

Changes in the status of waqf: Understanding of the Community Living in the Santiong Cemetery Land Waqf

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Abstract: This study investigates the contested status of *waqf* land designated for the Santiong Village Public Cemetery (TPU), which has been occupied by community members for housing, creating a conflict over its intended use. The research aims to analyze the legal status of this waqf land from an Islamic law perspective and to assess the resident community's understanding and perception of its function and empowerment principles. Using a quantitative method, data was collected via questionnaires distributed to a sample of 50 residents living on the waqf land. The research reveals two primary issues. First, the legal status of the waqf land is precarious; it lacks an official certificate from the Land Agency and relies solely on a Notary Deed held by the An-Nur Foundation, the acting *nazhir* (manager). Second, community understanding of waqf principles is low, with a majority of residents (66%) not providing empowerment benefits to the *nazhir*⁵. Despite these legal and social challenges, the study concludes that the waqf land possesses significant potential for future development. This potential is based on indicators such as the positive character of some respondents toward waqf and the prospective economic empowerment of the community.

Keywords: *Waqf*, The Santiong Village Public Cemetery, Change *Waqf* Status.

Abstrak: Penelitian ini mengkaji status sengketa tanah wakaf yang diperuntukkan bagi Tempat Pemakaman Umum (TPU) Desa Santiong, yang telah ditempati oleh warga untuk perumahan sehingga menimbulkan konflik atas tujuan peruntukannya. Riset ini bertujuan menganalisis status hukum tanah wakaf tersebut dari perspektif hukum Islam serta menilai pemahaman dan persepsi masyarakat setempat mengenai fungsi dan prinsip-prinsip pemberdayaannya. Dengan menggunakan metode kuantitatif, data dikumpulkan melalui kuesioner yang dibagikan kepada sampel sebanyak 50 warga yang tinggal di atas tanah wakaf.

Penelitian ini mengungkapkan dua isu utama. Pertama, status hukum tanah wakaf tersebut belum kuat; tanah ini tidak memiliki sertifikat resmi dari Badan Pertanahan dan hanya bersandar pada Akta Notaris yang dipegang oleh Yayasan An-Nur sebagai nazhir (pengelola). Kedua, pemahaman masyarakat mengenai prinsip-prinsip wakaf masih rendah, dengan mayoritas warga (66%) tidak memberikan manfaat pemberdayaan kepada nazhir. Meskipun menghadapi tantangan hukum dan sosial tersebut, penelitian ini menyimpulkan bahwa tanah wakaf ini memiliki potensi besar untuk pengembangan di masa depan. Potensi ini didasarkan pada indikator seperti karakter positif sebagian responden terhadap wakaf dan adanya prospek pemberdayaan ekonomi bagi masyarakat.

Kata Kunci: Wakaf, Pemakaman Umum Desa Santiong, Perubahan Status Wakaf.

A. Introduction

One of the religious institutions that contain social value is waqf, which has enormous benefits for the lives of Muslims. The institution of waqf is one of the manifestations of social care in Islamic society. The principle of property ownership in Islam is not allowed to be controlled only by a group of people. (QS. At-Taubah (9): 103). Further explanation of other verses Allah SWT did not create humans and jinn, except to worship Him (QS. Az-Zariat (51): 56), worship in the sense of serving Him as a whole, both the attitude of life and human life personally, as well as members and as a unity of creatures in general.

Perwakafan as a form of realization of worship in Islam has flourished and developed in Islamic society in Indonesia since the entry of Islam until today. There are many forms of waqf, some are in the form of land, buildings, plants and other waqf assets, all of which have existed in ancient times.

In ancient times before the arrival of Islam, there was a social institution that was almost the same as waqf known in Indonesia; as Daud Ali said in H. Suparman Usman., that "Before Islam came to this country, there was a social institution whose position was almost the same as waqf. To mention just a few examples,

permanent land in Lombok and heirloom (high) land in Minangkabau can be mentioned.¹ Therefore, it is understood that the Muslims in Indonesia regarding waqf are not only based on the Qur'an, the books of hadith and the books of fiqh, especially the Islamic fiqh of the Syafi'i school of thought, but also on custom. Many Indonesian Muslim customs originate from or are influenced by Islamic teachings, including those regarding waqf. Conversely, religious institutions derived from Islamic teachings have also been colored by Indonesian customs, especially by the customary principles of harmony, obedience and harmony in resolving disputes that occur regarding waqf.

The waqf land of the Santiong Village Public Cemetery (TPU), about 200 years ago the waqf land was given by Nya Tiong to the Shara A Board of the Makasar Selatan kampung mosque, to be guarded and managed properly. In 1950, the An-Nur mosque board was formed to protect and manage the TPU waqf land until now. In 1970 there was an occupation by community members, with the excuse of building a temporary house, and in 2006 the TPU manager contacted community members who had built houses in the TPU location to immediately leave the location of the TPU waqf land, because the TPU waqf land was only for the cemetery. The community members were ready to leave the location of the TPU waqf land on the grounds that there must be compensation from the Government, but the Government has checked the houses on the location of the TPU waqf land do not have certificates at all, because the land is only for the cemetery.²

There are 479 people living in the TPU area of Kelurahan Santiong, 203 men and 276 women, most of whom are victims of

¹ H. Suparman Usman, *Waqf Law in Indonesia*, Cet. I (Jakarta: Darul Ulum, 1994).

