

LEGAL STATUS OF LAND RIGHTS CONTROLLED BY BUDDHIST RELIGIOUS FOUNDATIONS IN MEDAN CITY

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ABSTRACT

The purpose of this study is to analyze the mechanism in the process of ownership of the property rights on the foundation land, as well as the factors that obstruct the process of ownership of the property rights on the foundation land, and to analyze the legal remedies available to a foundation so that land owned by the foundation but certified in the name of an individual can be changed to the foundation's name. The approach used was the juridical-empirical method, which is legal research carried out by combining a juridical legal approach with empirical elements. Literature review and interviews were employed as data collecting or processing techniques in this study. The research results obtained are based on Law 28 of 2004 concerning Amendments to Law 16 of 2001 on Foundations at ensuring greater legal certainty and order. Therefore, the Management of the Buddhist Religious Foundation in Medan City is required to continue the process of transferring for rights or applying for rights at the National Land Office in an orderly manner. Based on Government Regulation No. 18 of 2021 on Right to Manage, Land Rights, Multi-story Housing Units, and Land Registration in Article 87 Paragraph 1, "Systematic Land Registration". As a result, Buddhist Religious Foundations can conduct Land Registration in line with the applicable legislation. Based on the Decree of the Directorate General of Buddhist Community Guidance No. 323 of 2017 on Registration of Buddhist Religious Institutions so that Buddhist Religious Foundations can be independently registered to the Ministry of Religious Affairs through the Organization and Houses of Worship Information System (SIORI) on the website: <https://sioribuddha.kemenag.go.id/>.

Keywords: Legal status, Land rights, Buddhist religious fondation.

INTRODUCTION

The philosophy of collectivity (togetherness), ownership, and mutual benefit of the earth, water, and natural resources contained therein is clearly stated by the founders of our country in the 1945 Constitution of the Republic of Indonesia in article 33 paragraph (3), Utilization of the earth, water, and natural resources contained therein as much as possible for the public interest and the common welfare (RI Government, 1945). Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), in the General Elucidation, the first paragraph states that in the Republic of Indonesia, the structure of its society including its economic system is especially of an agrarian nature, its earth, water and airspace (RI Government, 2004).

As a gift from God Almighty, it has an important function to build a just and prosperous society as aspired to. National agrarian law must embody the spiritual principles of the state and the ideals of the nation, namely Belief in the God Almighty, Humanity, Nationality, Democracy, Social Justice and in particular must be the implementation of the provisions in Article 33 of the Constitution and the Broad Guidelines of State Policy as stated in the Political Manifesto of the Republic of Indonesia on 17 August 1959 and expressly stated in the Presidential Speech on 17 August 1960 (RI Government, 2004).

Based on General Elucidation Number I Basic Regulations on Agrarian Principles Number 5 of 1960 (UUPA) The existence of individual rights and collective rights (ulayat) depends on legal politics and the interests of the state. As a consequence of the right to control the state which aims to be used for the maximum prosperity of the people, the state has the right to cancel or take rights to appropriate land and according to the provisions stipulated in the law (Rubaie, 2007). The term land acquisition is used in Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest, which was amended again by Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest. This is also used in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (RI Government, 2012).

Aristoteles said: "laws are something different from what regulates and express the form of the constitutions; it is their function to direct the conduct of the magistrate in the execution of his office and the punishment of offender" (Ali, 2012). Purnadi Purbacaraka and Soerjono Soekanto stated that there are several laws given by the community, namely law as science, namely knowledge that is systematically arranged based on the power of thought. This shows that law is a rule, norm, value, regulation which is a guideline or benchmark for appropriate or expected behavior. If viewed from the point of view of science, then the law is the knowledge that is systematically arranged based on the power of thought (Purbacakara & Soekanto, 1982).

Land procurement according to the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest is the activity of providing land by providing adequate and fair compensation for losses to the entitled party (Government, 2012). Land procurement law is a set of norms, rules, or values, both written and unwritten which regulates the activity of providing land for development for the public interest by releasing the legal relationship between the right holder and his land by being given adequate compensation (Harsono, 2009).

The foundation will be owned as many business entities are established. The business entity is the real living capital of the foundation, religious foundations have the right to own land with ownership status. Government Regulation No. 38/1963 Article 4 stipulates "Religious and social bodies may have property rights over land used for purposes related to religious and social enterprises." A legal entity foundation consisting of assets that are separated and intended to achieve certain goals in the social, religious, and humanitarian fields (RI Government, 1963).

The implementation of property rights applications can be obtained by Buddhist religious foundations but has not been widely implemented, because regulations require a letter of appointment of legal entity foundations that can own property rights from the Ministry of Agrarian and Spatial Planning/National Land Agency which is very difficult to obtain. If the property rights granted in the name of the foundation are to be transferred partially or completely to other parties, permission must be obtained from the land office, because ownership obligations are recorded in the land book and the certificate concerned.

The land sector, in this case, the National Land Agency (BPN), should be reviewed and improved to further realize social justice in the control, use, ownership, and utilization of land rights for the welfare and prosperity of the Indonesian people. As well as improving the service communication system to facilitate the management of deed changes. Foundation managers who come to the land office to manage land for the sake of religious and social business should provide a property rights policy to the foundation so that the foundation is free to use its ownership to build its business in the religious and social fields.

