

# Legal Provisions and Regulations on *Wakaf*

By International Development Law Office, February 2008

We often come across notice boards that say “This land has been donated as *wakaf* for the construction of a mosque” or “This land has been donated as *wakaf* for the construction of a burial site for Muslims.” What does *wakaf* mean?

Article 1 paragraph (1) of the Law No. 41 year 2004 on *Wakaf* defines *wakaf* (charitable trust/endowment) as the legal act of a *Wakif* (the donator) in dividing and/or transferring part of their wealth either permanently or for a set period for religious purposes and/or public welfare in accordance with the *Syar'iyah* (Islamic Law). Meanwhile, according to Article 215 of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), *wakaf* is a legal act whereby a person or a group of persons or a legal body donate part of their wealth either permanently or for a set period for religious purposes and/or other public purposes in accordance with Islamic teachings.

Article 6 of the Law No. 41 year 2004 on *Wakaf* requires the following components to be met in an act of *wakaf*:

- a. *Wakif* (the donator)
- b. *Nazhir* (the recipient)
- c. The price of the *Wakaf* material.
- d. *Ikrar Wakaf* (document detailing the terms of *wakaf*)
- e. Purpose of the *wakaf* material.
- f. Period of *wakaf*.

Paragraph (2) of the article requires further that *Wakif* is the party donating their property. A *wakif* can be an individual, organisation and legal body (Article 7).

Article 8 paragraph (1) stipulates that an individual *wakif* can only perform a *wakaf* act if they meet the following requirements:

- a. They have come of age (adult)
- b. Mentally sane.
- c. Are not restricted from performing a legal act.
- d. Are the legal owner of the *wakaf* material.

Article 8 paragraph (2) stipulates that an organisational *Wakif* can perform a *wakaf* act if they meet the requirements stipulated in the statute of the respective organisation regarding donation of wealth or property of the organisation as *wakaf*.

Article 8 further stipulates in paragraph (3) that if the *Wakif* is a legal body, the act of *wakaf* should meet the requirements stipulated in the statute of the respective legal body regarding donation of wealth or property of the legal body.

The recipient of a *wakaf* is called a *Nazhir* (paragraph (3)). *Nazhir* will be responsible for managing the *wakaf* material according to its purposes. *Nazhir* can be an individual, organisation or legal body.

Article 10 paragraph (1) of the Law on *Wakaf* also further stipulates that an individual is eligible to become a *Nazhir* if they meet the following requirements:

- a. Indonesian citizen
- b. Moslem
- c. Has come of age (adult)

- d. Trusteeship
- e. Physically and mentally fit
- f. Not restricted to perform legal act

Meanwhile, Article 219 (F) of the KHI mentions that the *Nazhir* must be residing within the sub-district of the *wakaf* material. In addition, Article 219 paragraph (3) of KHI stipulates that a *Nazhir* has to be registered at the local Religious Affairs Office (KUA) and be sworn before the KUA at sub-district level with 3 witnesses. According to the Head of KUA of the sub-district of Darul Imarah, Aceh Besar, Drs. Sofyan Umar, *Nazhir* generally consists of at least 3 to 5 persons, consisting of the head, vice head, secretary, treasurer and member.

*Nazhir* has the following responsibilities in the act of *wakaf*, as stipulated in Article 11 below:

- a. To manage the administration of *wakaf* material.
- b. To manage and develop *wakaf* materials in line with the aim, function and purposes of the *wakaf*.
- c. To monitor and protect the *wakaf* material.
- d. To report the implementation of duties to the Indonesian body for *wakaf* (*badan wakaf indonesia*).

In line with Article 12, in the course of their duties, *Nazhir* may receive a fee of no more than 10% of the net *wakaf* material for the management and development of the *wakaf* property.

### **The Price of *Wakaf* Material**

Iskandar, S.H., one of the legal counsels in Yayasan Bungong Jeumpa, says that *wakaf* material can be used for other purposes than religious and social purposes. It can be directed for the public welfare by increasing the potential and economic benefit of the *wakaf* material. Yayasan Bungong Jeumpa is one of the organisations focusing on advocacy on inheritance and land issues.

Productive management and development of *wakaf* materials can be achieved among others through collection, investment, capital investment, production, partnership, trade, agribusiness, shopping centres, office complex, and educational and health facilities that are in line with the *Syar'iah*. *Wakaf* materials are divided into categories:

- a. immovable property
- b. movable property

Article 16 paragraph (2) defines immovable property as:

- A. Registered and unregistered right to land in line with the prevailing legislation.
- B. Building or part of a building on a land as mentioned in point A.
- C. Plant and other material closely related with soil.
- D. Ownership of unit of flats in line with the prevailing legislation.
- E. Other immovable property that meet the requirements by *Syar'iyah* and the prevailing legislation.

