

Legal Certainty of State Land as an Object of Waqf

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Article History: Received: April 10, 2026; Accepted: June 11, 2026

ABSTRACT

This research aims to critically analyze the legal certainty of state land as a waqf object within the Indonesian legal system, particularly regarding the legal position of the state as the holder of the right to control land and the validity of the Waqf Pledge Deed over state-controlled land. This study employs a normative legal research method using statutory and conceptual approaches. The legal materials consist of primary legal sources in the form of agrarian and waqf-related legislation, secondary legal sources including books, journals, and expert opinions, and tertiary legal materials supporting the analysis. The findings demonstrate that the state does not possess legal standing as a waqif because the state's right to control land constitutes a public authority to regulate and administer land rather than a proprietary right within private law. Consequently, state land cannot directly become an object of waqf without the prior granting of land rights. Furthermore, the validity of a Waqf Pledge Deed concerning state land is highly dependent on the legal status of the land. Such a deed may be deemed invalid if it is established over pure state land that has not been subject to specific land rights, as it fails to fulfill the ownership requirement of the waqif. The novelty of this research lies in its analysis of the normative conflict between agrarian law and waqf law concerning the legality of state land as a waqf object, as well as in clarifying the limits of state authority in land waqf practices in Indonesia.

Keywords : Legal Certainty, State Land, Land Waqf, State Control Rights, Waqf Pledge Deed.

1. INTRODUCTION

Indonesia, as the country with the largest Muslim population in the world, possesses enormous waqf potential, both in the form of movable and immovable assets, particularly land. Waqf is not merely regarded as a form of worship in Islamic law, but also as a socio-economic instrument that plays a strategic role in the development of public welfare. Waqf is understood as the withholding of property whose benefits are utilized for public interests in accordance with Islamic principles and social utility values (Musyaf, 2025). In its development, waqf practices in Indonesia have continued to increase alongside the growing public awareness of the importance of Islamic philanthropy as a means of promoting social welfare distribution.

Historically, waqf has been recognized since the era of Prophet Muhammad SAW and has developed into one of the fundamental pillars of Islamic civilization. Waqf has been utilized for the construction of mosques, educational institutions, hospitals, and various other social facilities. In Indonesia, the practice of waqf evolved in line with the spread of Islam through Islamic boarding schools (*pesantren*), mosques, and other religious institutions (Faztin, 2022). This development was subsequently accommodated within the national legal system through regulations concerning



waqf as stipulated in Law Number 41 of 2004 concerning Waqf along with its implementing regulations.

The regulation of waqf in Indonesia fundamentally aims to provide legal certainty regarding the subjects, objects, and procedures for the implementation of waqf. Article 1 paragraph (1) of Law Number 41 of 2004 defines waqf as a legal act conducted by a *wakif* to separate and/or transfer a portion of his or her property to be utilized for religious purposes and public welfare. This provision emphasizes that waqf objects must originate from assets legally owned by the *wakif*. Accordingly, ownership constitutes a fundamental element in determining the validity of a waqf transaction.

On the other hand, the national agrarian law through Law Number 5 of 1960 concerning Basic Agrarian Principles stipulates that the earth, water, and airspace are controlled by the state and must be utilized to the greatest extent possible for the prosperity of the people. The state's right to control as referred to in Article 2 paragraph (1) of the Law Number 5 of 1960 concerning Basic Agrarian Principles does not constitute ownership rights within the realm of private law, but rather represents public authority to regulate, manage, and supervise land utilization (Harsono, 2007). In this regard, the state acts as the highest authority over land, not as a landowner in the sense of a private legal subject.

The concept of the state's right to control gives rise to legal issues when associated with the practice of waqf over state land. The problem emerges because, under waqf law, the *wakif* is required to be the legal owner of the property being endowed, whereas the state does not possess ownership rights over state land in the civil law sense. Nevertheless, Government Regulation Number 42 of 2006 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 2 of 2017 provide the possibility for state land to become an object of waqf under certain conditions. This situation creates normative ambiguity regarding the legality of state land as an object of waqf and the legal position of the state in waqf transactions.

