

# Enhancing *Nazir* Capacity through Legal Literacy of Land Trust to Ensure Legal Certainty in Waqf Land Management

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## Abstract

*Nazir* as the party who received the mandate to receive and manage waqf land faced several problems related to waqf land. These problems are that the waqf



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land has not been certified, the waqf land is in dispute, the waqf land has been lost/controlled by another party. This problem occurs because the practice of waqf land is carried out verbally on the basis of mutual trust, the waqf pledge has not been made before PPAIW, the waqf pledge deed has not been processed, the waqf land has not been registered, and the waqf land has not been utilized according to the waqf pledge. Through community service activities, Nazir's capacity was increased through literacy in land waqf law. Legal literacy includes the land waqf process and waqf land registration. The legal act of donating land must be carried out according to the Waqf Law, carried out before an authorized official and the waqf land is registered at the Land Office. The waqf pledge must be made in front of the Waqf Pledge Deed Registrar to be recorded in the Waqf Pledge Deed. The Waqf Pledge Deed is written evidence in land registration at the Land Office, as the basis for issuing a Waqf Land Certificate. Waqf Land Certificates are issued to create legal certainty and legal protection for land waqf. The regulation of land waqf in the Waqf Law and its implementing regulations further confirms waqf as an important and useful institution for efforts to realize community welfare, in line with the goals of state life.

**KEYWORDS** *Legal Certainty, Land Endowments, Waqf Land Certificate, Legal Literacy*

## Introduction

Land waqf in Indonesia, where the majority of the population is Muslim, is a significant legal action. According to the Waqf Information System (2021), the potential of waqf land in Indonesia is substantial, with a total area of 56,199.51 hectares spread across 429,639 locations. Despite this potential, only 58.10 percent of the waqf land is registered, indicating a significant gap in the utilization and management of these assets<sup>1</sup>. The lack of certificated waqf land occurs because some waqf legal actions are carried out verbally on the basis of mutual trust between the waqif and

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<sup>1</sup> Tim Penyusun Direktorat Pemberdayan Wakaf, *Siwak (Sistem Informasi Wakaf)*.

*nadzir* and are not followed by an administrative registration process<sup>2</sup>. This can lead to legal uncertainty and non-optimal legal protection for waqf, *nadzir* and *waqf* land. The legal uncertainty referred to, among others, is evident from the occurrence of waqf land disputes between heirs and Nazir. The heirs of the waqif claim back the waqf land because they think that the land was not endowed by their parents. Legal uncertainty also occurs where the heirs of the nazir claim the waqf land that has been managed by their parents as inherited land and not waqf land.

In addition, legal uncertainty also occurs in the form of shifting ownership of waqf land and changing the function and use of waqf land that is not in accordance with its designation in the waqf pledge<sup>3</sup>. In the context of national waqf, the Ministry of Religious Affairs of the Republic of Indonesia (2013: 6) notes 5 (five) problems that affect the condition of waqf in Indonesia. First, the old paradigm of waqf is still dominant, characterized by the view that the formal legality aspect of waqf is not important, trusting religious figures as nazir without written evidence, and the lack of orderly administration of waqf. Second, many waqf assets, especially land, are not yet titled. This is due to the unwillingness and ignorance of the nazir to register waqf assets with the KUA and its registration with the Land Office. Third, the capacity of the average nazir does not have the skills to develop waqf assets productively. Fourth, the occurrence of waqf land disputes due to the lack of administrative evidence, the behavior of some irresponsible nazirs, the actions of third parties who deliberately take waqf land illegally, and the occurrence of

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<sup>2</sup> Syafiq, "Urgensi Pencatatan Wakaf Di Indonesia Setelah Berlakunya Uu No. 41 Tahun 2014 Tentang Wakaf." *See also* Suhadi Suhadi, et al. "Increasing Literacy on Land Endowment Law for Students of Al-Muhtada Research Islamic Boarding School in Semarang City." *Jurnal Pengabdian Hukum Indonesia* 5, no. 2 (2022): 232-248; Rofi Wahanisa, Suhadi Suhadi, and Aprilia Niravita. "Compensation System of Waqf Land Acquired for Developing Public Interest." *Diponegoro Law Review* 7, no. 1 (2022): 70-87; Mutiara Hamdalah Munandar, "Legal Protection of Uncertified Waqf Land in Indonesia." *Nurani Hukum* 4, no. 1 (2021): 1-8.

