofur Anshor, (1991), *Potensi Hukum Wakaf dan Pembinaannya di Indonesia*, Yogyakarta: UGM
- [2] Adrian Sutedi, (2012), *Sertifikat Hak Atas Tanah*, Jakarta: Sinar Grafika
- [3] Muhammad, Abdulkadir, (2004), *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti
- [4] Mukti Fajar ND and Yulianto Achmad, (2010), *Dualisme Penelitian Hukum: Normatif & Empiris*, Yogyakarta: Pustaka Pelajar



*Regulation:*

- [1] Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary
- [2] Act No. 41 of 2004 concerning *Waqf*
- [3] Civil Code
- [4] Constitution of the Republic of Indonesia 1945
- [5] Government Regulation No. 28 of 1977 concerning Ownership Land *Waqf*
- [6] Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning Implementation of Act No. 41 of 2004 concerning *Waqf*
- [7] Minister of Religion Regulation Number 1 of 1978 concerning Implementing Regulations of Government Regulation Number 28 of 1977 concerning Perwakafan Hak Milik Land

*Internet:*

Ministry of Religion of the Republic of Indonesia Directorate General of Islamic Community Guidance Directorate of *Waqf* Empowerment in 2013, *Waqf* Service Standards for Officials Making *Waqf* Pledge Deeds, <http://papua.kemenag.go.id/file/file/Data/dvsu1457068454.pdf>

*Interview:*

Interview with Mr. Muh Habib, as Head of the Jepara Regency Ministry of Religion office, 10 December 2021.