

PROBLEMATICS OF CHANGES IN THE STATUS OF THE RETURN EXCHANGE (*RUISLAG*) OF WAKAF LAND

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Abstract: Infrastructure improvements continue to develop in line with the implementation of infrastructure provision which is inseparable from the availability of land as the main resource to continue the realization of infrastructure development as part of the National Strategy Program launched by the Government. **This article** aims to analyze the problematic process of changing the status (*ruislag*) of waqf land in several cases that have occurred, as well as examining the *ruislag* process in land law and waqf law in Indonesia. **The method used** in research is literature study (library research) using a normative juridical approach. **The results of this research** show that in general the process of destroying waqf land is caused by the interests of certain parties and public interest factors. About waqf law as regulated in Law Number 41 of 2004, waqf assets may not be prohibited from being exchanged or transferred in the form of other rights. However, the opinion of the ulama also states that exchanging waqf assets can be carried out with several conditions, restrictions, and conditions as long as they do not violate the Sharia. About the provisions of land law, the land swap process refers to the land acquisition system for public purposes as regulated in Law 2 of 2012.

Keywords: Changes In Status, *Ruislag*, Wakaf Land

Introduction

Mazhab Syafi'i, which is still strong in Indonesia, still influences the understanding of the absolute prohibition of *istibdal* (*ruislag*) on waqf land (Kabisi, 2003). So *ruislag* waqf land is still taboo among the Muslim community in Indonesia. A large part of the Muslim community still thinks that waqf property in the form of land cannot be *ruislag*. The practice of waqf develops in accordance with the development and needs of society. The first source of waqf institutions is the Qur'an. In the Al-Qur'an, the word waqf, which means giving property, is not found as clearly as the meaning of zakat, but it is the interpretation of mujtahid scholars on the verses that talk about donating property in the form of charity. The second source of waqf after the Al-Qur'an is hadith (Rofiq, 2000). Waqf in the hadith of the Prophet can be found a lot. One of them was narrated by Ibn Umar about the caliph Umar, who donated his land in Khaibar. The third source of waqf after the hadith is the *ijtihad* of the scholars (the interpretation of the jurisprudence scholars) found in the classic books of jurisprudence.

Waqf assets have unique characteristics that make them suitable as eternal capital for the people. Its uniqueness lies in the necessity to maintain its integrity and manage it productively. From that productive management, it is expected to emerge a profit that can be used or distributed to the people. That is why waqf land, which has long existed in Indonesian society, has become

part of cultural values and social capital. So waqf land became part of the agrarian law norms which were promulgated in 1960.

Basic Agrarian Law Number 5 of 1960 has expressly provided protection and ordered implementation in special regulations. The government regulations referred to in Article 49 (3) Basic Agrarian Principles are embodied in Government Regulation Number 28 of 1977 concerning the Endowment of Land Property (Medaline et al., 2022). Waqf regulations have changed over time to meet the needs of society. Law Number 41 of 2004 concerning waqf was born as the legal umbrella for waqf in Indonesia.

In Article 40 of Waqf Law Number 41 of 2004, it is stated that waqf assets that have been donated are prohibited from: being used as collateral, confiscating, granting, selling, inheriting, exchanging, or transferring in other forms of transfer of rights. Waqf assets whose status is changed due to the exception as intended in paragraph (1) must be exchanged for useful assets, and the exchange value must be at least the same as the original waqf assets. Provisions regarding changes in the status of waqf assets as referred to in paragraphs (1), (2), and (3) are further regulated by government regulations (Haq, 2017).

Ruislag of waqf land can be carried out with six conditions, namely (Qolbunnuzuli & Syibly, 2023):

1. Assets or property that have been donated are not useful.
2. no income can be used to repair.
3. The exchange that occurred was not carried out through deliberate fraud.
4. It is best if the ruislag is carried out by a pious judge or someone who knows this matter. So that it does not result in the cancellation of waqf that has been done previously.
5. The thing that is a substitute for conversion is something similar to the initial waqf.
6. It is better for judges not to sell to people whose testimony cannot be accepted nor to sell to people who have debts because it minimizes suspicion or favoritism.

Government Regulation Number 25 of 2018 concerning Implementation regulates the exchange of waqf land. Legislation has explained in detail the ruislag of waqf land. Article 49 paragraph (1) Government Regulation Number 25 of 2018 states that changing the status of Waqf assets in the form of exchange is prohibited except with written permission from the Minister based on BWI approval.

Along with changes and developments in human thought patterns, living patterns and life, land changes also occur, especially in terms of ownership and control, in this case regarding legal certainty and certainty of land rights that are currently or will be owned. With the existence of problems, both regarding population growth and economic development, there is a need for deep land development activities will increase (Faisal : 2018).

The phenomenon of exchanging (ruislag) for waqf land occurs due to the need for land acquisition which forces land to be made available for development to realize the public interest. The public interest is the interest of most levels of society. In development, the meaning of public interests can be interpreted more broadly as the interests of the nation, state, and society, which must be realized and prioritized by the government for the prosperity of the people.

This study analyzes the study of waqf land exchange (ruislag) in a positive legal order and presents several cases as references. Thus, it will clearly illustrate the social reality that occurs in society regarding the problems that occur in the ruislag process for waqf land.

