

JURNAL CITA HUKUM

Indonesian Law Journal



- **Effect Fake News for Democracy**
Munadhil Abdul Muqith & Valerii Leonidovich Muzykant. (Moscow, Russian Federation)
- **Utilization of Peatland Technology For Food Availability in a Legal Perspective**
Christine S.T. Kansil, Jeane Neltje Saly & Adriel Michael Tirajo. (Jakarta, Indonesia)
- **Preliminary Phase of the Right of Assessment in Iran and France with Emphasis on One Article to Respect Legal Freedom and Protection of Citizenship Rights**
Zahra Emadoleslami & Hadi Ghorbani. (Islamic Republic of Iran)
- **Command Responsibility of Autonomous Weapons Systems under International Humanitarian Law**
Yordan Gunawan, Mohammad Haris Aulawi & Andi Rizal Ramadhan. (Yogyakarta, Indonesia)
- **Comparative Study of Conditions for the Purpose of Guarantee in Mudarabah Contracts Perspective of Islamic Jurisprudence and Iran's Civil Law**
Bijan Haji Azizi & Marzieh Younesi. (Islamic Republic of Iran)
- **Judicial Reform Under Democratic Consolidation in Indonesia**
Ibnu Sina Chandranegara, Syaiful Bakhti & Muhammad Ali. (Jakarta, Indonesia)
- **Legal Analysis of The Arrangement of Waqf Agricultural Agencies on Endowments Copyright In Perspective Legislation**
Nugroho Ari Wibowo, Nurul Hidayah & Hafid Zakariya. (Surakarta, Indonesia)
- **Direct Election of President and Vice President In Pancasila Perspective**
Sonny Taufan & Risang Pujijyanto. (Jakarta & Yogyakarta, Indonesia)
- **Меры по предотвращению экологических коррупционных преступлений (Measures to Prevent Environmental Corruption Crimes)**
Ade Irma Elvira & Latipah Nasution. (Moscow, Russian Federation)

Volume 7 Number 3 (2019)

Jurnal

CITA HUKUM

VOLUME 7 NUMBER 3 (2019)

JURNAL CITA HUKUM is Indonesian Law Journal published by Faculty of Sharia and Law, State Islamic University Syarif Hidayatullah Jakarta in Associate with Center for Study of Indonesian Constitution and Legislation (POSKO-LEGNAS) UIN Jakarta.

This journal specializes in Legal Studies and try to present various results of the latest and high-quality scientific research.

As an International Journal, all articles must be written in **English** or **Russian**, because they will be read online by millions of readers, both speakers of English and Russian.

JURNAL CITA HUKUM has been indexed at **Web of Science** (WOS) Web of Science (WOS) or Emerging Source Citation Index (ESCI) Clarivate Analytics, **DOAJ**, **EBSCO**, **DIMENSION**, **Microsoft Academic Search**, and **SINTA 2** and become a **CrossRef** Member since year 2015. Therefore, all articles published by JURNAL CITA HUKUM will have unique DOI number.

INTERNATIONAL EDITORIAL BOARD

Prof. Carolyn Sappideen, Scopus ID: 6506771331 School of Law Western Sydney University, Australia
Prof. Alexander Fedorovich Malyy, Scopus ID: 57194874834, Department of Constitutional Law, Kazan Federal University, Russian Federation
Prof. Razeen Sappideen, Scopus ID: 14041008300 School of Law Western Sydney University, Australia
Prof. Stanislav Shkel, Scopus ID: 56747984200, Department of Constitutional Law, Ufa State Petroleum Technological University, Russian Federation
Prof. Stefan Koos, Bundeswehr University Munich
Prof. Muhammad Munir, Scopus ID: 54414595100, Department of Law, International Islamic University Islamabad, Pakistan
Prof. Euis Nurfaelawati, Scopus ID: 56247081700, Faculty of Sharia and Law, State Islamic University (UIN) Sunan Kalijaga Yogyakarta
Prof. Abdul Gani Abdullah, Universitas Islam Negeri Syarif Hidayatullah Jakarta
Prof. Salman Maggalatung, Center for the Study of Constitution and National Legislation (POSKOLEGNAS), Indonesia
Assoc. Prof. Asep Saepudin Jahar, Scopus ID: 57156653300, Department of Economic Law Universitas Islam Negeri Syarif Hidayatullah Jakarta
Assoc. Prof. Ahmad Tholabi Kharlie, Thomson Reuters Id: R-5028-2017, Department of Family Law, Faculty of Sharia and Law, Universitas Islam Negeri Syarif Hidayatullah Jakarta

EDITOR IN CHIEF

Nur Rohim Yunus, Scopus ID: 57210890976, Thomson Reuters Researcher ID: F-3477-2017, ORCID ID: 0000-0003-27821266, SSRN ID: 2645355, SINTA ID: 5975443, Department of Constitutional Law, UIN Syarif Hidayatullah Jakarta, Indonesia

MANAGING EDITOR

Muhammad Ishar Helmi, Thomson Reuters Researcher ID: F-3345-2017, ORCID ID: 0000-0001-7060-8191, SINTA ID: 6199804, Department of Criminal Law UIN Syarif Hidayatullah Jakarta, Indonesia.

