

POSITION OF WAKF LAND POST ISSUANCE OF LAW NUMBER 11 OF 2020 CONCERNING WORK

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Abstract: *Waqf is one way that is believed to be a form of charitable investment, which is a provision for retirement from life in this mortal world to an essential life by Muslim humans, where charity flows as long as the waqf property still provides benefits for others. The seriousness of the government and nadzir to maintain and/or protect and ensure the waqf objects function according to what the wakif intended as stated in the Waqf Pledge Deed will provide direct benefits for the wakif and the users of the benefits of the waqf land itself, and indirectly provide confidence for the waqf. prospective nadzir to want to endow their land because it will be a charitable investment that is guaranteed to be protected and will give them an uninterrupted reward.*

Key Words: *Waqf Land, Commercialization, Land Procurement, Public Interest, Legal Certainty.*

1. INTRODUCTION:

The state makes waqf land as one of the lands that can be used as land that can be used by the government for the implementation of public interest development. The government issued implementing regulations for this change by issuing Government Regulation Number 19 of 2021 concerning the Implementation of Land Procurement for Development in the Public Interest, so that waqf lands that stand on top of mosques or prayer rooms, orphanages, madrassas, religious schools and other forms can become road infrastructure. , industrial areas, offices, markets and so on that are commercial in nature.

2. THEORITICAL FRAMEWORK:

a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[1]

b. Benefit Theory

Maslahah comes from Islamic legal theory, which is oriented towards more than emphasizing the element of benefit or benefit for humans rather than questioning purely normative problems.

c. Legal Theory of Development

A developing society is characterized by changes so that the role of law in development is to ensure that the changes occur in an orderly manner.

3. LITERATURE REVIEW:

The control of land by the state is interpreted as the authority of the state to regulate the designation and use of the land, so that the prosperity and welfare of the people can be utilized as much as possible.

Waqf is a legal act within the scope of Islamic law, waqf is an act that is sacred, noble, and *charity* for mankind. [2]

Omnibus law itself literally means one bus with many loads, meaning that in the context of omnibus law as a law, the emphasis or characteristics of omnibus law is on the substance and content of the law that uses the welding omnibus model itself, so it can be understood that omnibus law is just a designation. for model laws with multiple loads.[3]

4. METHOD:

The method used in this study is a normative juridical approach, which is an approach that focuses on reviewing and researching legal material with reference to legal norms contained in legislation, court decisions and legal norms that exist in society.[4]

5. DISCUSSION:

With the opening of opportunities to replace waqf land needed by the government with the spirit of increasing investment which is increasingly facilitated and protected by Law Number 11 of 2020 concerning Job Creation, making the sacredness of waqf land a field of charity that continues to flow; the pattern of compensation opens up opportunities for misuse, and the position of nazhir changes from that of manager to owner who should only be the manager; the government should maintain the existing waqf land and support its development in the form of assistance so that its efficiency continues to increase, so that it can stimulate the spirit of waqf. Law Number 11 of 2020 concerning Job Creation also provides an opportunity to build flats on waqf land on a lease basis, making the commercialization of waqf land easier.

6. ANALYSIS:

A. Waqf Land Before and After Law Number 41 of 2004 concerning Waqf

The development of waqf property in a commercial form can be of good value if it is built and developed from the existing waqf results without disturbing the waqf given directly by the wakif. The provision of wakif must be maintained and perpetuated as a form of maintaining the mandate because it is the obligation of Nazhir as a manager. Article 45 Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf as a guideline for development is very good if it is carried out as a form of development referred to above, but it is not a change in the allocation of what is directly given by wakif to nazhir.

B. Position of Waqf Land after the issuance of Law Number 11 of 2020 concerning Job Creation

The government issues implementing regulations for the provision of flats as the implementation of Law Number 11 of 2020 concerning Job Creation, namely Government Regulation Number 13 of 2021 concerning the Implementation of Flats, as well as Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Housing Units Arrangement, and Land Registration. Government Regulation Number 13 of 2021 concerning the Implementation of Flats in Article 2 letter e further emphasizes that waqf land can be empowered to become public flats. Article 22 of the government regulation gives Nazhir the right to propose changes to the designation of waqf land if what is to be built is different from the purpose of waqf to the Indonesian Waqf Board. The empowerment is carried out by means of rental or joint utilization.

C. Management of Waqf Land that is More Effective and Provides More Legal Certainty

The government should also provide guarantees that the waqf land will be maintained and managed properly according to the intention of the wakif itself, which then if it has good results, and is sufficient for other developments, then please Nazhir develop it according to the waqf law and adjusted to the development of waqf according to the academic text in question. So that wakif who have excess assets will compete to donate their land, and wakif with their limitations can donate assets according to their abilities so that all Muslims compete in goodness, in this case waqf for the welfare of the ummah.

7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) Regulation of waqf land before Law Number 41 of 2004 concerning waqf was promulgated, waqf was regulated in Government Regulation Number 28 of 1977 concerning Waqf of owned land, as an implementation of the provisions in Article 14 paragraph (1) letter b and Article 49 paragraph (3) Law Number 5 of 1960 concerning

the Basic Agrarian Law, where waqf land becomes land that cannot be changed its designation and/or use according to the Waqf Pledge Deed (AIW) that has been made, except that the waqf land cannot be used as stated in the Deed of Waqf Pledge and has obtained approval from the Minister of Religion or an appointed official. After the issuance of Law Number 41 of 2004 concerning waqf, there was an expansion both in the period of waqf from permanent to time-limited (waqf object in the form of rent), the purpose of waqf is from other public purposes according to Islamic teachings to general welfare according to sharia, and The expansion of the type of waqf property from immovable property is expanded to include movable objects.

- 2) Law Number 11 of 2020 concerning Job Creation or also called *omnibuslaw* is a reference to the birth of implementing regulations under it, which often conflict with the main law, such as in the case of waqf land, which is entirely carried out for the sake of creating investment in Indonesia.
- 3) The government with its legislative authority can make arrangements with the aim of maintaining the perpetuity of the waqf intention as stated in the waqf pledge deed; The government with its own budget increases the supporting facilities needed to achieve service optimization for what the wakif intends for its waqf objects; Nadzir with the intention of worship manages and maintains every inch of land that has been granted management rights to him; so that with this pattern there will be more and more Muslims who endow their land because they are pursuing the practice of jariah as a provision to face the Creator.

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