*Wakaf* land or *tanoh wakeueh* is considered a religious institution by Aceh custom, whereby a piece of it is donated to meet the purposes of an individual or for community purposes, in line with Islamic principles. Land is normally donated as *wakaf* to the *geuchik* (head of village) and *imam meunasah* (religious leader), who

will be responsible for the management of the land. (*Praktek Penyelesaian Formal dan Informal Masalah Pertanahan, Kewarisan, dan Perwalian Paska Tsunami di Banda Aceh dan Aceh Besar*, A.Salim, IDLO, h.73)

*Wakaf* materials are divided into the following in line with their function and purposes:

- Religious facilities and activities.
- Educational and health facilities and activities.
- Aid for the poor, neglected children, orphans and scholarship.
- Development and improvement of the economy of the people.
- Other welfare improvement.

In practice, the donation of *wakaf* material must go through a number of procedures, among others *ikrar wakaf* (document detailing the terms of the *wakaf*). These are stipulated in Article 1 paragraph (3).

Specifically for the Deed of *Wakaf* Agreement for land *wakaf*, the *Wakif* has to fill in a number of forms at the local KUA. Drs. Sofyan Umar further explains that the *Wakif* has to submit the following supporting documents before completing the forms:

- Supporting proof of ownership of the property to be donated as wakaf
- A WK model of letter, a statement by the head of village on the donation of wakaf land. The letter will later have to be submitted to the national land agency office for registration of land title.
- A WD model of letter, land title of wakaf land before the government regulation (pp) no.28/ 1977 took into effect.

Apart from the above documents, the following forms have to be completed:

- W1 form, a statement of wakaf for wakif, nazhir and PPAIW.
- W2 form, a wakaf *Terms of Agreement* that will be shown as the application letter to the Head of Land Agency office and also addressed to the Religious Court/Mahkamah Syar'iyah.
- Copy of Wakaf terms of agreement deed (Akta Ikrar Wakaf) in the form of W2.A by PPAIW addressed to Wakif, Nazhir, Head of District/Municipal Department of Religious Affairs. Application of Akta Ikrar Wakaf for wakaf land to the KUA office is free of charge, except for seal cost.

The *Ikrar Wakaf* will be pronounced by the *Wakif* to the *Nazhir* before the *Ikrar Wakaf* Deed Official (*Pejabat Pembuat Akta Ikrar Wakaf/PPAIW*) witnessed by 2 people. The *Ikrar* will be pronounced orally/in writing and stated in the *ikrar wakaf* deed made by PPAIW.

In the absence of the *Wakif* during an *Ikrar Wakaf* due to circumstances allowable by the law, a *Wakif* can appoint a representative to act on their behalf by way of a letter of representation witnessed by 2 people.

### **Changes of Status of *Wakaf* Material**

Property donated as wakaf cannot be: used as collateral, confiscated, inherited, exchanged, used as a gift, sold or transferred into any other forms of title. Any violation of this requirement will be subject to criminal sanction, as stipulated in Article 67 paragraph (1) – (3).

Anyone found guilty of deliberately using the *wakaf* material as collateral or gift, sell, bequeath, or transfer the *wakaf* material to other forms of title without due permit, the offense shall be sentenced to a maximum of 5 years imprisonment and/or a fine of a maximum of Rp. 500,000,000 (five hundred million rupiah).

Anyone found guilty of deliberately transferring the purpose of the *wakaf* property without due permit shall be sentenced to a maximum of 4 years imprisonment and/or a fine of a maximum of Rp 400,000,000 (four hundred million rupiah).

Anyone found guilty of deliberately using or taking the advantage of the management and development of *wakaf* property in excess of the designated amount shall be sentenced to a maximum of 3 years imprisonment and/or a fine of Rp. 300,000,000 (three hundred million rupiah).

Iskandar S.H. further mentions that disputes over *wakaf* issues can be settled through *musyawarah* (consultation and negotiation) to reach *mufakat* (consensus agreement) by mediation. Settlement can also be achieved by asking the support of the local KUA office. If the dispute cannot be settled through consultation and negotiation, the case can be referred to the *Mahkamah Syar'iyah*.