EDITORS

Indra Rahmatullah, ORCID ID: 0000-0002-6160-4225, SINTA ID: 6200500, Department of Economic Law, Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta, Indonesia.
Fitria Fitria, ORCID ID: 0000-0001-9733-1233, Department of International Law, York Law School, University of York, UK, United Kingdom.
Mara Sutan Rambe, ORCID ID: 0000-0001-5404-6635, SINTA ID: 6200494, Department Criminal Law, Faculty of Law, UIN Syarif Hidayatullah Jakarta, Indonesia.
Erwin Hikmatiar, Thomson Reuters Researcher ID: F-3235-2017, ORCID ID: 0000-0003-4103-818X, SINTA ID: 6200141, Center for The Study of Constitution and National Legislation (POSKOLEGNAS), UIN Jakarta.
Arip Purkon, ORCID ID: 0000-0002-6195-9384, Department of Law, University of Malaya, Malaysia.

LANGUAGE EDITOR (ENGLISH AND RUSSIA)

Raisa Shahrestani, Belgorodsky State University, Russia.
Firsty Izzata Bella, State Islamic University (UIN) Syarif Hidayatullah Jakarta, Indonesia.

ASSISTANT TO THE EDITORS

Imas Novita Juaningsih, State Islamic University (UIN) Syarif Hidayatullah Jakarta, Indonesia.
Azizah Ratu Buana, State Islamic University (UIN) Syarif Hidayatullah Jakarta, Indonesia.

Redaktur Office

Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta
Street Ir. H. Juanda 95 Ciputat Jakarta 15412
Phone. (62-21) 74711537, Faks. (62-21) 7491821
Website: www.fsh-uinjkt.net, E-mail: jurnal.citahukum@uinjkt.ac.id.
Link: <http://journal.uinjkt.ac.id/index.php/citahukum>

Jurnal

CITA HUKUM

INDONESIAN LAW JOURNAL

Welcoming contributions from scientists, scholars, professionals, and researchers in the legal disciplines to be published and disseminated after going through script selection mechanisms, reviewing sustainable partners, and rigorous editing processes.

TABLE OF CONTENTS

Effect Fake News for Democracy	
Munadhil Abdul Muqsih, Valerii Leonidovich Muzykant	307-318
Utilization of Peatland Technology For Food Availability in a Legal Perspective	
Christine S.T. Kansil, Jeane Neltje Saly, Adriel Michael Tirayo	319-334
Preliminary Phase of the Right of Assessment in Iran and France with Emphasis on One Article to Respect Legal Freedom and Protection of Citizenship Rights	
Zahra Emadoleslami, Hadi Ghorbani	335-350
Command Responsibility of Autonomous Weapons Systems under International Humanitarian Law	
Yordan Gunawan, Mohammad Haris Aulawi, Andi Rizal Ramadhan.....	351-368
Comparative Study of Conditions for the Purpose of Guarantee in Mudarabah Contracts Perspective of Islamic Jurisprudence and Iran's Civil Law	
Bijan Haji Azizi, Marzieh Younesi.....	369-382
Judicial Reform Under Democratic Consolidation in Indonesia	
Ibnu Sina Chandranegara, Syaiful Bakhri, Muhammad Ali.....	383-404
Legal Analysis of The Arrangement of Waqf Agricultural Agencies on Endowments Copy-right In Perspective Legislation	
Nugroho Ari Wibowo, Nurul Hidayah, Hafid Zakariya.....	405-416
Direct Election of President and Vice President In Pancasila Perspective	
Sonny Taufan, Risang Pujiyanto.....	417-430
Меры по предотвращению экологических коррупционных преступлений (Measures to Prevent Environmental Corruption Crimes)	
Ade Irma Elvira, Latipah Nasution.....	431-450

Legal Analysis of The Arrangement of Waqf Agricultural Agencies on Endowments Copyright In Perspective Legislation*

Nugroho Ari Wibowo¹, Nurul Hidayah², Hafid Zakariya³

Faculty of Law, Batiq Islamic University of Surakarta, Indonesia



[10.15408/jch.v7i3.12289](https://doi.org/10.15408/jch.v7i3.12289)

Abstract

Intellectual Property Rights include movable property that can be represented, one of which is Copyright. Copyright as a property of Waqf is formulated in Article 16 paragraph (2) of Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (Law Number 28 of 2014 About Copyright). In the waqf, there is a transfer of rights as outlined in the form of a waqf pledge made before PPAIW (Officials Maker of the Waqf Pledge Deed) in the AIW (Deed of Waqf Pledge). The purpose of this study is to find out the implementation of a copyright waqf by the Officials Maker of the Waqf Pledge Deed and the obstacles that may arise in its implementation. The research method used in the preparation of this paper is the Normative research method, using qualitative analysis techniques. From the results of the study, it can be concluded that the implementation of copyright waqf is done the same as the waqf of other objects, namely based on Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Wakaf (Government Regulation Number 42 of 2006 About Implementation of Waqf Law), by officials making deed of waqf pledges. The obstacle that appears in the implementation of the waqf copyright is the lack of knowledge/understanding of a KUA (Office of Religious Affairs) head as PPAIW (Officials Maker of the Waqf Pledge Deed) in the implementation of the Pledge of Waqf on Copyright. Another obstacle is that there are no specific regulations governing the implementation of waqf on Intellectual Property.