<sup>3</sup> Suhadi and Sastroatmodjo, "Model Kebijakan Pemberian Ganti Kerugian Pengadaan Tanah Berdasarkan Konteks Penguasaan Tanah." *See also* Rahadi Wasi Bintoro, et al. "Ontological Study of The Classification of People in The Transfer of Land Rights in Realizing Legal Certainty." *Pandecta Research Law Journal* 17, no. 1 (2022): 92-103.

*tukar guling* that is not in accordance with waqf legislation. Fifth, there is no integrated system in the management and development of waqf assets nationally.

Waqf land is a concept commonly recognized in Indonesian society, which from a juridical perspective is land whose land rights have been abolished due to waqf legal actions, namely since the pledge of waqf by the waqif to the *nazhir*. In national land law, waqf land is an object of land registration, which must be registered to ensure legal certainty and protection. Through land registration activities, a sense of security for the community is to be realized, in order to realize legal security<sup>4</sup>. Legal security means legal certainty and protection. To obtain a sense of security in the use of land is not enough just based on the fact of land tenure alone, but also required documentary evidence (written evidence) in the form of land records (land certificates)<sup>5</sup>. The legal certainty of land waqf needs to be continuously pursued, considering that waqf is a legal institution that has lived for a long time in Indonesian society and has made important contributions to efforts to realize community welfare. These contributions include the use of waqf land for various purposes such as the construction of places of worship, educational institutions, cemeteries, hospitals and agricultural land.

Based on the matters as described, the community's legal knowledge and understanding of waqf, especially land waqf in accordance with national law, needs to be improved. Based on the Business Strategic Plan of the Institute for Research and Community Service of Semarang State University and the Tri Dharma of Higher Education, the Community Service Team of the Faculty of Law, Semarang State University, consisting of lecturers, education staff and students, is called to carry out community service activities to improve legal literacy in land trusts. This legal literacy of land trusts is a form of application of the results of research on land trusts that have been carried out by the previous Service Team which recommends the need to improve legal literacy of land trusts to the

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<sup>4</sup> Zevenbergen, "A Systems Approach to Land Registration and Cadastre."

<sup>5</sup> Wahanisa et al., "Sosialisasi Pentingnya Kepemilikan Sertifikat Tanah Sebagai Bukti Penguasaan Hak Milik Atas Tanah Berdasar Pp No. 24 Tahun 1997 Tentang Pendaftaran Tanah Di Desa Jetis Kecamatan Bandungan Kabupaten Semarang."

community. The science and technology applied in this community service activity is the law of land trusts in Indonesia and its registration. The target group in this community service is the Muhammadiyah Gunungpati Branch Management of Semarang City.

Based on an initial survey with the management, it is known that in managing waqf land, the Muhammadiyah Board of Semarang City faces problems, namely that some waqf land has not been titled, there are even waqf land parcels in dispute and there are also land parcels that are lost or have been controlled by other parties. Land parcels that are in dispute, land parcels that have not been titled, and land parcels that are lost/controlled by other parties. These problems occur because (1) the waqf pledge has not been made before the PPAIW, (2) the waqf pledge deed has not been processed, (3) the waqf land has not been registered, (4) the waqf land has not been utilized according to the waqf pledge. Based on these problems, the Muhammadiyah Board of Gunungpati II Semarang City feels the need and considers it important to increase legal literacy in order to carry out waqf land management safely and effectively. Based on these problems, the Muhammadiyah Gunungpati II Board of Semarang City as the Nazir of the organization needs an increase in legal literacy in land waqf in order to manage waqf land more legally certain and safe. This need is evidenced by the Statement of Willingness to Become a Partner of Community Service Activities from the Muhammadiyah Gunungpati II Semarang City Branch Management).