² "Wawancara," *Irvan, Wawancara*, 10 Oktober 2023, n.d.

the riots. The area of the TPU Santiong waqf land is 8.43 hectares. The West side borders Ngidi, the East side borders the highway, the North side borders Kali Mati, the South side borders the Chinese cemetery.³ Referring to this explanation, an assumption can be put forward that in the Islamic perspective on waqf in the Santiong Village TPU, it needs to be utilized according to its function, not for usurpation, meaning that it must really carry out the social functions that exist on the TPU waqf land. Therefore, the purpose of this research is to find out "The Status of Waqf Land in Santiong Village Public Cemetery from the Perspective of Islamic Law" in order to get clear answers about the status of waqf land in TPU according to existing laws, the purpose of waqf land in public cemeteries (TPU) can overcome social problems, and optimize the empowerment of waqf objects. So When the traditional provision and Islamic law provisions are contradictory, it is a must to negotiate and dialogue then preempt the main requirements on the philosophy of "*adat matoto agama, agama matoto kitabullah, and Sunnah Rasulullah*," so the tradition and Islamic law can get along in harmony.⁴

B. Method

This type of research uses a quantitative method using primary data in the form of interviews, questionnaires in data collection that contain structured questions and then converted into data. The questionnaire was distributed to respondents who lived in waqf land at Public Cemetery (TPU).⁵

³ Kelurahan Santiong, "Dokumen Kelurahan Santiong Kota Ternate" (Kota Ternate: Kelurahan Santiong Kota Ternate, 2023).

⁴ Abu Sahman Nasim, Nur Azizah Rahman, and Iin Junisti Hamid, "Saro-Saro: Relevance Of Custom Symbols And The Prohibition Of Hijab In Muslim Community Weddings In Jailolo Selatan District, West Halmahera Regency," *Justicia Islamica* 20, no. 2 (2023): 321–40.

⁵ Yamin & Kurniawan, *Partial Least Square Path Modeling* (Salemba: Salemba Infotek, 2011).

The population is said by Mordalis in Suharsini Arikunto, that the population is all the individuals who are the source of sampling.⁶ The population as the object of community research at the public cemetery (TPU) of Santiong Village amounted to 496 people with details of 207 men and 289 women. Research using samples is to represent individuals in the population or to represent the population in question.⁷ The sample used in this study is⁸ 10% of the total population, namely 48 people in this study consisting of the community, religious leaders, traditional leaders, and youth/students, which can represent the accuracy of the data needed in the study. The sample used in this study was 50 people whose details include; 30 people, 2 religious leaders, 2 traditional leaders and 16 youth/students in the study.

Data collection in this study is through techniques, a) Observation, b) Questionnaire, c) Interview, d) Documentation. The data analysis steps carried out consist of: 1) Literature analysis related to the concept of waqf, the concepts of experts, 2) Grouping data or displaying data, 3) Data reduction and 4) Data interpretation, namely interpreting and grouping all data so that there is no overlap and confusion due to differences.⁹

Furthermore, to analyze the data obtained through the questionnaire method, then it is processed and analyzed using a percentage test using a formula. as follows:

⁶ Suharsini Arikunto, *Prosedur Penelitian Suatu Pendekatan*, Cet. IX (Jakarta: Rineka Citra, 1992).

⁷ Husain Usman dan Purnomo Sutiadi Akbar, *Social Research Methods*, Cet. II (Jakarta: PT Aksara, 2000).

⁸ Masrin dan Sofyan Efendi Sangarimbun, *Metode Penelitian Survei*, Cet. I (Jakarta: PT Pustaka LP3 ES Indonesia, 1989).

⁹ Suharsini Arikunto & Cepi Saifuddin Abdul Jabar, *Evaluasi Program Pendidikan*, Cet I (Jakarta: Sinar Grafindo Offset, 2004).

$$p = \frac{f}{N} \times 100\%$$

Information:

p = percentage

f = frequency of respondents' answers

n = the number of people (respondents) who answered each for all question items.¹⁰

C. Results and Discussion

1. The Legal Basis of Waqf: A Qur'anic, Prophetic, and Legal Perspective

The concept of *waqf*, though not explicitly stated in the Qur'an, is widely interpreted by Islamic scholars as a noble practice rooted in Qur'anic injunctions about charity and the optimal use of wealth. Verses such as *Surah Al-Imran* (3:92) — “You will never attain righteousness until you spend from that which you love” — underscore the spiritual importance of donating valuable assets for the sake of Allah. Similarly, *Surah Al-Baqarah* (2:267) advises believers to give from the good things they earn and produce, encouraging not only charity but the best form of it. Although the term “*waqf*” itself is not directly mentioned, these verses are foundational to the development of *waqf* as a permanent form of benevolence, promoting long-term societal benefit and spiritual reward. These interpretations are consistent with the broader Islamic ethos of utilizing wealth for communal welfare and divine satisfaction.

Complementing the Qur'anic ethos, the Sunnah of the Prophet Muhammad ﷺ provides clearer textual and practical basis for *waqf*. One widely cited hadith is: *"When a person dies, all his deeds end except three: ongoing charity (ṣadaqah jāriyah), beneficial knowledge, or a righteous*

¹⁰ Sudiono, *Pengantar Statistik Pendidikan* (Jakarta: Rajawali, 1989).

child who prays for him." (Narrated by Ahmad).¹¹ Scholars have widely interpreted *ṣadaqah jāriyah* to include waqf, due to its enduring nature and continual benefit to society.¹² This hadith emphasizes the perpetual merit of charitable acts that outlive the donor, directly aligning with the principle of waqf which preserves assets and channels their benefit over time. This perpetuity distinguishes waqf from temporary forms of charity and establishes it as an enduring spiritual investment.