Keyword: Waqf, Intellectual Property Rights, Copyrights, PPAIW (Officials Maker of the Waqf Pledge Deed)

How to cite (Turabian)

Wibowo, N.A; Hidayah, N; Zakariya, H. "Legal Analysis of The Arrangement of Wakaf Agricultural Agencies on Endowments Copyright In Perspective Legislation" Jurnal Cita Hukum [Online], Volume 7 Number 3 (December 18, 2019)

* Received: July 29, 2019, revised: August 25, 2019, accepted: August 11, 2019, Published: Decembert 18, 2019.

¹ Nugroho Ari Wibowo is a Researcher at the Law Faculty, Islamic Batiq University of Surakarta.

² Nurul Hidayah is a Lecturer of Islamic Law at The Law Faculty, Islamic Batiq University of Surakarta.

³ Hafid Zakariya is a Lecturer of Intellectual Property right at the law Faculty, Islamic Batiq University of Surakarta. Street of H. Agus Salim Number 10 Surakarta.

*Corresponding Author: nugrohoariwibowo12@gmail.com

Analisis Yuridis Pengaturan Pejabat Pembuat Akta Ikrar Wakaf Dalam Wakaf Hak Cipta Perspektif Peraturan Perundang-Undangan

Abstrak

Hak Kekayaan Intelektual termasuk harta benda bergerak yang bisa diwakafkan, salah satunya adalah Hak Cipta. Hak Cipta sebagai harta Wakaf dirumuskan dalam Pasal 16 ayat (2) Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. Dalam wakaf terjadi peralihan hak yang dituangkan dalam bentuk ikrar wakaf yang dibuat dihadapan Pejabat Pembuat Akta Ikrar Wakaf dalam bentuk Akta Ikrar Wakaf (AIW). Tujuan penelitian ini adalah untuk mengetahui pelaksanaan wakaf hak cipta oleh Pejabat Pembuat Akta Ikrar Wakaf serta kendala yang mungkin muncul dalam pelaksanaannya. Metode penelitian yang digunakan dalam penyusunan skripsi ini adalah metode penelitian Normatif, dengan menggunakan teknik analisis kualitatif. Dari hasil penelitian dapat diambil kesimpulan bahwa pelaksanaan wakaf hak cipta dilakukan sama seperti wakaf benda lainnya, yaitu berdasarkan Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Pelaksanaan Wakaf yang dilaksanakan oleh Pejabat-Pembuat-Akta-Ikrar-Wakaf. Kendala yang muncul dalam pelaksanaan wakaf hak cipta adalah kurangnya pengetahuan/pemahaman seorang kepala KUA sebagai PPAIW dalam pelaksanaan Ikrar Wakaf terhadap Hak Cipta. Kendala lainnya adalah tidak ada peraturan yang khusus mengatur tentang pelaksanaan wakaf terhadap Harta Kekayaan Intelektual.

Kata Kunci: Wakaf, Hak Kekayaan Intelektual, Hak Cipta, Pejabat Pembuat Akta Ikrar

Юридический Анализ Регулирования Официальный Представитель По Созданию Акта об Заверении вакфа в авторском праве Вакфа на основании закона и нормативной точки зрения

Аннотация

Права интеллектуальной собственности включают движимое имущество, которое может стать вакфом, одним из таких прав является Авторское право. Авторское право как имущество Вакфа сформулировано в Главе 16 пункта (2) Закона № 28 от 2014 года об Авторском праве. На Вакфе есть переход прав, описанный в форме заверения Вакфа, сделанного перед официальным представителем по созданию акта об заверении Вакфа в форме Акта об заверении Вакфа (AIW). Цель этого исследования состоит в том, чтобы определить реализацию вакфа авторского права официальным представителем по созданию акта об заверении Вакфа и препятствия, которые могут возникнуть при его реализации. Метод исследования, использованный при подготовке данной статьи, является нормативным методом исследования с использованием методов качественного анализа. Из результатов исследования можно сделать вывод, что реализация вакфа авторских прав осуществляется так же, как и вакф других объектов, а именно на основании Постановления правительства № 42 от 2006 года о реализации вакфов официальным представителем по созданию акта об заверении Вакфа. Препятствием, возникающим при реализации закона о вакфе авторского права, является недостаток знаний/понимания главы Офиса по Духовным Делах как PPAIW при реализации Заверения Вакфа по Авторскому Праву. Еще одно препятствие заключается в том, что не существует конкретного регулирования о реализации Вакфа по объекту интеллектуальной собственности.

Ключевые слова: вакф, права на интеллектуальную собственность, авторские права, официальный представитель по созданию акта об заверении Вакфа

Introduction

In human life, wealth has a very important position. But wealth can also cause problems, because wealth will make people sink into worldly passions and forget about religious matters. Humans must give thanks to Allah, because with the presence of Islam through the Holy Quran, humans are guided to manage their assets as well as possible. Islam carries a set of Islamic laws relating to wealth, namely shadaqah, zakat, waqf, inheritance, and grants.