Such inconsistency in regulation demonstrates the existence of a normative conflict between agrarian law and waqf law. On the one hand, the Law Number 5 of 1960 concerning Basic Agrarian Principles affirms that the state merely possesses public authority over land. On the other hand, several implementing regulations provide room for waqf over state land. According to Soemardjono (2001), the state's right to control cannot be equated with ownership rights because the state only acts as a regulator and manager of agrarian resources. Therefore, a legal issue arises as to whether the state may be positioned as a *wakif* in the practice of state land waqf and how the



validity of the Waqf Pledge Deed (*Akta Ikrar Wakaf*) established over such land should be assessed.

This issue becomes increasingly significant because it is directly related to legal certainty in the practice of land waqf in Indonesia. Legal certainty is fundamentally essential to prevent disputes and legal defects concerning waqf objects utilized for public interests. Gustav Radbruch argued that law must provide certainty, clarity, and consistent applicability in order to create order within society. The ambiguity concerning the status of state land as an object of waqf has the potential to create vague norms (*vage normen*) and normative conflicts in its implementation.

Furthermore, the urgency of this research is also based on the need to harmonize agrarian law and waqf law in Indonesia. The regulation concerning state land as an object of waqf continues to generate multiple interpretations, particularly regarding the legal standing of the state as the party endowing the land and the authority of the Official for the Preparation of Waqf Pledge Deeds in drafting Waqf Pledge Deeds over state land. According to Winahyu Erwiningsih (2009), the state's right to control must be understood as a form of public authority utilized to regulate and supervise the use of agrarian resources for the benefit of society at large, rather than as a form of private ownership.

Based on the foregoing explanation, research concerning the legal certainty of state land as an object of waqf is essential to undertake. This study focuses on analyzing the legal position of the state as the holder of the state's right to control in endowing land and the validity of Waqf Pledge Deeds over land controlled by the state. This research is expected to contribute to the development of waqf law and national land law, while simultaneously providing solutions to the normative conflicts that have long created legal uncertainty in the practice of state land waqf in Indonesia.

2. RESEARCH METHODS

The research method employed in this thesis is normative legal research using a statutory approach and a conceptual approach. This research focuses on examining legal norms concerning legal certainty of state land as an object of waqf, particularly regarding the legal position of the state as the holder of the right to control land in relation to the endowment of land, as well as the validity of the Waqf Pledge Deed over state-controlled land. The object of the research includes the provisions stipulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 41 of 2004 concerning Waqf, as well as various implementing regulations related to waqf and land law. The research was conducted through library research utilizing primary, secondary,



and tertiary legal materials obtained from statutory regulations, books, legal journals, scholarly doctrines, and other scientific literature relevant to the research topic.

The research procedure was carried out by identifying legal issues, collecting and examining legal materials, and subsequently analyzing them systematically in order to obtain legal arguments capable of addressing the formulated research problems. The technique for collecting legal materials was conducted through library research, while the analysis of legal materials employed a deductive method by relating general legal provisions to specific issues concerning waqf over state land. The analysis was conducted using grammatical interpretation and systematic interpretation techniques to identify conformity, conflicts of norms, and legal ambiguities within the regulation of waqf over state land, thereby producing conclusions that provide legal certainty regarding the object of the research.

3. RESULTS AND DISCUSSION

The Legal Position of the State as the Highest Rights Holder in Endowing Land Control Rights

The legal position of the state as the holder of the right to control land is fundamentally a public authority derived from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and further elaborated in the Basic Agrarian Law. The state does not occupy the position of a landowner in the private law sense; rather, it acts as a regulator and administrator of agrarian resources for the greatest prosperity of the people. This concept affirms that the relationship between the state and land is *publiekrechtelijk* rather than *privaatrechtelijk*, meaning that the state cannot be equated with a private legal subject possessing ownership rights over land (Herlindah et al., 2025).

The concept of legal standing in waqf law is closely related to authority and ownership over the waqf object. Under both Islamic law and Indonesian positive law, a wakif must be a party possessing full ownership rights over the property to be endowed. Therefore, the state, as the holder of the state's right to control land, does not fulfill the element of *milk al-tām* or absolute ownership over state land. The state merely possesses administrative authority to regulate, administer, and supervise land use; consequently, it lacks the legal capacity to act directly as a wakif (Anas Prihadi et al., 2023).

