

The Problem of Uncertified Waqf Land in Gorontalo City

Muh. Rezqy Musa

Faculty of Law, Universitas Negeri Gorontalo, Indonesia.

Article Info	Abstract
Corresponding Author: muh.rezqy.musa99@gmail.com History: Submitted: 08-07-2024 Revised: 19-01-2025 Accepted: 05-08-2026 Keyword: Certification; Land Registration; Nazhir; Waqf.  Copyright ©2026 by Muh. Rezqy Musa. All writings published in this journal are personal views of the authors and do not represent the views of the Estudiante Law Journal.	Law Number 41 of 2004 on Waqf and Government Regulation Number 42 of 2006 require waqf land to be registered and certified, yet a substantial part of the waqf land in Gorontalo City, including land on which mosques stand, remains uncertified. This article identifies the factors that inhibit the protection of rights over uncertified waqf land in Gorontalo City. The study uses empirical legal research with a qualitative approach; data were obtained through interviews, observation and documentary study, and were analysed descriptively. Three inhibiting factors are identified. First, limited public understanding and awareness, so that land is given in waqf without the proper legal procedures of registration and certification. Second, the complexity of the administrative and legalisation procedures, compounded by cumbersome bureaucracy and the absence of technical support, which leaves nazhirs unable to satisfy the administrative requirements. Third, the weak protection afforded to rights over uncertified waqf land, which leaves such land poorly managed and prevents its social and religious benefits from being realised by the community.

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1. Introduction

Islam requires development with proper management. Among the management that needs to be developed is utilizing waqf land for Islamization media. The hope is to create prosperity for Muslim citizens. Prosperity of the people can be done by the government and citizens themselves with a variety of empowerment that originates in the economic sector. This does not mean that everything is measured from the economic aspect, other aspects also need to be empowered, namely the aspect of human resource development. This is done in the form of empowering educational institutions by utilizing land endowments. So far, in the view of ordinary people, the category of donated land is only concentrated in certain areas of land, namely in rural and urban areas. In rural areas, such as rice fields for agriculture and aquaculture, plantation land for plantations, home industry, and tourist destinations. The farm land is intended for planting secondary crops, real estate, landscaping and home industry. Swamp land for fisheries cultivation, hilly land for tourist destinations, buildings and home industry. Meanwhile, in urban areas, land next to the main road is used for offices, business centers, shopping areas, apartments, hotels, home stays and meeting buildings. The land near the toll road is designated for gas stations, car and motorbike repair shops, restaurants and food stalls.¹

Historically, waqf has played a very vital role in the economic development of Muslim communities. Even though there is quite a long history of experience in waqf management, there are still various facts that waqf management has not achieved the expected results. The waqf which is expected to improve the welfare of society has not yet been realized.²

According to the discussion, waqf is taken from the Arabic word waqf, meaning to hold or stop. In terms of Islamic law, waqf is a legal act of a person who deliberately separates or releases property that is used to benefit needs in the way of Allah or in the path of goodness.³ Meanwhile, according to the latest waqf regulations, namely: Law no. 41 of 2004 concerning Waqf, in Article 1, Waqf is the legal act of wakif to separate and/or hand over as one's property to be used forever or for certain things according to the needs and interests for the purposes of worship and/or general welfare according to sharia.

Furthermore, as a religious institution that is closely related to socio-economic issues, waqf has been implemented by Muslims from the early period during the time of the Prophet. The first implementation of waqf was carried out by Umar bin Khattab's friend on his land in Khaibar. According to Imam Syafi'i, after the implementation of Umar's waqf, there were around 80 friends who donated their wealth.⁴

¹ Moh Rosyid, 'PERAN SERTIFIKAT TANAH WAKAF DALAM MENGANTSIPASI DINAMIKA ZAMAN: STUDI KASUS MADRASAH DINIYAH MUAWANATUL MUSLIMIN DI KUDUS', *ZISWAF* 3, no. 1 (2016): 99-128.

² Ahmad Djalaluddin, 'LEGITIMASI FIQIH BAGI OPTIMALISASI DAN PENDAYAGUNAAN WAKAF', *IQTISHODUNA* 2, no. 1 (2011), <https://doi.org/10.18860/iq.v2i1.210>.

³ Suparman Usman, *Hukum Perwakafapan Di Indonesia* (Darul Ulum Press, 1994), 26.

⁴ Sulaiman Rasyid, *Fiqif Islam* (At-Thahiriyah, 1976), 324.

Judging from the use or purpose of waqf, there are 2 categories of waqf, namely special waqf/family waqf/expert waqf/*dzurri* waqf/*alal aulad* waqf and general waqf/*khairi* waqf. Special waqf is a waqf that is specifically intended for certain people, one or more.⁵

In subsequent developments, the *dzurri* waqf was considered to be less able to provide benefits for general welfare because it often resulted in poor management and utilization by the families entrusted with the waqf assets. However, even though Islam allows *dzurri* waqf, several countries that have implemented it, such as Egypt, Syria, Turkey, Morocco, and Algeria, have eliminated *dzurri* waqf, on the ground that this form of waqf tends not to be productive and gives rise to disputes that are later difficult to resolve.

Khairi waqf means waqf intended for public interests or problems (*limashail al ummah*). The legal basis for *khairi* waqf is the hadith of the prophet which tells about the waqf of Umar bin Khattab's friend. He gave his garden produce to the poor, Ibn Sobil, Sabililah, guests, and servants who were trying to redeem themselves. Waqf is intended for the general public and is not limited to its use, covering all aspects that will provide benefits and prosperity to humanity in general. These interests are biased towards social security, education, health, defense, security, and so on.⁶

Waqf as an institution regulated by the state has been manifested in statutory regulations since 1905, although it is still limited to land endowments which include mosques and holy houses. These regulations were still in effect until the Japanese occupation and during the Republic. On September 24, 1960, land regulations known as the Basic Agrarian Law (UUPA) Number 5 of 1960 were promulgated. On the basis of the Basic Agrarian Law, Government Regulation Number 28 of 1977 on the Waqf of Owned Land was enacted. Article 17 PP No. 28 of 1977 states that regulations drafted during the Dutch East Indies era were abolished. As a follow-up to PP No. 28 of 1977, several regulations were issued as follows:

- a) Implementing regulations of PP No. 28 of 1977 which are regulated by Minister of Religion Regulation No.1 of 1978.
- b) Joint instructions from the Minister of Religion and the Minister of Home Affairs No. 1 of 1978.
- c) Decree of the Minister of Religion No. 73 of 1978 concerning the delegation of authority to the Head of the Regional Office of the Provincial Department of Religion or at the same level throughout Indonesia to appoint/dismiss each head of the KUA as PPAIW.
- d) Instruction of the Minister of Religion No.3 of 1978 concerning instructions for implementing Minister of Religion Decree No.73 of 1978
- e) Minister of Religion Instruction No.3 of 1978 concerning guidance and development of heads of religious legal entities that own land.

⁵ Abdullarrahman, *Masalah Perwakafan Tanah Milik Dan Kedudukan Tanah Wakaf Di Negara Kita*. (Citra Aditya Bakti, 1994), 59.

