

# ACCOUNTABILITY PROCEDURE FOR HEIRS IN THE REGISTRATION SYSTEM OF WAKAF ASSETS LAND IN INDONESIA

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## Abstract

**Research Objectives** - This study aims to examine the legal aspects of the procedure for accountability of heirs as surrogate wakifs in the registration system of waqf land inheritance in Indonesia.

**Methodology** - This study uses descriptive qualitative research, namely uncovering certain social situations by describing reality correctly, formed by words based on relevant collection and analysis techniques and obtained from natural situations and entered into journals.

**Findings** - The results of this study indicate that the legal basis for the responsibility of heirs as a surrogate waqf in the registration of waqf inherited land is regulated in Article 24 to Article 27 of Law Number 41 of 2004 concerning Waqf.

**Originality** - This study can be concluded that the waqf pledge deed and waqf land certificate provide legal certainty for the wakif, the wakif's heirs and other related parties, and can be authentic evidence in the event of a dispute.

**Keywords:** Heirs, Waqif, Waqf land

## INTRODUCTION

Inheritance is a crucial issue and cannot be simply ignored, not a few people go too far (by committing murder) because of this inheritance matter. Inheritance is a right for heirs in accordance with the provisions stipulated in Islamic law.

The reality in society, when a person's right to property is not fulfilled, the needs of their soul (al-nafs) will be disrupted, so that it will lead them to hunger, depression, and it is not uncommon for suicides to occur, and their religion is disrupted due to a lack of life. economically it is very easy to be influenced by irresponsible parties to shake their religious beliefs (Nawawi, 2016).

Even when someone dies and leaves assets, this property does not immediately become an inheritance and is divided among all the heirs, because there are rights that must be paid in advance to the heir's tirkah (inheritance), which then the assets can be distributed to all heirs (Muhibbussabry, 2020).

Inheritance is addressed to heirs, but there are also assets that cannot be passed on to heirs, namely waqf assets. Nevertheless, inherited assets can be donated in accordance with certain conditions, for example the amount of inherited assets that is donated has been determined in regulations.

This is because the heir who donates his property also has heirs who are also entitled to his inheritance. Several problems occurred, namely not a few heirs of the wakif (the person who donated his property) asked to return the property that had been donated by the wakif when the wakif had died, so a dispute arose.

Of course, asking for the property that has been donated cannot be justified. Rasulullah ShalallaahuAlaihiWassalaam, said that: "Waqf assets may not be sold, bought, inherited or donated". Likewise, Article 40 of Law Number 41 of 2004 concerning Waqf, states that:

Waqf property that has been donated is prohibited:

a. As collateral;

- b. confiscated;
- c. Granted;
- d. For sale;
- e. inherited;
- f. Exchanged; or
- g. Transferred in other forms of transfer of rights.

Waqf becomes a charity or social charity for wakif after death, with many benefits provided to the community at large. Waqf continues to experience development and will always develop along with the pace of changing times with various forms of innovation, such as cash waqf, intellectual property waqf and others (Haji, 2003).

Thus, the wakif who has donated his property has relinquished his personal ownership rights, and has handed over the responsibility for maintaining and managing these assets to the Nazhir. According to the provisions of Article 1 number 4 of Law Number 41 of 2004, it is the party who receives the waqf property from the waqif to be managed and developed according to its designation.

Evidence of a statement of the will of the wakif to endow his property to be managed by the nazhir in accordance with the designation of the waqf property set forth in the form of a deed, which is called the Waqf Pledge Deed. The waqf that has been declared or pledged by the waqif cannot be cancelled. This is as stipulated in Article 3 of Law Number 41 of 2004, that: "A waqf that has been pledged cannot be cancelled."

Sometimes, when a waqif is still alive, he does not carry out the waqf pledge, so that in the absence of a waqf pledge, the waqf assets do not have legal force. It is feared that if there is no waqf pledge, there may be a dispute over waqf property with the wakif's heirs, unless the wakif's heirs know about the property being donated by the wakif but no waqf pledge has taken place.