This project is a collaboration between the Service Team of the Faculty of Law and the Faculty of Language and Arts, State University of Semarang and the Partner, namely the Muhammadiyah Gunungpati II Branch Management of Semarang City. This collaboration takes the form of education or briefing by the Service Team on land trusts in the perspective of Indonesian law and assistance in analyzing land trust cases within the scope of the Muhammadiyah Leadership of Semarang City. The Muhammadiyah Gunungpati II Branch Management of Semarang City contributed to the preparation of facilities and infrastructure for activities. This community service activity begins with a survey to determine the problems and needs of partners which are then determined to be the main theme of community service, namely increasing legal literacy in land trusts in Indonesia. This community service activity was

carried out at Pondok Pesantren Tahfidzul Quran Muhammadiyah Lukman Al-Hakim, Jl Rimba Bhakti, Patemon Village, Gunungpati District. The community service team consisted of lecturers, education staff and students of the Faculty of Law, State University of Semarang, Muhammadiyah Gunungpati II Branch Management of Semarang City, Aisyiyah Gunungpati II Branch Management of Semarang City, and students. Santri who attended and were involved in this activity were partly students who came from various districts / cities in Central Java Province.

Community service is carried out with 2 (two) methods, namely education / material briefing and analysis of land trust cases that occur in Semarang City. Education/briefing activities are carried out by providing basic concepts of land waqf as a basis for knowledge and understanding of land waqf and the importance of legal certainty and legal protection in land waqf. The materials provided include a) Waqf in the Perspective of Islamic Law, b) Waqf in the Perspective of National Law, c) Land Trust: Land Rights that can be Waqf, and d) Registration of Waqf Land: Efforts to Realize Legal Certainty and Security of Land Trust. In addition to education or debriefing, case analysis of land waqf was also conducted, by discussing concrete cases of land waqf that occurred in Semarang City, both related to the Wakif, Nazir, and waqf property in the form of land. In addition, concrete cases related to the legal status of unregistered waqf land and its resolution and waqf land affected by land acquisition activities for the public interest were also discussed.

## Results and Discussion

Through this community service activity, the legal literacy of the Muhammadiyah Gunungpati II Branch Management of Semarang City has a fairly good initial understanding of the concept of waqf in the perspective of Islamic law. Waqf terminologically means holding an object that is permanent in substance, which can be taken advantage of to be

given in the way of goodness<sup>6</sup>. The legal basis for waqf in Islamic law includes "When a man dies, his deeds are cut off except for three things: *sadaqah jariyah*, useful knowledge, and righteous children who always pray for him" (HR Muslim). The pillars and conditions of waqf as found in Islamic law have also been understood. The pillars and conditions of waqf are (a) there is a donor (waqif), there is an item to be donated (*Mauquf*), there is a waqf target (*Mauquf Alayh*), and there is a clear statement of the intention to donate something for good (*sighat*). *Perwakafan* in the perspective of Islamic law is an institution that has been known for a long time and has even become part of the customs of the people in many regions in Indonesia. *Perwakafan* under Islamic Law is considered valid if the pillars and conditions of waqf are fulfilled. There is no obligation to put it in a written document and register the land being waqf, because it is done orally on the basis of mutual trust.

In the context of national law, Waqf is governed by Law Number 41 of 2004 concerning Waqf and its implementing regulations. According to Article 1, number 1 of this law, Waqf is defined as a legal action by the Wakif to separate and/or submit part of his property to be utilized forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to Sharia. This understanding is based on six essential elements of Waqf, which include:<sup>7</sup>

1. Wakif: The person who dedicates the property.
2. Nazhir: The person responsible for managing the Waqf property.
3. Waqf Property: The property dedicated for religious and charitable purposes.
4. Waqf Pledge: The commitment to utilize the property for the designated purposes.
5. Designation of Waqf Property: The specific property designated for Waqf.
6. Waqf Period: The duration for which the property is dedicated for Waqf purposes.

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<sup>6</sup> Khosyi'ah and Al-Musayyar, *Wakaf Dan Hibah: Perspektif Ulama Fiqh Dan Perkembangannya Di Indonesia*.

<sup>7</sup> Badan Wakaf Indonesia, *Katalog Proyek Wakaf Produktif Indonesia*, 5.