Further support for waqf is found in the practical example of Umar ibn al-Khattab, who, upon acquiring a valuable piece of land in Khaybar, consulted the Prophet ﷺ about its optimal use. The Prophet advised: *"If you wish, you may withhold the corpus and give its yield in charity."* Umar subsequently established it as waqf, stipulating that it could neither be sold, inherited, nor gifted, but only its proceeds used for the poor, travelers, and other beneficiaries (Narrated by Muslim).¹³ This example has served as the jurisprudential prototype of waqf, embedding within Islamic legal tradition the principle of *ḥabs al-ʿayn wa tasbīl al-manfaʿah* — restraining the asset and dedicating its benefits for charity. This prophetic endorsement solidified waqf as an institution that balances ownership with communal obligation.

In the context of Indonesian legal systems, waqf is firmly rooted in statutory regulations that reflect both Islamic values and modern legal principles. Government Regulation No. 28 of 1977 defines waqf as a legal act whereby an individual or legal entity permanently allocates a portion of their property for religious or public benefit.

¹¹ Ahmad Hanbal, *Musnad Al-Imam Ahmad Bin Hanbal*, 1st ed. (Kairo: Muʿasasah al-Risalah, 2001).

¹² Kumedi Jaʿfar, "Hukum Perkawinan Islam Di Indonesia," *Ayy-Syir'ah*, no. II (2021): 114.

¹³ Muslim Alhadjaj, *Sahib Muslim*, vol. 13 (Kairo: Dar Ihya' al-Kutub al-Arabi, n.d.).

This regulatory framework underscores the Islamic principle of perpetual charity while ensuring formal documentation and oversight.¹⁴ Law No. 41 of 2004 further expands upon this by delineating procedures and responsibilities associated with waqf, aiming to enhance transparency and effective management. These regulations demonstrate the Indonesian state's commitment to institutionalizing Islamic philanthropic principles in harmony with national legal standards.¹⁵

Moreover, the Basic Agrarian Law (UUPA) integrates waqf within the broader framework of land law. Article 14 paragraph (1) specifies that the government is responsible for allocating land for religious and sacred purposes, highlighting waqf as a legal institution worthy of state protection. Article 49 further affirms the right of religious and social institutions to use land for social services, reflecting the state's acknowledgment of waqf's vital societal role. This integration showcases the legal evolution of waqf from a purely religious practice to one that is governed, protected, and promoted by national laws, blending Islamic tradition with legal pragmatism.¹⁶

Finally, the Compilation of Islamic Law (KHI), enacted through Presidential Instruction No. 1 of 1991, serves as an additional legal foundation for waqf in Indonesia. It systematizes aspects of waqf, such as object registration, nazir roles, and supervisory mechanisms, reflecting an effort to harmonize religious doctrine with formal administrative practices. KHI ensures the consistent implementation of waqf in accordance with Islamic teachings and national interests, and underscores the role of religious authorities,

¹⁴ H. Adijani al-Alibij, *Waqf of Owned Land in Indonesia in Theory and Practice* (Jakarta: CV Rajawali, 1992).

¹⁵ Departemen Agama RI, "Guidelines for the Empowerment of Strategic Productive Waqf Land in Indonesia" (Jakarta: Departemen Agama RI, 2007).

¹⁶ Indonesia, *Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria*, vol. 144 (Ganung Lawu, 1960).

such as the Ulema Council, in guiding waqf governance. Collectively, these legal instruments illustrate how Indonesia has operationalized the concept of waqf, grounded in Qur'anic values and prophetic traditions, into a structured and enforceable legal institution that contributes to national development and religious life.¹⁷

2. Legal Status of Waqf Land in The Islamic Cemetery TPU

Waqf is for the benefit of mankind that Islam teaches the social function of waqf in social life. Waqf land for the Public Cemetery (TPU) of Santiong Village, about 200 years ago the waqf land was given by Nya Tiong to the Syara A Agency of the South Makassar village mosque, to be maintained and managed as it should. In 1950, the management of the An-Nur mosque was formed which was in charge of maintaining and managing the waqf land of TPU Santiong until now. In 1970 there was a raid by community members, on the pretext of building temporary houses, and in 2006 the TPU manager contacted the community members who had built houses at the TPU location immediately out of the TPU waqf land location, because the TPU waqf land is only for cemeteries. Residents are ready to leave the location of the TPU waqf land on the grounds that there must be compensation from the Government, but the Government has inspected the houses at the location of the TPU waqf land do not have any certificates at all, because the land is only for cemeteries.¹⁸

According to the explanation Hasan Ibrahim and Agil Bopeng., these people acted on behalf of the Board of Management of the An-Nur Mosque Maintenance Foundation, whose articles of association were established in a deed dated April 29, 1953, Number

¹⁷ Republik Indonesia, "Instruksi Presiden No 1 Tahun 1991 Tentang Kompilasi Hukum Islam" (1991).

¹⁸ "Wawancara."

