

# The Analysis of Administrative Law to the Government Policy about Tax Exemption of Waqf Land Certification

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**Abstract.** The waqf land certification is free charged whereas the general land is not. The research analyzes the article 22 from the government regulation Number 13 Year 2010 concerning the government policy of tax exemption of waqf land certification based on public administration law. The purpose of the research is to understand and to analyze the reasons of government publishing this kind of policy in the perspective of Administrative Law. The kind of research is library research, it needs secondary data, which consists of the material of primary, secondary and tertiary laws. The approach is juridical normative and the analysis is qualitative. The result of the research explains that the government publish the policy of tax exemption with the objective to make Waqf land useful for the society, to accelerate of Waqf land legalization, to protect and to optimize the function of Waqf land. This policy is one effort to understand the waqf action that having a sense of religious service as well as having law certainty. The government policy is the implementation of Administrative Law function in order to create a clean and appropriate government with the good general government principal, such as legality, equity, justice, law protection, wisdom, general need implementation and smart action.

## 1 Introduction and literatures review

The regulation of Waqf law comes from the religious institution that is existing Islamic law in the society life. However, when conflict happens in relation to the certificate of waqf law and the protection of waqif in the waqf action, in fact, waqf law that only based on religion norms has not been able to solve those problems. [1] Therefore, the government publish the policy to control its society in accordance with their religion doctrine, especially Waqf. That policy is in the form of law about the waqf land certification, such as an instruction of

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Religion Ministry No. 15, 1989 about forming of Waqf decree and certification of waqf land, the instruction of Religion Ministry and BPN Head No 04, 1990 and No. 24 1990 about waqf land certificate, the Decision Letter of Religion Ministry and BPN Head no 422 and No. 3/SKB/2004, [2] about waqf land certificate. Government Regulation (PP) No 13, 2010 is about the type and rate of non-tax public income (PNPB) that is exist in National Land Body.[3]

Law No. 25 Year 2009 about public service explains that society has a right to get qualified service based on the principle and objective of the service. Type of services meant in Law No. 25 Year 2009 are administrative service, good service and merit service.[4] In administrative service, there is a service of making waqf land certificate in order to give law certainty to the social functioned waqf land. The service of waqf land certification which is done by the National Land Body is different with the other ones. As written in Article 22 PP No. 13, 2010 about type and rate of Non-Tax Public Income (PNPB) existed in the National Land Body, it describes that the rate for registration service of waqf land is determined Rp 0,00 (Zero Rupiah).

This paper will analyze Article 22 PP No. 13, 2010 about the government policy in relation to the tax exemption of waqf land certification based on public administration law. The objective is to understand the reason of government in publishing that type of policy, whether it is appropriate with good service principle in public administration law or not. The aim of this paper is in order to understand the reason, objective and benefit of government policy in relation to publishing Article 22 PP No. 13. 2010.

## 2 Methodology

Kind of the research is library research. It uses juridical normative approach. Juridical means a research that tries to study things that correlated to the basic law of regulation used, such as Law No. 41/2004 about Waqf, PP No. 28/1972 about waqf land, Regulation of Agrarian Ministry and Spatial Planning/ Head of National Land Body of Indonesian Republic No. 2, 2017 about the manners of registration Waqf land in Agrarian Ministry and Spatial Planning/ Head of National Land Body of Indonesian Republic No. 2, 2017 about the manners of registration of Waqf land in Agrarian Ministry and Spatial Planning/National Land Body. Whereas normative is a research in order to know how far the law regulation can control the society.

The research data used is secondary data because it takes data from the library. The law materials needed are primary, secondary and tertiary law materials. The way on analyzing data is descriptive. It describes the result of the research quantitatively and takes a decision deductively.

## 3 Discussion

### 3.1. Waqf Land Certification

Waqf land certification is a process of making waqf land certificate that is published by BPN after a proposal of registration of waqf land from *nazhir*. [5][6] Certificate, as explained in Article 1 No. 20 PP No. 24, 1997, is “a letter of proven right as described in article 19 section (2) letter c, Regulation of Basic Agrarian, for right of land, right of managing waqf land, possession right of flats, and its burden as it is written in its land’s book”. Moreover, the

objective of land certification specifically, is in order to get strong or authentic prove of waqf property.[7] After land certificate published, the owner of waqf land changes from *wakif* possession to the members of religious community, and the responsibility of using waqf property is *nazhir*.

Waqf Land Certificate is a proven letter of waqf land.[6] It is started from publishing of the waqf pledge official document PPAIW (Publishing of Waqf Pledge Official Document), called as KUA (Religion office) that functions as the Subdistrict of Moslem Religious Leader Council. After that it is continued to registration process of waqf land by *nazhir*. The supreme basic of the registration is Law of Agrarian No. 5, 1960, Article 19.

The benefit of waqf land certification is as a basic capital of the existence of waqf department, to avoid an accusation from the other side about the status of waqf land because of the high price nowadays, and of the future land, to strengthen the status of waqf land as an historical fact, therefore it is not removed or misused.[8] Besides, the waqf land will get assurance and the certainty of law. If the waqf land certificate has been renowned in the name of *nazhir*, the *nazhir* will get assurance and certainty of law to use waqf additionally.[9] The certification of waqf land will be processed in BPN, after the law action of Waqf fulfills the regulation and requirement as determined in Law of Waqf Certification of waqf land that will be processed after KUA published the Waqf Pledge Decree.

### **3.2. Government Policy about Tax exemption of Waqf Land Certification**

The government policy about tax exemption of waqf land certification can be saved and can be anticipated if there will be a waqf dispute in the rest time.[7] This government policy is a realization of article 22 PP No. 13, 2010, that explains the rate of registration service is determined Rp 0,00 (Zero Rupiah). Moreover for the rate of land registration service from maintenance service data of land registration is in the form of registration service for *nazhir* determined as Rp 0,00 (Zero Rupiah). This section explains that Government efforts to give a good service to the society in relation to the fee of waqf certification.