These elements of Waqf in the Waqf Law are substantially similar to the pillars and conditions of Waqf in Islamic Law. The definition of Waqf in the Waqf Law updates the definition of waqf as contained in Article 1 Paragraph (1) of Government Regulation Number 28 of 1977<sup>8</sup>. In the context of Government Regulation No. 42/2006, the definition of waqf is a legal act by a person or legal entity that separates part of their assets, including property, and institutionalizes it forever for the benefit of worship or other public purposes in accordance with Islamic teachings<sup>9</sup>. This definition encompasses not only owned land but also other land rights, such as Building Rights Title, Business Rights Title, and Use Rights. Additionally, waqf can also be in the form of immovable and movable objects, including money. The regulation has undergone reforms, including the amendment of Government Regulation No. 42/2006 by Government Regulation No. 25/2018, which further refined the implementation of Law No. 41/2004 on Waqf.

The Waqf Law and its implementing regulations confirm that a Wakif is an individual, organization, or legal entity that deliberately and responsibly hands over its property to be used forever or for a certain period in accordance with its interests for the purposes of worship and/or public welfare according to Sharia. The Nazhir is the party that receives waqf assets from the Wakif to manage and develop them in accordance with their designation. The Nazir's obligation is to ensure that the waqf assets function as intended by the Wakif<sup>10</sup>, making them the main and important element in waqf management. Nazirs can be individuals, organizations, or legal entities. To provide legal certainty about the Nazir, Government Regulation No. 42/2006 emphasizes that individual Nazirs are appointed by the Wakif after fulfilling the requirements stipulated in the Waqf Law. Nazirs must be registered with the Minister and the Indonesian Waqf Board (BWI) through the local Religious Affairs Office. If there is no local office, registration is carried out through the nearest Office of Religious Affairs, the Ministry of Religious Affairs, or the

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<sup>8</sup> Suhadi, *Ganti Rugi Tanah Desa Dan Tanah Wakaf Dalam Pengadaan Tanah*, 69.

<sup>9</sup> Jumadiah et al., "Waqf Dimensions in the Context of Improving the Mosque Prosperity Board's Economy Based on Law Number 41 of 2004 Regarding Waqf," 163.

<sup>10</sup> Richardson, "Islamic Law and Zakat: Waqf Resources in Pakistan."



representative of the BWI in the province/regency/city. The proof of Nazir registration is issued by BWI, implying that the Nazir as the manager of waqf assets must be legally registered, evidenced by the registration at the Indonesian Waqf Board.

Waqf assets can only be *waqf* if they are legally owned and controlled by the Waqif. Based on Article 16 of the Waqf Law, waqf assets include immovable and movable objects. Immovable objects include:<sup>11</sup>

- a. land rights in accordance with the provisions of applicable laws and regulations, both registered and unregistered.
- b. a building or part of a building that stands on land
- c. plants and other objects related to the land
- d. property rights over apartment units in accordance with the provisions of applicable laws and regulations
- e. other immovable objects in accordance with the provisions of sharia and applicable laws and regulations.

Movable objects are assets that cannot be used up due to consumption, including:<sup>12</sup>

- a. money;
- b. precious metals;
- c. securities;
- d. Vehicle;
- e. intellectual property rights;
- f. lease rights; and
- g. other movable objects in accordance with sharia provisions and applicable laws and regulations.

Another important point in the legislation governing waqf in national law is the existence of a waqf pledge. Article 17 of the Waqf Law stipulates that the waqf pledge is made by the Waqif to the Nazir in front of the PPAIW and witnessed by 2 (two) witnesses. The Waqf Pledge is stated orally and/or in writing and is stated in a waqf pledge deed by the PPAIW. In the event that the Waqif is unable to state the waqf pledge orally or is unable to attend the implementation of the waqf pledge due to

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<sup>11</sup> Pasya, "Management of Waqf Land for the Muhammadiyah Association of Gading Rejo Pringsewu Lampung Branch," 3836.