⁶ *Hukum Perwakafapan Di Indonesia...Op.cit*, 36.

- f) Instructions of the Joint Minister of Religion and the Head of the National Land Agency No.4 of 1990/No.24 of 1990 concerning Waqf Land Certification.
- g) Various decrees and circulars from the Director General of Islamic Guidance and Hajj Affairs regarding Waqf.
- h) Compilation of Islamic Law which is socialized with the Presidential Instruction. No. 1 of 1991.
- i) Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf.
- j) Republic of Indonesia Government Regulation no. 42 of 2006 concerning Waqf.

However, in field operations, problems are still found that need attention from the relevant parties in a coordinated manner, such as the problem of unregistered waqf land. In the implementation of waqf, it turns out that the administrative provisions in PP No. 28 of 1977⁷ have not fully received the attention of the public in general, especially those who are waqf. What stands out about the Wakif is the worship side of waqf practice. Therefore, the waqif does not feel the need to be administered or registered as such, the waqif can be carried out based on the sincerity and pleasure of the waqf's statement letter.⁸

Table 1. Waqf land that does not yet have a certificate.

Village > Allotment > Status		
Moodu	Mesjid al-magfirah	Not Yet Certified
Moodu	Mesjid asy-syahidah	Not Yet Certified
Moodu	Mesjid al-yakin	Not Yet Certified
Moodu	Mesjid al-falah	Not Yet Certified
Moodu	Mesjid an-nasrullah	Not Yet Certified
Moodu	Mesjid ulil albab	Not Yet Certified
Moodu	Mesjid at-taha	Not Yet Certified
Tamalate	Mesjid sabilul huda	Not Yet Certified
Tamalate	Mesjid nur muhammad	Not Yet Certified
Tamalate	Mesjid anisykurli	Not Yet Certified
Tamalate	Mesjid birul walidaini	Not Yet Certified
Tamalate	Mesjid umar bin katab	Not Yet Certified

⁷ Masalah Perwakafan Tanah Milik Dan Kedudukan Tanah Wakaf Di Negara Kita..Op.cit, 60.

⁸ Hukum Perwakafapan Di Indonesia...Op.cit, 35.

Village > Allotment > Status		
Tamalate	Mesjid al-mujahidin	Not Yet Certified
Padebuolo	Mesjid baitur rahmah	Not Yet Certified
Padebuolo	Mesjid walfajri	Not Yet Certified
Padebuolo	Mesjid al-mukaramah	Not Yet Certified
Padebuolo	Mesjid al-hilal	Not Yet Certified
Heledulaa Selatan	Mesjid ibnu taimiyah	Not Yet Certified
Heledulaa Selatan	Mesjid al-mutakabbir	Not Yet Certified
Heledulaa Selatan	Mesjid al-adha ii	Not Yet Certified
Heledulaa Utara	Mesjid sultan amay	Not Yet Certified
Heledulaa Utara	Mesjid nurul ilmi	Not Yet Certified
Ipilo	Mesjid ar-rahman	Not Yet Certified
Ipilo	Mesjid as-salam	Not Yet Certified
Ipilo	Mesjid al-mukhlisin	Not Yet Certified
Ipilo	Mesjid al-ansyor	Not Yet Certified
Ipilo	Mesjid al-ihwan	Not Yet Certified

Source: East City Religious Affairs Office, 2021.

The implementation of waqf law in Indonesia was originally still very simple without any administration, just a verbal statement was made. The management and maintenance of the waqf land was then handed over to Nadzir. Because it is not registered administratively, many waqf lands do not have proof of waqf, so many waqf lands are lost and many become disputes in court. To avoid problems related to the administration of waqf land, it is necessary to provide written evidence, namely the existence of a Waqf Pledge Deed. Even though the Waqf Pledge Deed is very important as its validity according to the Islamic religion and the requirements or materials for registering waqf land, in various regions there are still many waqf lands that have not been certified or even do not have a Waqf Pledge Deed.⁹

⁹ Nirwan Junus et al, 'Peningkatan Kesadaran Hukum Masyarakat Mengenai Sertifikasi Tanah Wakaf Guna Menjamin Kepastian Hukum Di Desa Pentadu Barat Kecamatan Tilamuta.', *Jurnal Pelayanan Hubungan Masyarakat* 1, no. 2 (2023): 146–58, <https://doi.org/10.59581/jphm-widyakarya.v1i2.743>.

In developments in this modern era, there are still mosques or holy houses that do not yet have clear ownership, in this case, the Al-Farhan mosque which is in the North Dulomo area and has an area of 255 (M2) and the Al-Ikhlâs mosque which is in the South Dulomo village covers an area of 255 (M2). 421(M2). Even though the two mosques have been donated to the local government, there is no subsequent certificate or clarity of ownership, this will cause immediate problems if the heir to the waqf land wants to ask for the ownership back.

And there are also houses of worship that do not yet have or have not yet registered their land with the parties concerned to register or make a certificate considering the number of houses of worship in this eastern city, there are very many mosques or holy houses that have not registered or have certificates in the legal regulations- Invitation Number 41 of 2004 article 11 paragraphs 1 and 3 which explains that Nazhir has the task of administering waqf assets, this explains how to administer or register waqf proceeds, as well as provide and protect waqf assets, endowments or wakifs (waqf givers).) If you have to take precautions, in this case, register the results of the waqf to avoid problems that will occur in the future.

In practice, to obtain a certificate, the waqf must be recorded, stated in the Waqf Pledge Deed (AIW), and registered with the relevant government. This implementation must also be carried out by the procedures contained in the provisions of the Law governing waqf, with the aim of maintaining order and security. Waqf administration is held to safeguard waqf assets. The disruption of waqf assets is related to the way the nazhir manages waqf assets. However, even though this happens in the field, it shows that the community does not fully understand how to implement these standards in a planned and effective manner, so in some cases waqf resources are not registered managed and handled properly.

In its development from year to year, the Al-Farhan mosque and the Al-Ikhlâs mosque in the northern city until 2019 do not yet have information or clarity regarding land certificates or legal ownership with proven land certificates, and there are still more mosques in the eastern city. who have not registered their land with the local government, this will cause problems or conflicts when one of the heirs changes the agreement made by the deceased heir.

Many mosques still do not have a certificate or, more specifically, when the wakif donates the land to erect/build a mosque, there is no certificate or it has not been registered with the village order as waqf land for the mosque to be built, this will cause conflict in the future when the wakif's children and grandchildren want to take or wants to repossess the land on which the mosque was built, and from that the author uses the title as a problem that will arise among the community.

2. Method

The type of research employed in this article is **sociological juridical research**,¹⁰ which examines legal norms in relation to their actual implementation and operation within society. This research approach does not merely analyze law as a set of written rules or normative provisions, but also considers law as a social phenomenon that interacts with the behavior, practices, institutions, and conditions existing in the community. Accordingly, the sociological juridical approach is particularly relevant for examining whether the legal provisions governing waqf, especially those concerning the registration, certification, administration, and management of waqf property, have been effectively implemented in practice. Through this approach, the research seeks to identify possible discrepancies between the normative requirements established by legislation and the actual practices undertaken by *wakifs*, *nazhirs*, government institutions, and other stakeholders involved in waqf management.

