

# The Development of “Waqf” on the “Ulayat” Lands in West Sumatera, Indonesia

Onny Medaline (Corresponding Author)

Department of Law, Universitas Pembangunan Panca Budi,

Medan, North Sumatera, Indonesia

E-mail: [onnymedaline@dosen.pancabudi.ac.id](mailto:onnymedaline@dosen.pancabudi.ac.id)

Received: December 10, 2016    Accepted: July 10, 2017    Published: July 13, 2017

doi: 10.5296/jsss.v5i1.10419

URL: <http://doi.org/10.5296/jsss.v5i1.10419>

## Abstract

The Article 3 of the Agrarian Laws consists of the regulation about one aspect of the most important communal rights related to the scope of life, namely the “ulayat” rights. These laws themselves, do not define the meaning of the “ulayat” lands. Therefore, the admission of the existence of the “ulayat” rights included in the Article 3 of the Agrarian Laws still considered as the ambivalent by the consideration of the policy board. The absence of the deep concepts on the “ulayat” lands in the agrarian laws, affected the establishment of the other regulation, in this case, called the “waqf” regulation. By the entire series of the “waqf” regulations, there are not Articles cite that the land object along with the “ulayat” right can pass into the “waqf” land. Therefore, it needed the study about the development of the “ulayat” institution of society in West Sumatera, that becomes the transformation and the interaction processes among the culture and tradition of Minang Kabau based on the Islamic aspects. Moreover, as the enthusiasm of the “waqf” development to become the social welfare. Therefore, the “waqf” and the “ulayat” lands in West Sumatera are the assets of the local communities to take care of them continually and expands the “waqf” properties to aim the future social welfare.

**Keywords:** Agrarian laws, “Waqf”, “Ulayat” lands

## 1. Introduction

The Protection of “waqf” found in laws of land affairs in the article of 49 verse 3 No.5, 1960 about the Fundamental Regulation of Agrarian Affairs which stated that “The “waqf” of one's land is protected and regulated by government regulation”. To conduct this, on May 17th, 1977, the government notarized the government regulation No. 28 in 1977 about the “waqf” of one's land.

Furthermore, the new regulation of “waqf” formed the laws No.41 2004 about the “waqf”, and the government regulation No. 42, 2006 about the implementation of “waqf” laws aims to arrange and develop the waqa' in Indonesia to become more productively. The laws of the “waqf” offer the expansion of the wealth to become the “waqf”'s objects, not only limited to non-moveable wealth but also moveable ones such as money, gold, vehicles, securities, intellectual possession, rental right, and the other moveable ones agree with the Islamic laws. Regarding non-moveable things which can be “waqf's objects not only limited to land possessions but in the article 16 of the laws of “waqf” stated that “the rights of the land agree with either the listed or non-listed applied laws”. Therefore, the rights of land which become the “waqf” objects such as one's possession, the right of building use, the right of business use, the right of using, and the right of mansion possession.

The problems will occur if the implementation of waqa' related to the “ulayat” lands which authorized by customary laws of community along with the right of “ulayat” as the “waqf” object. In the laws of the land admitted about the “ulayat”, as mentioned in Article 3 of the laws of the land. This related to the existence of the right of “ulayat” in the society of West Sumatera which still authorized by local customary community. Totally, the widths of them in West Sumatera either listed or non-listed in the National Land Affairs are about 358.90 ha (three hundred and fifty eight comma ninety hectares), and the amount of them is 3.388 locations (three thousand and three hundred eighty eight). Among of 19 existed regencies/cities in West Sumatera, the regencies of Lima Puluh City and Payakumbuh cities are the areas which the authority level of the “ulayat” dominated by local customary community. Therefore, more than 65 % (sixty five percent) the “waqf” shift comes from the object of “ulayat”