12, made before Arnoldus Johannis Soentpjet, the deputy temporary notary at that time. In relation to the deed of amendment dated July 29, 1985, number 6 was made in front of Henki Zoujiera, the deputy temporary notary in Ternate at that time. Based on the Decree of the An-Nur Mosque Maintenance Foundation, number 01/XI/YMA/I/1997, dated October 29, 1997, concerning the Granting of Power of Attorney to the Chairman and Secretary of the An-Nur Mosque Foundation (Maintenance). This is the legal basis of the An-Nur Mosque Foundation, as the nazhir of the manager of the Public Cemetery (TPU) of Santiong Village.¹⁹

Therefore, what the heirs of the waqf said, that so far there has been no certificate from the Land Agency, there is only a Notary Deed and they consider it as a permanent legal entity for the An-Nur Foundation and as the legal basis for the waqf land of the Public Cemetery (TPU) of Santiong Village. The waqf land management agency (An-Nur Foundation) has been contacting the Ternate City Land Agency, but they said it was not their authority, but that the waqf problem was the authority of the Regional Office of the Ministry of Agriculture. And the Foundation has also contacted the Regional Office of the Ministry of Education, but until now there has not been one, there is only a Notary Deed.²⁰

The above view, it is understood that; The main purpose of the benefits of waqf land empowerment at TPU is community participation in empowering funds for development. This means that the legal status of the empowerment benefit is for the benefit of the wider community which in the language of ushul fiqhi is called "*Masbali al-ummah*", this trait is what distinguishes the benefits

¹⁹ Hasan Ibrahim and Agil Bopeng, "Wawancara Badan Pengurus Yayasan Pemeliharaan Masjid An-Nur Santiong" (Kelurahan Santiong Kota Ternate, 2020).

²⁰ "Wawancara."

of empowerment of waqf land for the Public Cemetery (TPU) of Santiong Village and donations to other communities.

3. Legal Status of Changes and Transfer of TPU Waqf Assets in Santiong Village

The important legal status in responding to and responding to the work of the Nazhir waqf of the Public Cemetery (TPU) of Santiong Village with the mechanism of benefits from empowerment. Apparently, the community is different in responding to and responding to the application of the benefits of empowerment. There are 3 assumptions of respondents as follows:

a. Responding because of religious emotional factors

Some of the respondents stated that they provided the benefits of waqf land and the empowerment of waqf land TPU Santiong Village because they felt that they were Muslims. The existence of TPU Santiong Village for them is part of the teachings of Islam. This is as stated by one of the respondents as follows:

"As a Muslim, at least I must participate in providing the benefits of empowerment of waqf land in this TPU, because the TPU of Santiong Village is a place for Muslims, so it must provide empowerment benefits there". (Darwin Marengkeng, Santiong Community Leader).

Understanding this statement as the nature and characteristics of most people, although perhaps among the people in terms of observing the teachings of Islam has not been fully implemented, but they realize that they are Muslims who on the one hand must participate in the development of enlivening the teachings of Islam. Respondents were 28 people or 28 percent. Although their number is quite large, but one thing that needs to be understood from them is that not all of the 28 people provide waqf land benefits to the Nazhir Public Cemetery (TPU) of Santiong Village, but because of religious emotional factors, they still support the development and respond to the existence of waqf land benefits in the TPU as stated by one of them:

"Even though I have not given the benefits of waqf land to Nazhir the manager of waqf land, I am very grateful, because there is already a Nazhir in the TPU of Santiong Village, as a Muslim I have to respond, even though I have not given Nazhir the benefits of waqf land".²¹

b. Responding due to the profit factor

It is almost certain that respondents who provide benefits to the Waqf Land of TPU Santiong Village because the profit factor is an economic demand that the pursuit of profit is the main target of all opportunities obtained. Moreover, when compared between the benefits of waqf land and making donations, the level of obtaining waqf land benefits and comfort from 50 respondents who were sampled, as many as 13 people who provided benefits because of the benefits of comfort and the benefits they obtained, for the community is a very valuable thing, because the community has benefited from the benefits of comfort.

c. Responding due to strong religious understanding factors

Doing something because of a strong religious understanding is one of the mirrors of a very high consciousness. That is what interests some respondents. For them, the benefits of empowerment and providing benefits to waqf land in TPU Santiong Village, are none other than a strong and deep understanding of religious teachings, even among them there are those who propose that: "If we as good Muslims, know a commandment, and are able to do it, and then do not do it, then it is a sin".²²

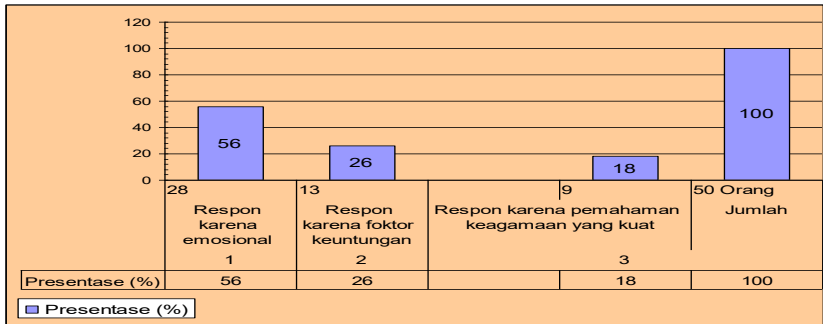
The three groups above, it is understood that; In general, they have abilities, insights, a good level of religious understanding, and an adequate level of education. However, there are still those who are reluctant to provide benefits to the waqf land of the Public

²¹ Fahrizal, "Wawancara Nazir" (Kelurahan Santiong Kota Ternate, 2020).

²² Samsul Alam, "Wawancara Warga Masyarakat" (Kelurahan Santiong Kota Ternate, 2020).