Waqf is a noble act by giving away wealth to others or to social institutions for the public interest. As a form of worship, waqf will bring reward. Waqf are regulated in the Law Number 41 year 2004 about Waqf. In the waqf law, waqf is determined as a legal act of endowment to be approved and/or given up part of his property to be used forever or for a certain period in accordance with their interests for the purposes of worship and/or public assistance in accordance with sharia.

Islamic history states that waqf has been known since the time of the Prophet Muhammad, that is when the Prophet Muhammad (PBUH) migrated with the Muhajirins to Medina with the result of building a mosque. In the beginning waqf was carried out on the basis of the impulse of a Muslim who wants to do charity for his possessions, so that it can be useful for others. But after feeling the benefits of performing waqf worship, then awareness arises to manage waqf properly according to Islamic law. The idea of the awareness of waqf management in order to better bring up the idea of forming an institution to manage and use waqf property, both individually or socially. Therefore, the BWI (Indonesian Waqf Board) was formed, which is expected to advance and develop national representation.

Since 2000, waqf began to receive a lot of attention in Indonesia both from practitioners, academics and the government (Lubis 2010). Waqf consists of immovable objects, movable objects, and movable objects other than money. Waqf objects that can be represented as movable objects are Intellectual Property Rights. Intellectual property rights in the classification of waqf are included in the type of movable property other than money, because intellectual property rights originate from the thought of intellectually intangible human creativity. Intellectual Property Rights are divided into two, namely Copyright and Industrial Property Rights.

Copyright as an object of waqf is an innovation in the field of national representation since the ratification of the 2014 Law on Copyright. The 2014 Copyright Bill regulates the transfer of copyright through waqf, which have not

been regulated in Act Number 19 of 2002 about Copyright. Previously, the practice of waqf in Indonesia was only dominated by waqf land, because the arrangement was clearer. But the government has provided support for the development of waqf in the country with the issuance of the Law number 41 year 2004 about Waqf. In addition to supporting the implementation of waqf, the government also issued Government Regulations Number 42 Year 2006 About the Implementation of Waqf Act). Law Number 16 of 2001 concerning Foundations also provides justification regarding waqf. There are several elements of understanding of waqf that are also contained in the Foundation Law, including (Kamil 2015). The existence of assets separated from the original owner; 2). Having certain goals, both religious and social/humanitarian goals; 3). Having an organization to organize established institutions.

Copyright as intellectual property in the form of movable property can be transferred by waqf. This can be seen in the formulation of Article 16 Paragraph (1) of Law Number 28 Year 2014 About Copyright. Furthermore, Paragraph (2) states that copyrights can be transferred or transferred, either in whole or in part because of waqf (letter c). Copyright as one of the waqf objects will be very potential, because copyright is a work of human creativity that has a variety of types. Every human being has the intellectual power to channel his ideas and realize them in various forms of writing, drawing and art, so that the development of copyright is very broad, both at home and abroad.

Copyright as an object of waqf is to offer the benefits of copyright by transferring economic rights to others. In Islamic law for the realization of waqf must be met with harmony and its requirements, namely (Romadona and Rosyadi 2018). *Wakif* (person or legal entity that donates his property); 2). Objects (movable or immovable objects which are required to be valuable and durable according to Islamic teachings); 3). *Mauquf 'alaih* (Waqf recipient); 4). *Shigat* (pledge or waqf statement); 5). *Nadzir* (waqf manager).

Through waqf, the management of property especially in the field of Intellectual Property Rights can be managed productively which will then drive innovation in the field of movable property. The existence of waqf is expected to be a source of public finance, for infrastructure development, construction of offices, investments which can further benefit the empowerment of the dhu'afa and the welfare of the people. Meanwhile, religious products and creations have been circulating and developing in society (Khairandy 2016).

The economic and moral benefits need to be analyzed first so that the implementation of copyright endowments can be done. Economic rights in the Copyright Act are the rights to benefit the economic value of a copyrighted

work, while moral rights are inherent rights of the creator, so that the goals and benefits of waqf can be achieved. In addition, it will bring new innovations in terms of advancing Islamic economics and the welfare of Moslems.

In copyright waf there is a transfer of rights. Transfer of property as an object of waqf is contained in an authentic deed, namely the AIW (the Deed of Waqf Pledge). Waqf pledge is a statement of the will of the *Wakif* spoken orally and/or written to Nazhir to donate his property (Law Number 41 of 2004). The pledge of waqf was written in the form of a deed, which was made and signed by PPAIW (Officials Maker of the Waqf Pledge Deed), which is an authorized official determined by the Minister of Religion to make the AIW.

Waqf is inseparable from the role of the Waqf Pledge Acting Actor in carrying out his duties to participate in the empowerment of Copyright waqf. The notary has the authority to make an authentic deed regarding all deeds, agreements and stipulations required by the legislation and/or that is desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving the certificate, copy and quotation of the deed, all this as long as the making of the Deed is not also assigned or excluded to other officials or others stipulated by the Act (Law Number 2 of 2014 About Notary Position).