Literature Review

A. Waqf Land

Waqf is an institution that originates from Islamic law, therefore when discussing the issue of waqf in general and land waqf in particular, it is impossible to escape from discussing the concept of waqf according to Islamic law. In Islamic law, there is no single concept regarding waqf, because there are many very diverse opinions. The word waqf comes from the Arabic *al-waqf form of masdar* from “*waqafayaqifu waqfan*” which means “stop”, the word “*al-waqf*” means the same as *al-habsu*, masdar form of “*waqafa-yaqifu*” is “*habasu*” which means to hold back. But the point is that *al-habsu* or *al-waqf* both contain the meaning *al-imsak* (withhold), *al-man‘u* (prevent), and *at-tamakkust* (diam) (Kabisi, 2004). It is called withholding because the waqf is withheld from damage, sales, and all actions that are not in accordance with the purpose of the waqf.

Waqf is an Islamic social institution that is commonly understood as holding an object for its benefit and institutionalizing it for the public interest. There are three sources of knowledge that must be studied to understand this institution, namely: a) Islamic teachings originating from the Koran and al-Hadith as well as the *ijtihad* of mujtahids; b) statutory regulations both issued by the Dutch Government and those issued by the Indonesian Government; c) waqf that grows in society. The same thing was also stated that the study of waqf as a social institution refers to three bodies: a) waqf as a religious institution; b) waqf as an institution regulated by the state; c) waqf as a social institution or an institution that lives in society. Waqf comes from the word *waqafa* (to hold back, stop, stay in place, remain standing) (Anshori & Ghofur, 2006).

As for the elements or pillars of waqf according to the majority of scholars, they are: 1) People with waqf (*waqif*). The *wakif* must have the ability to do *tabarru*, which is to give up property rights without a material balance. Based on the consideration of the perfect intellect in people who have reached the age of puberty and *rashid* which refers to the maturity of the soul or the maturity of the mind; 2) Endowment property (*mauquf*). *Mauquf* is considered valid if it is a valuable property, durable to use, and the property of the *wakif*. Waqf property can be in the form of fixed or movable objects; 3) The purpose of waqf (*ma uqf 'alaih*), must not conflict with the values of worship and must be clear in its provisions; 4) Akad/statement of waqf (*shighat*), can be presented in writing, orally or with a gesture that can be understood only for people who cannot use that way verbally or verbally. In Article 6 of Law Number 41 of 2004 on Waqf, the element of waqf is added to two more things, namely: waqf manager (*nadzir*) and waqf period. Waqf regulations during the independence period can be stated as follows:

1. Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles officially states the protection of waqf assets (Article 49 Paragraph 3). Confirmation of the protection of land belonging to the waqf is contained in Government Regulation
2. No. 10 of 1961 concerning Land Registration. This regulation increases control over land certification for pledged waqf land, which is usually considered valid with just a verbal pledge;

3. Government Regulation No. 28 of 1977 concerning Waqfation of Owned Land. This regulation is classified as the first regulation which contains the substantive and technical elements of waqf;
4. Presidential Instruction No. 1 of 1991 concerning KHI. The expansion of waqf rules in KHI includes, among other things, relating to waqf objects and nadzir;
5. Law No. 41 of 2004 concerning Waqf and Government Regulation Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf. This provision tries to revitalize waqf institutions by sharpening the definition, function, scope, institutional innovation, monitoring mechanisms, and waqf governance.

The current regulations regarding waqf have regulated a broader range of waqf land objects, not just limited to property. Article 17 Government Regulation Number 42 of 2006 states that land rights that can be donated consist of:

1. Ownership rights to land whether registered or not;
2. Joint land rights of housing units following the provisions of the legislation
3. Building rights, cultivation rights, or rights to use that are on state land;
4. Building rights or rights to use that are on land with management rights or private property rights must obtain written permission from the holder of management rights or property rights.

B. Pengadaan Tanah

Land Procurement is the activity of providing land by providing adequate and fair compensation to the entitled parties. Land acquisition activities for development purposes are theoretically based on certain principles and are divided into two subsystems: 1) land acquisition by the government for the public interest; 2) land acquisition by the government because it is not in the public interest (commercial). In essence, land acquisition is an action by the government to acquire land for public purposes which is carried out based on deliberation to reach an agreement regarding the release of rights and compensation before revoking rights (Rimanto et al., 2004).

Land procurement in Article 1 point 2 of Law No. 2 of 2012 in conjunction with Article 1 number 2 of Presidential Regulation of the Republic of Indonesia No. 71 of 2012 is an activity to provide land by providing adequate and fair compensation to entitled parties. The elements in the definition of land acquisition are: the activity of providing land, appropriate and fair compensation, and the parties who have the right. The definition of land acquisition as stated in Article 1 point 2 of Law No. 2 of 2012 in conjunction with Article 1 number 2 of Presidential Regulation of the Republic of Indonesia No. 71 of 2012 is the definition of land acquisition in general. The definition of land procurement for public purposes is the activity of providing land for public purposes by agencies that require land based on regional spatial plans that have been determined by providing appropriate and fair compensation to the entitled parties. The party that requires land in land acquisition for public purposes is the agency. Which includes agencies according to Article 1 point 1 of Law No. 2 of 2012 in conjunction with Article 1 number 1 Republic of Indonesia Presidential Regulation No. 71 of 2012 are State Institutions, Ministries, Non-Ministerial Government Institutions, Provincial Governments, Regency/City Governments, and State-Owned Legal Entities/State-Owned Enterprises that receive special assignments from the Government.

