

## Unrecorded Waqf Land: A Socio-Legal Study of the Phenomenon of Security without Administration

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### Abstract

Waqf land plays an important role in the social and economic development of the community, but its administrative registration is still an obstacle. This study examines the phenomenon of unregistered waqf land but free from disputes in Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan, Tanjung Medan District, Rokan Hilir, Riau. This study aims to identify factors that cause unregistered waqf land, understand social, cultural, and legal influences, and provide recommendations to increase awareness of the importance of recording waqf land. The research method used is a qualitative approach with a socio-legal method. Data were collected through in-depth interviews, observations, and related document studies. The results and conclusions of this study indicate that the main factors for unregistered waqf land are the lack of understanding of waqf law in the community, the lack of socialization from PPAIW, and the strong customary customs that consider waqf valid without registration. Oddly enough, no waqf land disputes were found in the area, due to the role of traditional leaders and the high level of community trust in the traditional system. This study recommends increasing the socialization of waqf law and facilitating the registration of waqf land.

**Keywords:** Legal Awareness, Administrative Registration, Role of Traditional Figures, Socio-Legal, Waqf Land

### Abstrak

Tanah wakaf memiliki peran penting dalam pembangunan sosial dan ekonomi masyarakat, namun pencatatan administratifnya masih menjadi kendala. Studi ini mengkaji fenomena tanah wakaf yang tidak tercatat tetapi bebas dari sengketa di Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, dan Kepenghuluan Sri Kayangan, Kecamatan Tanjung Medan, Rokan Hilir, Riau. Penelitian ini bertujuan mengidentifikasi faktor-faktor yang menyebabkan tidak tercatatnya tanah wakaf, memahami pengaruh sosial, budaya, dan hukum serta memberikan rekomendasi untuk meningkatkan kesadaran akan pentingnya pencatatan tanah wakaf. Metode penelitian yang digunakan adalah pendekatan kualitatif dengan metode *sosio-legal*. Data dikumpulkan melalui wawancara mendalam, observasi, serta studi dokumen terkait. Adapun Hasil dan kesimpulan dalam penelitian ini menunjukkan bahwa faktor utama tidak tercatatnya tanah wakaf adalah minimnya pemahaman hukum wakaf di masyarakat, minimnya sosialisasi dari PPAIW, serta kuatnya kebiasaan adat yang menganggap wakaf sah tanpa pencatatan. Anehnya, tidak ditemukan sengketa tanah wakaf di wilayah tersebut, karena peran tokoh adat dan tingkat kepercayaan masyarakat yang tinggi terhadap sistem tradisional. Penelitian ini merekomendasikan peningkatan sosialisasi hukum wakaf dan memfasilitasi pencatatan tanah wakaf.

**Kata Kunci:** Kesadaran Hukum, Pencatatan Administrasi, Peran Tokoh Adat, *Sosio-Legal*, Tanah Wakaf

## INTRODUCTION

Waqf land plays an important role in supporting social and economic development in the community,<sup>1</sup> especially in providing religious facilities, education, and improving welfare.<sup>2</sup> In Indonesia, the management and recording of waqf land is regulated through Law No. 41 of 2004 concerning Waqf and its implementing regulations.<sup>3</sup> This registration aims to ensure the legality of waqf land while protecting it from potential conflicts in the future. Unrecorded waqf land is very vulnerable to conflict.<sup>4</sup> Such as the conflict over the waqf land of the mosque in Gampong Ulee Tanoh, Tanah Pasir District, North Aceh Regency, the results of his research stated that the waqf dispute occurred due to the uncertainty of whether the land had been waqf or not because it still had a private land certificate.<sup>5</sup> Then the waqf dispute also occurred in Kotamobagu, North Sulawesi; his research stated that the lack of understanding from the *nadzir* and the unclear status of the owner of the waqf land often triggered unavoidable conflicts.<sup>6</sup>

Previous research results indicated that unrecorded waqf land has the potential to cause disputes. However, this situation is different from the community in Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan, Kec. Tanjung Medan, Kab. Rokan Hilir, Riau Province. From the past until now, the practice of waqf in the area has never been recorded in the local PPAIW. The waqf process is carried out through oral statements without official recording.

