

**OBSTACLES IN THE MANAGEMENT OF CERTIFICATION OF MOSQUE  
ENDOWMENT LAND IN PERBAUNGAN DISTRICT (IMPLEMENTATION OF  
LAW NUMBER 41 OF 2004 CONCERNING ENDOWMENTS)**



**Hilmiyah Humaidi Damanik<sup>1</sup>**

**Universitas Islam Negeri Sumatera Utara, Medan, Indonesia**  
[hilmiyahd@gmail.com](mailto:hilmiyahd@gmail.com)

**Ansyari Yamamah<sup>2</sup>**

**Universitas Islam Negeri Sumatera Utara, Medan, Indonesia**  
[ansariyamamah@uinsu.ac.id](mailto:ansariyamamah@uinsu.ac.id)

**Ramadhan Syahmedi<sup>3</sup>**

**Universitas Islam Negeri Sumatera Utara, Medan, Indonesia**  
[ramadhansyahmedi@uinsu.ac.id](mailto:ramadhansyahmedi@uinsu.ac.id)

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**Abstract**

Waqf land certification in Indonesia has been governed by various regulations for decades, serving as essential authentic evidence for ensuring legal certainty of waqf land. However, data from the Perbaungan District Religious Affairs Office (KUA) in 2022 reveals that out of 88 mosque waqf lands, only 43 have been certified, while 45 remain uncertified. This situation arises due to numerous obstacles in the certification process, hindering the effective implementation of Law Number 41 of 2004 concerning Waqf. This empirical juridical study investigates the procedures and challenges in certifying mosque waqf land under the mentioned law. The study draws on primary and secondary data collected through observations, interviews, and documentation, and the data is analyzed using qualitative descriptive methods. The findings indicate that: 1) In Islamic law, waqf land certification is encouraged by the recommendation for documentation in muamalah as outlined in QS Al-Baqarah verse 282. The process and procedures are further regulated by Indonesian positive law. 2) Key obstacles include a lack of information and outreach, inadequate professionalism of waqf nazhir, administrative complexity, costs, and low public legal awareness.

**Keywords:** Mosque Waqf Land Certificate, Obstacles, Waqf Law

## INTRODUCTION

Endowments are clearly regulated in Indonesia. The regulation is stated in Law Number 41 of 2004 concerning endowments. This law guarantees the legality of the implementation of endowment practices in Indonesia. Law Number 41 of 2004 concerning Endowments or called the Endowment Law is expected to be able to create legal order and endowment administration in order to protect endowment assets. This Endowment Law emphasizes that legal acts of endowments must be recorded and stated in a deed of endowment pledge, registered and announced.

One form of land use for endowments that is common in Indonesia is for the construction of mosques. In addition to being a place to carry out worship, mosques also function for religious and social activities in the community.

Unfortunately, even though it has been 20 years since the endowment regulations or laws were born in 2004 in Indonesia, many problems have occurred in their implementation in society. The main problem that most often arises is about the legality or legal certainty of the mosque waqf land, namely the absence of a waqf land certificate which is the basis for proving the validity of the waqf for the land.

From this problem of certification of mosque waqf land, it triggers and gives birth to other problems that are much more complicated. For example, the denial of the waqf by the heirs of the waqf, the transfer of the function of the mosque waqf land, prosecution or lawsuits by the heirs of the waqf regarding ownership of the land that was donated, the struggle for the area of mosque waqf land adjacent to land owned by the community because written evidence regarding the legal act of waqf, namely the waqf land certificate, does not exist.

The problems of mosque waqf land as above also occur in Perbaungan District. Based on data from the Religious Affairs Office (KUA) of Perbaungan District in 2022, there were 88 mosque waqf lands. A total of 45 mosques have not been certified and only 43 have been certified as waqf land. The number of waqf land certifications has increased from previous years. In 2019, out of 88 mosque waqf lands in Perbaungan District, only 13 waqf lands have been registered and have waqf land certificates. Of the 13 certified waqf lands, they are used as: prayer rooms, mosques, graves, and other social purposes.