<sup>12</sup> Pasya, 3836.

reasons justified by law, the Waqif can appoint his proxy with a power of attorney strengthened by 2 (two) witnesses. The waqf pledge is stated in the waqf pledge deed. The things that must be included in the waqf pledge deed are (a) the name and identity of the Wakif, (b) the name and identity of the Nazir, (c) data and information on the waqf property, (d) the designation of the waqf property, and (e) the period of waqf. In national law, the existence of a waqf pledge deed and PPAIW in land waqf is important and can even be said to be a pillar of national waqf<sup>13</sup>.

In national law, the existence of a waqf pledge deed and PPAIW in land waqf is essential and can be considered a fundamental element of national waqf. The waqf pledge deed serves as evidence of the Wakif's intention to dedicate their land rights to be managed by the Nazir according to its designated purpose, as outlined in the deed. PPAIW in the context of waqf has 3 (three) important roles, namely (1) as the spearhead of waqf services that occur in the community, (2) as a party who has real data on waqf at the sub-district level in order to secure waqf property, and (3) as a facilitator or at least a companion if there is a waqf dispute either concerning legal elements or internal nazir conflicts that occur within its scope of work<sup>14</sup>.

Based on Article 3 of Government Regulation No. 42/2006, waqf assets must be registered in the name of the Nazir for the benefit of the party referred to in the AIW in accordance with its designation. The registration of waqf assets in the name of the Nazir does not prove the Nazir's ownership of the waqf assets, and the replacement of the Nazir does not result in the transfer of the waqf assets concerned. This provision emphasizes that the Nazir is not the owner of the waqf property, but rather the party entrusted with the mandate to manage and endeavor the waqf property so that it can truly benefit the community. Waqf aims to utilize waqf property in accordance with its function, which is to realize the potential and economic benefits of waqf property for the benefit of worship and to promote public welfare. The Waqf Law provisions indicate

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<sup>13</sup> Agama, Tata Cara Perwakafan Benda Tidak Bergerak Dan Benda Bergerak Selain Uang.

<sup>14</sup> Wakaf., "Standar Pelayanan Wakaf Bagi Pejabat Pembuat Akta Ikrar Wakaf (PPAIW)," 1.

that the period of waqf can be divided into two categories: forever and for a certain time.

Based on discussions and views as well as case analysis in this community service activity, it can be stated that the legal literacy of the Muhammadiyah Gunungpati 2 Semarang City Management about land waqf in Indonesia has also increased. Land waqf is waqf in which the waqf property is land, specifically land rights. Waqf land in a juridical perspective is land whose land rights have been abolished due to waqf legal acts, namely since the waqf pledge by the waqif to the *nazhir* in front of the Waqf Pledge Deed Recorder (PPAIW)<sup>15</sup>. Land rights that can be waqf are not only property rights, whether they have certificates or not, but also building rights, business rights and use rights. In addition, the main requirements for land rights that are represented by waqf are that the land rights must be legally owned or controlled by the Waqif, free from all encumbrances, disputed cases, and not pledged, as evidenced by a certificate from the authorized agency<sup>16</sup>.

The registration of waqf land with the Land Office is intended to provide legal certainty and legal protection for waqf land. Waqf land registration is regulated in the Minister of Agrarian Affairs Regulation (Permen ATR/BPN) Number 2 of 2017 concerning Procedures for Registration of Waqf Land at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Waqf land registration is carried out by the PPAIW on behalf of the Nazir, through a land registration application accompanied by: (a) application letter, (b) measurement letter, (c) certificate of the relevant property rights, (d) AIW or deed in lieu of AIW, (e) letter of ratification of the relevant Nazir from the agency that organizes religious affairs at the sub-district level, (f) statement letter from the Nazir that the land is not in dispute, case, confiscation and not pledged. Through this waqf land registration, the Head of the Land Office will issue a Waqf Land Certificate as strong written evidence of the waqf land. With a waqf land certificate, it will be easily proven to parties with an interest in the waqf land.

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<sup>15</sup> Suhadi, *Ganti Rugi Tanah Desa Dan Tanah Wakaf Dalam Pengadaan Tanah*, 69.

<sup>16</sup> Indonesia, Wakaf.