Even so, no conflicts or disputes were found regarding waqf land in the area. The community in Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan did not have a problem with this, so the condition was considered safe without conflict. This phenomenon raises the question, why unrecorded waqf land does not trigger polemics or disputes. Therefore, this study tries to answer why waqf land in Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and

<sup>1</sup> Ika Rinawati, "Manfaat Wakaf Uang Dalam Pengentasan Kemiskinan Di Indonesia," *An-Nisbah: Jurnal Perbankan Syariah* 2, no. 1 (2021): 100–115, <https://doi.org/10.51339/nisbah.v2i1.214>.

<sup>2</sup> Roni Hermawan, "Pencatatan Tanah Wakaf Di Pimpinan Cabang Menurut UU 41 Tahun 2004," *Jurnal Riset Hukum Keluarga Islam* 3 No. 2, no. 41 (2023): 95–100, <https://doi.org/10.29313/jrhki.v3i2.2864>.

<sup>3</sup> Ayu Iftitakhul Laili, "Pandangan Tokoh Agama Islam Di Desa Grogol Kecamatan Diwek Kabupaten Jonbang Dalam Pencatatan Ikrar Wakaf," *Opinia de Journal* 3, no. 2 (2023): 19–31, <https://doi.org/10.35888/opinia.v3i2.46>.

<sup>4</sup> Khoiru Nisa et al., "Analisis Penyelesaian Sengketa Wakaf Dalam Perspektif Hukum Peradilan Agama Di Indonesia," *AL-HUKMU: Journal of Islamic Law and Economics* 03, no. 2 (2024): 79–92, <https://doi.org/10.54090/hukmu.208>; Merinda Cahya Muria Putri and Muttaqin Choiri, "Analisis Yuridis Dalam Penetapan Nomor: 0664/Pdt. P/2017/PA. PMK Sebagai Perlindungan Hukum Aset Wakaf Tidak Tercatat Di Madura," *An-Natiq Jurnal Kajian Islam Interdisipliner* 2, no. 1 (2022): 33–49, <https://doi.org/10.33474/an-natiq.v2i1.14295>.

<sup>5</sup> Azriati A, Jamaluddin J, and Hamdani H, "Penyelesaian Sengketa Tanah Wakaf Masjid (Studi Kasus Di Gampong Ulee Tanoh Kecamatan Tanah Pasir Kabupaten Aceh Utara)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 2, no. 3 (2019): 11–24, <https://doi.org/10.29103/jimfh.v2i3.4034>.

<sup>6</sup> Masyrifah Abasi, "Penyelesaian Sengketa Wakaf Di Kotamobagu: Analisis Dan Prospek," *Journal of Islamic Economics Law* 4, no. 1 (2024): 30–43, <https://doi.org/10.30984/ajiel.v4i1.3126>.

Kepenghuluan Sri Kayangan is not administratively recorded and what factors influence the unrecorded waqf land in the area. What is the impact on the sustainability of unrecorded waqf land management, and what recommendations can be given to increase public awareness of the importance of officially registering waqf land without ignoring local wisdom values?

Many studies have been conducted on issues surrounding waqf land, such as research by Maghfirah et al.<sup>7</sup> and Djafri et al.,<sup>8</sup> which discuss waqf disputes based on Law No. 41 of 2004 and Islamic Law. Then there is the research by Zafran and Khamim, which found that according to Islamic law, unregistered waqf is said to be valid as long as it meets the pillars and requirements, while according to positive law, waqf must be registered as a condition for waqf.<sup>9</sup> Then there was the research by Najmudin et al., which found that there was a conflict over waqf land from the heirs of the waqf because the land that had been waqf was not managed wisely by the *nadzir*, so that the land became a garbage dump and was getting smaller because it was taken over for the construction of residents' houses.<sup>10</sup> Then there was the research by Anwar, which found that there was uncertified waqf land for the mosque and had the potential for waqf *isbat* because there was no waqf certificate, which resulted in the heirs of the waqf wanting to sell the land.<sup>11</sup> Then there was the research by Masud and Irsal, which found that there was a waqf land dispute in the district. Sebar Kota Bengkulu and the results of his research stated that the settlement of waqf land disputes was carried out through non-litigation and litigation channels in accordance with Islamic law and positive law.<sup>12</sup> Then the research by Nuari and Fawzi found that the waqf in DKM Thoriqotul Hikmah Negla Village, Brebes Regency, followed Islamic law because it met the necessary conditions. However, in terms of procedure, there are still shortcomings, because all waqf assets are not officially recorded in accordance with the provisions of the Waqf Law No. 41 of 2004.<sup>13</sup>

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<sup>7</sup> Nurul Izzah Magfirah, Musyifikah Ilyas, and Erlina Erlina, "Kedudukan Wakaf Atas Tanah Wakaf Tanpa Sertifikat Di Kabupaten Bulukumba," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 2023, 600–615, <https://doi.org/10.24252/shautuna.vi.32076>.

