



Legal Protection for Unrecorded Waqf: An Analytical Study at the Kuala Tungkal Religious Court

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Abstract

Unregistered Waqf is still a common problem in West Tanjung Jabung Regency, which can cause legal disputes and hinder the optimization of waqf benefits for the community. Many waqf assets are only declared verbally or through private deeds without official registration by applicable legal provisions. Therefore, this study aims to analyze legal protection for unregistered Waqf through the Waqf *isbat* mechanism at the Kuala Tungkal Religious Court and the role of judges in determining waqf *isbat* through legal *ijtihad*. This study uses a normative juridical method with a statute and conceptual approach. Research data were obtained through observation, interviews with judges at the Kuala Tungkal Religious Court, and studies of relevant documents. The results of the study indicate that waqf *isbat* is an effective legal instrument in providing legal protection for unregistered Waqf because court decisions can be the basis for *nazhir* to make official registrations at the Indonesian Waqf Agency (BWI) and the National Land Agency (BPN). Judges in deciding waqf *isbat* cases are not only guided by applicable regulations but also carry out legal *ijtihad* by considering *maqashid al-shariah* to ensure the benefit of Waqf and its legal certainty. However, there are obstacles in the implementation of waqf *isbat*, such as long administrative procedures and lack of coordination between related institutions, so it is necessary to simplify procedures and harmonize regulations to increase the effectiveness of waqf *isbat* in protecting unrecorded waqf assets. Thus, waqf *isbat* can be a more optimal legal solution in guaranteeing the legal status and sustainability of waqf benefits for Muslims in Indonesia.

Keywords: *Isbat* Waqf, Legal Protection, Waqf Registration, Judge's *Ijtihad*, Religious Court

Introduction

Waqf has a very important role in the community's social and economic life, especially in managing assets aimed at public welfare. However, in practice, many waqfs are carried out without going through official administrative procedures, so they are not legally registered. This phenomenon also occurs in West Tanjung Jabung Regency, where many waqf assets do not yet have formal legality, either in the form of certificates or registration in the national legal system. It is the background to the emergence of the need to determine Waqf *isbat* at the Kuala Tungkal Religious Court as a form of legal protection for unregistered Waqf (Saiin et al., 2019). When a waqf is not officially registered, it can cause various legal problems, such as ownership disputes, misuse of assets, and the potential for reduced benefits of Waqf for the benefit of the community. Therefore, legal steps are needed to provide certainty and protection for the waqf assets. The Kuala Tungkal Religious Court has made legal discoveries based on the judge's *ijtihad* through a comprehensive methodology as an institution that has the authority to handle Waqf case. This approach aims to align the practice of waqf *isbat* with the provisions of applicable laws and regulations, especially Law Number 41 of 2004 concerning Waqf. Thus,

unregistered Waqf can be ratified legally and legally binding (Asriati et al., 2021).

The discovery of law by the judge in the case of Waqf *isbat* at the Kuala Tungkal Religious Court is one form of response to the needs of the community that wants legal certainty over their waqf assets. (Pengadilan Agama Kuala Tungkal, 2023). By using progressive legal interpretation methods and considering the principles of expediency, justice, and legal certainty, judges strive to create legal solutions that are normative and applicable to people's lives. This step is important to ensure that Waqf's initial objectives can use Waqf's assets and avoid potential disputes in the future (Priyadi et al., 2023).

Implementing Waqf *isbat* by the Religious Court is also an effective instrument in protecting Waqf that has not been registered in Indonesia. Through this process, Waqf, which originally did not have formal legality, can obtain legal status so that its management can run more optimally and its sustainability is guaranteed. With legal certainty, waqf assets can be more easily manage by *nazhir* and supervised by related institutions to ensure that their benefits remain sustainable for the community. In addition, waqf *isbat* can solve land administration problems, especially in clarifying the ownership status of waqf land that is still unclear (K. Anwar, 2024).