As initial data, the author has conducted interviews with several related informants to find out the root of the problems that occur in the community. First, to the BKM of the Silaturrahim Mosque in Citaman Jernih Village, he said that the lack of information he received regarding the process and procedures for managing certificates, so that the expansion of waqf land and certification has not been carried out until now, even though the expansion must be proven immediately in writing because there are often disputes over waqf land rights with land belonging to neighboring mosques. Second, the author conducted an interview with the BKM of the Al Ihsan Mosque in Melati Satu Village. The informant stated that the main obstacle in processing certification was the absence of written evidence or legal basis for the mosque's waqf land, because the land was donated by the waqif decades ago and was not recorded, while the heirs did not have strong evidence of the waqf. Third, an interview with the BKM of the Al Huda Mosque, Sei Sijenggi Village. There was a conflict between the BKM and the waqif heirs who demanded a plot of land from the land that had been donated by their grandfather, while both parties did not hold or have evidence in the form of a certificate for the mosque land. Furthermore, the author conducted interviews with several Islamic religious instructors who worked in Perbaungan District.

In addition to the absence of written evidence regarding the land waqf, the lack of competence or skills of the BKM is also one of the obstacles in processing waqf land certification. The instructors have been conducting outreach to the BKM since 2021, although there has been an increase from previous data, the level of processing waqf land certificates still needs to be maximized. The obstacles described above are some of the reasons why the community faces obstacles in managing the certification of waqf land and implementing waqf rules or laws. The initial data obtained by the author illustrates that although the waqf law has been around for 20 years, in its implementation there are still many obstacles that occur in the community.

Considering the great benefits and advantages of mosque waqf land for the community, and considering the many problems and harms that arise due to the lack of legal certainty or legality of mosque waqf land, certification of mosque waqf land is a very important thing to do so that the mosque waqf land is maintained, preserved and used properly,

There are several reasons why there are still many mosques that have not been certified in Perbaungan District. The problems faced Among them is the low legal awareness of the Mosque Prosperity Agency (BKM) which is then appointed and appointed as nazhir in the waqf process to carry out certification of waqf land. Nazhir is obliged to handle the administration of waqf land. This is stated in Article 11 of Law Number 41 of 2004 concerning Waqf. In this article, nazhir is obliged to carry out the administration of waqf property, namely taking care of certification, managing, supervising, and reporting the implementation of tasks to the Indonesian Waqf Agency (BWI). Furthermore, this article is emphasized in Article 3 paragraph (1), 13 paragraph (1) and 30 paragraph (1) of Government Regulation (PP) No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf states that waqf assets must be registered in the name of the nazhir in a waqf pledge deed (AIW) in accordance with the type of assets being waqf, held in a Waqf Pledge Assembly attended by the Nazhir, Mauquf alaih, and at least 2 (two) witnesses.

The Compilation of Islamic Law (KHI) also emphasizes the same thing, stated in Article 220 that the nazhir is obliged to manage and be responsible for waqf assets and their results, and the implementation of waqf in accordance with the objectives according to the provisions stipulated by the Minister of Religion. Furthermore, the nazhir is required to make periodic reports on all matters that are his responsibility to the Head of the local District Religious Affairs Office with a copy to the local District Ulama Council and Sub-district Head.

The waqf regulations in Indonesia are certainly inseparable from Islamic law or provisions. Indeed, the Koran does not explicitly mention using the word waqf, but there are many verses in the Koran that explain infaq, alms and charity which can also be used as waqf. One of the verses of the Koran that is used as a proof (legal basis) regarding waqf is QS Al Baqarah verse 261:

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ  
سُنْبُلَةٍ مِائَةٌ حَبَّةٌ وَاللَّهُ يُضَعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“The parable of those who spend their wealth in the way of Allah is like (those who sow) a seed (seed) that grows seven stalks, on each stalk there are a hundred seeds. Allah multiplies (rewards) for whom He wills. Allah is All-Encompassing, All-Knowing.”

Apart from QS Al Baqarah verse 261, there are still many verses from the Koran that discuss and motivate waqf. As in QS Al Baqarah verse 267, QS Ali Imran verse 92 and QS Al Hajj verse 77. Not only does it recommend waqf, the Koran also emphasizes recording every transaction carried out, this is also the legal basis for the obligation to certify waqf land. The obligation to record every transaction is explained in QS Al Baqarah verse 282: °

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

"O you who believe, if you owe a debt for a certain period of time determined, you should write it down ..."

Abu Abdillah Muhammad al Anshari al Qurthubi or the mufassir known as Imam al Qurthubi explains in his commentary entitled Al Jami' li Ahkam al Quran, that this verse is an order for "al kitabah" which is recording, and the recording in question must be accompanied by "al isyhad" which is testimony, because recording without testimony cannot be a "hujjah" or legal basis.

Although this verse orders the obligation to record debts and receivables, it can also be understood that the obligation to record is intended for all muamalah transactions, including waqf deeds which must be recorded. So from this verse the author understands that carrying out certification of waqf land is in line with the recommendations of the Qur'an.