Paul Hadisuprpto said that legal studies or legal research is a function of the development of legal science itself and cannot be separated from or very closely related to the development of society. Until now, several legal concepts have been put forward by people in the context of historical developments in countries. Law as universal principles of morality and justice, law as positive rules that are generally accepted in abstracto, for a certain time and area, it is published as a product of political power which is identical with the designation of national law (state), law as judges' decisions in concerto in the judicial process as part of the legal effort to settle cases, law as a real and functional social institution in the system of people's lives, both in the process of restoring order and resolving disputes and law as symbolic meanings as manifested and from the actions and interactions of citizens (Hadisuprpto, 2009).

The purpose of the Basic Regulations on Agrarian Principles is to lay the foundations for the preparation of national agrarian law, which will be a tool to bring prosperity, happiness, and justice to the state and people, especially the peasants in the framework of a just and prosperous society, to lay the foundations for establishing unity and simplicity in land law as well as to lay the foundations to provide legal certainty regarding land rights for the whole people (Arba, 2016).

Some of the laws and regulations as the legal basis for land procurement for development in the public interest are as follows:

- The 1945 Constitution of the Republic of Indonesia, Article 33 paragraph 3;
- Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), contained in articles 6 and 18;
- Regulation of the Minister of Home Affairs Number 15 of 1973 concerning Provisions Regarding Procedures for Land Acquisition;
- Presidential Decree No. 55/1993 on Land Procurement for Development in the Public Interest;
- Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest;
- Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Procurement for Development in the Public Interest;

- Regulation of the President of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest;
- Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Procurement;
- Presidential Regulation of the Republic of Indonesia Number 40 of 2014 concerning Amendments to Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest;
- Presidential Regulation of the Republic of Indonesia Number 99 of 2014 concerning the Second Amendment to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest.

The basis for democracy and deliberation is reflected in Article 18 in conjunction with the provisions of Law Number 20 of 1961 concerning Revocation of Land Rights and Presidential Regulation Number 65 of 2005 concerning Land Procurement for the Implementation of Public Facilities Development by the Government which was replaced by Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.

The main philosophic al basis for land procurement for development in the public interest is reflected in the Principles of Pancasila. Religious facilities are one of the public interests that require land. Land procurement for the construction of religious facilities can be done with voluntary donations by the rights holders through property land endowments, as well as through government land procurement. The basic religious values as one of the state's basic principles are reflected in the First Principle of Pancasila embodied in the provisions of Article 1 paragraph (2), stipulating that the entire earth, water, and airspace, including the natural resources contained therein, in the territory of the Republic of Indonesia as the gifts of God Almighty are the earth, water, and airspace of the Indonesian nation and constitute the wealth of the nation. Article 5 stipulates that the agrarian law which applies to the earth, water, and airspace is customary/adat law as far as it is not in conflict with the national and state's interests based on the unity of the nation, with Indonesian socialism as well as with the regulations stipulated in this law and with other legislative regulations, all with due regard to the elements based on the religious law Land rights for religious purposes and other sacred purposes, based on belief in the Almighty God and Article 49 concerning land rights for sacred and social purposes, are recognized and protected regarding their ownership rights to land for religious institutions as well as land endowments (waqf). Article 49 stipulates:

- The right of ownership on the land of religious and social institutions as far as it is utilized for purpose in the social and religious fields is recognized and protected. Those institutions are also guaranteed to obtain sufficient land or buildings and for undertakings the social and religious fields;
- For religious and other sacred purposes as meant in article 14, land under the direct control of the state may be granted with the right of use;
- Land for religious purposes (waqf) is protected and regulated by government regulation (Maria & Soemardjono, 2001).

The issue of the state ensuring the wellbeing of the people is fundamental to the welfare state. Regarding this, Jurgen Habermas argues that guaranteeing the welfare of all people

is the main objective of a modern state. Furthermore, according to Habermas, the assurance of all people's welfare is realized in the protection of the risk of unemployment, accident, illness, old age, and death of the breadwinner must be covered largely through welfare provisions of the state (Poggi, 1992).

The Unitary State of the Republic of Indonesia also adheres to the concept of the Welfare State. This was emphasized by the Pioneers of Independence and the Founders of the Unitary State of the Republic of Indonesia that the democratic state to be established as a "Welfare State" (walvaarstaat) not a "Night Guard State" (nachtwachterstaat). In this choice regarding the conception of the Indonesian welfare state, Moh. Hatta used the term "Management State" (Yamin, 1959).

The principle of Welfare State in the 1945 Constitution is discussed in depth in several articles, especially those relating to socio-economic aspects. With the inclusion of welfare issues in the 1945 Constitution of the Republic of Indonesia, according to Jimly Asshiddiqie, the Indonesian Constitution can be called an economic constitution and even a social constitution as also seen in the constitutions of Russia, Bulgaria, Czechoslovakia, Albania, Italy, Belarus, Iran, Syria and Hungary. Furthermore, according to Jimly, the content style stated in the 1945 Constitution appears to be influenced by the method of writing constitutions that are typically seen in socialist countries (Asshiddiqie, 2005).