With the various challenges faced in registering Waqf, the role of the Religious Court is becoming increasingly strategic in providing legal certainty for waqf assets that have not been registered (Fadhlullah, 2024). Therefore, the study of legal protection for unregistered Waqf through the Waqf *isbat* mechanism at the Kuala Tungkal Religious Court is very important to understand how judicial practices can provide fair and effective solutions in the context of Islamic law and national law in Indonesia. This study is expected to provide insight for various related parties, including legal practitioners, academics, and the wider community, in optimizing the protection of waqf assets for the benefit of the community and sustainable social development.

Literature review

Several previous studies have discussed the issue of legal protection for unregistered Waqf and the mechanism of waqf confirmation in the religious court system in Indonesia. One relevant study is the research conducted by Putra and Musfira (2021), which highlighted various obstacles in recording Waqf in Indonesia, especially in rural areas. The study found that the main factor causing many unrecorded Waqf is the lack of public understanding of the importance of waqf legalization and administrative procedures that are considered complex and require additional costs. Therefore, in this context, waqf *isbat* at the Religious Court is an alternative that solves this problem.

Other research by Sachputri & Syam (2024) examines the role of judges in conducting legal *ijtihad* on unregistered Waqf. This study emphasizes that the role of judges in resolving waqf *isbat* cases is not only limited to the application of legal norms textually but also involves contextual legal interpretation so that the decisions taken can reflect the principles of justice and benefit. The study results show that judges, in several cases, use the *maqashid al-shariah* approach to ensure that their decisions are legally valid and beneficial to the wider community.

In addition, research conducted by Yarmunida et al. (2021) discusses the effectiveness of the waqf *isbat* decision in providing legal certainty for waqf land that does not yet have a certificate. This study shows that the waqf *isbat* decision in the Religious Court has had a significant impact in clarifying the legal status of waqf land and providing a guarantee of protection for waqf assets from potential disputes or control by unauthorized parties. However, this study also highlights that there are still obstacles to implementing the waqf *isbat* decision, especially in the administrative aspects of the National Land Agency (BPN), which requires further procedures for issuing waqf certificates.

Other research by A. Anwar et al. (2024) highlighted the role of waqf management institutions in supporting official waqf registration. This study shows that cooperation between the Religious Court, the Ministry of Religion, and waqf management institutions is essential to ensure that every waqf *isbat* decision can be implemented effectively. This study also states that digitizing waqf administration can be a long-term solution to overcome the problem of waqf registration, which is still an obstacle in various regions.

Various studies suggest that legal protection for unregistered Waqf is a complex issue that requires a multidisciplinary approach. Waqf confirmation in the Religious Court has become one of the most effective instruments for providing legal certainty. However, administrative challenges and inter-institutional coordination still need to be improved so that this mechanism can run more optimally throughout Indonesia.

Research method

This research uses a normative legal method, which focuses on studying legal norms that apply to legal protection for unregistered Waqf (Asikin, 2004). The approaches used in this research include the statute approach and the conceptual approach (Soekanto, 2014). The legislative approach is carried out by analyzing various regulations related to Waqf (Soekanto, 2004), especially Law Number 41 of 2004 concerning Waqf and other regulations related to the recording and legal protection of Waqf. Meanwhile, a conceptual approach is used to understand the legal concept of waqf *isbat* and how judges conduct *ijtihad* in providing legal certainty for unrecorded Waqf (Ali, 2021). The research location is in West Tanjung Jabung Regency, Jambi Province, under the jurisdiction of the Kuala Tungkal Class IB Religious Court, an institution authorized to handle waqf *isbat* cases in the area.