Authority Bodies, Regional Owned Enterprises, and Limited Liability Companies (LLC) that need land cannot use Law No. 2 of 2012 in conjunction with Presidential Regulation of the Republic of Indonesia No. 71 of 2012 as the legal basis for acquiring the land.

The Public Interest in the land acquisition system is the interest of the nation and state as well as the common interests of the people, land rights can be revoked by providing appropriate compensation and following the method regulated by law, namely Article 18 of the Basic Agrarian Principles, which is the reference for land acquisition for public purposes in Indonesia. It is stated in Law No. 2 of 2012 that one of the principles in land acquisition for the public interest is justice. In the explanation, it says "What is meant by the principle of justice is providing guarantees of adequate compensation to Entitled Parties in the Land Acquisition process so that they get the opportunity to live a better life."

Implementation of land acquisition for development in the public interest based on Law Number 2 of 2012 is only carried out based on the release or surrender of land rights. According to Law Number 2 of 2012, land acquisition for public purposes is carried out through the stages of planning, preparation, implementation, and delivery of results. By referring to legal and regulatory provisions, authorities who require land are obliged to make plans for land acquisition in the public interest.

Operations, the public interest is difficult to formulated but in order to take public lands it is necessary to affirm that the general interest is the basis of certain criteria so that the procurement of land must comply with applicable law. The scope of activities that include the public interest, the following expressed the general interest of article 10 UU No. 2 year 2012 set 18 categories that include the general interest (Medaline dkk, 2020):

1. National defense and security;
2. Public roads, toll roads, tunnels, railway lines, railway stations, and railway operations facilities;
3. Reservoirs, dams, burps, irrigation, drinking water drains, drainage and sanitation, and other irrigation buildings;
4. Ports, airports, and terminals;
5. Oil, gas and geothermal infrastructure;
6. Power plants, transmissions, substations, networks, and distribution of power;
7. Government telecommunications and Informatics network;
8. Disposal and garbage processing;
9. Government/local Government hospitals;
10. General safety facilities;
11. Public burial place of the government/local government;
12. Social facilities, public facilities, and public green open spaces;
13. Nature Reserve and cultural reserve;
14. Government Office/Local government/village;
15. The arrangement of urban slums and/or land consolidation, as well as housing for low-income communities with lease status;
16. Education infrastructure or school government/local government;
17. Government/local Government sports infrastructure;
18. Public markets and public parking

C. Change of Land Status

Changes in the legal status (position) of waqf land as an object of rights; for example, from its status as Waqf Property to "property rights", for example through sale and purchase, gift, inheritance, exchange, or other forms of transfer of rights changes in the use of waqf land (Medaline, 2020); For example, from the beginning as it was used for purposes such as religious services (mosques, prayer rooms) change into schools, polyclinics, or other facilities to advance public welfare. Changes in designation can also be interpreted as changes in land use; specifically, changes in land use waqf land according to the land use plan and territorial division within an area for certain functions; For example, the functions of residential, trade, industry, etc., are following spatial planning policies determined by the government which are prepared democratically, integrated, comprehensive, harmonious, balanced, transparent, and sustainable. Changes in the status of waqf assets in the form of "exchange" or "exchange" are prohibited except with written permission from the Minister based on the considerations of the Indonesian Waqf Board (BWI) (Muzarie, 2010).

Government Regulation 25 of 2018 uses the phrase "approval," meaning that written permission from the Minister can only be given with the following considerations:

1. Changes in waqf property to be used for public purposes by the General Spatial Plan based on the provisions of Legislative Regulations that do not conflict with sharia principles;
2. Waqf property cannot be used in accordance with the waqf pledge;
3. An exchange is made for direct and urgent religious needs 41 Law No. 41 of 2004 (1) Provisions as referred to in Article 40 letter f are excluded when waqf property that has been waqf is used for public benefit in accordance with the general spatial plan based on the provisions of the regulations.

In the legislation regarding waqf in Indonesia, the status of waqf assets is not classified as to what types of waqf assets can be changed, so in this case, the law allows changes to the status of waqf assets regardless of the type of object. Because what is in the spotlight is not the form, but what is most important about waqf is its function and purpose.

There is no change in the provisions or status of something that has been discharged. In Government Regulation Number 28 of 1977 concerning Waqfation of Owned Land, Article 11 explains: (1) Basically, land owned that has been donated cannot be changed to its designation or use other than that intended in the waqf pledge. (2) Deviations from the provisions mentioned in paragraph (1) can only be carried out for certain matters after first obtaining written approval from the Minister of Religion, namely: a. because it is no longer in accordance with the objectives of the waqf as pledged by the wakif; b. because of the public interest. (3) Changes in the status of the land that has been desecrated and changes in its use as a result of the provision in paragraph (2) must be reported by Nadzir to the Regent/Mayor of the Regional Head, QC. Head of the local Agrarian Sub Directorate to obtain further solutions.

In Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (Book III of Waqf Law) Article 225 stipulates that objects that have been donated cannot be changed or used other than those intended in the waqf pledge. Deviations from the provisions referred to can only be made for certain matters after first obtaining written approval from the

Head of the District Religious Affairs Office based on advice from the District Ulama Council and the local sub-district head for the following reasons: a. Because it is no longer in line with the aims of the waqf as proclaimed by the wakif; b. Because of the public interest. In Law Number 41 of 2004 concerning Waqf, Article 40 also regulates changes and transfers of waqf assets that are considered not or are not functioning as intended by the waqf itself. In principle, waqf assets that have been donated are prohibited; used as collateral; confiscated; granted; for sale; inherited; exchanged; or transferred in other forms of transfer of rights.

Furthermore, written permission for the exchange (ruislag) can be given by the Head of the Regional Office of the Provincial Ministry of Religion if the following requirements have been met:

1. There is a letter of approval from the provincial BWI;
2. The exchanged property has a certificate or proof of legal ownership in accordance with the provisions of the laws and regulations;
3. The value and benefit of the property of the exchanger are at least equal to the property of the re-Waqf.

The value and benefits of exchanged assets are determined by the Head of the Regional Office of the Provincial Ministry of Religion based on the recommendations of the Determination Team, whose members are:

1. Regency/city regional government;
2. Regency/city land office;
3. district/city Indonesian Ulema Council;

Method

According to Peter Mahmud Marzuki, Law research is a process for discovering the rule of law, the basis of law, and the doctrine of law to solve law problems (Abdoeh, 2020). [1]. This type of research is normative juridical research in the form of problems that have the aim of examining concepts from existing literature which are connected to case studies as the focus of descriptive analysis in the problem of changing the status of re-exchange (Ruislag) in Waqf Land. The approach used is to use a conceptual approach as well as case studies in descriptive form that analyze. In the conceptual approach method analyzed, in the Problem of Changing the Status of Redemption (Ruislag) of Waqf Land, the basic concepts of reform access are technically implemented with activities that lead to achieving targets in the Problem of Changing the Status of Redemption (Ruislag) of Waqf Land. The cases in this research aim to focus attention on one particular object that is raised for in-depth study to reveal the reality of the phenomenon discussed in this research.

Result and Discussion

A. Land Acquisition System for Public Purposes

Land acquisition is an action by the government to obtain land for various development activities, especially for the public interest. Land procurement is an activity to obtain land by providing fair and appropriate compensation and ensuring the socio-economic welfare of the land rights owner (Furqon, 2017). The land acquisition process is carried out based on mutual agreement, and there is no element of coercion. Land procurement has three elements, namely: 1)

activities to acquire land, in order to fulfill development land for public purposes; 2) providing compensation to those affected by land acquisition activities; and 3) releasing legal relations from land owners to other parties (Sumardjono, 2008).

Based on the definition above, land procurement is divided into several elements, namely: a) Land procurement requires mutual agreement; b) Land acquisition has benefits for the broad public interest; c) Compensation for losses in land acquisition has the principle of justice; d) Land acquisition has a clear and definite legal basis; e) Land procurement is carried out openly and transparently; f) Land acquisition requires community participation; g) Landowners must obtain an equal position with the Government; and h) The negative impact of land acquisition should be minimized as far as possible in land acquisition activities, which must be carried out by the following basis:

- a. The basis of Agreement, land procurement is carried out based on an agreement between the party who needs the land and the holder of the land rights.
- b. The basis of benefit, land acquisition is expected to have a positive impact on those who need the land, the affected communities, and the wider community.
- c. The basis of justice, affected communities are given compensation that can restore their socio-economic conditions, at least equivalent to their original conditions, taking into account losses from physical and non-physical factors.
- d. The basis of certainty, land acquisition is carried out according to procedures regulated by statutory regulations so that the parties know their respective rights and obligations.
- e. The basis of openness, affected communities have the right to obtain information about the project and its impacts, compensation policies, development schedules, resettlement plans, and replacement locations, as well as the community's right to express objections.
- f. The basis of participation, the participation of all stakeholders at each stage of land acquisition is necessary to create a sense of ownership and to minimize community resistance to the activities concerned.
- g. The basis of equality, parties who need land and affected parties have an equal position in the land acquisition process.

Minimizing the impact and continuity of socio-economic welfare. Confirmation of the public interest needs to be determined firmly so as not to give rise to multiple interpretations. Because land acquisition aims to develop the public interest, there must be definite criteria regarding the meaning or category of the public interest itself.

Land procurement by the government to carry out development is aimed at fulfilling the public interest. Public interests are carried out to achieve the greatest prosperity of the people. According to Huybers, "public interest is the overall interest that concerns the protection of individual rights as citizens, and the procurement and maintenance of public facilities and services for the public." Theoretically, it is not difficult to understand, but in this case there are six indicators to see the public interest, namely: 1) controlled and owned by the state; 2) cannot be privatized; 3) not for profit; 4) for places of worship; 5) for the environment; and 6) determined by law. Meanwhile, Dr. Bernhard Limbong in his book on land acquisition for development (Limbong, 2011: 145) quotes the thoughts of Roscoe Pound who stated that *social interest* is an interest that grows in society according to the needs of society itself (Rozalinda, 2015).