Based on the background of the problem, the formulation of the problem can be drawn, namely How is the implementation of Waqf on Copyright by Officials Maker of the Waqf Pledge Deed and What are the obstacles in the Implementation of Copyright Waqf.

Research Methods

In this study the authors used a normative method. Normative research or so-called library research is research conducted by examining library materials that have been collected, which is carried out by examining primary legal sources such as laws, the Quran, court decisions and opinions of scholars. To describe the symptoms of the legal issues under study, the study was conducted descriptively. The approach taken in this study is a qualitative approach to obtain descriptive analysis.

Data sources that will be used in this study are primary legal materials (legal material that is legally binding), secondary legal materials (legal materials obtained from written documents), and tertiary legal materials (other legal materials outside the scope of primary and secondary legal materials) (Kementerian Agama 2013). The method of data collection is done through

library research and field studies to obtain supporting data on the implementation of primary legal materials.

To support empirical data as tertiary legal material in this study, the writer will visit the relevant institution to obtain empirical facts as data analysis, namely the interview method with the Head of Office of Religious Affairs (KUA) of Laweyan District, Mahmud as PPAIW (Officials Maker of the Waqf Pledge Deed), to find out matters relating to the discussion in this study which included the role of the Waqf Pledge Acting Official in making the Deed of Waqf Pledge of Copyright. Data analysis method used is a qualitative method, namely by providing exposure, description and description of the results of research that has been conducted with reference to the Act, Government Regulation, the results of library research and the results of interviews.

Analysis of the Implementation of Waqf on Copyright by PPAIW (Officials Maker of the Waqf Pledge Deed)

Waqf is derived from Arabic Waqf which means to hold. Hold in the sense of not being able to be sold and not to be awarded. Waqf is essentially giving up ownership of human property belonging to Allah in the name of the Ummah to be used as a public interest. Therefore waqf is a prescribed worship in Islam because it has two dimensions at once, namely the dimension of religion and the socioeconomic dimension (Fahmi & Noor 2012).

According to the Compilation of Islamic Law in article 215 paragraph (1) it is mentioned that wakaf is the legal act of a person or group of people or legal entities which separates a part of their property and institutionalizes it for ever for other public interests in accordance with Islamic teachings.

Waqf property consists of immovable and movable objects. A movable object is a property that cannot be consumed by consumption. Objects can be classified as movable objects because of their movable or moving properties or due to statutory provisions. The distribution of waqf property is explained in article 16 of the Waqf Law 2004, paragraph (2) states that waqf property is immovable, namely: 1). Land rights in accordance with statutory provisions. 2). Buildings or parts of buildings that stand on the ground. 3). Plants and other objects related to the soil. 4). Ownership rights to one apartment project. 5). Other immovable objects in accordance with Islamic regulations and laws and regulations.

While article 16 paragraph (3) mentions movable objects including; 1). Money; 2). Precious metals; 3). Securities; 4). Vehicle; 5). Intellectual property rights; 6). Rental rights, and 7). Other movable objects in accordance with sharia provisions and applicable laws and regulations.

Movable objects that cannot be exhausted due to usage can be represented in accordance with the provisions of sharia principles, one of which is intellectual property rights. In article 21 letter b of Government Regulation Number 42 of 2006 about the Implementation of Waqf Act, it is stated that movable property other than money that can be represented is Intellectual Property Rights. While article 15 of the Minister of Religion Regulation Number 73 of 2013 about Procedures for the Representation of Immovable and Movable Objects Apart from Money, Intellectual Property Rights consist of copyright, trademark rights, patent rights, industrial design rights, trade secret rights, integrated circuit rights, rights protection of plant varieties and/or other rights.

Copyright is an intangible movable object that can be transferred, namely the transfer of economic rights to copyright through waqf. This is in accordance with article 16 paragraph (2) of the Law Number 28 Year 2014 about Copyright. The creator has the right to transfer the rights owned by him to the royalties obtained by him according to his wishes, one of which is by way of waqf (Jumena & Sumiati 2017).

Waqf object according to the provisions of waqf law is known as waqf property. In article 1 number 5 of the Law Number 41 year 2004 about Waqf stated that waqf property is property that has long-lasting durability and/or long-term benefits and has economic value according to sharia which is represented by waqf.

Waqf is carried out by the head of the Office of Religious Affairs with a position as PPAIW (Officials Maker of the Waqf Pledge Deed). For waqf of immovable property such as land, arrangements for making the Deed of Waqf Pledge are left to the head of Office of Religious Affairs (KUA) or other officials who conduct waqf matters. This is considered to have gone well, because land ownership is regulated in Government Regulation Number 28 year 1977 about Land Ownership. The Office of Religious Affairs (KUA) is a government institution under the Ministry of Religion, which has a master data of religious information, therefore the appointment of the KUA head as the maker of the AIW is very appropriate. A PPAIW inherits in him a role, duty, and authority in serving, completing, and securing waqf property. The following will explain the role, duties and authority of PPAIW (Kementerian Agama Republik Indonesia, 2013: 13-14):