The subjects in this study were all Judges of the Kuala Tungkal Religious Court Class IB, who have an important role in handling waqf *isbat* cases (Muhammad, 2004). The data sources used were primary data from interviews with judges, secondary data in laws and regulations and related court decisions, and tertiary data from legal literature, journals, and other relevant documents (Sunggono, 2007). Data collection techniques were carried out through observation of trial practices, interviews with judges to understand their perspectives in deciding waqf *isbat* cases, and documentation of various decisions and related documents (Yasid, 2010). The data obtained were then analyzed using the Miles & Huberman (1994) model, which involves three main stages, namely data reduction, data presentation, and conclusion, to obtain comprehensive and in-depth analysis results related to legal protection for unrecorded Waqf.

Result and Discussion

The Unrecorded Phenomenon of Waqf in West Tanjung Jabung Regency

Unregistered Waqf in West Tanjung Jabung Regency is a problem that still often occurs in waqf practices in Indonesia (SIWAK, 2023). As an Islamic socio-economic instrument, Waqf has a strategic role in supporting community welfare, but in practice, there are still many waqf assets that do not have official registration. Many people have donated their land or property verbally or through private deeds without going through the legal procedures stipulated in laws and regulations. Recording Waqf is very important to provide legal protection for assets that have been donated so that they can be managed sustainably and according to the original objectives of the waqif (Hermawan, 2023).

One of the main factors causing many unregistered Waqf is the low public awareness of the importance of waqf legality. The public still assumes that Waqf is sufficient to be done with intention and verbal statement without formal registration at an authorized institution. In addition, limited knowledge regarding the administrative procedures for recording Waqf is also a major obstacle. Many waqif and *nazhir* do not understand that registering Waqf at the Office of Religious Affairs (KUA) and the Indonesian Waqf Board (BWI) is a crucial step in maintaining the validity and sustainability of waqf assets (Pratama, 2023).

In addition to the awareness factor, limited access to official registration institutions is also the main cause of unregistered Waqf. In several areas, including in West Tanjung Jabung Regency, people living in remote areas face obstacles in reaching the KUA office or related agencies to register Waqf. Administrative costs and bureaucratic processes that are considered complicated are also inhibiting factors, so people tend to choose to donate their property informally. As a result, waqf assets that do not have formal legality become vulnerable to legal problems in the future (Riski & Rahmawati, 2022).

Another problem that arises from the phenomenon of unregistered Waqf is the increasing potential for disputes over ownership of waqf land (Abasi, 2024). In some cases, the heirs of the Waqf or other interested parties often reclaim the assets that have been Waqf because there is no evidence of official registration. In addition, without a waqf certificate, waqf assets are also easier to transfer or change their function for other interests that are not by the original purpose of the Waqf. It harms the public interest and threatens the continuity of social benefits waqf assets should provide.

In the context of waqf management, the absence of official records also makes it difficult for *nazhir* to manage and develop waqf assets optimally. *Nazhir* faces obstacles to establishing cooperation with other parties, such as financial institutions or the government, without clear legality for productive waqf development. Therefore, strengthening the recording system and waqf validation mechanism is urgently needed to ensure legal protection for the Waqf that the community has declared. With good records, waqf assets can be more guaranteed to be sustainable so that the community can feel the benefits in the long term (Hermawan, 2023).

Efforts to increase public awareness regarding waqf registration's importance must be carried out systematically and continuously. Socialization by related institutions such as the

KUA, BWI, and religious courts can help provide a better understanding to the public regarding the waqf registration procedure and the benefits obtained from this legality. In addition, simplifying the integration process and digitizing waqf registration can effectively increase the number of officially registered Waqf (Adainuri et al., 2024). Thus, legal protection for waqf assets can be further strengthened, and the potential for disputes that often arise due to the unclear legal status of Waqf can be significantly minimized.

The Role of Judges in Determining the *Isbat* of Waqf Through Legal *Ijtihad*

In handling waqf *isbat* cases, judges at the Kuala Tungkal Religious Court have a central role in ensuring that unregistered Waqf can obtain legal status. Waqf *isbat* is a legal mechanism submitted by related parties, such as *nazhir* or heirs of the Waqf, to obtain waqf approval through a court decision. The existence of waqf *isbat* is very important in the context of legal protection for waqf assets that do not yet have formal legality because, without court approval, the legal status of the asset becomes unclear and vulnerable to various legal disputes (Triyono, 2021).