Cemetery (TPU) of Santiong Village, because their needs are very large while their income is adequate, even their needs are insufficient and other things. Therefore, a comparison of the legal status of the three responding community groups, in detail, can be seen in the following graph:

Source; Primary data after processing, 2020.²³



Graph 1 Public Response to Legal Status Benefits of Waqf Land TPU Santiong Village, 2020

Graph 1 shows that there are three forms of respondents which is one of their reasons and motivation to develop waqf land benefits in TPU Kel. Santiong, as many as 28 people or 56 percent who provide waqf land benefits because they claim to be Muslims, even though their religious teaching experience is not good, as many as 13 people or 26 percent who provide waqf land benefits because of their motivation to make a profit, Because they admit and realize that the profits they get from the results of the use of waqf land that have been considered safe from haram elements.

As for those who occupy waqf land with a strong religious understanding factor as many as 9 people or 18 percent, although this number is lower than the previous two groups, this group has an awareness and belief in religious teachings, especially regarding Waqf in Islam in TPU Santiong Village.

²³ Kelurahan Santiong, “Data Primer Kelurahan Santiong” (Ternate: Kelurahan Santiong, 2020).

The view mentioned above is understood that; the existence of TPU waqf land in Santiong Village using a benefit mechanism in accordance with the provisions of the law currently applicable in Indonesia. The form and existence of TPU waqf land in Santiong Village as a social institution with an empowerment benefit mechanism, although it is still new, but the community's response is quite encouraging.

Based on the views and responses of the community are very varied, this is due to different levels of understanding, mindset, insight, level of education, and understanding, but on the one hand, that the existence of the Santiong Village Public Cemetery (TPU) land has very good prospects in the future.

4. Utilization of Waqf Land TPU Islamic Cemetery in Santiong Village: Islamic Law Perspective

There are three public understandings of the purpose of using waqf land at the Public Cemetery (TPU) of Santiong Village, based on the results of the questionnaire distributed, namely:

a. Society that understands

Of the 50 respondents consisting of community groups of academics, entrepreneurs/traders, student employees and teachers, generally they approved the use of waqf land (TPU) in Santiong Village for the following reasons:

- 1) They can use part of the waqf land and can set aside some sustenance to the nazhir in accordance with Islamic law.
- 2) It is easier for them to understand the empowerment of Waqf based on Islamic sharia which implements a benefit system.
- 3) They are given the opportunity by the nazhir to develop their business in an Islamic way, Muslims are obliged to utilize and develop it in accordance with Islamic law.

In line with the three reasons mentioned above, one of the people who occupies waqf land stated:

"Actually, our existence in the waqf land of the Public Cemetery (TPU) of Santiong Village, which implements the benefits is a great opportunity for us to develop the waqf social system, especially regarding the issue of benefits in sharia".²⁴

b. People who lack understanding

The community that does not understand consists of academics, traders, teachers, and students, they put forward the following reasons:

- 1) They generally do not understand the mechanism for implementing benefits, empowering waqf land.
- 2) They do not understand about the empowerment of waqf land, they are not interested in providing benefits for the empowerment of waqf.
- 3) They have generally occupied waqf land for a long time.

One of them expressed his views so that he did not understand as follows:

"I do not know and understand the mechanism of the benefits of waqf land empowerment applied to the Nazhir (TPU) of Santiong Village. In my opinion, it is the same as renting in general, because we also receive the benefits of the rented place".²⁵

c. People who don't understand

The community group is generally ordinary people with low economic conditions and education levels. This group is also like the previous group, their reasons are quite simple:

- 1) They still need daily necessities instead of being given to nazhir.

²⁴ Tokoh Agama Sirajuddin, "Wawancara Tokoh Agama" (Kelurahan Santiong Kota Ternate, 2020).

²⁵ Tokoh Masyarakat Djafar Senen, "No Title" (Kelurahan Santiong Kota Ternate, n.d.).

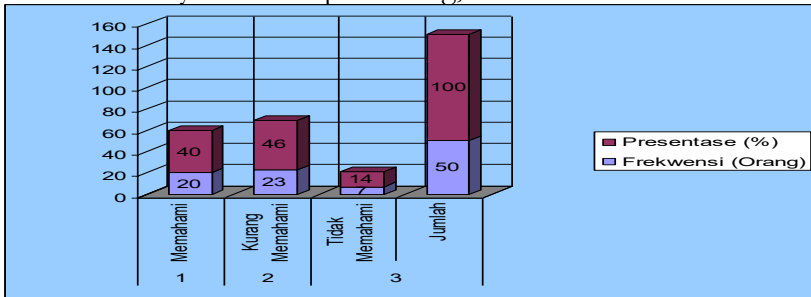
- 2) Do not understand the benefits of waqf empowerment
- 3) Not used to giving to the nazhir.

According to one of these groups, the following is stated:

"My knowledge about the use of waqf and Nazhir is not there, I have not been able to provide empowerment benefits to Nazhir, because it is still very difficult to meet the needs of life, but I want to do that, if I understand".²⁶.