Sociological juridical research generally utilizes secondary data as the initial basis for understanding the legal framework applicable to the issue under examination and subsequently complements such information with primary data obtained directly from the field or community. Secondary data in this research are obtained through the examination of relevant laws and regulations, ministerial regulations, legal documents, books, scientific journal articles, previous research, and other literature related to waqf governance and the certification of waqf land. These materials are used to construct the normative and theoretical framework necessary for assessing the implementation and effectiveness of the applicable legal provisions. Meanwhile, primary data are obtained directly from relevant actors and institutions in order to determine how these regulations are understood, implemented, and experienced in practice. The combination of normative legal materials and empirical findings enables the research to provide a more comprehensive assessment of the effectiveness of the regulations and the factors that influence their implementation.

Data collection is conducted through **document and literature studies as well as field-based data collection**, particularly interviews and, where necessary, questionnaires directed at relevant respondents or informants. Document studies are used to identify and analyze the legal norms, policies, and administrative requirements governing waqf, while interviews are intended to obtain direct information concerning practical problems encountered in the registration, certification, and management of waqf property. The empirical data are subsequently examined in relation to the applicable legal framework to identify relationships or correlations between relevant variables, such as the level of legal awareness among *wakifs* and *nazhirs*, compliance with administrative procedures, institutional capacity, and the effectiveness of waqf land certification. Through this method, the research is expected not only to describe the applicable legal provisions but

¹⁰ Irwansyah Irwansyah, *Penelitian Hukum; Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020); Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum : Normatif & Empiris* (Pustaka Pelajar, 2010); Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

also to explain the factors contributing to the gap between the law as formally prescribed (*law in the books*) and the law as actually implemented within society (*law in action*).¹¹

3. Factors Inhibiting the Protection of Rights over Uncertified Waqf Land

Waqf is an important institution in Islamic law which functions to provide long-term benefits for society.¹² As a form of almsgiving, waqf allows the giver (*wakif*) to donate assets in the form of land, buildings or other property to be used for social, religious and general welfare purposes. Endowed assets usually cannot be sold, inherited or transferred ownership, so that the benefits can continue to be felt by future generations. Waqf institutions have a vital role in supporting various programs such as education, health and the development of religious infrastructure.

In Indonesia, waqf has been regulated in statutory regulations to ensure the waqf process runs in accordance with applicable legal principles. Law Number 41 of 2004 concerning Waqf and Minister of Religion Regulation Number 73 of 2013 concerning Procedures for Registration of Waqf Land provide a clear legal framework for the implementation of waqf. However, even though there are existing regulations, there are still many challenges faced in implementing them. Problems such as lack of public awareness about the importance of waqf land certification, land disputes, and administrative problems often hinder effective waqf land management.

Therefore, further efforts are needed to increase public awareness and understanding of waqf as well as improve the administration system and legalization of waqf land. Education and outreach regarding the importance of following legal procedures in the waqf process must continue to be carried out by the government and related institutions. In addition, resolving land disputes and providing more efficient and transparent administrative services can help ensure that waqf land can be used according to its original purpose. In this way, waqf can function optimally in supporting social and religious development and providing sustainable benefits for society.

Even though waqf has great potential to support social and religious development, in reality there are still many problems found in society regarding waqf land. One of the main problems is that many waqf lands are not certified, which causes ownership rights to the land to be unclear. When waqf land does not have an official certificate, this makes it difficult to manage it and reduces the ability of the land to provide optimal benefits in accordance with the original objectives of the waqf. Without a certificate, waqf land ownership becomes vulnerable to disputes and claims from other parties. Several factors inhibiting the protection of waqf land in Kota Timur District include:

a) Lack of Public Understanding and Awareness

Many *wakifs* and *nazhirs* in Indonesia have not fully realized that the registration and certification of waqf land constitute essential legal processes for ensuring the

¹¹ Amiruddin, *Pengantar Metode Penelitian Hukum* (Raja Grafindo, 2012), 34.

¹² Junus et al, 'Peningkatan Kesadaran Hukum Masyarakat Mengenai Sertifikasi Tanah Wakaf Guna Menjamin Kepastian Hukum Di Desa Pentadu Barat Kecamatan Tilamuta.'

sustainability, protection, and legal certainty of waqf assets.¹³ In practice, the transfer of land for waqf purposes is sometimes carried out primarily on the basis of religious intention, social trust, family relationships, or customary practices without being followed by adequate administrative and legal procedures. Such practices may include the absence of proper documentation, registration, certification, or other formal evidence demonstrating that the land has legally been designated as waqf property. Although the religious intention of the *wakif* may have been fulfilled according to the understanding of the parties concerned, the absence of formal legal documentation can create significant problems in the future, particularly when the status, boundaries, ownership history, or management authority over the waqf land is subsequently questioned.

The registration and certification of waqf land therefore should not merely be regarded as an administrative formality. Rather, these processes constitute important legal instruments for protecting waqf assets and ensuring that their designated status can be maintained across generations.¹⁴ A certificate provides formal evidence concerning the legal status of the land and strengthens the position of the waqf property against potential claims by heirs, third parties, or other interested persons. This protection is particularly important because waqf is intended to provide sustainable benefits and is generally associated with the preservation of assets for religious, social, educational, and public-welfare purposes. Without adequate legal protection, the continuity of these benefits may be threatened by disputes, unlawful transfers, changes in control, or attempts to reclaim the land after the death of the original *wakif*.

The lack of awareness concerning these legal procedures may result in waqf land being transferred or designated without proper registration before the relevant authorities. In some communities, the declaration of waqf may be considered sufficient once it has been made orally in the presence of religious leaders, family members, or community representatives. While such practices may possess religious and social significance, they may not provide adequate legal protection when disputes arise. Problems may emerge, for example, when the descendants of the *wakif* subsequently claim that the property remains part of the family's inheritance or when third parties challenge the boundaries or ownership of the land.¹⁵ Under such circumstances, the absence of clear documentary evidence can make it difficult for the *nazhir* to demonstrate and defend the waqf status of the property.

Consequently, legal certainty becomes one of the most important dimensions in the governance of waqf assets. The principle of legal certainty requires that the status of waqf

¹³ Ahmad Wahyudi et al, 'Formal and Substantive Compliance of Nazhir in the Use of Waqf Principal Funds for Operational Costs', *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 11, no. 1 (2026): 123–42, <https://doi.org/10.24235/mmppsc93>.

¹⁴ Attahiraa Prajna Paramitha and Miftahul Huda, 'Judicial Interpretation of Waqf Land Validity in Indonesia: A Comparative Analysis of Positive Law and Islamic Law through Case Decision No. 453/Pdt.G/2020/PA.Kdi', *Berasan: Journal of Islamic Civil Law* 4, no. 1 (2025): 52–76, <https://doi.org/10.29240/berasan.v4i1.12639>.