<sup>8</sup> Muhammad Taufan Djafri et al., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah)," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 2, no. 3 (2021): 396–412, <https://doi.org/10.36701/bustanul.v2i3.402>.

<sup>9</sup> Zafran Nuridha and Moh Khamim, "Tinjauan Hukum Tanah Wakaf Yang Belum Tercatat Di PPAIW (Pejabat Pembuat Akta Ikrar Wakaf), KUA Kecamatan Margadana Kota Tegal," *Jurnal Studi Islam Indonesia (JSII)* 2, no. 1 (2024): 127–44, <https://doi.org/10.61930/jsii.v2i1.599>.

<sup>10</sup> Najmudin, Syihabudin, and Hasuri, "Penyelesaian Sengketa Wakaf Di Desa Kubang Puji Dalam Perspektif Hukum Positif Di Indonesia," *Mizan: Journal of Islamic Law* 5, no. 1 (2021): 43–56, <https://doi.org/10.32507/mizan.v5i1.893>.

<sup>11</sup> Khoiril Anwar, "Potensi Isbat Wakaf Menurut UU. No 41 Tahun 2004 (Studi Kasus Wakaf Masjid Tanpa Sertifikat Wakaf Di Desa Sumbarsari, Kecamatan Barong Tongkok, Kabupaten Kutai Barat)," *Jurnal Multidisiplin Ilmu Akademik* 1, no. 4 (2024): 342–56, <https://doi.org/10.61722/jmia.v1i4.2154>.

<sup>12</sup> Ibnu Masud and Irsal Irsal, "Penyelesaian Sengketa Tanah Wakaf Di Kecamatan Selebar Kota Bengkulu Dalam Perspektif Hukum Islam Dan Hukum Positif," *Al-Khair Journal: Management Education* 2, no. 1 (2022): 49–60, <https://doi.org/10.29300/al-khair.v2i1.2643>.

<sup>13</sup> Akmal Nuari and Ramdan Fawzi, "Analisis Hukum Islam Dan UU Wakaf Terhadap Aset Wakaf Tidak Tercatat: (Studi Kasus Pada DKM Thoriqotul Hikmah Desa Negla Kabupaten Brebes)," *Jurnal Riset Hukum Keluarga Islam*, 2024, 135–42, <https://doi.org/10.29313/jrhki.v4i2.5264>.

Previous research provides an overview that waqf land that is not officially registered is prone to conflict or waqf disputes from both the waqf party, the waqf heirs, the *nadzir*, and the community who own land around the waqf. So the researcher wants to see it from a different side, as happened in the Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan, where none of the waqf land is recorded, but there has been no conflict or waqf dispute until now.

## RESEARCH METHOD

This study uses a qualitative approach with a socio-legal study method. This approach integrates positive legal analysis with a sociological perspective to understand the reality that occurs in society.<sup>14</sup> A qualitative approach is used to help researchers explore various phenomena in depth and interpret the participants' experiences and views.<sup>15</sup> The research location focuses on Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan Kec. Tanjung Medan, Rokan Hilir Regency, Riau Province. This location was determined based on various considerations, including the largest number of waqf lands, the absence of records of the waqf land, and the absence of related conflicts or disputes.