Pound divides three categories of interests, including public interests, social interests, and personal interests. There are three principles from which it can be concluded that an activity is truly in the public interest, namely: a. These activities are truly owned by the government, containing the limitation that public interest activities are not owned by individuals or the private sector. b. Implementation of activities and management of activities in the public interest can only be done by the government. c. Not seeking profit and limiting the function of an activity to the public interest. There are several things that should be a measure of the public interest, namely: (1) crossing social segment boundaries, meaning that public interest projects can be accessed by all groups; (2) The aim of the project is not to pursue profit; and (3) the project will be funded using state funds and managed by the government. The public interest is the needs or interests of many people or broad objectives, taking into account social, political, psychological, and national defense aspects on the basis of the principles of national development. The principle of public interest is to prioritize the public interest itself without neglecting personal or group interests.

When procuring land for development in the public interest, two elements of interest must be taken into account, namely personal and public interests, and cannot just have one interest. Land acquisition for public purposes uses the legal basis of Law No. 2 of 2012 and does not use Law No. 20 of 1961 concerning the Revocation of Rights to Land and Objects on It (Halim, 2005). Implementation of Law No. 2 of 2012 in the acquisition of land for public interest using the basis *The latter law asks about the former law*, namely, whether the new law eliminates or overrides the old law, which regulates the same material. Based on this principle, Law No. 2 of 2012 eliminates or overrides Law No. 20 of 1961 as the legal basis for acquiring land for public purposes. Law No. 2 of 2012 which is implemented by RI Presidential Regulation No. 71 of 2012, both from a legal perspective in the form of a law and its content, which contains rules regarding land appraisal and the existence of a public consultation process as a dialogic communication process, does appear to be better than previous similar regulations. It is correct that the regulation of land acquisition for the public interest is not in the form of a Presidential Regulation of the Republic of Indonesia but in the form of a law, namely Law No. 2 of 2012, because it regulates the rights and obligations of Indonesian citizens.

Law No. 2 of 2012 regulates the rights of parties entitled to land procurement objects to obtain appropriate and fair compensation, and parties entitled to land procurement objects are obliged to comply with the provisions in Law No. 2 of 2012. The definition of public interest as stated in Article 1 number 6 of Law No. 2 of 2012 *juncto* Article 1 number 6 Presidential Regulation No. 71 of 2012, is in the interests of the nation, state, and society, which must be realized by the Government and used for the greatest prosperity of the people.

B. Legality Of Changes in Land Status (Ruilslag) in Waqf Law

Ruilslag is known as the exchange of goods in the Big Indonesian Dictionary (KBBI), also known as the exchange of goods, which means exchanging goods without adding money. In Article 1541 of the Civil Code, it is stated that exchange is an agreement in which both parties bind themselves to give each other an item reciprocally in exchange for another item. If these two meanings are combined, then the meaning of ruilslag or exchange is an agreement with both parties binding themselves to give each other an item reciprocally in exchange for another item without adding money from either party. Meanwhile, Law Number 41 of 2004 concerning Waqf states that

waqf assets that have been donated are prohibited from: being used as collateral; confiscated; granted; for sale; inherited; inherited; exchanged; and transferred in the form of other transfers of rights. Article 41 states that waqf property is permitted to be exchanged with other waqf land objects in the form of waqf land if the waqf property that has been donated is used for public purposes by the general spatial plan (RUTR) based on the provisions of the applicable laws and regulations and is not contrary to sharia. Then waqf assets whose legal status has changed can only be exchanged for objects in the form of land with a better exchange rate, or at least the same as the previous land object. The better exchange rate referred to is in the form of Tax Object Sales Value (NJOP), which is at least the same as the NJOP of the waqf property, and the exchange property is located in a strategic area and is easy to develop.

Article 49 in Government Regulation Number 42 of 2006 explains the requirements for exchanging waqf assets as follows: Changes in the status of waqf assets in the form of exchange are prohibited except with written permission from the Minister based on BWI's considerations. Written permission from the Minister as intended can only be given with the following considerations: a. The changes in waqf property are used for public purposes in accordance with the General Spatial Plan (RUTR) based on the provisions of the Legislative Regulations and do not conflict with Sharia principles. b. Waqf assets cannot be used in accordance with the waqf pledge. c. Exchanges are made for direct and urgent religious needs.

Apart from the considerations as intended, permission to exchange waqf assets can only be granted if: a. The exchanged assets have a certificate or proof of legal ownership in accordance with the Legislative Regulations. b. The value and benefits of the exchanged assets must be at least the same as the original waqf assets. The value and benefits of the exchange property as intended are determined by the regent or mayor based on the recommendation of an assessment team whose members consist of: a. Regency/City Regional Government. b. Regency/City Land Office. c. Regency/City Indonesian Ulema Council (MUI). d. Regency/City Department of Religion Office. Then in Article 49 of the government regulation, it is stated regarding the exchange of waqf assets, namely: (1) Changes in the status of waqf assets in the form of exchange are prohibited except with written permission from the Minister based on BWI considerations. Written permission from the Minister, as intended in Article (1) can only be given with the following considerations: a. The change in waqf property is used for public purposes in accordance with the general spatial planning plan (RUTR) based on statutory provisions and does not conflict with sharia principles. b. Waqf assets cannot be used in accordance with the waqf pledge. c. exchanges are made for direct and urgent religious needs. Apart from that, based on the considerations as intended in paragraph (2), permission to exchange waqf assets can only be granted in waqf: a. The exchanger's property has legal title or ownership by law. b. The value and benefits of the exchanged assets are at least the same as the original waqf assets. The value and benefits of exchanged assets, as referred to in paragraph (3) letter b are determined by the Regent or Mayor based on the recommendation of an assessment team whose members consist of: a. district or city local government. b. district or city land office. c. Regency or city Indonesian Ulema Council (MUI). d. Regency or city Department of Religion offices. e. Nazir of the waqf land concerned. Waqf swapping is the activity of exchanging waqf land for new land and then transferring it. Basically, changes to the designation or use of waqf property other than those promised in the waqf pledge cannot be changed. If it is necessary, it can be done after going through a permit application up to the level of the Minister