In addition there are also those who want to donate inherited assets. The waqif wants to donate inherited assets in the form of property, which before the wakif dies asks the heirs to donate the assets and register the waqf land. Of course, related to the inheritance that is donated, it will involve the rights of the heirs in it.

The purpose of this research is to find out the legal aspects of the procedure for accountability of heirs as a surrogate wakif in the registration system of waqf land inheritance in Indonesia.

## RESEARCH METHODOLOGY

This study uses a qualitative approach, where qualitative research is an approach in conducting research that aims to explain phenomena in depth through the collection of data in depth.

Qualitative research reveals certain social situations by describing reality correctly, formed by words based on relevant collection and analysis techniques and obtained from natural situations. Thus, qualitative research is not only an attempt to describe the data, but the description is the result of collecting valid data that is qualitatively required. In this study using a descriptive type, this type of research aims to make a systematic, factual and accurate description of the facts and characteristics of a particular population or object.

## DISCUSSION

The word waqf comes from Arabic, namely from the word waqafa, yaqifu, waqfan which means standing up from sitting, or calm after walking. The word waqafa ad-daarwanahwahu means to make the house a waqf in the way of Allah. According to Fukaha, the word waqf means holding property and channeling its benefits to certain parties. It is permissible to channel it to the public interest at the beginning and at the end or for the public interest only at the end (Furqon, 2019).



Waqf according to the provisions of Article 1 number 1 Law Number 41 of 2004 is: "Wakif's legal act to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or welfare according to sharia", while according to Article 215 paragraph (1) Book III of the Compilation of Waqf Laws of Islamic Law, it states that: "Waqf is a legal act of a person or group of people or legal entity that separates part of his property and institutionalizes it forever for the benefit of worship or other public needs in accordance with Islamic teachings.

Recorded in gold ink, the story of Caliph Uthman bin Affan bought and donated a house well, as quoted in the Hadith: "No one wants to buy a house well and then he makes his bucket with the Muslim bucket (that is, makes it a waqf and he can still take water from it) it will be rewarded better from that source in heaven." Uthman said: "I also bought it from my personal property" (H.R. at-Tirmidhi and declared hasan by ash-Shaykh al-Albani). And until now the house well continues to grow, the surrounding area has developed into a productive date palm garden, and the implication is that until now a bank account in the name of Uthman bin Affan, there is still and continues to be abundant, waqf proceeds. Waqf is not only a social aspect, waqf is very clear with economic aspects that need to be developed by nazhir (managers) in the modern era (Jaharuddin, 2020).

The function of waqf according to Article 5 of Law Number 41 of 2004 is: "Waqf functions to realize the potential and economic benefits of waqf assets for the benefit of worship and to promote public welfare", whereas according to Article 216 of the Compilation of Islamic Law, that: "The function of waqf is to perpetuate benefit from waqf objects in accordance with the objectives of waqf".

The implementation of waqf must pay attention to the pillars or elements of waqf. Basically, there are 4 (four) pillars of waqf, namely (Indonesia, 2019):

1. Waqif (parties who endow their assets);
2. Mauqufbih (wealth donated);
3. Mauquf 'alaih (beneficiary of waqf); And
4. Shighah (statement of waqf).

Whereas Article 6 of Law Number 41 of 2004, states that:

Waqf is carried out by fulfilling the elements of waqf, as follows:

- a. Waqif;
- b. Nazir;
- c. Waqf Property;
- d. Waqf Pledge;
- e. Allocation of waqf assets;
- f. Waqf period.

Waqf is part of alms, but has several unique specifications and distinguishes it from other alms. Among the uniqueness of waqf, among others (Sarwat, 2018):

1. Ongoing benefits;

The assets that are donated are assets that have continuous benefits that can be felt by those who have been given the right to get them, while for alms generally the benefits are immediately used up or disposable.

2. Continual reward;

The benefits of the waqf can continue to be obtained and felt, so every time there is a benefit, the reward will be given by Allah, and so on, as long as the waqf property can be utilized, then during that time the reward will be obtained. So waqf is often referred to as charity whose rewards continue to flow or sadaqahjariyah.