¹⁵ Muhammad Reyhan and Isman Isman, 'Normative Analysis of the Feasibility of Nazhir Compensation: A Review of Law Number 41 of 2004 and Labour Law in Indonesia', *Zicons: Zawiyah International Conference on Sharia and Legal Studies* 1 (December 2025): 21–33.

property, the authority of the *nazhir*, the purpose for which the property is designated, and the rights and obligations associated with its management be clearly identifiable and legally enforceable. Formal registration allows the state to recognize and record the existence of the waqf property, while certification strengthens documentary evidence concerning its legal status. Through these mechanisms, the legal system provides protection not only to the *wakif* and *nazhir*, but also to the beneficiaries of the waqf and the broader community whose interests may depend upon the continued existence and proper management of the property.

The absence of official certification not only creates difficulties in protecting and managing waqf land but may also affect public confidence in the waqf system. Waqf is fundamentally based on public trust because the *wakif* transfers assets with the expectation that they will be professionally and sustainably managed for designated religious or social purposes. When waqf assets are poorly documented or become the subject of prolonged disputes, public confidence in waqf institutions and *nazhirs* may decline. Such circumstances may discourage other members of society from donating their property because they may question whether their assets will be adequately protected and utilized in accordance with their intended purposes.

Uncertified waqf land is also particularly vulnerable to disputes, changes in control, overlapping claims, and other legal complications. Such vulnerability can prevent the property from being developed and utilized optimally.¹⁶ A waqf asset that should generate long-term benefits for the community may instead remain unproductive because its legal status is uncertain. For instance, plans to construct or develop mosques, schools, Islamic educational institutions, health facilities, orphanages, community centers, or other public facilities may encounter administrative and financial obstacles where the legal status of the underlying land cannot be clearly demonstrated. Similarly, potential cooperation with government institutions, financial institutions, private entities, or other organizations may become difficult when the waqf asset does not possess adequate legal documentation.

Therefore, certification should also be understood as part of a broader effort to improve the governance and productivity of waqf assets. Legal certainty provides a foundation upon which *nazhirs* can develop more sustainable management strategies. Once the status of an asset is legally secure, the *nazhir* can focus on ensuring that the property generates maximum benefits in accordance with the objectives of the waqf. This is particularly relevant to the development of productive waqf, where waqf assets are not merely preserved physically but are managed in ways capable of generating economic or social returns that can continuously finance public-benefit activities.

For this reason, increasing public awareness and understanding of the legal procedures governing waqf is essential. Legal education concerning waqf should not be directed exclusively toward *wakifs*, but should also involve *nazhirs*, religious leaders, village officials, community organizations, and other stakeholders involved in the administration

¹⁶ Ahmad Jafar et al, 'Waqf: From Classical Charitable System to Modern Financial Tool', *International Journal of Ethics and Systems*, ahead of print, 7 May 2025, <https://doi.org/10.1108/IJOES-10-2024-0354>.

and management of waqf assets. The community needs to understand that compliance with formal legal procedures does not diminish the religious character of waqf. On the contrary, legal registration and certification strengthen the possibility that the intention of the *wakif* will continue to be respected and that the donated property will remain protected and beneficial for future generations.

From the description above, it can be observed that the implementation of waqf in Indonesia has not yet fully achieved its potential. One of the fundamental challenges lies in the limited public understanding of the meaning, objectives, forms, and management possibilities of waqf. For a considerable part of society, waqf continues to be understood primarily in its conventional form as the permanent dedication of immovable property for religious purposes. This understanding is closely associated with the historical development of waqf practices in which land is donated for the construction of mosques, prayer facilities, Islamic boarding schools, cemeteries, or other religious and social facilities. Although these forms of waqf remain highly valuable, limiting the concept of waqf exclusively to such practices may restrict its broader social and economic potential.

This traditional understanding can be particularly evident in rural communities, where the concept of waqf may remain strongly influenced by classical practices inherited across generations. In such circumstances, members of the community may assume that a person who wishes to perform waqf must first possess vacant land that can subsequently be donated for the construction of a mosque, cemetery, school, or other religious facility. Consequently, individuals who do not own substantial land may perceive themselves as having limited opportunities to participate in waqf. Such an understanding does not fully reflect the development of contemporary waqf instruments, which can include not only immovable property but also movable assets and other forms of property capable of being managed to produce sustainable social benefits.

The development of modern waqf therefore requires a transformation from a predominantly consumptive understanding toward a more productive approach. Productive waqf emphasizes the management and development of waqf assets in a manner that preserves their principal value while generating sustainable benefits. Under this approach, the economic potential of waqf becomes particularly important.¹⁷ Waqf assets can potentially be developed through commercial activities, investment, property management, agricultural activities, educational services, health services, and other economically productive mechanisms, provided that their management remains consistent with applicable legal and Sharia principles. The returns generated from these activities can subsequently be directed toward social, educational, religious, and humanitarian purposes.

The development of waqf practices in neighboring countries, particularly Malaysia, provides a relevant comparative perspective for Indonesia. Malaysia has developed various approaches to strengthen the institutional and economic dimensions of waqf

¹⁷ Muhammad Bilal Zafar and Ahmad Jafar, 'Waqf over a Century: Innovation and Tradition in Shaping Social Equity and Sustainable Development', *International Journal of Sociology and Social Policy* 46, nos 3–4 (2025): 448–72, <https://doi.org/10.1108/IJSSP-12-2024-0625>.

management. One important feature of this development is the increasing involvement of professional and corporate actors in supporting the development and management of waqf assets within the applicable institutional and regulatory framework. Such involvement reflects an understanding that the management of waqf requires not only religious legitimacy but also professional expertise in areas such as finance, investment, property development, corporate management, risk management, and business planning.

The involvement of private-sector actors in waqf development can provide several potential advantages. Private companies generally possess managerial expertise, professional human resources, access to capital, technological capabilities, and experience in developing commercially viable projects. When these capabilities are integrated into an appropriate waqf governance framework, they may contribute to improving the productivity of waqf assets. Rather than allowing valuable waqf land to remain idle or underutilized, professional partnerships can facilitate its development into projects capable of generating sustainable economic returns while maintaining the fundamental purpose and status of the waqf.

The Malaysian experience therefore demonstrates that waqf management does not necessarily have to be understood exclusively as the responsibility of traditional religious institutions. A modern waqf governance system may involve cooperation among religious authorities, government institutions, professional *nazhirs* or trustees, financial institutions, corporations, universities, and civil society. The participation of different actors can potentially increase managerial efficiency, strengthen accountability, expand financing opportunities, and introduce innovation into the development of waqf assets. Nevertheless, private-sector participation must remain subject to strong regulatory safeguards to ensure that commercial considerations do not undermine the religious and social objectives of waqf.

In this regard, Indonesia may draw relevant lessons from the development of productive waqf management in Malaysia without necessarily adopting the Malaysian model in its entirety. Differences in legal systems, institutional structures, religious administration, land regulation, and socio-economic conditions require any comparative model to be adapted carefully to the Indonesian context. Nevertheless, the underlying principle remains relevant: waqf assets should be managed professionally, transparently, accountably, and productively so that their benefits are not confined to passive asset preservation but can contribute more substantially to social and economic development.

