



# Public Legal Awareness of the Fixed Object Waqf Paradigm Towards Progressive Waqf

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## Abstract

**Abstract:** This study aims to determine the factors that influence changes in the legal awareness of the community and *nazhir* in Bantul Regency towards the paradigm of fixed object waqf towards progressive waqf. The type of research is a field study. The method uses descriptive qualitative juridical data analysis. The primary data is conducted by interviewing the respondents with purposive sampling. The results showed that three determinant factors influenced the progressive waqf paradigm: 1) Public understanding of waqf property was limited to fixed objects (immovable objects). 2) Public understanding of the allocation of waqf property is limited to educational and worship facilities. 3) Public understanding of the waqf reward is limited to education and worship.

**Keywords:** *Legal Awareness, Fixed Objects, Progressive Waqf*

## 1. Introduction

The law is influenced by the realities that live in society. Society's influence on the law is comprehended in legal realism.<sup>1</sup> Awareness is the behavior of

<sup>1</sup> Hariyanto Hariyanto, "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (June 7, 2018): 53–63, <https://doi.org/10.24090/Volksgeist.V1I1.1731>.

knowing, understanding, regarding, and obeying the customs and habits in society and written law. This definition can be comprehended as being aware, which means feeling knowing, remembering the actual situation, or knowing about the standing.<sup>2</sup>

Legal awareness also represents that the law formation must reveal the legal awareness of the community; the law may correspondingly create new societal patterns. So that, in the end, it creates a new legal awareness that follows the required conditions.<sup>3</sup> It can be concluded that legal awareness is a belief in the law itself. The existence of the law contains benefits and creates disciplines in society and justice. A waqf is a form of legal awareness; therefore, waqf should create a benefit in society.

Soerjono Soekanto cites P. Scholten's review of legal awareness, stating that legal awareness is awareness or values contained in humans about existing laws or laws that are expected to exist. The critical point that is emphasized is the values regarding the function of law and not a legal assessment of factual occurrences in the society concerned.<sup>4</sup>

Meanwhile, waqf is a kind of gift whose implementation is carried out by holding (ownership) of genesis, then making the benefits generally accepted.<sup>5</sup> Law No. 41 of 2004 concerning waqf emphasizes that one of the strategic steps to improve public welfare is to increase the role of waqf. The waqf is a religious institution that not only aims to provide various kinds of worship and social facilities but also has economic power that has the potential to promote public welfare, so it is necessary to develop its utilization following sharia principles.

In practice, the waqf in real life of the Indonesian people has not been entirely and efficiently run, so in various cases, the waqf property is not correctly maintained, neglected, or turned into third parties that are against the law way. Such a situation is not solely due to the negligence or inability of *nazhir* (waqf manager) to manage and develop waqf assets. *Nazhir* is mandated to organize and supervise waqf according to the purpose of waqf.<sup>6</sup> Another factor driving

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<sup>2</sup> A Widjaya, *Kesadaran Hukum Manusia Dan Masyarakat Pancasila* (Jakarta: Era Swasta, 2006), 224.

<sup>3</sup> Lauresius Arliman, *Penegakan Hukum Dan Kesadaran Masyarakat* (Yogyakarta: Deepublish, 2015), 229.

<sup>4</sup> Soerjono Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum* (Jakarta: CV.Rajawali, 2005), 152.

<sup>5</sup> Departemen Agama RI, *Paradigma Baru Wakaf Di Indonesia* (Jakarta: Direktorat Pemberdayaan Wakaf Direktorat Jendral Bimbingan Masyarakat Islam, 2006), 1.

<sup>6</sup> Abdul Manan, *Pembaruan Hukum Islam Di Indonesia* (Depok: Kencana, 2017), 282.

the non-maintenance of waqf property is the attitude of the society who are less concerned or do not understand the status of waqf property, which should be protected for public welfare. This situation allows the emergence of various legal problems.

So far, waqf is still understood by the majority of the Indonesian people as solely land waqf as regulated in Government Regulation No. 28/1977 on Land-Owned Waqf. For more than 20 years, this version has been embedded and rooted in our society.<sup>7</sup> In general, waqf's scope tends to be limited to immovable objects, consumptive objects, and consumables. Waqf is understood as non-productive goods, such as mosques, prayer rooms, and schools. The community's general knowledge shows that the allocation of waqf property is exclusively for worship facilities, not for economic benefits to developing social welfare. The public does not understand that waqf can furthermore be in the form of a donation to the poor, abandoned children, orphans, scholarships, and other public welfare advancements according to sharia and statutory regulations.