Based on the description above, the percentage level of Public Understanding still seems to vary greatly, and is balanced between those who understand, lack of understanding and do not understand. The percentage rate can be seen in the following graph:

Source: Primary data after processing, 2020.²⁷



Graph 2 Level of Public Understanding of Benefit Empowerment Waqf Land at TPU Santiong Village, 2020

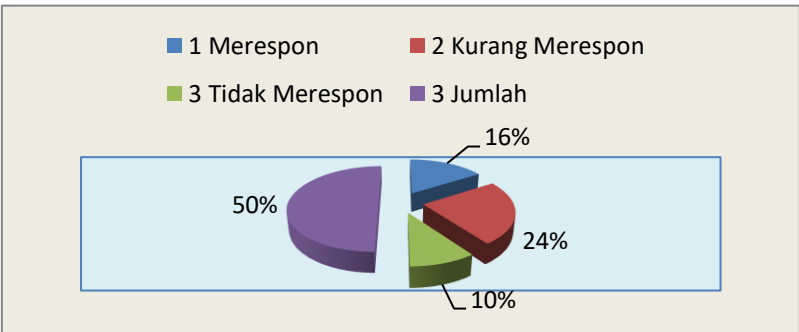
Based on graph 2, as many as 20 respondents and or 40 percent understood, while those who did not understand were 23 people or 46 percent, and those who did not understand as many as 7 people or 14 percent. It turns out that people who do not understand the benefits of empowering waqf land implemented by Nazhir are more dominant. In addition to the three community responses mentioned above, the same thing, also stated as something that responded,

²⁶ Djabar Harun, "Wawancara Guru Sekolah" (Kelurahan Santiong Kota Ternate, 2020).

²⁷ Kelurahan Santiong, "Data Primer Kelurahan Santiong."

poorly responded to and did not respond, this group can be seen in the following table:

Source: Primary data after processing, 2020.²⁸



Graph 3 The level of understanding of the community that responds to the Benefits of Waqf Land Empowerment at TPU Santiong Village

Based on graph 3 above, it shows that, as many as 16 respondents or 32 percent have responded to the benefits of waqf land empowerment, while those who have not responded and did not respond are 24 respondents or 48 percent and 10 people or 20 percent, respectively. It is understood that, the implementation of empowerment benefits by Nazhir at the TPU of Santiong Village, only a small part of the community responded. One of those who responded and has built a house on the Waqf TPU land of Santiong Village for 24 years said that:

"The existence of waqf land in the TPU of Santiong Village must be known, because we are Muslims, even though we do not have permission from the Village Head or the Waqf Management Agency (Nazhir) in writing, but we are given the opportunity to build a temporary house, therefore we must be aware and provide a little benefit for the empowerment of waqf land".²⁹

Meanwhile, those who do not respond give the following views:

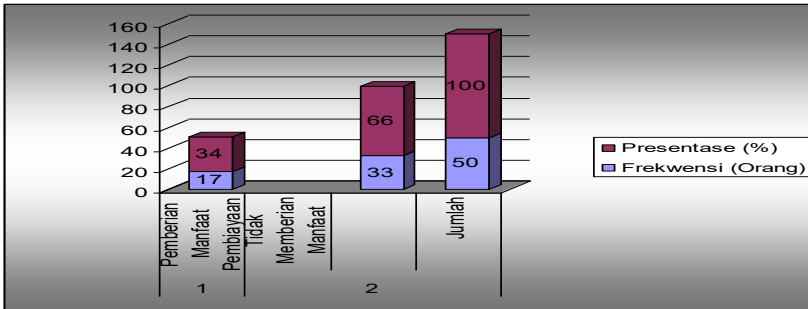
²⁸ Kelurahan Santiong.

²⁹ Abubakar Jumati, "Wawancara Masyarakat" (Kelurahan Santiong Kota Ternate, 2020).

"Frankly, I don't respond to the benefits of waqf land empowerment at TPU Santiong Village, but when it comes to donations, I know, because many of my families have made donations".³⁰

is how much the benefits of empowering waqf land by the community to provide some of the benefits to Nazhir. Only half of the community provides benefits to Nazhir waqf land in Santiong Village (TPU). It is clear in the following graphic:

Source: Primary data after processing, 2020.³¹



Graph 4 Respondents who claimed to provide Empowerment Benefits Waqf Land in Nazhir TPU Santiong Village, 2020

Graph 4 shows that out of 50 respondents, only 17 people or 34 percent provided waqf land empowerment benefits to Nazhir, while 33 people or 66 percent did not provide benefits for waqf land empowerment.

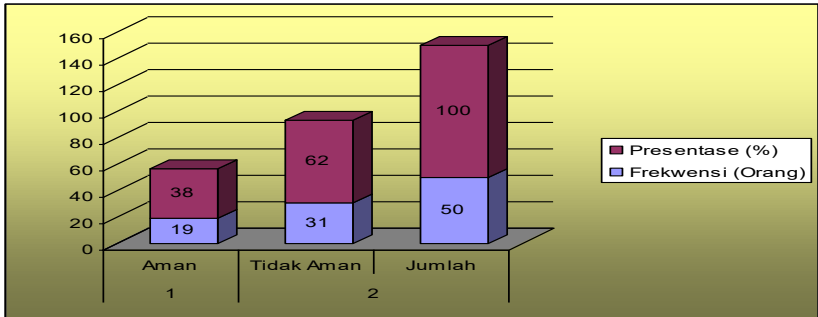
The data is understood that the public's interest in providing benefits for the empowerment of waqf land in Nazhir (TPU) is very low. In fact, when viewed from the side of the existence of Waqf Land in Santiong Village, many residents have broken through to occupy the land. Nazhir's hope for the benefits of empowerment by the community has not been realized. Feeling safe in occupying

³⁰ Hawa Abas, "Wawancara Masyarakat" (Kelurahan Santiong Kota Ternate, 2020).

³¹ Kelurahan Santiong, "Data Primer Kelurahan Santiong."

waqf land is one of the reasons or choice of respondents in utilizing the empowerment of waqf land at the Public Cemetery (TPU) of Santiong Village. It can be seen in the following graph:

Source: Primary data after processing, 2020.³²



Graph 5 Respondents who occupy waqf land and the Benefits of Empowerment for Feeling Safe, 2020

The data in graph 5, as many as 19 people feel safe from the benefits of empowerment or 38 percent, while the remaining 31 people or 62 percent do not feel safe. Respondents who do not feel safe, indeed, generally respondents have not provided empowerment benefits to waqf land in TPU Santiong Village.