In carrying out their duties, judges are guided by applicable regulations and conduct legal *ijtihad* to find the right solution based on the principles of justice and benefit. The *ijtihad* method used by judges generally refers to the *maqashid al-shariah* approach by considering the benefits for the community and the continuity of the benefits of waqf assets (Pertiwi & Herianingrum, 2024). *Maqashid al-shariah* emphasizes the protection of ownership and utilization of waqf assets so that they can continue to provide benefits to the community by the original purpose of the waqif (Subhan, 2023). Therefore, in deciding the case of waqf *isbat*, the judge pays attention to the legal-formal aspects and the substance of justice, which aims to maintain the optimal benefits of waqf assets.

In addition to considering *maqashid al-shariah*, the judge also refers to the doctrine of Islamic law and jurisprudence from previous court decisions to provide legal certainty that is in line with national regulations (Abdullah, 2025). In many cases, judges find situations where there are no official documents that can be used as a basis for validating Waqf, so they must conduct an in-depth study of the evidence presented, such as testimony from the local community, informal documents and the intentions and practices of the waqif so far. By using this approach, judges can ensure that the Waqf *isbat* process fulfills administrative aspects and maintains waqf values in Islam.

In the context of religious courts in Indonesia, waqf *isbat* often involves the interpretation of applicable legal norms, both in positive law and in Islamic jurisprudence. Judges must be able to balance the provisions of Law Number 41 of 2004 concerning Waqf with broader Islamic legal principles. In some cases, judges also refer to the Compilation of Islamic Law (KHI) as a guideline in resolving waqf cases. Therefore, waqf *isbat* is not just an ordinary administrative process but a complex legal effort requiring precision, sensitivity, and a deep understanding of Islamic law and national law.

With the discovery of law through *ijtihad*, waqf *isbat* can effectively provide legal certainty and protection for waqf assets that have not been administratively recorded. Court decisions in Waqf *isbat* cases not only provide legitimate legal status for waqf assets but also

become the basis for *nazhir* to make official registrations at the Indonesian Waqf Agency (BWI) or the Office of Religious Affairs (KUA). Thus, the role of judges in determining the *isbat* of Waqf is not only limited to the legal aspect but also contributes to maintaining the sustainability of the benefits of Waqf for Muslims in Indonesia. Therefore, strengthening the capacity of judges to handle waqf cases and harmonizing clearer regulations regarding the *isbat* of Waqf are necessary steps to increase the effectiveness of legal protection for waqf assets in the future.

Effectiveness of Waqf *Isbat* in Providing Legal Protection for Unrecorded Waqf

Implementing waqf *isbat* at the Kuala Tungkal Religious Court has significantly impacted the protection of waqf assets that previously did not have formal legality. The waqf *isbat* process is an important instrument in the Indonesian legal system that provides legal certainty for waqf assets that have not been administratively recorded. Through the waqf *isbat* decision, the *nazhir*, as the waqf manager, obtains strong legal legitimacy to manage and develop the assets by the waqf objectives that the waqif has determined. It is an important foundation for the sustainability of social benefits from waqf assets in the education, religious, and general public welfare sectors.

One of the main impacts of waqf *isbat* is to provide a legal basis for the *nazhir* to record waqf assets at related agencies such as the National Land Agency (BPN) and the Indonesian Waqf Agency (BWI). With legal registration, waqf assets are better protected from potential ownership disputes from the waqif's heirs and interested third parties. In addition, clear recording also allows waqf assets to be developed productively, for example, through cooperation with sharia financial institutions or other business entities oriented towards developing productive Waqf. Thus, the effectiveness of waqf *isbat* lies not only in the aspect of legal protection but also in the potential for optimizing waqf benefits on a wider scale.