3. There is a manager.

The manager of the waqf property is called nazhir waqf. Nazhir is needed to ensure that waqf assets can continue to provide the maximum benefit to the waqif. Nazhir has a heavy responsibility



because he is given a mandate from the wakif to be able to continuously send gifts to him, both when he is still alive and after he dies.

One of the problems in waqf is related to waqf property which is often the object of dispute, especially when waqf property comes from inheritance. The conditions related to the waqf property are assets that are valuable, belong to the wakif, and are durable to use. Waqf assets can also be in the form of capitalized money, such as shares, which must be managed as optimally as possible so as to benefit or benefit many people (Rosadi, 2019). In Article 16 of Law Number 41 of 2004, it is stated that:

(1) Waqf assets, consisting of:

- a. immovable objects; And
- b. Moving objects.

(2) Immoveable objects as referred to in paragraph (1) letter a, include:

- a. Land rights in accordance with the provisions of the applicable laws and regulations, both registered and unregistered;
- b. Buildings or parts of buildings that stand on land as referred to in letter a;
- c. Plants and other things related to land;
- d. Ownership rights to apartment units in accordance with the provisions of the applicable laws and regulations;
- e. Other immovable objects in accordance with sharia provisions and applicable laws and regulations.

(3) Movable objects as referred to in paragraph (1) letter b are assets that cannot be used up due to consumption, including:

- a. Money;
- b. Precious metal;
- c. Securities;
- d. Vehicle;
- e. Intellectual property rights;
- f. lease rights; And
- g. Other movable objects in accordance with sharia provisions and applicable laws and regulations.

Regarding the inheritance that is donated, it can be seen in Article 25 of Law Number 41 of 2004, which states that: "Waqf assets that are donated by will are at most 1/3 (one third) of the amount of inherited assets after deducting the debts of the bequest, except with the consent of all heirs.

Furthermore, it is stated in Article 26 of Law Number 41 of 2004, that:

- (1) Waqf with a will is carried out by the beneficiary after the beneficiary dies;
- (2) The beneficiary of the will as referred to in paragraph (1) acts as a proxy for waqif;
- (3) Waqf with wills as referred to in paragraph (1) and paragraph (2) shall be carried out in accordance with the procedures for waqf regulated in this Law.

The will must be carried out by the beneficiary, including here if the heir asks the heir to donate part of his inheritance, then the will must be carried out. This is as stipulated in Article 27 of Law Number 41 of 2004, which states that: "In the event that a waqf with a will is not carried out by the recipient of the will, at the request of the interested party, the court may order the recipient of the will concerned to carry out the will."

Based on the will of the heir who wants to donate his inheritance, the heir has full responsibility to carry out the will of the heir, namely the heir acts as a substitute wakif. Provisions regarding this will are regulated in the Compilation of Islamic Law, including:

1. Article 194 Compilation of Islamic Law

- (1) A person who is at least 21 years old, has good sense and without coercion can bequeath a part of his property to another person or institution;
- (2) The property that is bequeathed must be the right of the bequest;

(3) Ownership of property as referred to in paragraph (1) of this Article can only be exercised after the testator dies.

## 2. Article 195 Compilation of Islamic Law

(1) A will is made orally before two witnesses, or in writing before two witnesses, or before a notary;

(2) Wills are only allowed as much as one-third of the inheritance unless all the heirs agree

(3) Wills to heirs are valid if agreed by all heirs;

(4) Statements of approval in paragraphs (2) and (3) of this article are made verbally before two witnesses or in writing before two witnesses before a notary.

## 3. Article 196 Compilation of Islamic Law

In the will, both in writing and verbally, it must be stated clearly and clearly who or what institution is appointed to receive the inherited property.

## 4. Article 201 Compilation of Islamic Law

If the will exceeds one-third of the inheritance while the heirs do not agree, then the will is only carried out up to one-third of the inheritance.

## 5. Article 202 Compilation of Islamic Law

If the will is intended for various good activities while the will is insufficient, then the heirs can determine which activities take precedence over their implementation.