The state's right to control land as stipulated in Article 2 of the Basic Agrarian Law essentially grants the state authority to determine the allocation, utilization, and legal relationships between legal subjects and land. Such authority does not constitute ownership rights that may be



transferred through private legal acts such as sale and purchase, grants, or waqf. In this context, state land that has not been encumbered with specific land rights cannot directly become an object of waqf because it contradicts the ownership principle in waqf law (Jamilullah, 2023).

Legal issues arise when provisions contained in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 2 of 2017 and the Regulation of the Minister of Religious Affairs Number 73 of 2013 provide opportunities for the waqf of certain state lands. This condition creates a conflict of norms with the Waqf Law and the Basic Agrarian Law, both of which fundamentally require the existence of valid land rights prior to the execution of waqf. Consequently, legal uncertainty emerges regarding the status of state land as a waqf object and the validity of legal acts carried out by the relevant officials (Herlindah et al., 2025).

From the perspective of legal certainty theory, a regulation must be formulated clearly, consistently, and without multiple interpretations in order to provide legal protection for society. The inconsistency between implementing regulations and higher statutory provisions has generated uncertainty in the practice of state land waqf. This demonstrates a regulatory disharmony that potentially gives rise to future disputes, particularly concerning the legality of waqf objects and the legal status of the Waqf Pledge Deed issued by the Official Authorized to Draw Up Waqf Pledge Deeds (Mufarochah & Wirnyaningsih, 2022).

The Waqf Pledge Deed is an authentic deed functioning as evidence of the occurrence of a waqf legal act. Nevertheless, the legal force of The Waqf Pledge Deed is determined not only by the formal aspect of its execution but also by the fulfillment of the substantive requirements of waqf, particularly regarding the legality of ownership over the waqf object. If the endowed land remains pure state land and has not been granted specific rights to a legal subject, The Waqf Pledge Deed potentially suffers from a legal defect because the wakif lacks lawful authority over the waqf object (Herlindah et al., 2025).

In principle, the validity of an Waqf Pledge Deed concerning state land can only be recognized once the land rights have been granted to a particular legal subject, such as the Right to Build, Right of Use, or Right of Cultivation in accordance with statutory regulations. Through such land rights, the legal subject holding the rights acquires private legal authority to undertake legal acts, including endowing the land as waqf. Under such circumstances, the waqf object is no longer state land directly, but rather land rights granted by the state to a particular party (Jamilullah, 2023).

Furthermore, the authority of the Official Authorized to Draw Up Waqf Pledge Deeds must also be carefully understood in the practice of state land waqf. The Draw Up Waqf Pledge



Deeds is not merely required to examine administrative completeness but is also obligated to conduct substantive verification of the legal status of the land and the legal standing of the wakif. If an Waqf Pledge Deed is executed without proper consideration of the actual legal status of the land, it may result in legal consequences in the form of nullity by operation of law or, at the very least, the deed may later be challenged regarding its validity (Mufarochah & Wirnyaningsih, 2022).

From the perspective of national agrarian law, state land cannot be treated as a private object freely transferable through civil legal acts. The state acts solely as a regulator and administrator in land management for public interests. Therefore, the concept of waqf over state land must first be placed within the framework of granting land rights prior to the declaration of waqf. Such a mechanism is essential to maintain orderly land administration while simultaneously ensuring legal protection for nadzir and beneficiaries of the waqf (Herlindah et al., 2025).

Based on the foregoing discussion, it can be understood that legal certainty concerning state land as a waqf object can only be realized through harmonization between agrarian law and waqf law. The state does not possess legal standing as a wakif because it does not hold ownership rights over state land. Therefore, every implementation of waqf involving state land must first proceed through the mechanism of granting land rights in accordance with agrarian law provisions. Accordingly, the resulting Waqf Pledge Deed will possess valid legal force, provide legal protection for all parties, and realize the objectives of waqf for religious purposes and the sustainable welfare of society (Anas Prihadi et al., 2023).

The Validity of the Deed of Waqf Pledge Over State-Controlled Land

The discussion concerning the validity of the Waqf Pledge Deed over state-controlled land originates from the position of the Waqf Pledge Deed as an authentic deed that plays a significant role within the Indonesian waqf legal system. The Waqf Pledge Deed not only serves as evidence of the legal act of waqf but also functions as the administrative basis for the registration of waqf land and the issuance of waqf land certificates. Therefore, the validity of the Waqf Pledge Deed is highly dependent upon the fulfillment of both the formal and material requirements of waqf as regulated under Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006. In this context, the principal issue concerns the existence of lawful ownership rights held by the wakif over the waqf object. When the object endowed is state land, legal problems emerge because the state merely possesses the right to control, rather than ownership rights in the civil law sense. Such circumstances create legal uncertainty regarding the legality of the Waqf Pledge Deed over state land (Herlindah et al., 2025).