Grammatically, "kepastian" or certainty comes from the word "pasti" or definite which means it is fixed, must and definite. The Great Dictionary of the Indonesian Language, the definition of certainty is a definite (fixed) matter, rule, provision, while the notion of law is a legal instrument of a country that is able to guarantee the rights and obligations of every citizen. So, legal certainty is a provision or stipulation made by the legal apparatus of a country that can provide guarantees for the rights and obligations of every citizen (Departemen Pendidikan dan Kebudayaan, 1997).

In the formation of the rule of law, the main principle is built to create clarity on the rule of law, this principle is legal certainty. The idea of the principle of legal certainty was originally introduced by Gustav Radbruch in his book entitled "einführung in die rechtswissenschaften". Radbruch wrote that in law there are 3 (three) basic values, namely: 3 (1) Justice (Gerechtigkeit); (2) Purposiveness (Zweckmassigkeit); and (3) Legal Certainty (Rechtssicherheit) (Julyano, 2019).

According to Maria S.W. Sumardjono about the concept of legal certainty, namely that "normatively, legal certainty requires the availability of laws and regulations that are operational and support their implementation. Empirically, the existence of laws and regulations needs to be implemented consistently and consequently by the supporting human resources" (Pratama, 2009).

Business entities that are legal entities can be divided into profit-oriented legal entities, such as Limited Liability Companies and Cooperatives and non-profit legal entities which include Foundations and Associations. Currently, Indonesia only recognizes 2 (two) types of social legal entities: Foundations and Associations. Despite their similarities, mainly that they are both involved in the social field, the two legal bodies are not the same. The Foundation itself already has the Law of the Republic of Indonesia Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (hereinafter referred to as the Foundation Law) as the basis for establishing a Foundation. Meanwhile,

Associations are still regulated based on Staatsblad 1870 Number 64 (hereinafter referred to as Stb. 1870-64) and Articles 16531665 of the Civil Code (KUHPer). In addition to these regulations, the Staatsblad 1939 Number 570 in connection with 717 regulates the Indonesian Association (Inlandse Vereniging) which at first only applied to the Java-Madura area, then refined by Staatsblad 1942 Number 13 jo Number 14 applies to all parts of Indonesia.

Foundations as legal entities are different from other legal entities such as Limited Liability Companies or Cooperatives; foundation does not have members or a limited liability company. Foundations have organs where for a foundation to be valid as a legal entity, it must go through 3 (three) processes, namely the process of establishment, ratification, and announcement. As for the old foundation, the validity of the foundation as a legal entity is if the articles of association have been adjusted to the provisions of the Foundation Law (Widyadharma, 2001).

According to Sudikno Mertokusumo, land rights are rights to a certain part of the earth's surface, which is limited, has two dimensions with length and width. As a basic right, land rights are very meaningful as a person's existence, freedom and dignity as a human being. Land rights can be owned and granted to individuals or groups of people together with Indonesian citizens, this is following the legal basis for the provisions of land rights as stipulated in Article 4 paragraph (1) of the UUPA. The personal nature of land rights refers to the authority of the right holder to use or benefit from the land in question for his interests and to meet his personal and family needs, this is following the provisions in Article 9 paragraph (2) of the UUPA which stipulates "every Indonesian citizen, whether men or women has equal opportunity to obtain a certain right on land to acquire its benefits and yields thereof for himself/herself as well as his/her family". The words "to acquire its benefits and yields thereof for himself/herself as well as his/her family" indicate the personal nature of land rights in the concept of the National Land Law (Harsono, 2009).

METHODOLOGY

The research data used is secondary data where the data is obtained from the literature and explanations from academics and practitioners in related fields.

According to Gregory Churchill (1978), in legal research, the use of secondary data includes materials, which, when viewed from the point of view of their binding strength, are various legal materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials (Abdulkadir, 1993).

Data collection or processing techniques used are literature review techniques (study document) and interviews. The technique is carried out by collecting legal materials that are considered to be related to the problems in the research, then classifying the legal materials collected by conducting interviews with related sources. The procedure for conducting this research is by analyzing documents and interviews with resource persons where it can support the search for literature data.

The author conducts face-to-face interviews. The research analyzed is intended as an explanation and interprets logically systematically with an empirical juridical approach.

Systematic logic towards a deductive inductive way of thinking. The data that has been collected in the study (both primary and secondary data) will be analyzed using qualitative analysis so that it is possible to produce conclusions.

According to Soerjono Soekanto, qualitative data analysis is a research procedure that produces descriptive data analysis, namely what is stated by the respondent in writing as well as real behavior, researched, and studied as a whole (Abdulkadir, 1993).

DISCUSSION

A. Setting the Legal Status of Land Rights Controlled by Buddhist Religious Foundations

Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations contains Article I of several provisions, general explanations, and explanations of articles in Law Number 16 of 2001 concerning Foundations, amended as follows: Provisions of Article 3 substance remains and the explanation is changed so that the formulation of the explanation of Article 3 is as stated in the Elucidation of Article by Article Number 1 of this Law. The provisions of Article 5 are amended so that it reads as follows: "Article 5 (1) Foundation assets, whether in the form of money, goods, or other assets obtained by the Foundation based on this Law, are prohibited from being transferred or distributed directly or indirectly, either in the form of salaries, wages, or honorariums, or other forms can be valued in money to the Trustees, Management and Supervisors.