Bantul Regency, with an area of 506.85 km<sup>2</sup>, is divided into 17 sub-districts, 75 villages, and 933 hamlets. In the second semester of 2020, the population of Bantul Regency is 954,706 people, with details of 475,871 males and 478,835 females. The largest population is in Banguntapan District, and the smallest is in Kretek District.<sup>8</sup> Islam is the majority religion of the Bantul society, with a relatively insignificant number of Christians and Catholics. Like most Islam in Java's remote areas, most nevertheless maintain a strong *kejawen* tradition.

Concerning waqf land assets registered at the Ministry of Religion of Bantul Regency until June 2021, there were 2792 pieces. Of this number, the *nazhir* came from individuals, Muhammadiyah, Nahdlatul Ulama and Foundations. Meanwhile, if they are classified based on their uses, they are for mosques, prayer rooms, schools, Islamic boarding schools, Religious Affairs Office, and other social activities. Meanwhile, 2026 lands have been certified, and 766 still have not been certified.<sup>9</sup>

<sup>7</sup> Dunyati Ilmiah, "Optimalisasi Asset Wakaf Melalui Sukuk Wakaf Di Indonesia," *JESI (Jurnal Ekonomi Syariah Indonesia)* 9, no. 2 (February 28, 2020): 127–37, [https://doi.org/10.21927/JESI.2019.9\(2\).127-137](https://doi.org/10.21927/JESI.2019.9(2).127-137).

<sup>8</sup> Pemerintah Kabupaten Bantul, "Jumlah Penduduk," accessed May 30, 2021, [https://bantulkab.go.id/data\\_pokok/index/000000027/jumlah-penduduk.html](https://bantulkab.go.id/data_pokok/index/000000027/jumlah-penduduk.html).

<sup>9</sup> Kemenag Bantul, "Data Tanah Wakaf Kabupaten Bantul Per Juni 2021," accessed May 27, 2021, <https://bantul.kemenag.go.id/data-tanah-wakaf-kabupaten-bantul-juni-2021>.

Meanwhile, the productive waqf promoted in Bantul Regency is cash waqf. Cash waqf management in Bantul is under Yogyakarta's Indonesian Religious Leader Organization (MUI) Cash Waqf Board. The fact shows that waqf managers are still minimal in producing material (progressive waqf). Therefore, it is necessary to increase the legal awareness of the Bantul society. People should realize that their assets are not sufficient to be owned and controlled by themselves. Sharing their property with waqf is necessary to help other people.

Many research explores waqf, and several studies have been accomplished by previous researchers, especially related to legal awareness. Research on waqf, specifically; First, research from Nining Angriani and Firman Muin<sup>10</sup> examines the level of legal awareness of the community in managing waqf land certificates. Second, Ahmad Syafiq<sup>11</sup> examines public awareness of spending zakat, infaq, alms, and waqf. Third, Siti Qotika<sup>12</sup> examines the level of legal awareness of the community in participating in the complete systematic land registration program (PTSL). Based on the descriptions of some of these studies, this research is significantly distinct from previous research because this study aims to reveal the factors that influence changes in the legal awareness of the society and *nazhir* in the Bantul district towards the paradigm of fixed object waqf into progressive or productive waqf.

## 2. Research Method

The type of research is field research. Data consists of primary data from respondents and secondary data from books, magazines, and research reports. The method of collecting primary data is through interviews; secondary data is by document study. The research uses religion, social welfare, and evidence of the social welfare approach.<sup>13</sup> The sample was selected based on subjective considerations from the researcher so that the researcher decided for himself

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<sup>10</sup> Nining Angriani and Firman Muin, "Kajian Tentang Kesadaran Hukum Masyarakat Dalam Pengurusan Serifikat Tanah Wakaf Di Desa Dwi Tiro Kecamatan Bontotiro Kabupaten Bulukumba," *Jurnal Tomalebbi*, vol. 2, 2016, <https://ojs.unm.ac.id/tomalebbi/article/view/1717>.

<sup>11</sup> Ahmad Syafiq, "Peningkatan Kesadaran Masyarakat Dalam Menunaikan Zakat, Infaq, Sedekah Dan Wakaf (ZISWAF)," *Ziswaf: Jurnal Zakat Dan Wakaf* 5, no. 2 (2018), <https://doi.org/10.21043/ZISWAF.V5I2.4598>.

<sup>12</sup> Siti Qotika, "Kesadaran Hukum Masyarakat Untuk Melakukan Pendaftaran Tanah Dalam Reformasi Agraria Melalui Program PTSL (Pendaftaran Tanah Sistematis Lengkap)," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 28, no. 9 (2022), <http://www.riset.unisma.ac.id/index.php/jdh/article/view/14564>.

<sup>13</sup> RI, *Paradigma Baru Wakaf Di Indonesia*, 91.

which respondents were supposed to be competent to represent the population.<sup>14</sup> Analysis of the data was qualitative juridical descriptively.