Jurisprudence and Islamic inheritance law in Indonesia have regulated this testament distribution system and may not exceed (one third) of the assets or tirkah left behind. Whether or not the heirs agree to a will that is more than 1/3 of the assets only applies when the testator has died, because the right to agree or disagree only exists after the testator dies. If among the heirs there are those who do not agree, then the total portion of the will will only be issued 1/3 of the property, not more than what was willed. The consent statement must be made verbally in the presence of two witnesses or in writing or before a notary. Specifically regarding the limit of 1/3 of the assets, generally the Sunni Fiqh School stipulates all assets left by the deceased (tirkah). Meanwhile, Shafi'i, Ahmad and Abu Hanifah emphasized that 1/3 meant assets when he died (Sarmadi, 2013).

The object/thing that is bequeathed must remain intact, not damaged or destroyed. If destroyed, the will is considered void. If left, then the rest is what is given to him. Therefore, for the sake of maintaining property, a will in the form of the result of an object or the use of an object must be given a certain period of time (Sarmadi, 2013).

As for one of the legal bases of will in the Qur'an, it is found in Q.S. al-Baqarah verse 180:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةُ  
لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

Meaning: "It is obligatory upon you, if one of you comes (signs) of death, if he leaves a lot of wealth, bequeaths to his parents and relatives in a ma'ruf manner, (this is) an obligation on those who pious".

A will is a message or message from a person or institution to another person or institution that will be fulfilled after the testator dies (Supardin, 2020). The will must be carried out by the recipient of the will, especially if the will is for a good cause, such as waqf. The emergence of waqf deeds is inseparable from the purpose of carrying out worship ordered by religion, (Abror, 2019) whose benefits are for purposes in the way of Allah or in the way of goodness.



One of the waqf objects is land. The object of waqf is any object, whether movable or immovable, which has durability that is not only disposable and has value according to Islamic teachings. Waqf objects must be property that is free from all burdens, bonds, encumbrances, and disputes. Waqf objects can only be donated if legally owned and controlled by the wakif (Rosadi, 2019).

According to BoediHarsono, waqf of property rights is a legal act that is holy, noble, and commendable which is carried out by a person or legal entity by separating a portion of his assets in the form of freehold land and institutionalizing it forever as a social waqf. . The legal basis for waqf of owned land is Article 49 paragraph (3) of Law Number 5 of 1960 concerning Basic Agrarian Principles, which stipulates that waqf of owned land is protected and regulated by Government Regulation No. 28 of 1977 concerning Waqf of Owned Land (Rosadi, 2019).

Waqf of owned land must be carried out voluntarily and without coercion from other parties. In addition to humans, legal entities can also perform waqf of owned land, but only certain legal entities that control private land can donate their land. The legal entities in question are government banks, religious institutions, and social organizations, in accordance with the provisions of Article 8 paragraph (1) letter b of the Regulation of the Minister of Agrarian Affairs/Head of the National Defense Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Rights Management (Rosadi, 2019).

As is well known, there are many endowments in the form of land in Indonesia, some of which are used for schools, Islamic boarding schools, mosques and so on. The use of the waqf land is very meaningful for the waqif. Of course, property waqf carried out by wakif must be in accordance with established procedures or provisions, namely Law Number 41 of 2004 and Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf, as well as other related regulations.

Someone who wants to donate his land, the first thing to do is make a waqf pledge. The waqf pledge deed is very important. A waqf pledge is a statement of the waqif's intention spoken verbally and/or in writing to the nazhir to endow his property. In the event that the waqif is unable to attend, then the waqif can appoint a representative or proxy and be strengthened by two witnesses, (Indonesia, 2019) and in the case of the waqif before passing away wills his heirs to donate part of his inheritance, then the heir act as a surrogate waqif.