In line with the verses of the Koran above, the Prophet Muhammad SAW also recommended land waqf, as mentioned in the hadith:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِخَيْبَرَ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمُرُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ فَمَا تَأْمُرُ بِهِ قَالَ إِنْ شِئْتَ حَبَسْتُ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقْ بِهَا عُمْرًا أَنَّهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ وَتَصَدَّقْ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبَىٰ وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ وَالضَّيْفِ لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ وَيُطْعِمُ غَيْرَ مُتَمَوِّلٍ (صحيح مسلم عن ابن عمر)

"It was narrated from Ibn Umar ra, he said: Umar had obtained a plot of land in Khaibar, then he came to the Prophet SAW to ask for consideration regarding that land, then he said: O Messenger of Allah, indeed I have obtained a plot of land in khaibar, where I did not get a treasure more valuable to me than him; So what would you order me to do regarding it? Radullah saw said to Umar: if you like, keep the land and donate the benefits. Then Umar donated the benefits of the land on the condition that the land would not be sold, would not be given away and would not be inherited. He donated the land to poor people, relatives,

servants, Sabilillah, Ibn Sabil, and guests, and there was no obstacle for the person who took care of it to eat part of it in a virtuous way and eat it without considering that the land was his own.” (HR. Muslim, Sahih Muslim).

The hadith explains that waqf has existed since the time of the Prophet Muhammad SAW and he recommended it because it has many benefits for the ummah, however, in this hadith there is no mention of the obligation to record the property or land donated. However, the recommendation for waqf and its recording becomes stronger if it is linked to the verses mentioned previously. After explaining the recommendations for waqf from the Qur'an and the hadith, and explaining the rules and laws regarding waqf that apply in Indonesia, it is understood that land waqf is in accordance with the recommendations of Islamic law, and is regulated and protected by Law Number 41 of 2004. on Waqf, Government Regulation Number 42 of 2006 on the Implementation of Law No. 41 of 2004 on Waqf, and the Compilation of Islamic Law. However, regulations and religious arguments have not been able to maximize the number of waqf land certifications in Perbaungan District due to the many obstacles in its administration. Thus, the researcher considers it necessary to conduct in-depth research with the title "Obstacles to the Management of Certification of Mosque Waqf Land in Perbaungan District (Implementation of Law Number 41 of 2004 Concerning Waqf)".

## **RESEARCH METHOD**

Research Methodology is the scientific steps used by researchers to collect, process, and analyze data in order to answer the research questions. Methodology provides an overview of data sources and the steps used to study and analyze the data. This research utilizes field research methods, which are a type of qualitative research that intensively examines social correlations and current community conditions. The focus of this research is on the Mosque Prosperity Board (BKM) in Perbaungan District, where the legal awareness regarding mosque endowment land certification is still low.

The research approach used is an empirical approach with an empirical juridical method. This approach describes the real conditions observed in the field and uses field research to gather the necessary data. The aim of this research is to analyze and identify the

legal awareness of BKM regarding mosque endowment land certification in Perbaungan District by collecting data through interviews and documentation.

The subjects of the research are the BKMs in Perbaungan District, which will provide information regarding legal awareness of endowment land certification. The researcher will conduct interviews with BKM administrators to obtain relevant data. Meanwhile, the objects of the research are mosque endowment lands that have not been certified; from the total of 88 mosques in Perbaungan District, 43 mosques will be the focus of this research.

Primary data is collected through direct interviews and via social media or mobile phones, with prepared notes and questionnaires to ensure the information obtained meets the research needs. Secondary data, such as literature, books, journals, and related documents, are used to support the research results, while field documentation is also carried out as evidence of the research activities.

The data analysis method used is qualitative descriptive, starting with analyzing the obtained data, describing it, and linking it with the empirical approach. This research is structured into five chapters: Chapter I - Introduction, Chapter II - Theoretical Framework, Chapter III - Analysis of Obstacles, Chapter IV - Solutions to Obstacles, and Chapter V - Research Results and Conclusions with Recommendations. This systematic approach aims to provide a structured and directed overview of the research on mosque endowment land certification in Perbaungan District.