However, although waqf *isbat* has provided a solution for the legal protection of unrecorded waqf assets, its implementation still faces various challenges. One of the main obstacles is the long administrative process and complex bureaucracy in obtaining a waqf *isbat* decision. Submission of waqf *isbat* to a religious court requires various supporting documents that are sometimes difficult for *nazhir* or related parties to fulfill, especially in cases of Waqf that have been going on for generations without complete written documents. As a result, many waqf *isbat* processes are delayed or rejected due to inadequate evidence (Islamy et al., 2023).

In addition, the lack of coordination between the judicial institution and the waqf registration agency is also an obstacle to implementing waqf *isbat*. After receiving a court decision, the *nazhir* still has to go through various administrative stages to register waqf assets at the BPN or BWI. This process often takes a long time, especially if there is overlapping regulation or disagreement between related institutions in determining the legal status of waqf assets. Therefore, improvements are needed in the inter-institutional coordination system so that the waqf *isbat* decision can be directly integrated with the waqf registration process without experiencing significant obstacles (Jalili et al., 2024).

Through several strategic steps, efforts can be made to improve the effectiveness of Waqf *isbat* in providing legal protection for unrecorded waqf assets (Susanto, 2017). *First*,

religious courts need to simplify administrative procedures for waqf *isbat* submission. This can be done by optimizing digital technology in the registration and document verification process, thus facilitating access for people who want to submit Waqf *isbat*. *Second*, there needs to be a more integrated regulation between the judicial institution, the Ministry of Religion, BPN, and BWI regarding recording and managing waqf assets. Harmonizing these regulations will help accelerate the waqf recording process after the *isbat* decision is issued by the court.

Third, it is necessary to increase socialization in the community regarding the importance of recording Waqf from the start so that unrecorded waqf practices can be minimized in the future. KUA and BWI, as institutions authorized to register Waqf, KUA, and BWI can play a more active role in educating prospective waqif and *nazhir* regarding waqf recording procedures and their long-term benefits. With a better understanding at the community level, the number of waqf confirmation cases submitted to religious courts will be reduced because more waqf assets will be recorded from the start.

With these efforts, the effectiveness of waqf confirmation in providing legal protection for unrecorded waqf assets can be further improved (Aldeen et al., 2021). A more efficient and well-coordinated waqf confirmation process will provide stronger legal guarantees for waqf assets so that the benefits can continue to be felt by the community in the long term (Adainuri et al., 2024). Therefore, synergy between judicial institutions, government agencies, and the community is the main key to optimizing the role of waqf *isbat* as an effective legal protection instrument in Indonesia.

Conclusion

Isbat wakaf at the Religious Court of Kuala Tungkal is crucial in providing legal protection for waqf assets that have not been officially registered. This process not only serves to legalize the legal status of Waqf but also ensures the continuity of its benefits for society. Judges in determining *isbat* wakaf employ an *ijtihad*-based legal approach that considers *maqashid al-shariah* and the principle of justice to ensure that the rulings align with national law and Islamic values. Although *isbat* wakaf has provided legal certainty, its implementation still faces challenges, such as lengthy bureaucratic procedures and a lack of coordination between relevant institutions. Therefore, improvements in regulations, simplification of administrative procedures, and increased public awareness regarding the importance of waqf registration are necessary to optimize the effectiveness of *isbat* wakaf in protecting unregistered waqf assets in the future.

Declaration of conflicting interest

The researcher declares that there is no conflict of interest in this study. The entire research process, including analysis and writing, was conducted independently without pressure, influence, or interests from any party, whether individuals, institutions, or organizations. The findings and conclusions presented are purely based on academic studies and objectively obtained data. Therefore, this research is prepared by upholding scientific principles and integrity without any bias that could affect the results and interpretations provided.

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