## 2. Literature Reviews

The “waqf” is an expenditure of wealth in good way, becomes the alternative thing offered by Islam as a mean of getting close to Allah. It mentioned by al-habs (to hold), literally al-habs means al-sijn (jail), silent, protect, barrier, obstacle, “prisoner” and pacification. The compound of the word ahbasa (al-habs) with al-mal (wealth) means “waqf” (ahbasa al-mal).. However, the regulation of “waqf” in Indonesia does not take from the certain thought of Islamic laws as the formal thought professed by the country, the development of Islamic laws in tithe and “waqf” backed by the varieties of the existence thoughts in Islam. Although the Moslems in Indonesia mostly follow the thought of Syafi'i but in the context and the content of the tithe and the “waqf” regulation do not occur the rigidity of thought especially “Syafi'i” oriented, but dynamically set us the "maqashid syariah" (the aims of Islamic Laws) as the indicators. This can be seen in the applied Islamic Laws about the tithes of the company and professional income, the money “waqf”, the certain-time “waqf”, and so on, in order to

accommodate the Islamic Laws which have in abundance of *ijtihad*, *istinbath* dan *istihsan*.

There is no an obvious certainty about the “*waqf*” in Al-Quran. However, the Commandment of Al-Quran to do the good deed can become the common foundation to the deed of the “*waqf*”. Besides that, according to Al-Quran and Hadist, the Muslim Scholars agree (*ijma'*) to take the “*waqf*” as one of the deeds which declared in Islam Laws. There is no one can neglect or reject the deed of the “*waqf*” in Islam in the case of it becomes the deed that always implemented and conducted by the Prophet's friends and Moslems from the beginning until today.

The word “*ulayat*” means area. In the literature of customary laws, the right of “*ulayat*” called “*beschikkingsrecht*”. The “*ulayat*” land is an object of the “*ulayat*” rights authorized by the Society of customary laws. The society of laws has the full sovereign of its area “*ulayat*” land, and the customary leader has the full authority to arrange and set the relationship among the society along with its relationship with nature (Panuh, 2012). In the society of West Sumatera itself, the definition of “*ulayat*” is tended as the land of communal possession to all ethnics in West Sumatera.

The land of this communal possession possessed by a group of people who dwell on it with the “*ulayat*” rights. In accordance with the scope of the customary society in West Sumatera, which assembled in one region, ethical and community have the boundary to the land. The “*ulayat*” *nagari* (region “*ulayat*”) is the “*ulayat*” land along with the existing natural resources either on or in it, authorized by *ninik mamak* of the region customary community and utilized to the importance of regional community, whereas the regional government acts as the party arranges its utilization. The land of the “*ulayat*” *kaum* (communal “*ulayat*”) is the right of belonging to the land along with its existing natural resource either on or in it which is the right of collective belongings of all the certain ethnic members in case of its authority and utilization arranged by the ethnic leaders. The land of communal “*ulayat*” is the right of belonging to the land along with its existing natural resource either on or in it which is the right of belonging of all community members consist of *jurai/paruik* in which its authority and utilization arranged by *mamak jurai/mamak* of heir leader.

### **3. Research Methodology**

This study applied the qualitative research method intended that the analysis result was not depended on the amount of the data based on the numbers, but the analysis of the data was done deeply and holistically. This research done normative and empirical jurisdictions to find out the development of “*waqf*” on the “*ulayat*” lands in West Sumatera. The governmental regions in West Sumatera consisted of 7 cities and 12 regencies, therefore the locations of the research which become the samples were Payakumbuh city and the regency of Lima Puluh Kota. The research locations were chosen by the consideration that both areas are known still have a lot of community lands in West Sumatera.

### **4. Discussion**

#### *4.1 The Regulation of the “Ulayat” Right of Land Affair Laws in Indonesia*

The article 3 of the Agrarian Laws has the regulation deals with one aspect of the most important customary society related to its scope of life, that is the right of “*ulayat*”, cited “.the implementation of “*ulayat*” right and the other similar rights of the customary societies, as

long as in fact it has still existed". However, the Agrarian Laws do not give the obvious understanding of the position of the "ulayat" right in that laws. In the explanation of the article 3 of the Agrarian Laws only mentioned that the "ulayat" right and the other similar rights in the literature called "beschikkingsrecht."