The researcher has collected data in this study since 2021 to complete the thesis. The researcher developed previous research and completed the data needed since December 2024. Data was taken based on in-depth interviews, participatory observations, and document studies. Interviews were conducted with waqf administrators, waqifs, religious figures, village officials, and communities involved in waqf to understand their perceptions of waqf land registration. The study involved direct observation of the management and utilization conditions of unrecorded waqf land. We conducted a document study, which involved analyzing various documents related to waqf land, such as legal regulations, village administration data, and village archives. The study uses Soerjono Soekanto's legal awareness theory to look at how well the community understands and follows waqf land registration,<sup>16</sup> and Talcott Parsons' structural functional theory to explore how the lack of administration still allows for social harmony in the community.<sup>17</sup>

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<sup>14</sup> Fuad Luthfi et al., "Pendekatan Sosio-Legal Terhadap Fatwa: Analisis Kedudukan Dan Peran Fatwa MUI Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 4 (2024): 2226–45, <https://doi.org/10.62976/ijjel.v2i4.824>.

<sup>15</sup> Putri Amalia, Husaini Amaliyah Majid, and Izza As Sahrah, "Peran Teknologi AI Dalam Pengembangan Kemampuan Berpikir Kritis Mahasiswa," in *Prosiding Seminar Nasional Fakultas Tarbiyah Dan Ilmu Keguruan IAIM Sinjai*, vol. 3, 2024, 26–31, <https://doi.org/10.47435/sentikjar.v3i0.3134>; Nopita Lestari, Melda Tri Aprisa, and Desy Eka Citra Dewi, "Eksplorasi Strategi Pengumpulan Data Dalam Penelitian Kualitatif Dan Kuantitatif; Studi Perbandingan Metode Tesis Di Kalangan Akademisi," *Irsyaduna: Jurnal Studi Kemahasiswaan* 4, no. 3 (2024): 380–88, <https://doi.org/10.54437/irsyaduna.v4i3.1848>.

<sup>16</sup> Wahyu Saputra Faizal Amrul Muttaqin, "Budaya Hukum Malu Sebagai Nilai Vital Terwujudnya Kesadaran Hukum Masyarakat," *Al Syakhsiyyah: Journal Of Law and Family Studies* 1, no. 2 (2019): 187–207, <https://doi.org/10.21154/syakhsiyyah.v1i2.2026>.

<sup>17</sup> Andina Prasetya, Muhammad Fadhil Nurdin, and Wahyu Gunawan, "Perubahan Sosial Masyarakat Dalam Perspektif Sosiologi Talcott Parsons Di Era New Normal," *Sosietas: Jurnal Pendidikan Sosiologi* 11, no. 1 (2021): 1–12, <https://doi.org/10.17509/sosietas.v11i1.36088>.

## RESULTS AND DISCUSSION

### Reasons Why Waqf Land is Not Registered

Based on in-depth interviews with various sources related to waqf management in Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan, various factors have been verified that result in no recorded waqf land. These factors include the lack of knowledge of waqf law among the community, especially wakif and nadzir. The Waqf Pledge Deed Making Officer (PPAIW) does not provide socialization, and the community's waqf-making habit remains unrecorded.

The first factor is the lack of understanding of waqf law among the community, especially wakif and *nadzir*. In general, the community does not know the knowledge about correct waqf, including wakif and *nadzir*. The practice of waqf is carried out in a traditional way, namely following the habits, traditions, or customs that have been carried out and exemplified by their ancestors, such as making waqf with expressions based on mutual trust. The tradition of waqf as a very noble good deed from Allah does not have to follow the procedures for waqf according to applicable laws and regulations. Everything that is donated belongs to Allah absolutely and is not allowed to be taken by anyone, including the person who donated it.

In addition to oral waqf, the practice of waqf in society can also be done in writing, which is known by the wakif, *nadzir*, and people who are present when the waqf land is handed over as witnesses, without being declared before the local PPAIW to obtain AIW. Many people think that waqf does not need to be recorded in PPAIW, because waqf is a voluntary gift of property given as a means of getting closer to Allah SWT. All waqf land in the Pondok Kresek, Tanjung Sari, and Sri Kayangan regencies is not recorded in PPAIW. However, the community believes and believes that the waqf is valid and cannot be withdrawn. Researchers see that it is important for endowments to be officially registered with PPAIW to obtain AIW as authentic evidence. Endowments that are not registered with PPAIW do not have permanent legal status according to Law No. 41 of 2004 about Endowments, which states that endowments must be promised by the wakif and *nadzir*, and witnessed by two people in front of PPAIW.<sup>18</sup> After the endowment pledge is made, then the PPAIW will make an AIW and include all parties involved in the AIW.<sup>19</sup> After the endowment has an AIW, then the endowment is said to be valid and has authentic evidence.