Strengthening the role and capacity of *nazhirs* is therefore essential to the future development of waqf in Indonesia. The *nazhir* should not merely function as a passive custodian responsible for maintaining waqf property. In a modern waqf governance system, the *nazhir* should possess sufficient knowledge and competence in law, asset management, finance, investment, administration, and institutional governance.¹⁸ Professionalization of *nazhirs* would enable waqf assets to be managed strategically while

¹⁸ Leny Nofianti et al, 'Cash Waqf Innovation in Islamic Financial Institutions and Its Governance Issues, Case Studies: Indonesia, Malaysia, Türkiye', *Journal of Islamic Accounting and Business Research* 17, no. 4 (2024): 819–37, <https://doi.org/10.1108/JIABR-12-2023-0420>.

maintaining compliance with the objectives established by the *wakif* and the requirements of applicable law.

Ultimately, the challenges surrounding uncertified waqf land and the limited development of productive waqf demonstrate that waqf reform in Indonesia requires both legal and institutional transformation. Strengthening registration and certification is necessary to guarantee legal certainty and protect waqf assets from disputes and unlawful claims. At the same time, improving public literacy, professionalizing *nazhirs*, developing productive waqf models, and encouraging carefully regulated cooperation with professional and private-sector actors are necessary to maximize the economic and social potential of waqf. Through such an integrated approach, waqf can develop beyond its conventional function as a mechanism for providing religious facilities and become an important instrument for sustainable social welfare, economic empowerment, education, health services, and community development.

b) Complexity of administrative and legalization procedures

The certification of waqf land remains one of the major challenges in ensuring legal certainty and effective waqf management in Indonesia.¹⁹ In practice, the process of obtaining a waqf land certificate requires the fulfillment of various administrative and substantive requirements in accordance with the applicable laws and regulations. These requirements are intended to ensure that the land designated as waqf has a clear legal status, that the person acting as the *wakif* possesses the legal authority to donate the property, and that the transfer of the property into waqf does not violate the rights of other parties. Although these requirements are fundamentally designed to protect waqf assets, the complexity of the administrative process may become an obstacle, particularly for communities with limited understanding of land administration and waqf law.

One of the problems frequently encountered concerns the completeness and validity of documents relating to the ownership and legal history of the land. Before land can be formally registered as waqf property, it is necessary to establish that the land is legally controlled or owned by the *wakif* and is not subject to unresolved claims by other parties.²⁰ Difficulties may arise where the land has been controlled by a family for generations but has never been properly registered, where ownership documents are incomplete, or where the boundaries of the land are unclear. Such circumstances make the certification process more complicated because the legal status of the property must first be clarified before the land can be formally recorded as waqf.

Another difficulty may arise in relation to the heirs of the *wakif*, particularly where the waqf was originally conducted informally and was not immediately documented through the procedures required by law. In such circumstances, the *nazhir* may subsequently encounter difficulties in demonstrating that the land had previously and legitimately been

¹⁹ Harum Kusumaningtyas, 'Strengthening Legal Certainty for Waqf Land in Indonesia Through Certification: A Study at the Magetan District Land Office', *Berasan: Journal of Islamic Civil Law* 4, no. 2 (2025): 226–48, <https://doi.org/10.29240/berasan.v4i2.16005>.

²⁰ Alvanto Wibisono et al, 'Waqf Land Registration and Its Implications for Legal Certainty: A Case Study in Jember Regency', *Marcapada: Jurnal Kebijakan Pertanahan* 4, no. 2 (2025): 104–18, <https://doi.org/10.31292/mj.v4i2.149>.

designated as waqf.²¹ This problem becomes particularly significant after the death of the *wakif*, because the heirs may have different understandings concerning the status of the property. Some heirs may acknowledge the previous waqf, while others may regard the property as part of the inheritance. The absence of adequate documentary evidence can therefore transform what was initially regarded as a religious and charitable act into a complex dispute concerning ownership, inheritance, and the legal status of the land.

The problem becomes even more complicated when the land designated as waqf is already the subject of competing claims or disputes. Land disputes may concern ownership, inheritance, boundaries, overlapping rights, or claims from third parties. In such cases, the certification of waqf land cannot proceed effectively until the underlying legal issues have been resolved. Consequently, the failure to clarify the legal status of land before or immediately after the declaration of waqf may create long-term administrative and legal problems. This situation demonstrates that waqf administration cannot be separated from the broader land registration system because the effectiveness of waqf protection depends substantially upon the certainty of the legal status of the underlying property.

In addition to problems relating to land documents, complicated bureaucratic procedures may constitute another obstacle to the certification of waqf land. The certification process can involve several institutions and administrative stages, requiring *wakifs* and *nazhirs* to understand different procedures, forms, documentary requirements, and institutional authorities. For individuals who are unfamiliar with government administration, such processes may be perceived as complicated, time-consuming, and difficult to understand. This problem is particularly significant in rural communities where access to legal information, government services, and professional assistance may be relatively limited. As a result, some communities may choose to maintain informal waqf arrangements rather than complete the formal registration process.²²

Limited technical assistance from government institutions may further aggravate these difficulties. In principle, the existence of administrative requirements should be accompanied by sufficient guidance to enable members of the public to comply with them. However, where information concerning procedures, required documents, responsible institutions, and stages of registration is not effectively communicated, *wakifs* and *nazhirs* may experience difficulty completing the certification process. This indicates that the problem of uncertified waqf land cannot simply be attributed to a lack of compliance by the community. It must also be examined from the perspective of the accessibility, responsiveness, and effectiveness of public administration.

The inability of *nazhirs* to satisfy administrative requirements may ultimately prevent waqf property from obtaining formal legal recognition. This creates a paradoxical

²¹ Herman Herman et al, 'Legal Review of the Implementation of Certification of Endowment Land to Avoid Disputes from a Positive Legal Perspective in Indonesia Based on the Value of Legal Certainty', *International Journal of Synergy in Law, Criminal, and Justice* 2, no. 1 (2025): 463–68, <https://doi.org/10.70321/ijslcj.v2i1.92>.

²² Sulastri et al, 'Uncertified Waqf Land Conflicts: Case Studies from East Aceh', *Proceedings of Aceh International Seminar on Zakat and Waqf* 2, no. 1 (2025), <https://doi.org/10.22373/aiszawa.v2i1.9719>.

situation in which land may have been socially and religiously recognized as waqf for many years but remains inadequately protected from the perspective of state law. Such a condition creates legal vulnerability because social recognition alone may not always provide sufficient evidence when disputes arise before administrative authorities or courts. Therefore, the formalization of waqf through appropriate documentation and registration is essential for transforming social and religious recognition into stronger legal protection.

Administrative reform is consequently necessary to simplify and accelerate the certification of waqf land without sacrificing the principles of accuracy, accountability, and legal certainty. Simplification does not necessarily mean eliminating substantive requirements designed to prevent fraud or unlawful transfers of land. Rather, reform should focus on making procedures clearer, more integrated, transparent, accessible, and efficient. Standardized information concerning documentary requirements, clear processing stages, coordination among relevant institutions, and the use of digital administrative services may reduce uncertainty and facilitate compliance. At the same time, technical assistance should be strengthened, particularly for *nazhirs* and communities that lack adequate knowledge of land registration procedures.²³

From this perspective, one of the principal factors triggering conflicts over waqf land is the failure to register waqf property through the legally prescribed procedures. When the designation of land as waqf is based predominantly upon oral declarations, religious ceremonies, community recognition, or informal documentation, the legal status of the property may become difficult to prove at a later stage. The risk becomes greater when the *wakif* and witnesses to the original waqf have died. The next generation may no longer possess complete information concerning the original intention of the *wakif*, thereby creating opportunities for disputes between the *nazhir*, heirs, beneficiaries, and other interested parties.