The issued of PMNA No. 5 1999, firstly aimed as the guidance to the regional government to solve the conflicts related to the authority of the land by the customary society. This regulation defines the "ulayat" land and right and the procedures of admission of it. However, this PMNA not longer validated, since the issued of the regulation from Minister of Agrarian Affairs and the Lay-Out / the Head of National Agrarian Board No. 9, 2015 (in advanced called Agrarian of Minister Regulation No. 9, 2015) about the Arrangement of the communal right decision on the lands of the customary society laws along with a certain dwelled communities. This regulation wipes out the term of the "ulayat" right and the other similar ones cited in the article 3 UUPA, and substituted it by the term "the communal rights" stated in the article 1 of that regulation, mentioning that "the communal right is the right to assembly possessions on the lands of a customary society or the assembly belongings on the lands given to community dwelling near the forest and plantation areas.

#### *4.2 The Understanding of "ulayat" Land in West Sumatera*

In the society of West Sumatera, the definition of "ulayat" tended as the land of communal property of all ethics in West Sumatera. This land of it authorized by a group of people who dwell on it by the "ulayat" right. According to Van Vollenhoven, the "ulayat" right is the traditional communal one of customary society in Indonesia to authorize and carry out a certain area as the field of life to support the viability of its society members. Every member of the related customary society has the authorities to carry out and utilize the land and the existing natural resources freely in their area. The outsiders do not have any rights but the admission of the society itself (Warman, 2009).

The communalistic is a concept of customary laws which enable to authorize the land individually with the personal rights of land consisted the assembly aspects. The togetherness points out to the existing of assembly rights of customary society members of the lands, in the laws literature called the "ulayat" rights (Harsono, 2006), whereas the customary lands can be owned called the customary communal property. If the communal rights compared to the "ulayat" right of the customary laws of society can be observed the concept of the "ulayat" in West Sumatera namely the nagari (region), the ethnics and social "ulayat"s. Technically, the jurisdiction of the nagari (region) "ulayat" mentioned in the article 3 of UUPA. The nagari (region) of "ulayat" consists of a group of the community has the area of the certain boundary, the autonomy of the government and the personal wealth, completed with its regulation.

The social "ulayat" land not included in the category of the "ulayat" lands jurisdictionally, but it is the customary communal land or the property of social land (Warman, 2006). It can be said that mostly the authors affected by the habit of the "ulayat" terminology in West Sumatera, therefore conventionally known three kinds of the "ulayat". In fact, it cited relevantly and jurisdictionally as the "ulayat" right only the nagari (region) "ulayat", may be the ethnic "ulayat" (in the harmony of Bodi Caniago), where as the ethnic "ulayat" precisely called as the land of communal belongings differed from the personal belongings (Warman,

2006).

The understanding of the “ulayat” right and the communal one has the different dimension, which the “ulayat” right oriented in public and civil dimensions. The public dimension seen on the authority of the customary society laws to set out (1) the land / the area as the scope of life-related to its utilization included its maintenance; (2) the legal relationship between the customary society laws and its land; and (3) The law deed related to the land of the customary society law. The civil dimension of the “ulayat” right seen in the manifestation of the “ulayat” right as assembly belongings. On the other way, the right of communal land in accordance to Regulation of Agrarian Minister No. 9 2015 meant as the right of land to issue the certificate of the communal right (Sumardjono, 2009).

#### *4.3 The Development of Donated Land (wakaf) of Community Land (“ulayat” in West Sumatera*

The right of “ulayat” in the “waqf” laws and the regulation of conducting not a waqa' object. But in the process of “waqf” wealth registration cited in the article of 39 governmental regulation No. 42, 2006. The registration of the “waqf” certificate based on AIW or APIW with the following procedures: “To the non-belonging land comes from the customarily land directly registered to become the donated land on behalf Nazhir”. Therefore it can be said that the land of social “ulayat”, as mentioned above not only as the land of social land but also as the assembly of wealth object of customary community that can be a “waqf”.

