

Pembatalan wakaf tanah yang tidak dituangkan dalam akta ikrar wakaf (analisis Putusan Mahkamah Agung Nomor 392 K/AG/2006) = Cancellation waqf land deed of pledge not poured in waqf analysis of supreme court decision number 392 K/AG/2006) / Anisa Ayu Rahmawati

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Abstrak

[Tesis ini membahas tentang kedudukan hukum wakaf tanah yang tidak dituangkan dalam akta ikrar wakaf apabila terjadi pembatalan wakaf. Wakaf tanah yang tidak dituangkan dalam akta ikrar wakaf memiliki kemungkinan yang besar timbulnya sengketa di kemudian hari. Pada saat wakif mengucapkan ikrar wakaf, maka wakif telah menyerahkan harta benda miliknya untuk selama-lamanya untuk kepentingan umum. Dengan demikian secara hukum wakif tidak lagi mempunyai hak atas harta yang menjadi objek wakaf pada saat wakif menyatakan ikrar wakaf. Metode Penelitian yang penulis gunakan dalam penelitian ini adalah yuridis normatif, yaitu penelitian yang hanya dilakukan dengan cara meneliti terhadap asas-asas baik tertulis ataupun tidak tertulis. Hasil penelitian menunjukkan bahwa wakaf yang tidak dituangkan dalam akta ikrar wakaf telah sah menurut Hukum Islam karena telah memenuhi syarat dan rukun wakaf, namun dari segi pembuktiannya pemberian wakaf tersebut tidak diakui menurut Hukum Negara karena tidak memenuhi ketentuan sebagaimana diatur dalam Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf. Berdasarkan Pasal 3 Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf, menyatakan bahwa wakaf yang telah diikrarkan tidak dapat dibatalkan.

.....This thesis discusses the legal position of waqf land that is not stated in the deed of pledge waqf endowments in case of cancellation. Waqf land that is not stated in the deed of pledge endowments have a greater chance of the emergence of disputes in the future. At the time of the oath wakif endowments, then wakif has submitted his property in perpetuity for the public interest. Thus legally wakif no longer has rights to the property which is the object of waqf upon wakif states pledge endowments. Research methods that I use in this research is normative, the research that is only done by examining the principles either written or unwritten. The results showed that the endowment is not stated in the deed of pledge endowments have been legal under Islamic law for having qualified and harmonious endowments, but in terms of charitable giving proof is not recognized by state law because it does not meet the requirements as stipulated in Law No. 41 Year 2004 on Waqf. Under Article 3 of Law No. 41 of 2004 on Endowments, stating that the endowments which He swore irrevocable., This thesis discusses the legal position of waqf land that is not stated in the deed

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