Exceptions to the provisions as referred to in paragraph (1) may be stipulated in the Articles of Association of the Foundation that the Management receives a salary, wages, or honorarium if the Foundation Management is not the founder of the Foundation and is not affiliated with the Founder, Trustees, and Supervisors; carry out the management of the Foundation directly and fully. (3) The determination of the salary, wages, or honorarium as referred to in paragraph (2) shall be determined by the Trustees following the ability of the Foundation's assets."

The provisions of Article 11 are amended so that it reads as follows: "Article 11 (1) Foundations obtain legal entity status after the deed of establishment of the Foundation as referred to in Article 9 paragraph (2) is approved by the Minister. (2) To obtain the approval as referred to in paragraph (1), the founder or his proxies shall apply to the Minister through the Notary who made the deed of establishment of the Foundation. (3) The notary as referred to in paragraph (2) is obligated to apply for approval to the Minister within a period of no later than 10 (ten) days from the date the foundation deed was signed.

In granting ratification of the deed of establishment of the Foundation as referred to in paragraph (1), the Minister may request consideration from the relevant agencies within a period of no later than 7 (seven) days as of the date of receipt of a complete application. (5) The relevant agencies as referred to in paragraph (4) are required to submit answers within a period of no later than 14 (fourteen) days from the date the request for consideration is received. (6) Application for legalization of the foundation deed is subject to a fee, the amount of which is stipulated in a Government Regulation." The provisions of Article 12 are amended so that they read as follows: "Article 12 (1)

Application for approval as referred to in Article 11 paragraph (2), shall be submitted in writing to the Minister. (2) The approval of the application as referred to in paragraph (1) shall be granted or rejected within a period of no later than 30 (thirty) days from the date of receipt of a complete application. (3) If a consideration as referred to in Article 11 paragraph (4) is required, the approval is granted or rejected within a period of no later than 14 (fourteen) days from the date the response to the request for consideration from the relevant agency is received.

If the response to the request for consideration is not received, approval is given or rejected within a period of no later than 30 (thirty) days from the date the request for consideration is submitted to the relevant agency. Between Article 13 and Article 14 is inserted 1 (one) article, namely Article 13A, so that it reads as follows: "Article 13A Legal actions carried out by the Management on behalf of the Foundation before the Foundation obtains legal entity status are the responsibility of the Management jointly and severally." The provisions of Article 24 are amended, so that it reads as follows: "Article 24 (1) Deed of the establishment of a Foundation that has been legalized as a legal entity or amendments to the Articles of Association that has been approved or notified must be announced in the Supplement to the State Gazette of the Republic of Indonesia. (2) The announcement as referred to in paragraph (1) shall be made by the Minister within a period of no later than 14 (fourteen) days from the date on which the deed of establishment of the Foundation is ratified or amendments to the Articles of Association are approved or accepted by the Minister. (3) The procedure for the announcement is carried out following the provisions of the legislation. (4) The announcement as referred to in paragraph (1) shall be subject to a fee, the amount of which shall be determined by a Government Regulation."

The provisions of Article 32 are amended so that it reads as follows: "Article 32 (1) Foundation management is appointed by the Trustees based on the decisions of the Trustees meeting for 5 (five) years and may be reappointed. (2) Foundation management can be reappointed after the first term of office ends for the term of office as referred to in paragraph (1), which is determined in the Articles of Association. (3) The composition of the Management shall at least consist of: a. a chairman; b. a secretary; and c. a treasurer. (4) If the Management as referred to in paragraph (1), while carrying out their duties, performs actions which the Trustees consider detrimental to the Foundation, then based on the decision of the Trustees meeting, the Management may be dismissed before the end of the management period. (5) Further provisions regarding the composition, procedures for the appointment, dismissal, and replacement of the Management are regulated in the Articles of Association." The provisions of Article 33 are amended so that it reads as follows: "Article 33 (1) In the event of a replacement of the Management, the Manager who replaces it shall notify the Minister in writing.

The notification as referred to in paragraph (1) must be submitted within a period of no later than 30 (thirty) days from the date of replacement of the Foundation Management. The provisions of Article 34 are amended so that it reads as follows: "Article 34 (1) Foundation management can be dismissed at any time based on the decision of the Trustees meeting. (2) If the appointment, dismissal, and replacement of the Management are not following the provisions of the Articles of Association, at the request of the interested party or at the request of the Prosecutor's Office in terms of representing the public interest, the Court may cancel the appointment, dismissal, or replacement within a period of no later than 30 (thirty) days from the date the cancellation request is

submitted.” The provisions of Article 38 are amended, so that it reads as follows: “Article 38 (1) Foundations are prohibited from entering into agreements with organizations affiliated with the Foundation, the Trustees, Management and/or Supervisors of the Foundation, or anyone working for the Foundation. (2) The prohibition as referred to in paragraph (1) shall not apply if the agreement is beneficial for the achievement of the Foundation's aims and objectives.” Article 41 was removed.