### 3. Results and Discussion

In Islamic historical documents, the immovable objects waqf and productive waqf (cash waqf) have been practiced since the beginning of the second century of Hijriyah. Imam az Zuhri (d. 124 H) is a cleric who issued a fatwa regarding the recommendation to do dinar and dirham waqf to build da'wa instruments and social and educational facilities for Muslims. The way to build capital is by developing the business and distributing the profits as waqf.<sup>15</sup>

Waqf has two functions; worship God and social fellow human beings. The function of waqf as worship can be interpreted that waqf is expected to be a provision for the *wakif* (waqf giver) life in the afterlife. The reward will continue to flow as long as the waqf property is utilized. While the interpretation of waqf in the social function that waqf is an asset that has a role in accelerating the country's development. Waqf has a role in the distribution of welfare among the people. Poverty alleviation is one of the targets of the benefits of waqf.<sup>16</sup>

Most people approve that the waqf property is not limited to land exclusively but includes movable objects such as money, cars, jewelry, and books. Waqf assets that no longer be utilized can be sold and replaced with other more productive objects. Although there is a rejection of the exchange of waqf assets with other more productive assets, it is smaller than the rejection of changes in the designation of waqf. This refusal is possible because the interpretation of waqf is still "old-fashioned." However, the old paradigm is shifting along with the socialization carried out by religious leaders and the government regarding the waqf variety<sup>17</sup>.

Meanwhile, in the practice of waqf for social justice in Indonesia, waqf assets are owned by *nazhir*. Waqf assets include land, buildings, cash, vehicles, and other property. The utilization of waqf property is related to the designation, which is generally divided into two: the use for social and productive services. In general, waqf assets can be utilized for the benefit of worship and the interests of the general public in order to achieve welfare and social justice. Concerning service

<sup>14</sup> Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2004), 91.

<sup>15</sup> Achmad Djunaidi and Thobieb Al-Asyhar, *Menuju Era Wakaf Produktif* (Jakarta: Mumtaz, 2007), 44.

<sup>16</sup> Nasrul Fahmi Zaki Fuadi, "Wakaf Sebagai Instrumen Ekonomi Pembangunan Islam," *Economica: Jurnal Ekonomi Islam* 9, no. 1 (July 31, 2018): 151–77, <https://doi.org/10.21580/ECONOMICA.2018.9.1.2711>.

<sup>17</sup> Interviews results with Sharia Administrators at the Ministry of Religion, Bantul Regency Branch

waqf, waqf for religious and educational facilities is the most dominant compared to other social facilities. Meanwhile, waqf land used for other social facilities such as health facilities, orphanages, roads, and bridges is still minimal.

The issue of waqf is not only related to worship; it is also significant for community development. With the rapid development growth, the value and use of land are getting bigger and broader. It is common for waqf lands that do not have physical evidence, such as certificates, to change the recognition of the land. This problem was triggered by the lack of trust in the *wakif* family, *nazhir*, and those who wanted the waqf land with a shortcut.<sup>18</sup>

In addition, several factors that cause the lack of waqf land position in law and unclear status are the problem of cost. The cost problem emerges because most *wakif* have an economic problem. Most of the *wakif* also think they voluntarily give their land for waqf; why do they still have to be burdened again with the registration fee for waqf? Second, most of the waqf lands have not been certified.<sup>19</sup>

Based on the previous problems, the consequences of the waqf land's unclear status are cause the dispute between the *wakif* and the *nazhir* or between the *wakif* and the *nazhir* families. Therefore, *nazhir* as a manager must create a strenuous effort and directed steps in making policies based on the setting of the work program. This step avoids the image and assumption that prevails in society that managing waqf land is a side job and perfunctory. The management of waqf land is not simply for educational and social purposes. However, it can further be managed as an economic resource that provides added value for the waqf institution and the people in general

Another fact found in this study is that the *nazhir* stated that in the management of waqf land, they do not have explicit rights, income, or other rewards. The reason is that waqf land is used as a place of worship and is not productive. This reason is not entirely valid because if *nazhir* had a broader vision and social responsibility, he could use waqf land for productive business without bothering waqf land's primary function as a worship infrastructure.

Another problem that drives waqf land not managed professionally and productively is that most consider the work of *nazhir* waqf land as not their primary job but rather a side job based on sincerity. This problem means that

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<sup>18</sup> Interviews results with Sharia Administrators at the Ministry of Religion

<sup>19</sup> Interviews results with one of the *nazhir* in Bantul Regency

job as *nazhir* waqf is only carried out in their free time or holidays; it does not interfere with their primary job. In their job as *nazhir*, they are not rewarded for their work as waqf managers. In comparison, waqf managers have great potential to drive the community's economy. Professional management of waqf assets is crucial because waqf is one of the Islamic economic instruments that has been proven to impact society positively. Assets from the development of waqf assets can support the social sector and virtues and indirectly reduce poverty.<sup>20</sup>

For optimizing the utilization and management of waqf land, the government as an institution with coercive power can accommodate and provide a place for waqf institutions to develop. Society, especially Muslims in Indonesia, must actively participate in raising waqf institutions. Government participation in waqf facilities and arrangements can encourage the optimization of waqf objectives. The expected society participation is the willingness of waqf to provide land to be utilized as waqf. On the other hand, society is expected to be a good and professional *nazhir* in managing waqf assets. Meanwhile, other elements of society can encourage, assist and supervise the workings of *nazhir* in utilizing waqf land.