## **RESULTS AND DISCUSSION**

### **Socialization of Mosque Endowment Land Certification**

Addressing the challenges of mosque endowment land certification necessitates an enhanced approach from the Office of Religious Affairs (KUA) in Perbaungan District. Despite efforts such as meetings and mediation with nazhir (endowment managers), the limited budget for intensive training has restricted the effectiveness of these initiatives. Consequently, the KUA has turned to social media for outreach, yet this method has been less successful as many nazhir are not active on these platforms. To improve socialization efforts, it's proposed that more direct outreach, guidance, and advocacy be conducted by Islamic counselors who can provide religious education and clearer information about

endowment land certification. The KITA JAWARA program initiated by the Serdang Bedagai Regency government should be leveraged not just as a formal cooperation but as an effective community outreach tool.

### **Enhancing Competency and Professionalism of Nazhir**

To develop trustworthy and professional nazhir, it's essential to focus on improving their knowledge, skills, and competencies. This involves fostering attitudes and behaviors that reflect their role as trustees of Islamic property, ensuring proper management, and accountability. A unified understanding and implementation of endowment management practices are crucial for efficient control. Enhancing nazhir's competencies can be achieved through various educational methods: formal education via quality institutions, non-formal education through courses and training programs, and informal education through direct cadre development. Additionally, nurturing the physical and mental well-being of endowment managers is vital for maintaining motivation and cultivating good character and morals.

### **Accelerating Endowment Land Registration Through Cross-Sector Programs**

Accelerating endowment land certification requires leveraging government projects like the Complete Systematic Land Registration (PTSL) as detailed in relevant ministerial instructions and circulars. This includes coordination between the Ministry of Agrarian and Spatial Planning/National Land Agency, the Ministry of Religious Affairs, and the Indonesian Endowment Agency. The Ministerial Regulation Number 2 of 2017 and subsequent instructions mandate the registration of places of worship, with funding covered by the PTSL budget if within designated areas. For locations outside these areas, sporadic land registration applies. This process aims to ensure legal certainty for endowment properties and includes specific provisions for Islamic places of worship.

### **Implementation and Impact of the KITA JAWARA Program**

The KUA of Perbaungan District has actively engaged in data collection, outreach, and mediation with endowers and nazhir to promote endowment land certification. Collaborative efforts between the KUA and the National Land Agency of Serdang Bedagai emphasize the importance of certifying endowment land to prevent disputes and ensure legal certainty. A recent development, the KITA JAWARA program launched on December 13,

2023, by the Serdang Bedagai District Attorney's Office, aims to accelerate the certification of places of worship through cross-sectoral collaboration. This program, which includes partnerships with the Prosecutor's Office and the Ministry of Religious Affairs, has received positive community feedback and represents a significant step toward improving endowment land registration processes.

### **Future Directions and Recommendations**

For continued success in endowment land certification, it is crucial to build on the current initiatives by expanding outreach and education efforts. Strengthening partnerships between governmental and community organizations will facilitate more effective implementation of certification programs. Additionally, increasing budget allocations for training and utilizing more interactive and engaging methods of socialization can improve the effectiveness of these programs. The ongoing support and active participation of all stakeholders, including nazhir, local governments, and religious institutions, will be essential for achieving comprehensive and sustainable improvements in mosque endowment land management.

### **CONCLUSION**

In Islamic law, the validity of an act, in this case, endowment (waqf), is determined by the fulfillment of the necessary conditions and pillars of the act. Scholars and jurists have established the pillars and conditions for waqf, including the waqif (the person making the endowment), the mauquf bih (the endowment property), the mauquf 'alaih (the intended beneficiaries of the endowment), the sighat (the declaration or statement of waqf), and the nadzir (the manager or custodian of the waqf). Among these pillars, it is not required to have a written or recorded document; however, a verbal declaration or statement of waqf is required, and this statement does not need to be written or recorded. The issue of recording or certifying waqf property, when viewed from the perspective of the Quran, can be analogized to recording in commercial transactions as mentioned in Surah Al-Baqarah, verse 282. Meanwhile, the certification procedure for waqf land in Indonesia is regulated by positive law, including Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning

Waqf, Government Regulation Number 28 of 1977 concerning Ownership of Waqf Land, and Law Number 5 of 1960 concerning the Basic Agrarian Law.

The challenges faced by the community in certifying mosque endowment land in Perbaungan District are: first, lack of information and socialization. Second, the professionalism of waqf managers. Third, complex administration. Fourth, costs. Fifth, low legal awareness among the community.

The solutions proposed to address the challenges in the certification of mosque endowment land in Perbaungan District are: first, socialization of mosque endowment land certification. Second, enhancing the competence and professionalism of waqf managers. Third, expediting the registration of waqf land through cross-sectoral programs.