Normatively, Article 15 of the Waqf Law stipulates that waqf property may only be endowed if it is lawfully owned and controlled by the waqif. This provision demonstrates that ownership constitutes a fundamental element in waqf law. Under the national agrarian law system, state land refers to land subject to the State's Right to Control as regulated under Article 2 of the Basic Agrarian Law. The State's Right to Control cannot be interpreted as private ownership rights but rather as a public authority to regulate, administer, and supervise land utilization for the greatest prosperity of the people. Consequently, the state cannot be positioned as the owner of land within the meaning of civil law and therefore does not fulfill the requirements to act as a waqif. This analysis is consistent with the view that waqf may only be conducted by legal subjects possessing full ownership over the waqf object (Musyaf, 2025).

The issue becomes increasingly complex because, in practice, several regulations provide the possibility for state land to become an object of waqf. Article 17 paragraph (1) letter (c) of Government Regulation Number 42 of 2006 permits building use rights, cultivation rights, and rights of use over state land to be endowed. Furthermore, Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 2 of 2017 also provides room for the registration of waqf land over state-controlled land. These provisions create a conflict of norms because, on the one hand, waqf law requires lawful ownership, while, on the other hand, administrative regulations allow state land to become an object of waqf. Such normative conflict indicates the absence of harmonization between agrarian law and waqf law in determining the legal status of state land as an object of waqf (Nasihuddin, 2024).

From the perspective of Gustav Radbruch's theory of legal certainty, a legal norm must possess clarity, consistency, and should not create multiple interpretations. In the case of waqf over state land, normative ambiguity exists because one regulation emphasizes the importance of ownership rights over land, while another regulation opens the possibility for state land to become an object of waqf without first clarifying the mechanism for the transfer of rights. This inconsistency creates legal uncertainty for the waqif, nadzir, and the Official Authorized to Draw Up Waqf Pledge Deeds. As a consequence, the Waqf Pledge Deed executed over state land may potentially be challenged regarding its validity if disputes concerning the legal status of the land rights arise in the future (Sumardjono, 2020).

From the perspective of administrative law, the authority of the Official Authorized to Draw Up Waqf Pledge Deeds also constitutes an important aspect in determining the validity of the Waqf Pledge Deed. The PPAIW obtains attributive authority under the Waqf Law to execute Waqf Pledge Deeds as authentic deeds. However, such authority is not merely administrative in nature



but also contains the obligation to ensure the fulfillment of the material requirements of waqf. This means that the Official Authorized to Draw Up Waqf Pledge Deeds is not only required to examine the completeness of formal documents but must also investigate the legal status of the land to be endowed. If the land remains pure state land and has not yet been granted specific land rights to a legal subject, then the resulting Waqf Pledge Deed potentially suffers from legal defects because the waqf object does not satisfy the requirement of lawful ownership (Hadjon, 2022).

The validity of the Waqf Pledge Deed must also be viewed from the aspect of the civil legal relationship between the waqif and the waqf object. Under civil law, a legal act is only valid if performed by a party possessing authority over the object forming the basis of the legal act. The state, as the holder of the State's Right to Control, merely possesses public authority to regulate and manage land, rather than private authority to transfer or endow land in the same manner as a holder of ownership rights. Therefore, if the state acts as a waqif over state land, such action exceeds the scope of the state's public authority. Accordingly, the Waqf Pledge Deed resulting from such action may be considered not to fulfill the material requirements of a waqf legal act (Santoso, 2021).

Nevertheless, waqf over land originating from state land remains possible if land rights are first granted to a particular legal subject in accordance with agrarian law mechanisms. Under such circumstances, the waqf object is no longer pure state land but rather land rights lawfully possessed by a legal subject. For example, state land that has been granted the status of Right of Use, Building Use Right, or Ownership Right may be endowed as long as it complies with statutory regulations. Through the existence of such land rights, the waqif acquires a legal basis to conduct the legal act of waqf, and the resulting Waqf Pledge Deed thereby becomes legally valid (Wiradi, 2021).