Some of the respondents gave reasons, as stated by one of the respondents as follows:

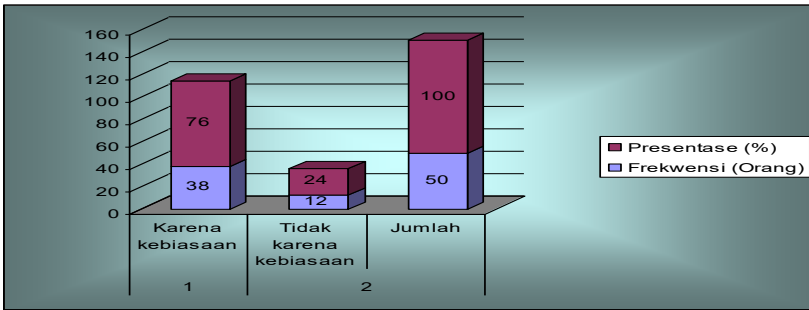
- 1) Not much is known about the benefits of empowering waqf land
- 2) More accustomed to giving donations to others, even decades
- 3) The mechanism for waqf land for Public Cemetery (TPU) in Santiong Village is convoluted and very difficult.³³

³² Kelurahan Santiong.

³³ Manaf Marengke, "Wawancara Masyarakat" (Kelurahan Santiong Kota Ternate, 2020).

The habit of giving donations to others by the respondents, indeed it is very difficult to divert attention and desire to turn to the benefits of waqf land empowerment, requires an understanding of the awareness of the respondents themselves. The number of respondents who are not used to providing waqf land empowerment benefits for reasons familiar with donations, can be seen in the table below:

Source: Primary data after processing, 2020.



Graph 6 Respondents who are not used to providing waqf land empowerment benefits for reasons due to the habit of donating, 2020

Graph 6 above shows that it is the habit factor that dominates the respondents for not providing the benefits of waqf land empowerment as many as 38 people or 76 percent of the 50 respondents determined. While 12 people or 24 percent are not due to habit factors. In each group of respondents gave the following statement:

a. Because of habits, the reasons are:

- 1) Feel safe
- 2) Obtaining facilities
- 3) It has not provided waqf benefits for empowerment for decades.³⁴

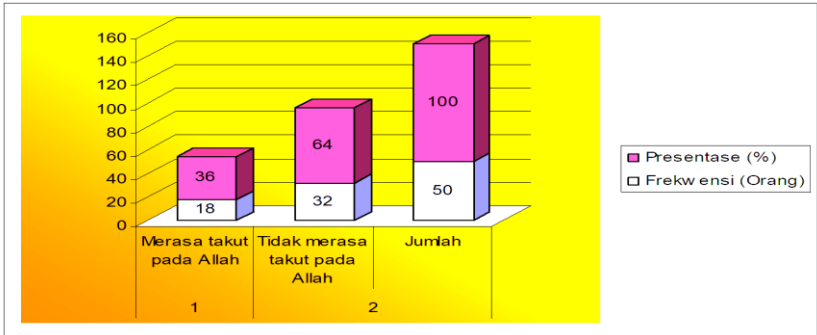
³⁴ Ikbah Abdullah, "Wawancara Masyarakat" (Kelurahan Santiong Kota Ternate, 2020).

b. Not because of habits, the reasons are:

- 1) Just for the benefit of waqf land
- 2) Feel safe
- 3) Keeping for temporary purposes.³⁵

Respondents who do not provide benefits to the empowerment of waqf land, do have very logical reasons, with the reasons stated above, it is a general view that on the other hand does not pay attention to religious factors. If the respondents consider the religious factor in the empowerment of waqf land, and also the awareness factor that the benefits of waqf land empowerment, then automatically, the waqf land (TPU) of Santiong Village is one of the options for social welfare empowerment. However, this is not the case, only some of the respondents stated that the benefits of empowering waqf land in the TPU are not the same. Respondents who feel fear of Allah by providing the benefits of empowering TPU waqf land as shown in the graph below:

Source: Primary data after processing, 2020.³⁶



Graph 7 Respondents who provide some benefits of empowering waqf land because they fear Allah

³⁵ Ahmad Sangaji, “Wawancara Masyarakat” (Kelurahan Santiong Kota Ternate, 2020).

³⁶ Kelurahan Santiong, “Data Primer Kelurahan Santiong.”

Graph 7 shows that, 18 people or 36 percent feel afraid of Allah, while 32 people or 64 percent are not afraid of Allah, It is understood that this number has not provided empowerment benefits to waqf land and has not provided benefits to Nazhir waqf land, in the view of respondents making donations to others is the same as providing empowerment benefits to Nazhir waqf land, The reason is because they both benefit.