Several factors that influence the change in society's legal awareness and *nazhir* towards the paradigm of fixed object waqf into progressive or productive waqf, specifically:

- a. Public understanding of the waqf property scope is limited to fixed objects (immovable objects). People tend to know about waqf from the recitation, and the religious leader teaches that waqf assets are immovable objects.
- b. Public understanding of the allocation of waqf property is limited for educational and worship facilities. So far, public perception has considered the waqf's purpose for the public facilitation, such as a place to build mosques, schools, hospitals, and other social charities.
- c. Public understanding of the reward of waqf is limited to educational and worship facilities.

The legal constraint regarding waqf land is that numerous waqf lands still do not yet have a certificate. This uncertified waqf land is one of the obstacles to the utilization of waqf land. There are often disputes between heirs and waqf

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<sup>20</sup> Budi Santoso, *Wakaf Perusahaan: Model CSR Islam Untuk Pembangunan Berkelanjutan* (Malang: UB Press, 2011), 45.

land managers. The heirs of the *wakif* sued and claimed that the land managed by *nazhir* was their own. This conflict is due to the ownership certificate's absence, so the waqf land could be taken at any time and reclaimed. Partially, it can be seen that there are still many samples of waqf land that have not been certified. This waqf land for worship and educational facilities has been built, allowing it to be converted by the heirs of the land.

If this is the case, *nazhir* cannot oppose and defend the waqf land. In the end, a few people only enjoyed the benefits of the waqf land, which was initially expected to support the community. The issue of waqf land certificates must be resolved immediately so that the waqf land in the future does not become a matter of dispute for heirs and *nazhir*. The government is currently trying to help solve this problem.

Thus, securing through waqf land certification is a struggle to prevent disputes in the future. However, making waqf land certificates is not as easy as people think because it still requires time and funds. As an alternative, the government recommends that the *nazhir* have a waqf land deed. This deed can be completed at the Office of Religious Affairs (KUA) by presenting *nazhir* and several witnesses and is free of charge.

The existence of this waqf land deed can be a guide for *nazhir* that the waqf land he manages is waqf land. Thus, when an heir of a deceased *wakif* sues and wishes to take over the land, it can still be resisted by showing the waqf deed even though this ownership claim issue ends in court. *Nazhir* has the legal power to defend waqf land. It is the government's interest to ensure that all existing waqf land has a certificate, at least a waqf land deed. The government has guided the *nazhir* in each region on the importance of waqf land certificates. However, this guidance is still minimal due to the limited government budget funds allocated for this purpose.<sup>21</sup>

The large number of waqf lands that have not been certified is due to the low level of awareness of *Nazhir* on the importance of having certificates to protect waqf land and ensure the benefits of the land for society. On the other hand, waqf land that has not been certified is due to the perception that the certificate-making process takes a lot of time and costs. In fact, with a clear status of the waqf land, it can be managed optimally and provide endless benefits for society.

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<sup>21</sup> Achmad Siddiq and Hariyanto, *Wakaf Dan Pemekaran Wilayah: Perspektif Mashlahah Dan Hukum Positif*, ed. Mabarroh Azizah (Yogyakarta: Pustaka Ilmu, 2021), 47–48.

On the other hand, it provides an opportunity to be converted by irresponsible heirs of the *wakif*.

#### 4. Conclusion

Several factors that influence the change in legal awareness of society and *nazhir* in Bantul Regency, from the paradigm of fixed object waqf to progressive waqf, are influenced by: 1) Public understanding of waqf property is limited to fixed objects (immovable objects). 2) Public understanding of waqf property allocation is limited to educational and worship facilities. 3) Public understanding of waqf reward is limited to education and worship. Based on these three things, it causes the use of waqf land for social services exceeds religion, and education is significantly minimal. There are two reasons why people rarely provide waqf for public services. First, the public's understanding of the designation of waqf land is interpreted slightly as always related to worship. This kind of waqf is considered better and more rewarding than giving waqf for other service purposes. Second, in the context of a modern State, the provision of public facilities such as roads, hospitals, and bridges is not society's responsibility but the government's responsibility because people have paid taxes to the State.

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