Tax exemption determined by the country, through the consideration that the usefulness of waqf land is purposed to the need fulfillment of religious duties or religion and for the social function, not for individual. It is included in section 23 PP No. 13/2010. On some certain side, it can be charged Rp 0,00 (Zero Rupiah) from the land registration service in the form of land registration service for the first time. Those specific sides are a poor people government office, law body, in religion or social section that use the land function as a media to do religious activity, orphanage and old people's home. In conclusion the rate of waqf certification is zero rupiah because waqf is a Law Body relating to the religion and social activities which their land function are doing religious duty, orphanage, old people's home, even it is wider.

The previous government policy, has an objective to function the waqf land, to be meaningful for the society in many sections, such as: education, health, prosperity, economy and social religion. It is as a legal policy for the implementation of law in order to help government in reaching national goals, [10] as it is stated in the Opening of 1945 Constitution of the Republic Indonesia in Line IV.

### **3.3. The Analysis of Article 22 PP No. 13, 2010 about Government Policy of Tax exemption of Waqf Land Certification**

The process of Waqf land certification that is free of tax, is a government policy in order to accelerate waqf land legalization, hence it can protect and save waqf asset, and as a basic to

optimize the function of waqf property. This policy is one effort to change the paradigm in the society about the note of Waqf property. During the 27 years, the society considers that the implementation of waqf is only non-written. It does not need to have a decree of certificate, because Waqf is a religious duty in relation to deed of property with its main goal specifically for God Bless. According to them, the existence of official document or Waqf note makes the sincerity of deed lack even meaningless.[11] Considering the reality of waqf law above, it makes the government forms the regulation in the form of government policy about registration of waqf property in order to publish waqf land certificate. Government has determined a regulation about waqf land, as follows:[3]

- a. Government Regulation No. 28 1977 about the Waqf Land possession.
- b. Instruction of The Minister of Religion No. 15, 1989 about making of Waqf pledge official document and certification of Waqf land.
- c. Instruction of The Minister of Religion and Head of BPN No. 4, 1990 – No.20, 1990 about Waqf land Certificate.
- d. Decision Letter of The Minister of Religion and Head of BPN No. 422 and No. 3/SKB/2004 about Waqf Land Certificate.

Considering the determination of Waqf Land certification above, it is hoped that it can change paradigm of society's consideration about the certainty and protection of Waqf Land Law. The change of law in Waqf land certification is a law dynamic development in order to get the condition of justice, God's mercy, benefit, wisdom and philosophy.[12]

Tax exemption of Waqf land is a form of supreme service done by government for the society. Hence there is a concrete relationship between government and society to accelerate waqf land legalization. Although there are many problems during the process of Waqf land certification, for example: the existence of strong and firm requirements in land registration, *nazhir's* attitude that does not legalizes Waqf property seriously. The government certainty gives the best service in order to reach the objective of government, and a prosperous and equitable society. This is the role of HAN, in which one side it can role as a doer of doing regulation service and law protection for the society, and in the other side HAN can role a function in managing public administration law so that the society will not do the wrongdoing based on the law.[13]

The society service done by official of public administration, in this case is BPN, is an obligation to manage the nation well. A good management manner done by a good bureaucracy too, so that the acceleration of Waqf legalization goal is reached. For that reason, a good government is identical with a good bureaucracy that is based on the legalization and discretion from the powered nation official if there is no law regulation which determined them.[14]

The process of Waqf land certification is the form of service done with the cooperation between The Ministry of Religion with The Agrarian Ministry. The Waqf certificate is published by BPN after the publication of Waqf Pledge Official Document (AIW) or the representative official document of Waqf pledge done by KUA, and surely KUA publish the Waqf official document if the regulation and the requirement of Waqf are fulfilled. Hence, there is a law relationship between government (KUA and BPN) with the society (*nazhir wakaf*) in order to Waqf legalization. The basic used is PP No. 13, 2010 about Government Policy of Tax Exemption of Waqf Land Certification, and also other regulation in relation to the registration and certification of Waqf land.

The function of HAN in relation to Tax Exemption of Waqf Land are as follows; [15]

- a. Law Normative function, is a public administrative function in implementing various activities by functioning juridical instrument, such as government regulation, decision, determination, wisdom regulation, and etc.

- b. The function of Law in instrumental is the function of public administration to find and implement law regulation. The regulation is not only in law, but also in the combination of regulations and decisions. In the legalization of Waqf land, it exists in the Waqf law generally, but the implementation regulation exists in PP, Instruction of Agrarian Ministry, Instruction of Ministry of Religion, and Head of BPN.
- c. The function of Law Protection is the public administration function that protect the state apparatus and the citizen to the good and right attitude based on law, written or unwritten.

Based on the explanation of the function of HAN, it can be stated that by implementing HAN's function will create clean government that suitable with the good general government principle, such as legalization principle, sameness, justice, law protection, wisdom law, implementation of public, need and smart action. Therefore, the government policy about tax exemption of Waqf land certification is appropriate with the law principles of public administration.

## 4 Conclusion

Government policy in tax exemption of Waqf land and the implementation of HAN's function is creating a clean government that suitable with the good general government principles, such as legalization principle, sameness, justice, law protection, wisdom, implementation of general need, and smart action. The suggestion is, it is better to create the awareness that Waqf is an act of devotion that has social dimension. It needs a certainty and protection law for *Wakif* or someone who donates property to the Islamic community so that the objective of Waqf can be reached and the benefit of Waqf can be felt by the society.

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