## REFERENCES

- Al Nawawi, Yahya bin Syaraf Abu Zakaria. (1408 H). *Tahrir al Fazh at Tanbih*. Damaskus: Dar al Qalam.
- Al Qurthubi, Abu Abdillah Muhammad al Anshari. (1957). *Al Jami' li Ahkam al Quran*. Mesir: Darul Kutub al Misriyah.
- Alauddin, Imam al Kasani Abu Bakar bin Mas'ud bin Ahmad. (1997). *Badai ash Shanai fi Tartib asy Syarai*. Beirut: Dar al Fikr.
- Ali, Achmad. (2006). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana.
- Anwar, Syamsul. (2007). *Studi Hukum Islam Kontemporer*. Jakarta: RM Books.
- Apeldoorn, L.J van. (2006). *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*. Bandung: PT Revika Aditama.
- Arba. (2015). *Hukum Agraria Indonesia*. Jakarta; Sinar Grafika.
- Arikunto, Suharismi. (1995). *Dasar-Dasar Reseach*. Bandung: Tarsoto.
- Arikunto, Suharismi. (2006). *Prosedur Penelitian Suatu Pendekatan Praktek*. Jakarta: Rieneka Cipta.
- Az Zuhaili, Wahbah. (1987). *Al Fiqh al Islami wa Adillatuhu*. Damaskus: Darul Fikr.
- Depag RI. (2001). *Al-Qur'an Dan Terjemahannya*. Semarang: CV. Asy-Syifa.
- Departemen Pendidikan Nasional. (2007). *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka.

- Fatahillah, Zahrul. (2019). *Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Sertifikat (Studi Terhadap Putusan Wakaf Di Mahkamah Syar'iyah Aceh)*. KALAM.
- Hadi, Sutrisno. (1987). *Metodologi Research II*. Yogyakarta: Andi Offset.
- Kansil, CST. Christine S.T. Kansil, Engelian R, Paandeng dan Godlieb N. Mamahit. (2000). *Kamus Istilah Hukum*. Jakarta: Jala Permata Aksara.
- Mertokusumo, Sudikno dalam H. Salim HS. (2010). *Perkembangan Teori Dalam Ilmu Hukum*. Jakarta: PT Rajagrafindo Persada
- Muslim. Tt. Shahih Muslim. Bandung: Syarikat Al-Ma'arif lithob'i Wannasr.
- Otto, Jan Michiel. (2006). *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*. Bandung: PT Revika Aditama.
- Prasetyo, Deni dan Suratmin dan Syarifuddin. (2021). *Buku Saku Sertifikasi Tanah Wakaf*. Jakarta: Badan Wakaf Indonesia.
- Qahf, Mundzir. (2000). *Al Waqf al Islami; Tathwwaruhu, Idaratuhu, Tanmiyatuhu*. Damaskus: Dar al Fikr.
- Qamar, Nurul dkk. (2017). *Metode Penelitian Hukum (Legal Research Methods)*. Makassar: CV. Sosial Politic Genius (SIGn).
- Rahardjo, Satjipto. (2006). *Hukum Dalam Jagat Ketertiban*. Jakarta: UKI Press.
- Rahmat. (2023). *Islamic Religious Education Curriculum with a Multicultural Insight in Elementary Schools*. *Anjasmoro: Islamic Interdisciplinary Journal*, 1(1), 78–89. <https://doi.org/10.69965/anjasmoro.v1i1.21>
- Suliastiani, Siska Lis. (2017). *Pembaruan Hukum Wakaf di Indonesia*. Bandung: PT Refika Aditama.
- Syah, Abdullah. (2009). *Butir-Butir Fiqh Harta*. Medan: Wal Ashri Publishing.
- Syahputra, Akmaluddin. (2013). *Wakaf*. Bandung: Citapustaka Media.
- Umar, Ibnu Abidin Muhammad bin Amin bin. (1997). *Radd al Mukhtar ala ad Duur al Mukhtar*. Beirut: Dar al Fikr
- Usman, Husaini dkk. (2006). *Metodologi Penelitian Sosial*. Jakarta: PT Bumi Aksara.
- Usman, Muslih. (1996). *Kaidah-Kaidah Ushuliyah dan Fiqhiyah*. Jakarta: PT. Raja Grafindo Persada.
- Zuana, M. M. M., Toha, M., & Isbahi, M. B. (2024). *Exploration of Community Empowerment in a Village as the Entrance to a Lake in East Java*. *Malacca: Journal of Management and Business Development*, 1(1), 48–56. Retrieved from <https://e-journal.bustanul-ulum.id/index.php/malacca/article/view/52>