of Religion. In contrast to other forms of worship that have nothing to do with property, waqf is very dependent on whether or not the waqf property or assets can be used according to their purpose. The practice of waqf will be worth worship if the waqf assets can truly fulfill their intended function and be utilized. If the waqf assets are not functioning properly, a way must be found so that the waqf assets can function again.

C. Analysis of the results of the case study of waqf land Ruilag practices in the land acquisition process

Study of Cases of Swapping of Waqf Land in Indonesia The increasing prevalence of waqf instruments and the number of waqf management models such as cash waqf, productive waqf, and share waqf, the aim of which is none other than towards the benefit and dignity of the nation. Waqf innovation should not be considered trivial because, over time it has been influenced by the concept of productive waqf, which brings the nation towards a just and prosperous society. The case of exchanging waqf land must be considered positive because this is one of the methods that ensures waqf remains eternal and sustainable (Anshori & Ghofur, 2006).

The following are several practices for analyzing exchanges resulting from waqf studies in several field practice case areas, where the use is social and public facilities.

1. Case of Swapping of Mount Kembang Agricultural Waqf Land for Rice Fields.

Overview of waqf land: Gunung Kembang Desa Sukamulya, approximately 2,650 M2 with 327 Sukamulya waqf certificates located in Gunung Kembang, Sukamulya Tasikmalaya sub-district. Tasikmalaya with ownership certificate Number: 327 "WAKAF" issued by the National Land Agency of Tasikmalaya Regency on October 16, 1992, which now includes the city of Tasikmalaya. This waqf land was managed by a Nazhir named H. M. Yahya Aziz. Before 1990, this land was a waqf rice field, the proceeds of which were used for the construction and welfare of the As Sulha mosque as well as broadcasting the Islamic religion (Ministry of Religion, 2007–2013). However, it became no longer productive because the land was cleared to build a road from Ranca Bango village to Parhon village, and part of the waqf land was affected by the road project and in 1993 backfilling occurred, which resulted in the river flow being blocked by the road. In 1995, the remaining heirs (H. Memed, H. Mamin, H. Daru, and H. Euis Robiah) consulted with the nazhir to have the land sold or transferred. So the process of searching for exchange land began next.

In 2002, Nazir negotiated with H. Taufik Hidayat to exchange waqf land for his land covering an area of 11,397 m² in six certified locations. Exchange land is rice field land that produces three rice harvests in one year and is very profitable both in terms of area and income. *First*, there is 1 location of waqf land at different points, namely: waqf land which is located in the Gasong Block, with an area of 1,340 M² in the form of rice fields, with parcel No. S. 130. At the same location, the area is 2,190 m², and the area of 725 m² is Empty Yard Land (Palawija), Notification of Tax Due (L&B Tax) (SPPT) No. 0011-0166, parcel No.S.130. *Second*, there are 3 locations for the exchange of land for rice fields, namely: land in the Sadewata Block, Sukalaksana sub-district with an area of 1,430 m² in the form of rice fields, SPPT No. 485 plot

No. S.229. same location exchange land area 742 m² parcel no. S.229 block 010 Kohir Number 0270. Land in block Ciroman Sukamulya with an area of 4970 m², parcel no. S.125 Block 012 Kohir Number 0087 Exchange Land and Allocation of Waqf Land Results of Ruslagh, If you look at the area of the waqf land of 2,650 m² with exchange land of 11,397 m², it is very profitable to exchange both in terms of area and income so that the exchange land will be more profitable for the waqf. The proceeds are intended for the welfare of the mosque.

From a legal perspective, the administration of waqf land swaps has standard requirements for having a land certificate (sekufu). Likewise, the land has legal force, such as Waqf Law Number 41 of 2004 concerning waqf. The exchange land is wider, and from an administrative perspective, both the waqf land and the exchange land have met the requirements, namely having a land certificate. The Sales Value of Taxable Object (NJOP) value of the waqf land covering an area of 2,650 m² is 272,950,000 and the NJOP value of the exchange land is 310,075,000. The exchange land belongs to one person, namely H. Taufik Hidayat, here are several reasons why this exchange of waqf land occurred, including: a) the waqf land which covers an area of 2,650 M² (two thousand six hundred and fifty square meters) no longer functions, because the land is no longer rice fields, it is it is land so it does not produce anything; b) exchange land in six (6) locations with an area of 11,397 m² (eleven thousand three hundred and ninety seven square meters) is rice field land which produces three (3) rice harvests in one year; c) judging from the waqf land area of 2,650 m² from the 11,397 m² penukae land, it is very profitable to exchange both in terms of area and income so that the exchange land will be more profitable for waqf, the proceeds of which are intended for the welfare of the mosque; d) if from an administrative perspective the waqf land and the land being exchanged have met the requirements for a land certificate (sekufu) and the land also has legal force in accordance with the circular letter of the Director General of legal force, and is in accordance with the circular letter of the Director General of Islamic Community Guidance and Affairs. Hajj Number: D.11/5/MK/007/901/1989, and PMA number: 1 of 1978. 13 Then it was strengthened again by the existence of Waqf Law number 41 of 2004.