The provisions of Article 44 are amended, so that it reads as follows: “Article 44 (1) Foundation supervisors are appointed by the Trustees based on the decisions of the Trustees meeting for 5 (five) years and may be reappointed. (2) Foundation supervisors may be reappointed after the first term of office ends for the term of office as referred to in paragraph (1), which is determined in the Articles of Association. (3) Further provisions regarding the composition, procedures for the appointment, dismissal, and replacement of Supervisors are regulated in the Articles of Association.” The provisions of Article 45 are amended, so that it reads as follows: “Article 45 (1) In the event of a replacement of the Supervisor, the Management shall notify the Minister in writing. (2) The notification as referred to in paragraph (1) must be submitted within a period of no later than 30 (thirty) days from the date of replacement of the Foundation Supervisor.” 15. The provisions of Article 46 are amended, so that it reads as follows: “Article 46 (1) Foundation supervisors can be dismissed at any time based on the decision of the Trustees meeting.

If the appointment, dismissal, and replacement of the Supervisor are not in accordance with the provisions of the Articles of Association, at the request of the interested party or at the request of the Prosecutor's Office in terms of representing the public interest, the Court may cancel the appointment, dismissal, or replacement of the Supervisor within a period of no later than 30 (thirty) days from the date the cancellation request is submitted.” 16. The provisions of Article 52 are amended, so that it reads as follows: “Article 52 (1) Summary of the Foundation's annual report shall be announced on the bulletin board at the Foundation's office. (2) Summary of financial statements which are part of the summary of annual reports as referred to in paragraph (1), must be announced in Indonesian language daily newspapers for Foundations that: a. obtain State assistance, foreign assistance, and/or other parties in the amount of Rp. 500,000,000.00 (five hundred million rupiah) or more, within 1 (one) financial year; or b. has assets other than waqf assets in the amount of Rp. 20,000,000,000.00 (twenty billion rupiahs) or more. (3) The financial report of the Foundation as referred to in paragraph (2) must be audited by a Public Accountant. (4) The results of the audit of the financial statements of the Foundation as referred to in paragraph (3) shall be submitted to the Trustees of the Foundation concerned and a copy thereof to the Minister and related agencies.

The financial statements are prepared in accordance with the applicable Financial Accounting Standards.” The provisions of Article 58 are amended, so that it reads as follows: “Article 58 (1) The management of each Foundation that will merge and who will accept the merger shall prepare a proposal for the merger plan. (2) The proposed merger plan as referred to in paragraph (1) shall be stated in the draft deed of the merger by the Management of the Foundation that will be merging and will accept the merger. (3) The draft deed of merger must obtain approval from the Trustees of each Foundation. (4) The draft deed of merger as referred to in paragraph (3) shall be stated in the deed of merger drawn up before a Notary in the Indonesian language.” The provisions of Article 60 are amended, so that it reads as follows: “Article 60 (1) In the event that the merger of

a Foundation is followed by an amendment to the Articles of Association requiring the approval of the Minister, then the deed of amendment to the Articles of Association of the Foundation must be submitted to the Minister for approval accompanied by the deed of merger. (2) The approval as referred to in paragraph (1) shall be granted within a period of no later than 60 (sixty) days from the date the application is received.

In the event that the application is rejected, the refusal must be notified to the applicant in writing along with the reasons within the period as referred to in paragraph (2). (4) In the event that approval or rejection is not given within the period as referred to in paragraph (2), then the amendment to the Articles of Association is considered approved and the Minister is obliged to issue a decision on approval.” The provisions of Article 68 are amended, so that it reads as follows: “Article 68 (1) The remaining assets from the liquidation proceeds shall be handed over to another Foundation which has similar activities with the disbanded Foundation. (2) The remaining assets resulting from the liquidation as referred to in paragraph (1) may be transferred to another legal entity having similar activities to the disbanded Foundation, if this is regulated in the Law concerning the legal entity. (3) In the event that the remaining assets resulting from the liquidation are not handed over to other Foundations or to other legal entities as referred to in paragraphs (1) and (2), such assets are handed over to the State and their use is carried out in accordance with the activities of the disbanded Foundation.” The provisions of Article 71 are amended, so that they read as follows: “Article 71 (1) At the time this Law comes into force, Foundations that: a. has been registered at the District Court and announced in the Supplement to the State Gazette of the Republic of Indonesia; or b. has been registered at the District Court and has a permit to carry out activities from the relevant agency; is still recognized as a legal entity with the provision that within a period of no later than 3 (three) years from the date this Law comes into force, the Foundation is obliged to adjust its Articles of Association with the provisions of this Law. (2) Foundations that have been established and do not meet the provisions as referred to in paragraph (1) may obtain legal entity status by adjusting their Articles of Association with the provisions of this Law, and submitting an application to the Minister within a period of no later than 1 (one) years from the date this Law comes into force. (3) The foundation as referred to in paragraph (1) must be notified to the Minister no later than 1 (one) year after the adjustment. (4) Foundations that do not adjust their Articles of Association within the period as referred to in paragraph (1) and Foundations as referred to in paragraph (2) cannot use the word "Foundation" in front of their name and may be dissolved based on a court decision at the request of the Prosecutor's Office or interested parties." The provisions of Article 72 are amended, so that it reads as follows: “Article 72 (1) Foundations whose assets are partly derived from State aid, foreign aid, and/or public donations obtained as a result of the enactment of a statutory regulation are required to publish a summary of financial statements as referred to in Article 52 paragraph (2) which includes assets for 10 (ten) years prior to the promulgation of this Law. (2) The announcement of the summary of the annual report as referred to in paragraph (1) does not erase the rights of the authorities to carry out examinations, investigations and prosecutions, if there are allegations of violations of the law." Between Article 72 and Article 73, 2 (two) articles are inserted, namely Article 72 A and Article 72 B, so that it reads as follows: “Article 72 A At the time this Law comes into force, the provisions of the Articles of Association of Foundations as referred to in Article 71 Paragraph (1) and paragraph (2) which have not been adjusted to the provisions of this Law, shall remain valid as long as they do not conflict with this Law. Article 72 B At the time this Law comes into force, applications for ratification of the foundation's deed of establishment,

requests for amendments to the Foundation's Articles of Association, and notification of adjustments to the Foundation's Articles of Association that has been received by the Minister, are processed based on this Law and its implementing regulations.”