This view was expressed by one of the respondents who said as follows:

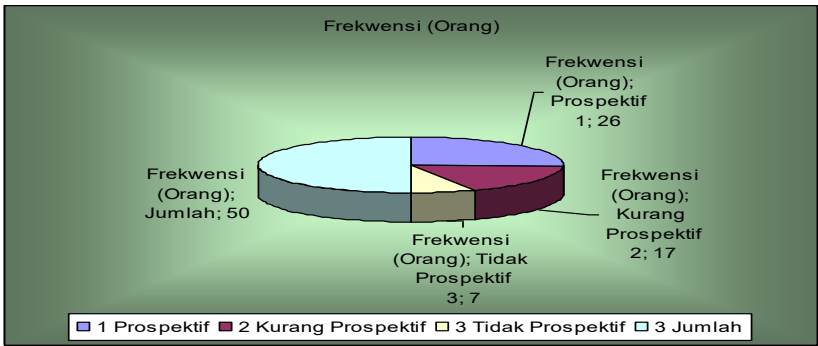
"In my opinion, making donations to others and providing some of the benefits of waqf land empowerment to Nazhir are all the same, because they all provide the same blessing benefits to the community".³⁷

The above view is understood that; There are still many people who think that waqf land in Santiong Village (TPU) is the same as us donating to other people who need it. So it is very natural if the community is strong in principle about the donations that the community gives, because the community is used to it, has made a lot of contributions. It is also understood that; The Nazhir (TPU) of Santiong Village should be able to provide understanding and awareness to the community through socialization, cooperation with religious/customary figures and Islamic organizations to convey various information about waqf land (TPU) of Santiong Village and others.

TPU waqf land in Santiong Village has prospects in the future as seen in the graph below:

³⁷ (Dade, "Wawancara Masyarakat" (Kelurahan Santiong Kota Ternate, 2020).

Source: Primary data after processing, 2020.³⁸



Graph 8 Respondents' views on the prospect of TPU waqf land in Santiong Village in the future, 2020

The response to the benefits of empowering waqf land at the Public Cemetery (TPU) of Santiong Village as stated above, is indeed a new thing. Moreover, the existence of waqf land in the midst of the people of Santiong Village in particular and the people of Ternate City in general has been hundreds of years, so to change the paradigm of the community who break through to occupy waqf land with the mechanism of the benefits of waqf land empowerment (TPU) in Santiong Village requires a process. Likewise, the attitude, views and understanding of the community with the empowerment benefit mechanism have begun to receive quite encouraging responses in the last few years.

Moreover, the potential of Muslims to develop waqf lands in accordance with Islamic sharia in the future is quite large. For this reason, the prospect of waqf land with an empowerment benefit mechanism is quite large. Lack of response, lack of understanding, not feeling fear of Allah and not providing empowerment benefits to Nazhir for waqf land, even though their number is quite large. But in the future prospects, one thing that needs to be understood from them is that not all of them have provided benefits for the empowerment of waqf land in the Santiong Village (TPU), but

³⁸ Kelurahan Santiong, "Data Primer Kelurahan Santiong."

because of religious emotional factors, the community feels that they as Muslims can support and participate in the implementation of Islamic law, supporting the benefit mechanism of waqf land empowerment managed by Nazhir in the Santiong Village TPU.

5. Changes in Waqf Status

Imam Ahmad is of the opinion that it is permissible to sell the waqf benmda, or exchange it, replace it, transfer it and use the proceeds of the sale to be used for the benefit of the waqf. Abu Tsaur, Imam Ahmad and Ibn Taymiyah, argued in (H. Suparman Usman, 1994: 39) that "it is permissible to sell, change, replace, or move waqf objects that are not functioning or are less functional (such as because they are damaged or for other reasons). This ability is good for the reason that the waqf object can function/benefit in accordance with the purpose of waqf, or to get greater benefits/better benefits for the interests of human beings in general.³⁹

In fact, Ibn Taymiyah advocated the exchange of waqf property if the exchange was better and more beneficial Zakiah Daradjat. Furthermore, he said that the exchange of waqf property has two things that encourage it, namely:

- a. The exchange is necessary (wish), such as waqf a horse for an army that fights jihad in the way of Allah, then the war is over and the horse is no longer needed. In this case, the horse can be sold and exchanged for buying a piece of land at the horse's selling price to build a mosque.
- b. The exchange is carried out for the benefit, such as selling the mosque and its land then buying it to another land and building another mosque on that land because the new place

³⁹ H. Suparman Usman, *Waqf Law in Indonesia*.

is considered better and strategic when compared to the first place.⁴⁰

This kind of exchange was carried out by Umar bin Khattab to the Kufa mosque as well as to the Masjid Haram. It can be understood that; The waqf can be sold, transferred, renovated or replaced to then rearrange its use for the public interest, in accordance with the purpose of the waqf. The main basis of this ability is that the object continues to provide benefits for mankind as long as religion allows.

D. Conclusion

The legal status of waqf land at the Public Cemetery (TPU) of the Islamic cemetery in Santiong Village, so far there has been no certificate from the Land Agency, there is only a Notary Deed as a permanent legal entity for the An-Nur Foundation and as the legal basis for the waqf land of the Public Cemetery (TPU) of Santiong Village. The waqf land management agency (An-Nur Foundation) has been contacting the Ternate City Land Agency, but they said it was not their authority, but the authority of the Regional Office of the Ministry of Land. And the Foundation has also contacted the Regional Office of the Ministry of Education, until now there has been no answer, there is only a Notary Deed. The purpose of using waqf land is empowerment and the benefits will be felt by the community as a necessity as well as a necessity. It is a must, because by providing benefits as active participation in development which is our collective responsibility. It is a necessity, because in providing these benefits, Nazhir offers his services for safety and welfare for beneficiaries of the

⁴⁰ Zakiyah Daradjat, *The Science of Fiqh Volume III*.

waqf land. The main purpose of the benefits of empowering waqf land at Public Cemeteries (TPU) is community participation in empowering funds for development.

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