2. Case of Waqf Land Exchange (Ruislag) Waqf Property affected by the construction of the Cikampek-Palimanan Highway

This waqf land intended for rice fields was donated by a wakif H. Samhudi in 1991 with Waqf Ownership Certificate Number 265/Sukasukur Village. This waqf land will be exchanged by PT. Citra Tama Graha Properti as the exchange agent in this case was represented by Drs. Arief Setiawan who is the Director of the company. The related waqf assets consist of rice fields covering an area of 3,940 m², waqf certificate number 00099 of 2008 dated July 22, 2008, located in the Gambiran Block, Panjalin Kidul Village, sub-district Sumberjaya, Majalengka Regency , West Java Province. The waqf assets are managed by Nazhir named Kantoen Ibrahim as chairman, Otong Mahudin as secretary, Zahidin as treasurer, Ruhiyat, and Tjasmita as members.

According to the data collected, the 3,940 m² worth of waqf land that is designated for rice fields produces 1–2 crops a year, producing 1–2 tons of rice. The gross income is used to manage religious facilities and participate in other religious activities. Land Exchange and Allocation of

Waqf Land Results from Ruslagh, Based on the report of the Waqf Asset Appraisal Team dated June 11, 2012, the total waqf assets are IDR 28,400,000,- from a value of 1,420 M2 x IDR. 20,000. While the total value of the exchange's assets is rice fields, 2,552 m² x Rp. 20,000 = Rp. 51,040,000 and a land area of 6,422 m² x Rp. 20,000 = Rp. 128,440,000 if added, the total value of the exchange's assets is IDR 179,480,000. Since the issuance of the application letter for the waqf land exchange process in September 2012, as seen in Nazhir's application letter, in the same year in November 2012 the determination of the replacement land location for the waqf land affected by the construction of the Cikampek-Palimanan highway in Penajlin Kidul village was issued. Sumberjaya sub-district, Majalengka Regency. After conducting a survey and analyzing administrative law, in December of the same year, a letter was issued from the head of the regional office of the Ministry of Religion for West Java Province regarding recommendations for exchanging waqf land.

Furthermore, the exchange assets consist of rice fields and land covering an area of 8,974 m², which is divided into five plots in the Gambiran Block, Panjalin Kidul Village, Sumberjaya District. Majalengka, West Java Province, along with data on replacement land in the form of Rice Fields 1,286 M² AJB No. 216/2007, Letter C No. 564, Plot No. 132 S.IV, and 1,266 M² AJB No. 363/2007, Letter C No. 1193, Plot No. 132 S. IV. Meanwhile, to replace Land Land worth 3,936 M² SHM No. 97, Letter C No. 2446/97, Plot No. 133 S. IV, 1,226 M² AJB No. 159, Letter C M² SHM No. 177, Letter C No. 124, and Plot No. 133 S.IV total to 8,974 M². Ruislagh's reasons for the case of exchanging waqf rice fields. Next, there are several reasons for changing the status or exchange of waqf assets, namely: a) The waqf assets are rice fields covering an area of 3,940 m², which are covered by a trace of the Cikampek-Palimanan toll road covering an area of 1,420 m². The remaining 2,520 m² of waqf land that is not affected by the toll road remains under Nazhir's management; b) The exchange assets are paddy fields and land covering an area of 8,894 m², consisting of: 2 plots of paddy land covering an area of 2,552 m², which are productive paddy fields with good technical irrigation systems, located next to the original waqf land and 3 plots of land covering an area of 6,442 m², located opposite the original waqf land. The results of physical observations carried out by the Regional Team of the Ministry of Religion of West Java Province and the team for assessing and benefiting property from waqf exchangers in Majalengka Regency, which was formed based on the Decree of the Regent of Majalengka number 124 of 2011 concerning the formation of the Team for assessing and benefiting property from waqf exchangers in Majalengka Regency, approved the replacement land as large as 8,974 m², of which the exchange land belongs to the Ministry of Public Works. Formal juridical evidence of the exchange stating that the exchange statement letter of exchange of land is not in dispute on a stamp duty of IDR 6,000, which was ratified by the local village head and sub-district head. There is also a letter of exchange stating that the assets of the old waqf will not be used for things that are contrary to Islamic law.