The second factor is the lack of socialization from PPAIW. The position is absolutely given to the head of the local KUA, whose sole duty is to manage and regulate

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<sup>18</sup> Handoko. Wawancara. Interview by Muhammad Alwi Dalimunthe, Desember 9, 2024.

<sup>19</sup> Mulya Wibisono, "Peran PPAIW Dalam Sertifikasi Tanah Wakaf Masjid:(Studi Kasus Di KUA Diwek)," *Journal Sains Student Research* 2, no. 4 (2024): 632–47, <https://doi.org/10.61722/jssr.v2i4.2043>; Aisyah Ayu Musyafah et al., "Optimalisasi Kinerja Pegawai Pembuat Akta Ikrar Wakaf (PPAIW) Dalam Pelaksanaan Hukum Wakaf Tanah Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 154–71, <https://doi.org/10.14710/jphi.v5i1.154-171>; Gustina Gustina et al., "Wakaf Tunai: Strategi Dan Tantangan Di Ranah Minangkabau," *Jurnal Ilmiah Ekonomi Islam* 10, no. 2 (2024): 1340–48, <https://doi.org/10.29040/jiei.v10i2.13118>.

endowments at the sub-district level. The duties and authorities of the PPAIW of Tanjung Medan Sub-district include, first, receiving and notifying the community about the endowment pledge. Second, providing validation to the endowment *nadzir*, both individual *nadzir* and legal entity *nadzir*. Third, welcoming the Endowment Pledge. Fourth, providing AIW and APAIW. The fifth step involves fully safeguarding the efforts made to create endowment certificates. Sixth, raising awareness among the entire community about the importance of the Endowment Pledge Deed (AIW). The seventh task involves aiding in the resolution of any disputes that may arise within Tanjung Medan Sub-district.

The head of KUA Tanjung Medan Sub-district, as PPAIW said, stated that his party had conducted socialization with some of the community in Tanjung Medan Sub-district. Socialization was carried out during religious events such as the Prophet's birthday and *Isra' Mi'raj*, but the community in Tanjung Medan District did not respond well to the information; very few people came to the Tanjung Medan District KUA to make endowments, and people came to the KUA only to take care of marriage matters.<sup>20</sup>

Contrary to the information obtained by the researchers from several field respondents, all of them stated that the PPAIW has never conducted socialization with the community from the past to the present. The community considers that the PPAIW is passive and not active; the PPAIW only waits and hopes that the community will register their endowment land with the Tanjung Medan KUA.<sup>21</sup>

In the researcher's opinion, PPAIW can be considered guilty of a breach of contract. It is called a breach of contract because, among the types, there are four parts, according to Subekti, including: first, not carrying out what was agreed to be carried out. Secondly, it involves executing the agreed-upon task but not in the correct manner. Third, carrying out what was agreed upon but not on time. Fourth, carrying out what has been agreed upon is not allowed to be done.<sup>22</sup>

From the forms of default, the researcher believes that PPAIW/KUA Tanjung Medan District has committed default because it violated point (1), namely not doing what it promised to do. PPAIW did not provide counseling to each resident in Tanjung Medan District, so it is considered not to have carried out its duties and obligations properly. As a result, the community in Tanjung Medan District in general does not know how the endowment procedure should be carried out in accordance with applicable laws and regulations, especially the community in Pondok Kresek Village, Tanjung Sari Village, and Sri Kayangan Village.

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<sup>20</sup> Majemuk. Wawancara. Interview by Muhammad Alwi Dalimunthe, Desember 1, 2021.

<sup>21</sup> Irman Syahputra. Wawancara. Interview by Muhammad Alwi Dalimunthe, Desember 2, 2024.