Giving waqf that is carried out without making a waqf pledge deed is invalid by the state, so there is no giving of waqf without a waqf pledge deed. If the granting of waqf is carried out underhanded, it can result in the granting of waqf being null and void by law. The making of the waqf pledge deed is carried out after the wakif has pledged to hand over the waqf land. Even though the waqf pledge is made in writing, the waqf pledge deed must also be made because the waqf pledge deed is evidence for the legitimacy of the land endowment deed that has been carried out. Like the deed of waqf pledge, basically the deed of replacement for the waqf pledge also functions as authentic evidence that can be used for various issues such as for registration materials at the Regency/City Land Agency Office and for evidence that may arise in the future regarding the donated land (jaya, 2016).

As authentic evidence, the waqf pledge deed and waqf land certificate can be used as evidence in the event of a dispute. Waqf land disputes often occur in Indonesia, one of which is because the waqif does not notify the heirs that there is waqf property, or that there is no waqf pledge deed or waqf land certificate.

The waqif must clearly and unequivocally declare his will to the nazhir before the Waqf Pledge Deed Making Officer (PPAIW). The Waqf Pledge Deed Making Officer then pours the waqf pledge into the Waqf Pledge Deed witnessed by at least two witnesses. In carrying out the waqf pledge, the waqf must bring and submit documents to the Waqf Pledge Deed Official, as follows (Rosadi, 2019):

1. Certificate of ownership or other evidence of land ownership;
2. A statement letter from the village head which is confirmed by the local sub-district head which certifies the truth of land ownership and is not involved in any disputes;
3. Certificate of land registration;



#### 4. Permit from the regent or mayor through the Head of the Agrarian Sub-Directorate.

Furthermore, the Waqf Pledge Deed Official on behalf of Nazhir will submit an application to the regent or mayor through the Head of the Agrarian Subdirectorate to register the waqf of the owned land, then the regent or mayor through the Agrarian Subdirectorate will record the waqf of owned land in the land book and certificate. If the donated land does not yet have a certificate, a certificate will be made first. Nazhir then reported the completion of the endowment to the Office of the Ministry of Religion (Rosadi, 2019).

Likewise with inherited assets in the form of donated land, the heirs as beneficiaries of the will are fully responsible for the implementation of the will. Waqf of inherited assets is carried out after the heir or testator dies, and the heir as the recipient of the will becomes the power to have the obligation and obligation to practice waqf according to the will of those left by the heir or testator. The steps taken by the heirs as substitute waqif are the same as the procedures for waqf as stipulated in the laws and regulations.

For the procedures for waqf of owned land, it has been regulated in Article 9 of Government Regulation Number 28 of 1977 concerning Waqf of Owned Land, that:

- (1) A party wishing to donate their land as endowment is required to appear before the Waqf Pledge Deed Official to carry out the Waqf Pledge;
- (2) The official for making the Waqf Pledge Deed as referred to in paragraph (1) is appointed and dismissed by the Minister of Religion;
- (3) The contents and form of the Waqf Pledge are determined by the Minister of Religion;
- (4) The implementation of the Pledge, as well as the making of the Waqf Pledge Deed, is considered valid, if it is attended and witnessed by at least 2 (two) witnesses;
- (5) In carrying out the Pledge as referred to in paragraph (1), the party giving the land endowment is required to bring along and hand over to the Official referred to in paragraph (2) the following letters:
  - a. Title certificate or other evidence of land ownership;
  - b. A statement letter from the village head which is confirmed by the local sub-district head which certifies the truth of land ownership and is not involved in any disputes;
  - c. Land registration certificate;
  - d. Permit from the Regent/Mayor of the Regional Head c.q. Head of the local Agrarian Sub-Directorate.

For the registration of waqf owned land, it is regulated in Article 10 of Government Regulation Number 28 of 1977, that:

- (1) After the Waqf Pledge Deed has been implemented in accordance with the provisions of paragraphs (4) and (5) of Article 9, the Officer for Making the Waqf Pledge Deed on behalf of the Nadzir concerned, is required to submit an application to the Regent/Mayor of the Regional Head c.q. Head of the local Agrarian Sub-Directorate to register the waqf of the land owned in question according to the provisions of Government Regulation Number 10 of 1961;
- (2) Regent/Mayor of Municipality Regional Head c.q. the head of the local Agrarian Sub-Directorate, after receiving the application referred to in paragraph (1) shall record the waqf of the land owned in question on the land certificate and certificate;
- (3) If the donated land does not yet have a certificate, the registration referred to in paragraph (2) shall be carried out after the certificate is issued for the land;
- (4) The Minister of Home Affairs stipulates the procedure for recording the waqf referred to in paragraphs (2) and (3);
- (5) After recording the waqf of owned land in the land book and the certificate as referred to in paragraphs (2) and (3), the Nadzir concerned is obliged to report it to the official appointed by the Minister of Religion.



Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2017 is a provision that regulates the procedure for registering waqf land. Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2017, land that can be donated is: (Rohman, Sugeng, & Rahayu, 2020)

1. Land with customary rights or land that has not been registered;
2. Land with Cultivation Rights, Building Use Rights and Use Rights on State Land;
3. Building use rights or usufructuary rights over land with management rights or property rights;
4. Ownership of Flats; And
5. State Land.

Land that has been donated, the status changes to waqf property as of the date of the waqf pledge. Nazhir must submit the Waqf Pledge Deed and Substitute Deed of Waqf Pledge Deed to the Land Office, within a maximum period of 30 (thirty) days from the signing of the Waqf Pledge Deed and Substitute Deed of Waqf Pledge (Rohman, Sugeng, & Rahayu, 2020).

As mentioned, even though there are rules governing waqf, it does not deny that there are disputes over waqf land. In this case many disputes are driven by the factor of not recognizing the waqf pledge or to take back the land (property) that has been donated, either by the wakif or by his heirs. These driving factors include:

1. Increasingly scarce land;
2. The higher the price;
3. Depletion of religious awareness;
4. The wakif donates all or most of his assets, so that his offspring feel they have lost their source of sustenance and become neglected in their lives. As a result, it is not impossible to find heirs who deny the existence of a waqf pledge from their parents and do not want to hand over waqf land to nazhir or similar. never report;
5. The greedy attitude of the heirs or completely unaware of the existence of a waqf pledge because their parents did not notify them.

Based on this, in practice, inherited assets often cause conflict, both internally within the family and with third parties, so that to donate inherited assets it is very necessary to communicate between the heir and his heirs in order to avoid conflicts that may occur. As in a history, Sa'ad bin Abi Waqqash asked permission from Rasulullah ShalallaahuAlaihiWassalaam when he wanted to bequeath two-thirds of his wealth, then Rasulullah ShalallaahuAlaihiWassalaam said: "No". Then Sa'ad asked again: "Then a third". Then the Prophet ShalallaahuAlaihiWassalaam, said: "One third. One third is quite a lot. Indeed, if you leave your heirs rich (sufficient) it is better than leaving them poor so they beg from others.

Based on this history, then in the inheritance there are rights for the heirs. The lives of the heirs are different, and if there are heirs whose lives are lacking, then the inheritance can be used to meet their needs, so that it is the same as the inheritance being used for good in the way of Allah.

## CONCLUSION

The legal aspect of the procedure for accountability of heirs as surrogate waqf in the system of registering waqf land for inheritance in Indonesia is that the heirs as surrogate waqif are procedurally responsible for carrying out the waqf will of the will maker (heir). A will is a message or message from a person or institution to another person or institution that will be fulfilled after the testator dies.

The legal basis for the responsibility of the heir as a surrogate waqif in registering the land of the inherited property as waqf is regulated in Article 24 to Article 27 of Law Number 41 of 2004 concerning Waqf. The provisions of Article 26 of Law Number 41 of 2004, states that waqf with a will is carried out by the beneficiary after the beneficiary dies. The beneficiary acts as a proxy for waqif. Waqf with wills is carried out in accordance with the procedures for waqf stipulated in Law Number 41 of 2004, which starts from making a waqf pledge, making a waqf pledge deed, to issuing



a waqf land certificate. Waqf pledge deeds and waqf land certificates provide legal certainty for wakif, wakif heirs and other related parties, and can be authentic evidence in the event of a dispute.

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