General Explanation of the Third Paragraph, the phrase “or appointed official”, between the phrase “Minister of Justice and Human Rights” and the phrase “the provision” is deleted. General Explanation of the Fourth Paragraph, the phrase "may be submitted to the Head of the Regional Office of the Ministry of Justice and Human Rights whose working area includes the domicile of the Foundation" between the phrase "application for the establishment of a Foundation" and the phrase "In addition", is replaced with the phrase "submitted to the Minister through the Notary who made the deed of establishment of the Foundation.” General Explanation of the Seventh Paragraph, the phrase "Foundations whose wealth comes from the State," between the phrases "Furthermore, against" and the phrase "foreign aid or other parties," is changed to the phrase "Foundations that receive assistance from the State," and the phrase "reports must be announced annually” between the phrases “by public accountants and” and the phrase “in Indonesian language newspapers”, is changed to the phrase “the financial statements must be announced”.

B. Legal Status of Land Rights Controlled by Buddhist Religious Foundations in Medan City

Based on the results of interviews and questionnaires that have been distributed by researchers, the following is the legal status of land rights controlled by Buddhist religious foundations in Medan City:

- 1) Mestika Abadi Foundation at Jalan Captain Jumhana Number 439-c, Sukaramai II Village, Medan Area District, Medan City, North Sumatra Province. Mestika Abadi Foundation was established in 2009 in accordance with Notary Deed number 36 dated July 10, 2009 before Notary Roosmidar, S.H. Has been legalized by a Legal Entity with Decision Number AHU35.AH.01.04.Tahun 2010 on January 6, 2010. Mestika Abadi Foundation owns Assets in the form of land obtained through receiving grants from Buddhists; donations from Buddhists for the purchase of land used for Buddhist places of worship and Buddhist Sunday Schools. The status of the land is in the name of the Foundation and registered with the National Land Agency (BPN). The management of the Mestika Abadi Foundation always strives to own assets in the form of land on behalf of the Foundation. At the time of the purchase of land or the initial receipt of the grant, it was directly submitted to the PPAT Notary for this matter. The management of the Mestika Abadi Foundation takes care of the following matters:
 - a) Registering the Foundation with the Directorate General of Buddhist Community Guidance at the Ministry of Religious Affairs of the Republic of Indonesia as a Religious Foundation, after obtaining a Registration Certificate, followed by a request for recommendation as a Religious Foundation with the right to own land ownership.
 - b) After obtaining the recommendation, proceed with submitting to the National Land Agency to obtain a Decree as a Foundation that can obtain land ownership rights.
 - c) On August 14, 2017, Mestika Abadi Foundation has received BPN decision letter number 6/Pnj/KEMATR/BPN/2017 regarding the appointment of Mestika Abadi

Foundation as a legal entity that can own land ownership rights. (Respondent on behalf of Johan, S.Si., AFA as the Chairperson of the Mestika Abadi Foundation Management).

- 2) Surya Budhi Agung Foundation at Jalan Gandhi Number 224, Sei Rengas I Village, Medan City District, Medan City, North Sumatra Province. Surya Budhi Agung Foundation was established in 1965 with the Deed of Establishment No. 140 dated June 25, 1965 by a notary Roesli domiciled in Medan. The Foundation has been approved as a Legal Entity by the Ministry of Law and Human Rights of the Republic of Indonesia. Surya Budhi Agung Foundation was established before 2004 and has undergone changes to adjust the provisions of Law No. 28 of 2004 Juncto Law No. 16 of 2001 concerning Foundations. Last amendment with Number 06 dated 21 February 2020 by DR. Tony, S.H., M.Kn, Notary in Deli Serdang Regency. Surya Budhi Agung Foundation owns Assets in the form of land obtained by buying and receiving grants from Buddhists. Assets in the form of land on behalf of the Foundation can be classified into various forms of ownership, namely:
 - a) Transfer of rights carried out before a Notary/PPAT in the form of a Sale-Purchase Deed or a Grant Deed followed by registration at the National Land Office (BPN).
 - b) Transfer of Rights made before a Notary in the form of a Sale-Purchase Agreement or a Grant Agreement that has not been registered at the National Land Office (BPN) on the grounds that the Notary used is not a PPAT in the Regency/City of its working area.
 - c) Transfer of Rights made before a Notary in the form of a Sale-Purchase Agreement or a Grant Agreement that has not been registered at the National Land Office (BPN) on the grounds that there are still several incomplete files while the seller or the grantor or the Foundation feels it is urgent to carry out the Transfer of Rights on the land in question.
 - d) Transfer of Rights carried out before the Head of Sub-District/Head of Village who is known to the Head of District in the form of a Sale-Purchase or Grant which is followed by registration at the National Land Office (BPN) by the Foundation.
 - e) Transfer of Rights made before the Head of SubDistrict/Head of Village who is known to the Head of District in the form of a Sale-Purchase or Grant that has not been registered at the National Land Office (BPN) by the Foundation with several reasons and considerations.
 - f) In addition, the Surya Budhi Agung Foundation has been appointed as a legal entity that can have land ownership rights by the Head of the National Land Agency of the Republic of Indonesia Number: 5/Pnj/14/2010 dated 19 February 2010. The status of the Indonesian National Land Agency (BPN) for the Surya Budhi Agung Foundation is Property Rights, not Building Rights. (Respondent on behalf of Satya Vira, M.Pd.B as General Secretary of the Indonesian Buddhist Maitreya Pandita Assembly)