<sup>22</sup> Irawati Rommer, Teng Berlianty, and Sarah Selfina Kuahaty, "Wanprestasi Dalam Perjanjian Makan Hasil Dusun," *LUTUR Law Journal* 4, no. 1 (2023): 1–9, <https://doi.org/10.30598/lutur.v4i1.10453>; Lala Alwi, Merry Tjoanda, and Pieter Radjawane, "Ganti Kerugian Akibat Wanprestasi Perjanjian Kerja Sama (Bagi Hasil) Kajian KUHPERDATA," *KANJOLI Business Law Review* 1, no. 2 (2023): 105–12, <https://doi.org/10.47268/kanjoli.v1i2.11618>; Viola Farica Azzahra et al., "Analisis Putusan Hakim Dalam Gugatan Wanprestasi Perjanjian Utang Piutang Modal Usaha," *Media Hukum Indonesia (MHI)* 2, no. 3 (2024), <https://doi.org/10.5281/zenodo.11627498>.

The third factor is ancestral customs. In general, the community carries out endowments traditionally because of the community's ignorance of the correct endowment according to applicable laws and regulations, so that the community follows the customs of their ancestors who have carried out endowments until now. The community assumes that a waqf that has been declared in writing or verbally with the knowledge of the wakif, *nadzir*, and witnesses is valid and sacred so that it cannot be challenged by anyone.<sup>23</sup> This understanding is still strongly held by some people.

In the author's opinion, although the community there considers that traditional waqf is valid and cannot be withdrawn, it would be better to also register it at the local PPAIW. In the next 10-20 years, the community may be more educated, so there may still be a gap to sue the waqf land, both the children of the wakif, the children of the *nadzir*, and even the community who owns land around the waqf land. Official registration of waqf land can provide legal certainty and legal protection for the waqf land.<sup>24</sup>

### **Social, Cultural and Legal Factors**

Among the reasons for the unrecorded 49 waqf lands in the community and the safety of the waqf land from conflict in the community are due to social and cultural factors and understanding of community law as follows:

The first factor to consider is the level of education within the community. According to data from the Central Statistics Agency of Rokan Hilir Regency in the 2024 period, the number of male residents in the Pondok Kresek Village was 19,525 people, while the number of female residents was 18,170 people, so the total population was 37,695. The majority of the population has an elementary-junior high school education background, especially their parents; even some people do not have an education background. The lack of parental education is, on average, only up to the elementary-junior high school level and not many high school levels. Likewise, based on data from Tanjung Medan District, there are no bachelor's graduates recorded. This indicates that there is still a lack of community education in Tanjung Medan District, including in the Pondok Kresek Village, Tanjung Sari Village, and Sri Kayangan Village.

With low public education, the majority of people living in the interior, and minimal socialization about endowment practices from PPAIW, it is natural that people do not know the endowment practices that are in accordance with the law. Therefore, the endowment practices that have been in place up until now remain traditional. The community is unaware of the effects of their endowment practices, so no one questions the endowment land.

The second factor to consider is the economic conditions of the community. Based on data from Tanjung Medan District. The average livelihood of the community is 16,832 farmers, not all of them as landowners but as laborers; 962 fishermen; 2,762 plantation

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<sup>23</sup> Ahmad. Wawancara. Interview by Muhammad Alwi Dalimunthe, Desember 13, 2024.

<sup>24</sup> Ahmad Hasyim, Khaerul Aqbar, and Kasman Bakry, "Status Kepemilikan Tanah Wakaf (Studi Perbandingan UU No. 41 Tahun 2004, KHI Dan Fikih Muamalah)," *AL-FIKRAH: Jurnal Kajian Islam* 1, no. 1 (2024): 46–66, <https://doi.org/10.36701/fikrah.v1i1.1653>; Adang Muhamad Nasrulloh, "Relevansi Kaidah Fikih Dalam Ketentuan Pencatatan Perwakafan Di Indonesia," *Istidal: Jurnal Studi Hukum Islam* 10, no. 2 (2023): 148–62, <https://doi.org/10.34001/ijshi.v10i2.5602>.

workers; and 709 livestock breeders. The majority of the community has a middle to lower middle class economy, including the community in Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan. With a middle and lower-middle-class economy, people focus more on earning a living and how to maintain their lives and households so that people do not really care about knowledge such as endowments that must be in accordance with laws and regulations.

Third, we examine the role of community/customary leaders. In Kepenghuluan Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan, the majority of people still uphold the values of their ancestors and traditional leaders. As a result, the policies made by traditional leaders are still considered sacred and must be followed. The advice of traditional leaders is still heard and appreciated by the community, including in terms of endowments, which have been practiced traditionally for generations, and thus the community continues this practice. The unrecorded endowment land until now and the absence of the community making withdrawals/conflicts over the endowment land are certainly inseparable from the role of traditional leaders, and the community still follows the teachings of their ancestors.