Apart from the aspect of legality, the registration of waqf land also constitutes an important instrument in realizing legal certainty. Article 32 of the Waqf Law emphasizes that waqf property must be registered in order to obtain legal protection. In practice, the process of waqf land registration requires proof of land rights as well as the Waqf Pledge Deed as the administrative basis. Without proof of land rights, the registration process cannot be carried out, thereby preventing the waqf land from obtaining a waqf certificate. Such circumstances may potentially give rise to disputes in the future, particularly if other parties assert claims over the endowed land. Therefore, the legality of land rights constitutes an absolute requirement in ensuring the validity of the Waqf Pledge Deed and the legal certainty of waqf land (Idrus, 2020).

From the perspective of Islamic law, waqf also requires full ownership (*milk al-tām*) by the waqif over the endowed property. The majority of Islamic jurists maintain that waqf is only valid when conducted over property genuinely owned by the waqif and whose benefits may be permanently transferred. Within the context of the State's Right to Control, the state does not possess full ownership over land but merely holds regulatory and managerial functions. Therefore, the concept of waqf directly over state land is inconsistent with the fundamental principles of waqf in Islamic law. This demonstrates the conformity between the principles of Islamic law and national agrarian law regarding the ownership requirement in waqf (Az-Zuhaili, 2020).

Based on the foregoing discussion, it may be affirmed that the validity of a Waqf Pledge Deed over state-controlled land is highly dependent upon the legal status of the land constituting the waqf object. A Waqf Pledge Deed may only be declared valid if the endowed land possesses a clear legal basis under agrarian law and is under the lawful control of the waqif. The state does not possess legal standing as a waqif because its authority is public rather than private in nature. Therefore, harmonization between waqf law and agrarian law regulations is necessary in order to avoid normative conflicts in the practice of waqf over state land. Such harmonization is essential to provide legal certainty, protect the parties involved, and prevent future disputes concerning waqf land (Herlindah et al., 2025).

4. CONCLUSION

Based on the results of this research and discussion, it can be concluded that the state does not possess legal standing as a waqif in the practice of waqf involving state land. This is because the state's right to control land, as regulated under Article 2 of the Basic Agrarian Law, constitutes a public authority (*publiekrechtelijk*) to regulate, administer, and supervise land utilization for the greatest prosperity of the people, rather than a private proprietary right (*privaatrechtelijk*). Consequently, state land that has not yet been encumbered with a specific land right cannot directly serve as an object of waqf, as it does not fulfill the requirement of full ownership (*milk al-tām*) as mandated under waqf law and Islamic law.

This research further finds that the validity of a Waqf Pledge Deed over land controlled by the state is highly dependent upon the legal status of the land constituting the object of waqf. A Waqf Pledge Deed may only be considered legally valid where the land endowed has previously been granted a specific land right to a legal subject in accordance with agrarian law mechanisms, such as Ownership Rights, Building Use Rights, Rights of Use, or other rights recognized under statutory regulations. Where a Waqf Pledge Deed is executed over pure state land lacking a lawful



underlying title, such deed potentially suffers from legal defects due to the failure to satisfy the substantive requirement of ownership over the waqf object.

The novelty of this research lies in its analysis of the normative conflict between agrarian law and waqf law concerning the legality of state land as an object of waqf, while simultaneously affirming the limits of state authority in the practice of land waqf in Indonesia. This study contributes to the development of agrarian law and waqf law by emphasizing that the waqf mechanism over state land may only be conducted after the granting of land rights to a specific legal subject, thereby ensuring legal certainty, legal protection, and orderly land administration.

As a policy recommendation, regulatory harmonization between the Basic Agrarian Law, the Waqf Law, and their implementing regulations in the fields of land and waqf administration is necessary in order to avoid multiple interpretations in the practice of state land waqf. In addition, the government should further clarify the mechanism for granting land rights prior to the execution of the waqf pledge and strengthen supervision over the authority of Officials Authorized to Draw Up Waqf Pledge Deeds in examining the legal status of land intended for waqf. Such measures are essential to ensure legal certainty, prevent waqf land disputes, and establish accountable and sustainable waqf governance.

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