1. Role; a). Providing legal certainty to secure waqf property; b). As a basis for information and data; c). Providing services and guidance functions in national representation of waqf.
2. Task; a). Establish a Waqf Assembly; b). Examining the completeness of the administration of waqf; c). Organizing the implementation of the Pledge of Waqf; d). To ratify the Deed of Waqf Pledge; e). Making news of the handover of waqf items; f). Delivering a copy of the AIW (The Deed of Waqf Pledge)/APAIW (The Substitute Deed of Waqf Pledge) to related parties; g). Create the APAIW; h). Take care of waqf certificate; j). Register and process Nazir replacements.
3. Authority; a). Checking the legality of waqf administration; b). Reject the implementation of waqf pledge if the administrative requirements and legal provisions have not been fulfilled; c). Provide input or attention to prospective Wakif, Nazhir candidates, and prospective witnesses; d). Propose Nazhir's replacement; e). Mediate if there is a conflict between waqf stake holders.

Copyright as an object of waqf is a new instrument in the Copyright Act of 2014. The problem of developing waqf objects must receive a juridical response, especially for Indonesia, which in its constitution has declared as a state of law (*recht staat*) (Naim 2017)). But in practice it turns out that it is not as popular as land waqf. This is consistent with the author's interview with the PPAIW of Laweyan Sub-District, Surakarta City, namely Drs. Mahmud. In interviews conducted, the authors can conclude that the implementation of copyright endowments has never existed. In accordance with the PPAIW District Laweyan statement that so far the Waqf of Copyright has never existed, and according to him according to him it has never been done, but it does not rule out the possibility of implementing copyright waqf as well as other objects in accordance with waqf laws and government regulations regulates the implementation of waqf (Mahmud 2019). Based on this statement, it can be taken into account that the implementation of copyright endowments is carried out in accordance with Government Regulation Number 42 year 2006 about the Implementation of Waqf Act, the 2014 Copyrights Act, and based on the 2004 Waqf Act.

Waqf for copyright has been done by a lecturer at the Sharia IAIN (State Islamic Institute of Religion) faculty of Sunan Gunung Djati named Hanafi (deceased), he has donated one of his creations in the form of books to HMI (Islamic Student Association) Bandung Regency Branch. The way to waqf the rights of scientific work in the form of writing is to allow people who receive

waqf to publish and distribute it on condition that the perpetrators do not take profits except as a substitute for printing, or if they want to take profits, then the benefits are shared representing waqf desires (Syufa'at 2017).

Copyright as a waqf object must contain elements in the implementation of waqf. Copyright waqf can be declared valid if they meet the pillars and conditions of waqf, namely:

1. *Wakif*. *Wakif* is a person who donates his wealth. In relation to copyright, wakif is a creator or owner of a copyright based on the registered work.
2. *Mauquf Bih*. *Mauquf Bih* is goods or assets to be presented. The assets to be presented are assets that are attached to a work of copyright, that is, proven by a Copyright Certificate.
3. *Mauquf 'Alaih*. *Mauquf a Alaih* is the purpose of the waqf which must not be in conflict with Islamic law. The Copyright Owner as a Wakif candidate must explain the purpose of waqf as what they will be used for, for whom and how they will be managed.

The procedure for making Waqf Pledge Deed on Copyright which is carried out by PPAIW is contained in article 34 of Government Regulation Number 42 year 2006 about Implementation of Waqf Act, as follows:

1. In accordance with statutory regulations.
2. PPAIW examines the completeness of the administrative requirements of the waqf and the physical condition of the waqf object.
3. The implementation of the waqf pledge and the making of AIW are considered valid if carried out in the Waqf Pledge Assembly
4. AIW that has been signed by the parties is approved by PPAIW.
5. A copy of AIW is submitted to: a). Wakif; b). Nazhir; c). Mauquf 'Alaih; d). The competent authority that deals with movable property other than money.

Waqf property must be submitted to Nazhir accompanied by the making of the minutes of handover at the latest when the AIW signing is carried out in the Waqf Pledge Assembly. The minutes of the handover of the waqf assets contain the condition and details of the waqf property signed by the Waqif and Nazhir.

In Article 41 of Government Regulation Number 42 year 2006 about the implementation of Waqf Act, for movable objects that have been registered, the

Wakif submits proof of ownership of movable property to PPAIW accompanied by a certificate of registration from the competent authority whose main task is related to the registration of the movable object. This explanation implies that the waif must submit the copyright certificate that has been registered at the Directorate General of Intellectual Property Rights to PPAIW as an attachment in the AIW registration. Then PPAIW is required to submit the Waqf Pledge Deed to the Minister through the Office of Religious Affairs and representatives of the BWI (Indonesian Waqf Board) so that it will be included in the general register of waqf held by the minister.

Registration of waqf property in the name of Nazhir cannot prove ownership of Nazhir to copyright waqf property, because copyright contains moral rights, namely the right attached to the creator to always be named even though copyright has changed. Copyright Waqf only transfers the economic value of an object, not to change the origin of the object. Economic rights over a work remain in the hands of the creator or copyright holder as long as the creator or copyright holder does not transfer all economic rights of the creator or copyright holder to the recipient of the transfer of the right to the work (Law Number 28 Year 2014).