Various legal instruments have established procedures and requirements concerning land registration and the protection of waqf property. In this regard, the land registration framework, including Government Regulation Number 24 of 1997 concerning Land Registration and the relevant regulations issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, provides an important legal foundation for ensuring certainty regarding land rights and registration. These provisions must also be understood in conjunction with the specific legal framework governing waqf. The existence of these regulations demonstrates that the Indonesian legal system has provided mechanisms through which waqf land can obtain formal recognition and protection. The principal problem, therefore, does not always lie in the absence of regulation but may instead concern the effectiveness of its implementation.

In reality, however, the existence of legal rules does not automatically guarantee their effective implementation within society. There remains a gap between the normative

²³ Siti Maghfiroh et al, 'Digitalization and Transparency of Waqf Lands Certification: A Strategy to Enhance Public Trust from an Islamic Ethical Perspective', *Journal of Islamic Economics Perspectives* 8, no. 1 (2026): 72–88, <https://doi.org/10.35719/svtrnj58>.

requirements prescribed by legislation and the actual practices of waqf at the community level. Some *wakifs* may consider the religious declaration of waqf sufficient and consequently do not regard formal registration as an urgent necessity. Similarly, some *nazhirs* may continue managing waqf property without completing the necessary administrative procedures because the property has long been recognized by the surrounding community as waqf. Such practices demonstrate the distinction between *law in the books* and *law in action*, in which formally established legal requirements do not necessarily correspond with social practices.²⁴

This discrepancy has important implications for legal certainty. Where waqf land remains unregistered, there may be insufficient formal evidence to demonstrate that the legal status of the land has changed from private property to property designated for waqf purposes. This creates opportunities for heirs or third parties to challenge its status, particularly when the economic value of the land increases over time. Land that may initially have possessed relatively limited economic value can become extremely valuable due to urban development, infrastructure construction, or changes in surrounding land use. Under such circumstances, the absence of strong documentary evidence may significantly increase the likelihood of competing claims and conflicts.

The issue of waqf land certification should therefore be understood not merely as an administrative problem but also as a matter of preventive legal protection. Registration and certification function as mechanisms for preventing disputes before they occur. By establishing clear documentary evidence concerning the identity of the *wakif*, the appointment of the *nazhir*, the location and boundaries of the property, and its designation as waqf, the legal system reduces opportunities for future disputes. Preventive protection is particularly important for waqf because the property is intended to provide continuing benefits beyond the lifetime of the original *wakif*. Consequently, legal protection must be capable of ensuring the continuity of the waqf across generations.

Another factor contributing to the problem is the limited role of local government in proactively facilitating waqf administration and management. In certain circumstances, government institutions tend to perform a reactive administrative function, providing services primarily when members of the community approach them to complete waqf-related procedures. Such an approach may be insufficient where public understanding of waqf law remains limited. Local governments should not merely wait for individuals to initiate the process but should also perform educational, facilitative, and coordinating functions. Public dissemination of information concerning waqf procedures, assistance with documentation, coordination with relevant land authorities, and cooperation with religious institutions can significantly improve the effectiveness of waqf administration.

The role of local government is particularly important because it operates at the administrative level closest to the community. Through cooperation with village governments, religious affairs offices, land authorities, religious organizations, and other

²⁴ Acep Zoni Saeful Mubarak et al, 'The Urgency of Legal Harmonization in Waqf Land Certification Practices: Tasikmalaya City Case Study', *Hikmatuna: Journal for Integrative Islamic Studies* 11, no. 2 (2025): 233–49, <https://doi.org/10.28918/hikmatuna.v11i2.13008>.

relevant institutions, local governments can identify waqf land that has not yet been formally registered and facilitate its legalization. Such proactive measures would constitute a form of preventive governance because they address potential legal problems before disputes emerge. Moreover, improved institutional coordination could reduce the burden placed upon individual *wakifs* and *nazhirs* in navigating complex administrative procedures independently.

Apart from institutional problems, the limited capacity of *nazhirs* also constitutes a significant challenge in the governance of waqf property. In many communities, a *nazhir* may be selected primarily because of religious knowledge, personal integrity, social standing, or the trust placed in that individual by the *wakif*. These qualities are undoubtedly important because waqf management is fundamentally based on trust and responsibility. However, modern waqf administration also requires knowledge concerning legal procedures, land registration, asset management, financial administration, institutional governance, and dispute prevention. A *nazhir* who lacks these competencies may experience difficulty ensuring that waqf property receives adequate legal and administrative protection.

For this reason, strengthening the competence and professionalism of *nazhirs* should become an integral component of waqf reform. Training programs should provide *nazhirs* with practical knowledge concerning waqf legislation, land certification, preparation of administrative documents, dispute resolution, financial reporting, and productive asset management. Professionalization would enable *nazhirs* to move beyond the traditional role of merely maintaining waqf property toward a more comprehensive role as legally responsible and professionally competent managers of social assets.

Accordingly, the problem of uncertified waqf land results from the interaction of several factors rather than from a single cause. These factors include limited public legal awareness, incomplete ownership documents, informal waqf practices, complicated administrative procedures, inadequate technical assistance, weak institutional coordination, limited proactive involvement by local governments, and insufficient managerial and legal capacity among *nazhirs*. Because these factors are interconnected, resolving the problem requires an integrated approach rather than relying exclusively on stricter legal rules.

Therefore, improving the legal protection of waqf land requires a combination of regulatory effectiveness, administrative simplification, institutional coordination, public legal education, and professional development for *nazhirs*. The government should ensure that certification procedures remain legally rigorous while becoming more accessible to the community. At the same time, local governments and relevant institutions should actively identify and assist in the certification of existing waqf properties that remain unregistered. Such measures would not only reduce the potential for land disputes but would also create stronger foundations for the development of productive waqf. Ultimately, legal certainty over waqf land is indispensable for ensuring that property dedicated by a *wakif* remains protected, professionally managed, and sustainably utilized for religious, social, educational, and broader public-welfare purposes.

c) **Limitations of Protection of Waqf Land Rights**

One of the fundamental problems in the protection of waqf land rights is the limited resources and institutional capacity of waqf management institutions. The effectiveness of legal protection for waqf property does not depend solely on the existence of laws and regulations, but also on the ability of the institutions and individuals responsible for implementing those regulations.²⁵ In this context, *nazhirs* occupy a particularly important position because they are entrusted with the administration, management, development, supervision, and protection of waqf property in accordance with its designated purposes. However, in practice, many *nazhirs* still face limitations in terms of legal knowledge, administrative competence, asset management skills, and understanding of land registration procedures. These limitations may significantly affect their ability to provide adequate legal protection for waqf land.