Here is, the data of “waqf” of the existing community land in Payakumbuh City and The Regency of Lima Puluh City in West Sumatera.

Table 1. Amount of the “waqf” lands in payakumbuh city

No	Districts	Amount of the “waqf” lands	Width (m <sup>2</sup> )	Amount of the “waqf” lands of the “ulayat” lands
1.	Payakumbuh Barat West Payakumbuh	49	30.407	48
2.	Payakumbuh Utara North Payakumbuh	21	45.119	21
3.	Payakumbuh Timur East Payakumbuh	38	30.671	38
4.	Payakumbuh Selatan South Payakumbuh	28	25.336	28
5.	Lamposi Tiga Nagari	19	56.285	19

Table 2. Amount of the “waqf” lands in the regency lima puluh city

No	Districts	Amount of the Lands	“waqf” (m <sup>2</sup> )	Amount of the Social “ulayat”
1.	Payakumbuh	38	41.194	9
2.	Guguk	66	92.077	25
3.	Suliki	44	49.318	11
4.	Harau	58	55.389	15
5.	Luhak	35	40.255	30
6.	Pangkalan Koto Baru	42	30.777	19
7.	Kapur IX	44	37.948	8
8.	Gunung Mas	27	21.806	7
9.	Bukit Barisan	105	71.267	30
10.	Mungka	32	28.008	8
11.	Akabiluru	77	746.608	28
12.	Lareh Sago Halaban	42	39.728	31
13.	Situjuah Limo Nagari	25	41.515	13

The data mentioned above described that more than 85% of the “waqf” lands in Payakumbuh City and the regency of Lima Puluh City came from the “ulayat” lands of the local community, it showed that the existing “waqf” lands were the old “waqf” lands or the “ulayat” of “waqf” lands inherited from the previous generation. Usually, the old existing “waqf” lands stood the old mosques.

## 5. Conclusions

In fact, the “waqf” has been taking place for a long time in the society in West Sumatera. It can be proved that although essentially in religion, the “waqf” by giving the legacy wealth is not the same, however, it is a social institution in which its allocation is similar to the family “waqf”. The continuation of the donated property in the previous customary community done orally with the limited allocation to build the mosques or the musholas. The mechanism of the “waqf” implementation on the lands of social “ulayat” by completing the requirements of the agreement from all members of society. However, in fact, there is not normative in the formation of the “ulayat” land registration among the Board of National Land Affairs in West Sumatera.

## References

- Panuh, H. (2012). *Pengelolaan Tanah Ulayat Nagari pada Era Desentralisasi Pemerintahan di Sumatera Barat*. Jakarta: Rajawali.
- Rafiq, A. (1997). *Hukum Islam di Indonesia Cet. II*; Jakarta: PT. Raja Grafindo Persada.
- Sumardjono, M. S. (2008). *Tanah dalam perspektif hak ekonomi, sosial, dan budaya*. Penerbit Buku Kompas.

Warman, K. (2006). *Ganggam Bauntuak Menjadi Hak Milik*.

Warman, K. (2006). *Ganggam bauntuak menjadi hak milik: penyimpangan konversi hak tanah di Sumatera Barat*. Andalas University Press.

Warman, K. (2009). *Pengaturan Sumber daya Agraria pada Era Desentralisasi Pemerintahan di Sumatera Barat (Interaksi Hukum Adat dan Hukum Negara dalam Perspektif Keanekaragaman dalam Kesatuan Hukum)*, Disertasi, Program Pascasarjana Fakultas Hukum Universitas GadjahMada, Yogyakarta

<http://simbi.kemenag.go.id/siwak/index.php>.

<http://www.bi.go.id>

### **Copyright Disclaimer**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).