C. Efforts to Realize Legal Certainty on Legal Status of Land Rights Controlled by Buddhist Religious Foundations in Medan City

Based on the results of interviews and the distribution of questionnaires that have been conducted by the researchers, the following are the efforts to realize legal certainty of the legal status of land rights controlled by Buddhist religious foundations in Medan City:

- 1) The Foundation Management visits the Notary to make the Foundation Establishment Deed and then the Notary registers the Foundation Name to the Ministry of Law and

Human Rights to check whether the Foundation's name has been used or not in order to avoid the similarity of names. After that, the Foundation Management came to the Regional Office of the Ministry of Religious Affairs to ask for a letter of recommendation for the name of the Buddhist Community Advisor. After receiving a letter of recommendation from the Buddhist Community Advisor (Pembimas), the letter is given to the Notary Party so that it can be uploaded through the system of the Ministry of Law and Human Rights for further processing. After all the processes at the Notary and the Ministry of Law and Human Rights are completed, the Foundation management can register the Foundation to the Ministry of Religious Affairs by bringing the requirements needed for registration in accordance with the Decree of the Directorate General of Buddhist Community Guidance Number: 323 of 2017 concerning Registration of Religious Institutions Buddha. Addressed to the Directorate General of Buddhist Community Guidance at the Ministry of Religious Affairs of the Republic of Indonesia in Jakarta, regarding Applications for Registration of Buddhist Religious Institutions. The completeness of the registration requirements is a photocopy of the Decree for the Appointment of Management from the Organization/Institution, a statement letter not in dispute with 10,000 stamps, signed by the Head of the Organization/Foundation/Institution, Photocopy of the Notary Deed or Articles of Association (AD) and Bylaws (ART), Endorsement Letter and Kemenkum HAM/Registered Certificate from the Minister of Home Affairs, Institution Description, Institution Email and Telephone, Front View, Left, Right and Inside, Certificate of Domicile of the Secretariat Office from the local Lurah/Village Head/RT/RW, Photocopy KTP of Trustees, Core Management, and Supervisors with the provisions of Religion in the KTP must be Buddhist, 1 sheet of color photo (4x6). After all the requirements are complete, the Foundation Management can register independently through the website application system <https://sioribuddha.kemenag.go.id/>. Then after the Foundation management has completed filling in the SIORI application system, it will automatically enter verification into the system of the City/Regency Ministry of Religious Affairs Office for Buddhist Organizers to be validated and proceed for verification to the Regional Office of the Ministry of Religious Affairs for Buddhist Community Advisors, after all processes are completed. The Regional Office of the Ministry of Religious Affairs to be forwarded to the Directorate General of Buddhist Community Guidance for verification and validation so that a Buddhist Religious Institution Registration Certificate can be issued. (respondent on behalf of Budi Sulistiyo as Buddhist Community Advisor at the Regional Office of the Ministry of Religious Affairs of North Sumatra Province).

- 2) Recommend to the Foundation that all assets contained in the Foundation are immediately made in the name of the Foundation so that these assets remain the property of the Foundation in order to avoid disputes between the foundation's management. (respondent on behalf of Rames Kumar as Buddhist organizer of the Ministry of Religious Affairs of Medan City).
- 3) Efforts made by the Indonesian Buddhist Association (Permabudhi) as a forum for Buddhist religious organizations, if there is a Foundation that has assets (assets) in the form of land that has not been registered in the name of the Foundation, the Chair/Management of Permabudhi together with the Chairperson of the Permabudhi Member Council will coordinate with the Chairperson. The Foundation is intended to provide guidance and motivate the Chairperson of the Foundation so that the assets

(assets) in the form of land ownership are immediately registered with the authorized institution/Government. (respondent on behalf of Ketut Supardi as Chairman of the Permabudhi Regional Board of North Sumatra Province).