Constraints in the Implementation of Waqf on Copyright

The implementation of waqf which has been generally understood is only limited to the waqf of immovable objects such as land, making the scope of waqf narrow. In fact a *Wakif* can endow a portion of his wealth in the form of movable property, whether tangible or intangible. The assets consist of money, precious metals, securities, vehicles, intellectual property rights, lease rights, and other movable property.

Copyright as an object of productive waqf has a great opportunity in raising funds for the welfare of the people, economic development and national progress. This is based on the 2014 Copyright Act which states that the transfer of intellectual property can be through waqf. The transfer of intellectual property rights is not regulated previously in the Law Number 19 year 2002 About Copyright. The renewal of the 2002 copyright law to law number 28 of 2014 About Copyrights had a major influence on national representation.

The obstacle in implementing copyright waqf is that not all KUA (Office of Religious Affairs) heads who are attached to the position as PPAIW (Officials Maker of the Waqf Pledge Deed) have adequate management and administrative support. Besides that, the support of understanding / knowledge

of a Head of KUA as PPAIW is felt to be lacking. PPAIW at the sub-district level only understands waqf for immovable objects, namely land and apartment units. This is because the surrender of the authority to carry out AIW (the Deed of Waqf Pledge) of immovable property to the head of the KUA is considered to have been going well since land ownership is regulated in Government Regulation Number 28 of 1977 About Land Ownership Representation. Lack of socialization of Intellectual Property Rights that can be transferred through waqf makes the scope of waqf the opposite. Whereas in Indonesia, creative works are very diverse, ranging from song creations, works in written form, works of art in all forms of paintings or drawings, batik works of art and others.

Conclusion

The implementation of copyright waqf is the same as other waqf, in accordance with waqf laws and government regulations governing the implementation of waqf. Waqf is carried out by the head of the Office of Religious Affairs with a position as PPAIW (Officials Maker of the Waqf Pledge Deed). A PPAIW inherits in him a role, duty, and authority in serving, completing, and securing waqf property.

Copyright as an object of waqf is a new instrument in the 2014 copyright law, but in practice it has not been as popular as land waqf. As said by a Head of KUA (Office of Religious Affairs) who is attached to the PPAIW position in the Laweyan Subdistrict of Surakarta City, that the implementation of Waqf on Copyright has never been done, but it does not rule out the possibility of implementing copyright waqf as any other object in accordance with waqf laws and government regulations governing the implementation of waqf. so the authors draw conclusions about the implementation of copyright waqf based on article 34 of Government Regulation Number 42 of 2006 About the Implementation of Waqf Act.

One obstacle that arises in the implementation of waqf on copyright, one of which is the role of PPAIW as an important pillar of the implementation of waqf not yet fully aware of the productive intellectual property if used as waqf property. Changing ownership of copyright waqf property to the name of Nazhir cannot prove ownership of Nazhir property to copyright waqf property, because copyright contains moral rights, namely rights inherent in the creator. Transfer of copyright through waqf can be described as the use of copyright to be taken as limited to its economic rights, without reducing or changing the moral rights inherent in the creator.

References

- Fahmi, D; & Noor, A. "Reformasi Hukum Wakaf Di Indonesia: Studi Terhadap Wakaf Hak Atas Kekayaan Intelektual." *Al-Ahkam* 22 (1) 2012.
<http://dx.doi.org/10.21580/ahkam.2012.22.1.3>.
- Jumena, J; & Sumiati, M.S. "Hak Atas Kekayaan Intelektual Sebagai Benda Wakaf." *Adzkiya : Jurnal Hukum dan Ekonomi Syariah* 5 (2) 2017.
<https://doi.org/10.32332/adzkiya.v5i2.1038>.
- Kamil, F. "Hak Kekayaan Intelektual Sebagai Obyek Wakaf." *Government. Badilag*. November 17, 2015.
<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hak-kekayaan-intelektual-sebagai-obyek-wakaf-oleh-drs-faizal-kamil-sh-mh-17-11>.
- Kementerian Agama. *Standar Pelayanan Wakaf Bagi Pejabat Pembuat Akta Ikrar Wakaf*. Jakarta: Kementerian Agama. 2013.
- Khairandy, R. *Wakaf Hak Kekayaan Intelektual*. Yogyakarta: Pusat HKI FH UII Press. 2016.
- Lubis, S.K. *Wakaf dan Pemberdayaan Umat*. Jakarta: Sinar Grafika. 2010.
- Mahmud. *Officials Maker of the Waqf Pledge Deed*. Laweyan District Religious Affairs Office. 2019.
- Naim, A.H. "Pengembangan Objek Wakaf Dalam Fiqih Islam Dan Hukum Positif Di Indonesia." *ZISWAF : Jurnal Zakat Dan Wakaf* 4 (2) 2017.
<http://dx.doi.org/10.21043/ziswaf.v4i2.3044>.
- Romadona, N; & Rosyadi, I. "Wakaf Hak Merek Dagang Menurut Hukum Islam." Surakarta: Universitas Muhammadiyah Surakarta. 2018.
<http://eprints.ums.ac.id/60849/>.
- Syufa'at. "Wakaf Hak Cipta (Studi Komparatif Hukum Positif Dan Hukum Islam)." In *Proceeding Batusangkar*. Vol. 1. 18. 2017. West Sumatera: IAIN Batusangkar.
<http://ecampus.iainbatusangkar.ac.id/ojs/index.php/proceedings/article/view/1562>.
- Peraturan Menteri Agama Nomor 73 Tahun 2013 Tentang Tata Cara Perwakafan Benda Tidak Bergerak dan Benda Bergerak Selain Uang.
- Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf.
- Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris.
- Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.
- Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf

JURNAL

CITA HUKUM

INDONESIAN LAW JOURNAL

TECHNICAL GUIDANCE FOR AUTHORS OF CITA HUKUM JOURNAL

1. Article must be original, not plagiarism, unpublished, and not under review for possible publication in other journals.
2. Article should be concept, research-based, and thoughts;
3. Article should be written in English
4. Article must contain of Law Science
5. Writing Guidance as follows:
 - a. Title is written by Capital maximum 12 words in the center
 - b. Name of authors are written completely, no degree, institutional affiliation, address, and email.
 - c. Abstract is written in English maximum 250 words.
 - d. Systematycs of article:
 - 1) Title
 - 2) Name of authors (no title), name of affiliation, email
 - 3) Abstract
 - 4) Keywords, between 3-5 words
 - 5) Introduction
 - 6) Sub title (if need it)
 - 7) Closing
 - 8) Bibliography (The bibliography list contains all references in text originating from sources that are relevant and at least up to date (last 10 years).
 - e. Paper Sizes are 17,5 X24 cm, up 2,5 cm, down, 2,5 cm, right 2,5 cm, and left 2,5 cm
 - f. Length of article is between 18 – 20 pages with 1.0 line spacing, Palatyno Fond Style with 10 size.
 - g. Rule of citation. Direct citation if word is more than 4 lines separated from the text with 1.0 spacing with 9 font. However if citation less than 4 lines, it should be integrated in the text with double apostrof both in the first and in the end. Every citation is given number. Citation system is body note and use turabia system. Every article, book, and other source should be cited on the reference.
 - h. Citation for Quran and Hadist. For verse citation contains name of surah, number of surah and number of verse example: (Qs. Al Mumin [40]: 43). For Hadis citation, mention name of Perawi/Author, example (H. R al-Bukhari and Muslim) and printed hadist version. Hadist must be from standar hadist books (Kutub at-Tisah).

Technical Guidance for Authors of CITA HUKUM JOURNAL

- i. Bodynote is written by Palatino Linotype style, size 10, for any sources as: (Yunus, 2014: 144).
 - j. Bibliography. Bibliography is written alphabetically, last author's name is in the first of name, example:
 - 1) Book: Soekanto, S. *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Press, 1986.
 - 2) Translated Book. Example: Pound, R. *Pengantar Filsafat Hukum: Book III*, translated by Moh. Radjab, Jakarta: Bharata, 1963.
 - 3) Journal, example: Rohim, N. "*Kontroversi Pembentukan Perppu No. 1 Tahun 2013 tentang Mahkamah konstitusi dalam ranah kepentingan yang memaksa*", *Jurnal Cita Hukum*, Volume 2 Number 1 (2014).
 - 4) Article as a part of book (antology). example: Juwana, H. "*Penegakan Hukum dalam Kajian Law and Development: Problem dan Fundamen bagi Solusi Indonesia*", in Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*, Jakarta: Kencana Prenada Media Group, 2012.
 - 5) Article from internet, example: Kharlie, Ahmad Tholabie, "*Problem Yuridis RUU Syariah*" in <http://ahmadtholabi.com/2008/03/03problem-yuridis-ruu-syariah>, downloaded on March 20, 2012.
 - 6) Article from magazine, example: Susilaningtias, "*Potret Hukum Adat pada Masa Kolonial*," in *Forum Keadilan*, No. 17, August 20, 2016.
 - 7) Article in Seminar, example: Asshidiqqie, Jimly, "*Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia*," paper presented on public lecture at faculty of law Universty Sebelas Maret, Surakarta on March 2, 2014.
 - k. Closing, article is closed by conclusion;
 - l. Short biography: author's biography contains full name, title, institution, education and other academic experts.
6. Every article that doesnt fulfill all requirements to this guidance will give it back to the author for revision.
 7. Article must be submitted to editors at least 3 months before publishing (April, August, and December) with uploading via OJS to <http://journal.uinjkt.ac.id/index.php/citahukum> or e-mail to jurnal.citahukum@uinjkt.ac.id.[]

in Collaboration with :



Indexed by :



Universiteit
Leiden



HARVARD
LIBRARY



JURNAL CITA HUKUM is a peer-reviewed journal on Indonesian Law Studies published bi-annual (June & December) by Faculty of Sharia and Law Universitas Islam Negeri Syarif Hidayatullah Jakarta in cooperation with Center for the Study of Constitution and National Legislation (POSKO-LEGNAS). JURNAL CITA HUKUM aims primarily to facilitate scholarly and professional discussions over current developments on legal issues in Indonesia as well as to publish innovative legal researches concerning Indonesian laws.