In many cases, the appointment of a *nazhir* is based primarily on personal trust, religious standing, community recognition, or proximity to the *wakif*. These considerations are understandable because waqf is fundamentally associated with religious commitment and trust. Nevertheless, contemporary waqf management requires competencies that extend beyond personal integrity and religious understanding. A *nazhir* must also possess sufficient knowledge concerning waqf law, land law, administrative procedures, documentation, asset management, financial accountability, and dispute prevention. Without such competencies, the *nazhir* may experience difficulty ensuring that waqf property is formally registered, legally protected, properly documented, and managed in a sustainable manner.²⁶

The problem becomes more significant when *nazhirs* are required to deal with complicated land administration procedures. The certification of waqf land may involve the preparation and verification of various documents, confirmation of the legal status and boundaries of the property, coordination with relevant government institutions, and compliance with applicable waqf and land registration requirements. For *nazhirs* who have limited experience with administrative and legal procedures, these requirements may be difficult to understand and complete. As a consequence, the certification process may be delayed or even abandoned, leaving waqf property without adequate formal legal protection.

Limited access to legal assistance and administrative support also constitutes a significant obstacle to the protection of waqf land. In principle, *nazhirs* should have access to sufficient information and institutional assistance when completing waqf registration and certification procedures. However, such assistance is not always readily available, particularly in rural or geographically remote areas. The distance from government offices, limited access to legal professionals, insufficient dissemination of information, and a lack of integrated administrative services may discourage *nazhirs* from completing the formalization of waqf property. Consequently, waqf assets may continue to be managed

²⁵ Danial Syah, 'Consequences of the Law of Domination and Development Waqf Land Without Rights', *Jurnal Ilmiah METADATA* 8, no. 1 (2026): 200–212, <https://doi.org/10.47652/metadata.v8i1.955>.

²⁶ Zati Ilham Abdul Manaf et al, 'Regulatory Gaps and Governance Challenges in Waqf Housing: Strengthening Legal and Institutional Protection Under Malaysia's Housing Development Framework', *Planning Malaysia* 23 (November 2025), <https://doi.org/10.21837/pm.v23i38.1849>.

primarily on the basis of social recognition and religious trust rather than formal legal documentation.²⁷

This situation demonstrates that the weakness of legal protection for waqf land cannot simply be attributed to the negligence of *wakifs* or *nazhirs*. It also reflects institutional limitations in providing accessible legal and administrative services. Effective legal protection requires the state to ensure that the procedures established by law can realistically be accessed and understood by the community. Therefore, legal certainty cannot be achieved merely by requiring registration and certification; it must also be supported by administrative mechanisms that are simple, transparent, affordable, and accompanied by adequate technical assistance.

In addition to limitations in human resources and institutional capacity, financial constraints constitute another important factor affecting the ability of waqf management institutions to complete the land registration and certification process. Although waqf property is intended to serve religious and social purposes, its administration may nevertheless involve certain expenditures associated with document preparation, verification, measurement, administrative processing, transportation, professional assistance where necessary, and other procedural requirements. For waqf institutions with limited financial resources, even relatively modest administrative costs can become a significant obstacle, particularly when several parcels of waqf land require simultaneous registration or legal clarification.²⁸

Financial limitations are particularly significant for *nazhirs* managing waqf assets that do not generate regular income. Many traditional waqf properties consist of land used for mosques, prayer facilities, cemeteries, Islamic schools, or other non-commercial social purposes. Although these properties provide substantial religious and social benefits, they may not produce sufficient financial resources to finance their own administration and legal protection. As a result, the *nazhir* may depend upon voluntary community contributions or personal funds to complete the certification process. Where such financial support is unavailable, administrative formalization may be postponed indefinitely.²⁹

The consequences of these financial constraints extend beyond the certification process itself. Waqf land that remains uncertified may be more vulnerable to competing claims, boundary disputes, unlawful control, inheritance claims, or other forms of legal conflict. At the same time, uncertainty regarding the legal status of the property may prevent the *nazhir* from developing it productively or establishing cooperation with government institutions, financial institutions, private entities, or other organizations. Thus, financial limitations can create a cycle in which the absence of resources prevents certification,

²⁷ Asiah Aqilah Abdul Ghani et al, 'Navigating Legal Constraints in Asnaf Housing Development on Waqf Land in Malaysia', *Nusantara: Journal of Law Studies* 5, no. 2 (2026): 902–36, <https://doi.org/10.66325/nusantaralaw.v5i2.218>.

²⁸ Nurzafira Zainul Abidin et al, 'Organisational and Institutional Challenges in Managing Waqf Property Development', *E-Academia Journal* 15, no. 1 (2026), <https://doi.org/10.24191/eaj.v15i1.10646>.

²⁹ Sulastri et al, 'Uncertified Waqf Land Conflicts: Case Studies from East Aceh', *Proceedings of Aceh International Seminar on Zakat and Waqf* 2, no. 1 (2025), <https://doi.org/10.22373/aiszawa.v2i1.9719>.

while the absence of certification subsequently limits opportunities to develop the waqf property and increase its economic and social productivity.

For this reason, financial support for the registration and certification of waqf land should be regarded as an investment in legal protection rather than merely an administrative expenditure. Government institutions and relevant waqf authorities should consider mechanisms through which economically disadvantaged *nazhirs* or waqf institutions can obtain assistance in completing the legal formalization of their assets. Such assistance could be integrated with certification programs, legal aid, technical guidance, or coordinated services involving the relevant government agencies. The objective should be to ensure that financial incapacity does not become the principal reason why socially and religiously valuable waqf property remains legally vulnerable.³⁰

Another limitation concerns the effectiveness of outreach and legal education conducted by land administration authorities, including the National Land Agency (*Badan Pertanahan Nasional* or BPN), in relation to the registration and protection of waqf land. The existence of formal registration procedures will have limited effectiveness if the community does not understand why certification is necessary, what documents must be prepared, which institutions should be approached, and what steps must be taken when legal problems arise. Therefore, dissemination of information constitutes an important component of preventive legal protection.

The role of the National Land Agency should consequently not be understood exclusively as processing applications after they have been submitted. Within the broader framework of public service and preventive legal protection, land authorities can contribute to increasing public awareness regarding the importance of registering waqf land. Outreach programs can provide information concerning certification procedures, documentary requirements, mechanisms for resolving administrative problems, and the legal consequences of leaving waqf property unregistered. Such programs would be particularly beneficial in areas where substantial amounts of waqf land remain undocumented or where land disputes frequently occur.

However, outreach cannot be carried out effectively by the National Land Agency alone. The protection of waqf land involves multiple institutions and therefore requires institutional coordination. Cooperation between the Ministry of Religious Affairs, the Indonesian Waqf Board (*Badan Wakaf Indonesia*), the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, local governments, Religious Affairs Offices (*Kantor Urusan Agama*), village governments, and relevant religious and community organizations is necessary to establish an integrated system of waqf land protection. Each institution possesses different functions and competencies, and these functions should complement rather than operate independently from one another.