Under national law, waqf land cannot be pledged, confiscated, granted, sold, inherited, exchanged, or transferred in any other form of title transfer. However, there are exceptions to this provision as stipulated in Article 41 of the Waqf Law, which allows waqf land to be exchanged. The exchange of waqf land can be carried out if the waqf land is used for the public interest in accordance with the general spatial plan (RUTR) based on the provisions of the applicable laws and regulations and does not conflict with sharia. The intended public interest is the public interest as stipulated in Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, for example for the construction of state defense and security facilities, public hospitals, power plants, toll roads.

Waqf land affected by land acquisition will, in principle, receive compensation in the form of replacement land or swap land<sup>17</sup>. Land acquisition laws and regulations determine that the holder of the basis of land tenure, such as the *nazhir*, whose land is used for public interest development, is given compensation. Although land acquisition laws and regulations stipulate that waqf land affected by land acquisition will receive compensation, the form of compensation is not explicitly explained. Article 20 of Presidential Regulation 71/2012 only states that the implementation of compensation for waqf land is carried out in accordance with the provisions of laws and regulations in the field of waqf. This means that the form of compensation, procedure, or mechanism for compensation of waqf land is guided by the laws and regulations governing waqf, including Law No. 41 of 2004 concerning Waqf, Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf, and Minister of Agrarian Affairs Regulation (Permen ATR/BPN) No. 2 of 2017 concerning Procedures for Registration of Waqf Land at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.

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<sup>17</sup> Achmad and Zaki, "Implementasi Wakaf Istibdal Dalam Pembebasan Lahan Pembangunan Jalan Tol (Studi Kasus Pembangunan Jalan Tol Surabaya-Mojokerto)"; El Ula and Silviana, "Kompensasi Tanah Wakaf Dalam Pengadaan Tanah Untuk Tol Semarang Demak Seksi II."

The compensation for waqf land affected by land acquisition differs from compensation for land that is not waqf land. Waqf laws and regulations use the term "exchange land" to refer to replacement land as intended in land acquisition regulations. The exchange land for waqf land must fulfill several requirements specified in Government Regulation No. 42/2006, including:<sup>18</sup>

1. Certificate of legal ownership: The exchange land must have a certificate or proof of legal ownership in accordance with laws and regulations.
2. Value and benefits: The value and benefits of the exchange land must be at least the same as the original waqf land. The value and benefits of the exchange land are determined by the regent/mayor based on the recommendation of an appraisal team consisting of elements from the regency/city government, regency/city Land Office, Indonesian Ulama Council (MUI) regency/city Religious Affairs Office, and the *nazhir* of the waqf land concerned.

The procedure for land waqf in national law is summarized as follows: (1) The Waqif or his proxy comes to the Office of Religious Affairs (KUA), (2) The Waqif or his proxy makes a pledge before the Waqf Pledge Deed Official (PPAIW), (3) The PPAIW issues the Waqf Pledge Deed (AIW) and Nazir Authorization Letter, (4) The KUA submits the Nazir authorization to the Indonesian Waqf Board (BWI) and submits the land registration to the District/City Land Office.

## Conclusion

The Muhammadiyah Gunungpati II Branch Board of Semarang City has an adequate understanding of the context of land waqf, both regarding the waqf process and the registration of waqf land. The process of land waqf with legal certainty must be carried out in accordance with waqf land legislation, namely the Waqf Law and its implementing

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<sup>18</sup> Wahanisa, Suhadi, and Niravita, "Compensation System of Waqf Land Acquired for Developing Public Interest"; Purkon, "Regulations of Waqf Management in Contemporary Indonesia"; Ali Said Hilabi, Mutiara Azura Mulyawan, and Yuli Indrawati, "Principles of Justice for Compensation for Land Procurement in Tamansari 11 Bandung City."

regulations and the Basic Agrarian Law and its implementing regulations. The existence of the Waqf Pledge Deed, the Waqf Pledge Deed Official (PPAIW), waqf land registration and Waqf land certificates are institutions and procedures to ensure legal certainty for waqf legal acts and waqf land. This guarantee of legal certainty and legal protection can be provided because of the written evidence issued by the authorized agency, which can easily be shown and proven to interested parties. With this increased understanding, the Muhammadiyah Gunungpati II Branch Management of Semarang City can ensure that the process of land waqf and land registration runs in accordance with the provisions of land waqf law and land registration law.

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