Soerjono Soekanto revealed that the community's level of legal awareness is determined by four factors, which include: A person's legal insight refers to their understanding of the consequences of certain actions. Legal understanding, meaning a person has knowledge and understanding of the need for these rules. Legal attitude aims to instill in each individual a tendency to evaluate a specific law. Legal behavior, namely each individual follows the existing rules. If each individual only has legal insight, it can be categorized that the level of legal awareness is still minimal, whereas if each individual in society already behaves towards the law, it is said that their legal awareness is high.<sup>25</sup>

Based on the indicators of legal awareness described, according to researchers, the legal awareness of the community is relatively minimal. This is determined by the level of education of the community; the economic conditions of the community are still relatively low, and they do not even know the Waqf Law. The community follows traditional waqf practices; it could be not because the community highly upholds customary values but because of the community's minimal understanding of waqf law.

Talcott Parsons expressed a structural functional theory based on the reality of nature that lives regularly with a system without chaos. Talcott Parsons believes that there are four important elements for all action systems, including: First, adaptation, namely a system, must be carried out in accordance with the environment and adapt the environment to what is needed. Second, the achievement of the intended purpose, namely the system, is required to provide understanding and achieve the intended purpose. Third, integration, namely the system, is required to regulate every relationship between the

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<sup>25</sup> Yayuk Sugiarti and Hidayat Andyanto, "Implementasi Program Keluarga Sadar Hukum Di Desa Patean Kecamatan Batuan," *Jurnal Jendela Hukum* 8, no. 1 (2021): 84–92, <https://doi.org/10.24929/fh.v8i1.1337>.



parts related to it. Fourth, pattern maintenance, namely, a system must complete, maintain, and improve.<sup>26</sup>

Based on Talcott Parsons' theory above, the researcher argues that based on the phenomena that occur in society, there is no chaos, conflict, or dispute because society inadvertently carries out the two elements of the theory expressed above, namely adaptation. Society has long practiced traditional waqf so that it no longer feels awkward to do the same thing, even though the existing regulations are less appropriate. Then, the achievement of goals. By carrying out traditional waqf, society has carried out its good intentions for waqf.

### **Impact on Waqf Land Management**

In general, every action taken has positive and negative impacts, including in the case of unrecorded waqf land. Based on the results of observations, there are several negative impacts in the management of waqf land, including the benefits that cannot be optimized and difficulties in supervision. The first impact is the lack of optimization for the benefits of waqf land. This is based on the data obtained in the Kepenghuluan Pondok Kresek, as in Table 1. The amount of waqf land in Tanjung Sari Village is as explained in Table 2. Meanwhile, in the Sri Kayangan Village, the amount of waqf land is explained in table 3.

Based on the data in table 1, the number of waqf lands in Kepenghuluan Pondok Kresek is 18. Table 2 shows that there are 17 waqf lands in Kepenghuluan Tanjung Sari. In table 3, it can be seen that the number of waqf lands in Kepenghuluan Sri Kayangan is 14. So the total is 49 waqf lands. Of the total 49 waqf lands, the waqf land designated for cemeteries is considered the least optimal in its management. This conclusion can be seen from the waqf lands designated for cemeteries, which are poorly maintained, such as those where there are wild grasses growing and making the cemetery waqf land unclean.<sup>27</sup> In addition, the cemetery waqf land is left alone, even though the waqf land is large. In fact, the waqf land can be used to plant trees that produce or vegetables that are temporary in nature so that they can produce without damaging the waqf land. It is not uncommon for the *nadzir* to come to the cemetery only when a death occurs.

The second impact is the difficulty of supervision. It is undeniable that unregistered waqf land is very non-transparent in terms of land area, building area, and income and expenses generated, including in the Pondok Kresek village. Thus, the PPAIW does not know how much waqf land there is, how much land has been donated, or what the waqf land is intended for, especially in terms of reports of income and expenses in managing the waqf land.