Such coordination is particularly important for identifying waqf land that has existed for a long period but has not yet obtained formal certification. Rather than relying entirely on

³⁰ Mohamad Shohibuddin and Ahmad Nashih Luthfi, 'Mitigating Agrarian Crises in Muslim-Majority Countries: The Institutional Innovation of Temporary Waqf', SSRN Scholarly Paper no. 6446251 (Social Science Research Network, 20 March 2026), <https://doi.org/10.2139/ssrn.6446251>.

nazhirs to initiate the process individually, government institutions could develop systematic data collection and mapping programs to identify uncertified waqf property. Once such property has been identified, the relevant authorities could provide administrative and technical assistance to clarify its legal status and facilitate certification. This proactive approach would strengthen preventive legal protection and reduce the likelihood that disputes will arise in the future.

The limitation of legal protection is also associated with the absence or weakness of continuous monitoring of the status and management of waqf land after the initial waqf process has been completed. Certification is undoubtedly important, but legal protection should not end when a certificate is issued. Waqf property must continue to be monitored to ensure that it remains utilized in accordance with the purposes determined by the *wakif*, is not unlawfully transferred or controlled, and does not become neglected or abandoned. Continuous supervision is therefore an essential element of effective waqf governance.

In this context, supervision should involve both administrative and substantive dimensions. Administrative supervision concerns the accuracy of records, the legal status of the property, changes in *nazhir*, and other relevant documentation. Substantive supervision concerns whether the waqf property is actually being managed and utilized in accordance with its designated religious, social, educational, or welfare purposes. Weak supervision in either dimension may create opportunities for mismanagement, unauthorized control, neglect, or diversion of the property from its intended function.

Furthermore, limitations in the protection of waqf land may arise because the community often reacts to legal problems only after a dispute has occurred. This reflects a predominantly repressive rather than preventive approach to legal protection. Once a dispute has developed, the parties may be required to engage in mediation, administrative proceedings, or litigation, all of which require additional time, resources, and legal expertise. In contrast, preventive legal protection seeks to ensure that the legal status of waqf land is clearly established from the beginning through proper documentation, registration, certification, accurate boundary determination, and institutional supervision.³¹

Preventive protection is particularly important because waqf property possesses characteristics that distinguish it from ordinary private property. Waqf assets are intended to provide continuing benefits and therefore require protection that extends beyond the personal interests and lifetime of the original *wakif*. The death of the *wakif*, replacement of the *nazhir*, changes in the composition of heirs, increasing land values, and changes in surrounding land use can all generate new legal risks over time. Consequently, the protection of waqf property requires a sustainable institutional mechanism capable of maintaining legal certainty across generations.

From a broader perspective, the limitations in protecting waqf land rights demonstrate a gap between normative legal protection and effective legal protection. Normatively,

³¹ Noor Lizza Mohamed Said et al, 'Sustainability of Waqf Zurri: Legal Analysis of Malaysia and Indonesia', *Nusantara: Journal of Law Studies* 5, no. 2 (2026): 798–824, <https://doi.org/10.66325/nusantaralaw.v5i2.259>.

Indonesia has established a legal framework regulating waqf and land registration. However, substantive legal protection cannot be measured solely by the existence of legislation. It must also be assessed by examining whether the legal framework can actually prevent disputes, protect waqf assets, facilitate registration, provide accessible remedies, and ensure that waqf property continues to serve its designated purposes.

Accordingly, strengthening the protection of waqf land requires improvements in at least three interconnected dimensions: the legal substance, institutional structure, and legal culture surrounding waqf management. At the level of legal substance, regulations and administrative procedures must provide clear, accessible, and effective mechanisms for registration and protection. At the institutional level, the capacity and coordination of *nazhirs*, land authorities, religious institutions, local governments, and waqf supervisory bodies must be strengthened. At the level of legal culture, public awareness concerning the importance of documentation, certification, professional management, and dispute prevention must be continuously developed.

The professionalization of *nazhirs* should constitute a central component of these reforms. Training and certification programs can improve their knowledge of waqf law, land administration, asset management, financial accountability, dispute prevention, and productive waqf development. Professional *nazhirs* would be better positioned to identify potential legal risks, maintain accurate documentation, coordinate with government authorities, and protect waqf property from unlawful claims. Professionalization would therefore transform the *nazhir* from a passive custodian into an active legal and managerial guardian of waqf assets.

At the same time, institutional support should be strengthened through the development of integrated services for waqf land administration. A coordinated or one-stop service mechanism involving the relevant religious and land authorities could reduce bureaucratic complexity and provide clearer guidance for *wakifs* and *nazhirs*. Digitalization of waqf records and their integration, where legally and technically possible, with land administration databases could also improve data accuracy, facilitate monitoring, and reduce the possibility of overlapping claims or loss of historical documentation.

Ultimately, limitations in the protection of waqf land rights arise from a combination of inadequate human-resource capacity, financial constraints, limited access to legal and administrative assistance, insufficient public outreach, weak institutional coordination, and inadequate preventive supervision. These weaknesses increase the possibility that waqf property will remain uncertified, underutilized, or vulnerable to disputes and unlawful claims. Therefore, strengthening legal protection requires more than the enactment of regulations; it requires an integrated system capable of ensuring that those regulations are effectively implemented.

Through stronger institutional coordination, increased competence of *nazhirs*, accessible administrative assistance, adequate financial support, systematic certification programs, and continuous supervision, waqf land can obtain more effective and sustainable legal protection. Such protection is essential not only for safeguarding the intention and rights of the *wakif*, but also for protecting the interests of beneficiaries and the wider community.

In this manner, legal certainty over waqf land can serve as the foundation for ensuring that waqf assets are preserved, professionally managed, and utilized optimally to achieve their religious, social, educational, and economic purposes.

4. Conclusion

The protection of uncertified waqf land rights in Indonesia continues to face several interrelated obstacles that affect the realization of legal certainty and the optimal utilization of waqf assets. First, the limited legal understanding and awareness of *wakifs*, *nazhirs*, and the community regarding the importance of formal registration and certification have resulted in many waqf practices being carried out primarily on the basis of religious intention, social trust, or customary practices without completing the legally required procedures, thereby increasing the vulnerability of waqf land to inheritance claims, competing ownership claims, and other forms of dispute. Second, the complexity of administrative and legalization procedures, combined with limited technical assistance, inadequate dissemination of information, and insufficient coordination among relevant government institutions, creates additional difficulties for *nazhirs* in fulfilling the documentary and procedural requirements necessary to obtain legal recognition of waqf land. Third, limitations in institutional capacity, financial resources, legal assistance, and the professional competence of *nazhirs* further weaken the effectiveness of legal protection and may cause waqf land to remain uncertified, inadequately managed, and vulnerable to legal disputes or unauthorized control. Therefore, strengthening the protection of waqf land requires an integrated approach through increased public legal awareness, simplification and accessibility of certification procedures, stronger institutional coordination, technical and financial assistance, professionalization of *nazhirs*, and more proactive supervision by relevant government authorities. These measures are essential not only to guarantee legal certainty and prevent disputes over waqf property, but also to ensure that waqf assets are sustainably protected, professionally managed, and optimally utilized to provide long-term religious, social, educational, and economic benefits for the wider community.

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