CONCLUSIONS

The conclusions of this study are as follows:

- 1) Based on Law 28 of 2004 concerning Amendments to Law 16 of 2001 concerning Foundations, the purpose of which is to better ensure legal certainty and order, as well as to provide the public with a correct understanding of Foundations, so as to restore the function of Foundations as legal institutions in the context of achieving certain goals in the social, religious, and humanitarian fields. The revision of Law Number 16 of 2001 concerning Foundations is intended so that Foundations can continue to function in an effort to achieve their goals and objectives in the social, religious, and humanitarian fields based on the principles of openness and accountability. For this reason, the Management of the Buddhist Religious Foundation in Medan City in an orderly manner in managing the assets controlled and is obliged to continue the process of transferring rights or applying for rights at the National Land Office.
- 2) Based on Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration in Article 87 Paragraph 1, "Systematic Land Registration" means Land Registration activities for the first time which are carried out simultaneously which includes all Land Registration objects that have not been registered in the territory or part of the territory of a village/sub-district or other names at the same level. Systematic Land Registration is carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia which includes the collection of physical data and juridical data regarding one or several Land Registration objects for the purpose of registration, the financing of which comes from the government and/or community budget, for that the Land parcel owner is expected to be required to participate in Land Registration activities. Therefore, Buddhist Religious Foundations can register and have a Land Certificate in accordance with the provisions of the applicable laws and regulations.
- 3) Based on the Decree of the Directorate General of Buddhist Community Guidance Number: 323 of 2017 concerning Registration of Buddhist Religious Institutions, the Foundation's management can register their Foundation with the Ministry of Religious Affairs by bringing the necessary conditions for registration. The Application Letter is addressed to the Directorate General of Buddhist Community Guidance at the Ministry of Religious Affairs of the Republic of Indonesia in Jakarta, regarding the Application for Registration of Buddhist Religious Institutions. Foundation administrators can register independently through the Organization and Houses of Worship Information System (SIORI) application on the website: <https://sioribuddha.kemenag.go.id/>.

The suggestions from this research are as follows:

- 1) In the process of land transfer and registration, National Land Agency officers can provide socialization activities to Foundation parties and use an online system for the process of submitting land transfer and registration as well as having officers who can be contacted at the office or hotline to help provide appropriate explanations if there is an obstacle in the process, so that the Foundation gets convenience and smoothness in the process of managing the transfer and registration of land.

- 2) The process of transferring rights to the foundation is carried out to avoid the risk of breaking the promise in the name of the individual used and if the name of the person used dies, it is possible that the heirs will not recognize that the land belongs to the Foundation.

REFERENCES

- Abdulkadir, M. (1993). *Hukum dan penelitian hukum*. PT. Citra Aditya Bakti.
- Ali, A. (2012). *Menguak teori hukum (Legal theory) dan teori peradilan (Judicial prudence), termasuk interpretasi Undang-Undang (Legispudence)*. Kencana.
- Arba. (2016). *Hukum agraria Indonesia*. Sinar Grafika.
- Asshiddiqie, J. (2005). *Hukum tata negara dan pilar-pilar demokrasi*. Konstitusi Press.
- Departemen Pendidikan dan Kebudayaan. (1997). *Kamus besar bahasa indonesia*. Balai Pustaka.
- Government, R. (2012). *Peraturan Presiden Republik Indonesia Nomor 71 Tahun 2012* (p. 42).
- Hadisuprpto, P. (2009). *Ilmu hukum (Pendekatan kajiannya)*. Universitas Jambi.
- Harsono, B. (2009). *Hukum agraria Indonesia, sejarah pembentukan Undang-Undang pokok agraria, isi dan pelaksanaannya*. Djambatan.
- Julyano, M. (2019). Pemahaman terhadap asas kepastian hukum melalui konstruksi penalaran positivisme hukum. *Jurnal Crepido*, 1(1), 13–22.
- Maria, S., & Soemardjono. (2001). *Kebijakan pertanahan, antara regulasi dan implementasi*. Kompas.
- Poggi, G. (1992). *The development of the modern state "Sociological introduction."* Stanford University Press.
- Pratama, M. I. C. (2009). *Kepastian hukum dalam production sharing contract*. Universitas Islam Indonesia.
- Purbacakara, P., & Soekanto, S. (1982). *Sendi-sendi ilmu hukum dan tata hukum*. Alumni.
- RI Government. (1945). *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (pp. 1–27).
- RI Government. (1963). *Peraturan Pemerintah (PP) Nomor 38 tahun 1963 tentang penunjukan badan-badan hukum yang dapat mempunyai hak milik atas tanah* (p. 42).
https://repositories.lib.utexas.edu/handle/2152/39127%0Ahttps://cris.brighton.ac.uk/ws/portalfiles/portal/4755978/Julius+Ojebode%27s+Thesis.pdf%0Ausir.salford.ac.uk/29369/1/Angela_Darvill_thesis_esubmission.pdf%0Ahttps://dspace.lboro.ac.uk/dspace-jspui/ha
- RI Government. (2004). *Undang-Undang Republik Indonesia nomor 5 tahun 1960 tentang peraturan dasar pokok-pokok agraria* (pp. 1–5).
- RI Government. (2012). *Undang-Undang Republik Indonesia nomor 2 tahun 2012 tentang pengadaan tanah bagi pembangunan untuk kepentingan umum* (pp. 1–47).
- Rubaie, A. (2007). *Hukum pengadaan tanah untuk kepentingan umum*. Bayumedia Publishing.
- Widyadharma, I. R. (2001). *Badan hukum yayasan (Undang-Undang nomor 16 tahun 2001)*. Badan Penerbit Universitas Diponegoro.
- Yamin, M. (1959). *Naskah persiapan UUD 1945: Risalah sidang BPUPKI/PPKI*. Sekretariat Negara RI.