3. Exchange of The Bondo Waqf Land at Kauman Grand Mosque

The Semarang Grand Mosque has waqf land assets in the form of agricultural land and yardlands in the Semarang Kodya area, covering an area of 119.20 Ha. This asset is land inherited from Ki Ageng Pandanaran, who at the time was the regent of Semarang. During its development, these lands were deemed less productive because many of them had turned into swamps, and according to the city master plan, the location of the land would be used for the development of

residential areas, so the idea arose to exchange it for land that was more productive, wider, and far from being touched by the plan. urban planning. The development plan to be more productive is a collaboration between the central BKM and PT Sambirejo, which is willing to exchange the waqf land for the Semarang big mosque for agriculture in Demak district, covering an area of 250 Ha. In the next journey to carry out the waqf land exchange process, PT Sambirejo collaborated with Sucipto (director of PT. Tensindo) as the funder (BKM, 1980–2000).

The exchange of waqf land for the Bondo Mosque took place over a very long period, around 19 years from 1980 to 2000 until it was completed, because the process of exchanging waqf land caused many problems, including in 1990 when BKM Kodya Semarang experienced obstacles in managing it because some of the exchanged land could not be controlled by BKM, while the existing waqf land was sold by PT Sambirejo armed with a BKM letter of authority located in Tlogomulyo, Tlogosari, and Muktiharjo. After conducting a field inspection by PT Sambirejo along with the Ministry of Religion, the Central BKM confirmed whether the waqf land had been sold, and PT Sambirejo agreed to fulfill the shortfall stated by PT Sambirejo in 1991. Until 1996, there was no ability to return the shortfall. If the land is lost, BKM will file criminal and civil lawsuits against PT Sambirejo. The criminal reported to the Central Java Regional Police, and Civil filed a lawsuit to the Semarang District Court. The result of the trial was that the BKM was defeated, but at the appeal level it was declared N.O (rejected) on the grounds that the lawsuit was vague, so this case was declared raw again. The development of solving this case problem made Muspida Tk. I Central Java felt obliged to intervene to resolve the issue of exchanging waqf land for the Semarang Grand Mosque. The alternative solution is peaceful in the sense that the distribution can be accepted by both parties to the dispute to return the reduced waqf land. The alternative land distribution that is considered closest to justice is: a) dividing 69.20 Ha of land in Semarang Municipality with a ratio of = 25% for Pt Sambirejo (17.20 ha 75% for BKM (51.90 ha) with consideration of BKM and PT Sambirejo each had a fundamental error in the waqf land exchange process; b) BKM and the Islamic Community were expected to accept the alternative distribution because the waqf land had been returned in the amount of 118.10 Ha (51.90 Ha of land in Semarang + exchange land in Demak 66.20 Ha) plus a compensation building IV Semarang and others. Exchange Land and Allocation of Waqf Land Results of Ruslugh: In terms of the exchange of waqf land, it is determined that the amount of Exchange Land and Allocation of Waqf Land Results of Ruislah: In terms of the exchange of waqf land it is determined that the amount of exchange land in the District. Demak covers an area of 250 Ha (Minister of Religion Decree Number: 12 of 1990, but in reality, PT Sambirejo only gave 66.20 Ha or 25%. Thus, PT Sambirejo still has not handed over 75% of the specified amount of excavator land. However, the alternative distribution of remaining land in Semarang with the formula 25%:75% is very fair.

Results of Practice Analysis of Waqf Land Cases such as the practice of exchanging waqf land, the practice of exchanging waqf land in the Gunung Kembang area of Tasikmalaya which was relocated from agricultural land to rice fields, the case of exchanging waqf land in the Cikampek Palimanan location from rice fields to the Cikampek Palimanan toll road, and land cases Waqf Bondo Kauman Grand Mosque, Semarang City, shows that the three examples of cases that the author refers to are based on the assumption that in the implementation of waqf land swaps there are varied phenomena with complete resolution even though they are a little complicated, but the cases handled related to this ruislah can be resolved well even though takes a long time.

Administratively, it runs effectively empirically as regulated in Waqf Law Number 41 of 2004, its ratification also includes recommendations and support from the government, the Ministry of Religion, and the Indonesian Waqf Board (BWI). In the visualization related to several cases of waqf land exchange above, it can be seen that the arrangements related to the use of waqf land exchange are permitted for the benefit of various types of people.

Conclusion

Land acquisition for development, especially in the context of building public interests, must be carried out based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, prosperity, sustainability, and harmony. This is as regulated in the provisions of Article 2 of Law No. 2 of 2012. Among all the principles mandated, the principles of humanity and justice are the basic principles that form the basis for the mandates of Pancasila and the 1945 Constitution of the Republic of Indonesia. In addition, the provision of compensation resulting from land acquisition must be carried out based on deliberation to reach a consensus to create justice based on Pancasila so that it does not cause losses to parties who lose their land rights. The process of transferring waqf land in Indonesia for the use of facilities public and other social uses is currently not a polemic because the process and implementation are regulated in statutory regulations waqf Number 41 of 2004, concerning Changes in the Status of Waqf Property, while in agrarian law it is regulated several written legal rules and regulations there is nothing written that regulates regarding earth, water and within certain limits space as well as natural wealth contained in those who adhere to the fundamentals as follows: the basis of adat Nationalism; basic social functions; national basis; the basis of non-discrimination; the principle of Mutual Cooperation; the principle of Unification and the basis of Horizontal separation. Temporarily in the process of transferring waqf land for general use, there is a decision on the basis of social function about where to change rolling over waqf land for social utilization in the form of toll roads and other general interests.

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