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<sup>26</sup> Masfi Sya'fiatul Ummah, "Tradisi Ngokoi Okan Perentehu Dayak Lawangan: Pendekatan Fungsional Struktural Talcott Parson," *Dharma Duta: Jurnal Penerangan Agama Hindu* 11, no. 1 (2019): 1–14, <https://doi.org/10.33363/dd.v16i1.136>; Rudy Kurniawan, Komputri Apria Santi, and Ahmad Sopian, "Pendidikan Dalam Perspektif Teori Sosiologi," *EDUCATE: Journal of Education and Culture* 2, no. 03 (2024): 412–23, <https://doi.org/10.61493/educate.v2i03.132>.

<sup>27</sup> M. Amin. Wawancara. Interview by Muhammad Alwi Dalimunthe, Desember 11, 2024

**Table 1. Percentage of Waqf Land in Pondok Kresek Village**

No.	Allocation of Waqf	Amount	Information
1.	Mosque	5	Not Recorded
2.	Prayer room	6	Not Recorded
3.	Cemetery	6	Not Recorded
4.	Madrasah Diniyah	1	Not Recorded
	Total Number:	18	

**Table 2. Percentage of Waqf Land in Tanjung Sari Village**

No.	Allocation of Waqf	Amount	Information
1.	Mosque	5	Not Recorded
2.	Church	7	Not Recorded
3.	Cemetery	5	Not Recorded
	Total Number:	17	

**Table 3. Percentage of Waqf Land in Sri Kayangan Village**

No.	Allocation of Waqf	Amount	Information
1.	Mosque	4	Not Recorded
2.	Prayer room	3	Not Recorded
3.	Cemetery	3	Not Recorded
4.	Educational institution	4	Not Recorded
	Total Number:	14	

The impact is that waqf land is difficult to supervise, and the status of the waqf land is still in doubt as to whether it is waqf land, grant land, private land, or other. If in the future there is a polemic, it will be difficult to maintain the waqf land, considering that the waqf land does not yet have strong legal evidence. However, the unregistered waqf land also has a positive impact. Waqf land can be managed traditionally by the community. Based on the information obtained, unregistered waqf land is more flexible because it is not based on existing regulations, which require waqf land to be designated according to the wishes of the waqif.

Unregistered waqf land can be used for urgent social interests. For example, waqf land that is used for a mosque—if the mosque has not been built— can be used temporarily for other purposes, such as a health post or religious event, the benefits of which can be felt by the wider community. That way, there is no prohibition on using waqf land outside its intended use.

### **Solutions to Increase Public Awareness of the Importance of Official Recording**

Based on the presentation above, the researcher proposes several solutions to raise public awareness about the importance of officially recording waqf land without neglecting cultural values, including:

First solution: conducting local-based outreach. Outreach should be carried out through educational programs involving local leaders, religious scholars, and community figures so that information about waqf can be more easily accepted. The materials for

outreach are designed in accordance with local cultural values to maintain respect for traditions, ensuring that the community feels valued and not blamed.

Second solution: Coordinating with religious institutions. Collaboration can involve mosques, prayer rooms, spiritual houses, *pesantren*, and study groups as formal educational channels related to waqf. This outreach emphasizes the importance of formally recording waqf as a manifestation of religious responsibility and the implementation of trust in accordance with legal provisions.

Third solution: simplifying administrative procedures. The National Agency for Waqf Management (PPAIW), the Ministry of Religious Affairs (Kemenag), the Indonesian Waqf Board (BWI), and the National Land Agency (ATR/BPN) need to simplify the process of waqf land recording, including the elimination of administrative costs. Furthermore, providing accessible and transparent digital technology for all members of society can facilitate and ease the process of recording both newly endowed and previously endowed waqf assets.

## **CONCLUSION**

Although waqf land in the Kepenghuluan of Pondok Kresek, Kepenghuluan Tanjung Sari, and Kepenghuluan Sri Kayangan is not officially recorded, there have been no conflicts or disputes as seen in other regions. Several factors contributing to the unrecorded status of the waqf land include a low understanding of waqf law among the community, a lack of outreach from the Waqf Deed Maker Official (PPAIW), and a strong customary belief that oral waqf is considered valid. While the community continues to rely on social norms and collective beliefs to protect waqf land, official recording is crucial to ensure long-term legal protection. Therefore, enhancing outreach and legal education is an essential step to guarantee the sustainability and protection of waqf land in the future.

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