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Review of Law Number 41 of 2004 Regarding the Practice of Swapping (Ruislag) of Mosque Waqf Land Outside the Context of Public Interest in Wringinputih Village, Banyuwangi Regency

Dewi Siti Khasanah¹, Moh. Syifaul Hisan²

Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember

Email: anadewi015@gmail.com¹, Email: moh.syifaullhasan@uikhas.ac.id²

Abstract: The practice of waqf in Indonesia has undergone modernization, including the management of waqf assets, which is often carried out through exchanges or swaps to maximize their benefits. Although the legality of such exchanges is clearly regulated under Law Number 41 of 2004, cases in the field still reveal violations of these regulations. This condition is driven by a lack of awareness regarding the importance of preserving waqf assets for community welfare and insufficient understanding of the applicable legal provisions. This research aims to investigate the practice of land exchange (ruislag) involving mosque waqf land conducted without considering public interest, focusing on the legal framework outlined in Law Number 41 of 2004 concerning Waqf. The study employs a qualitative approach, using the village of Wringinputih, Muncar subdistrict, Banyuwangi regency, as a case study. The research methods include observation, in-depth interviews with relevant parties, and analysis of related legal documents. The findings reveal that the practice of exchanging mosque waqf land in Wringinputih Village, Banyuwangi Regency, unrelated to public interest, occurred due to an offer from a particular party to exchange land. However, the land's status had not been officially transferred to the mosque. A prior agreement had been made between the heirs and the party involved in the land exchange. Following the handover, the mosque accepted and received the waqf. An examination of Law Number 41 of 2004 indicates that the land exchange practice involving the waqf land of Bustanul Arifin Mosque in Wringinputih Village, Banyuwangi, did not fully comply with the regulations. The discrepancies include the exchange being motivated by personal interest, the uncertified status of the land, and the lower value of the replacement land compared to the original.

Keywords: Land Swap, Mosque Waqf Land.

Abstrak: Praktik perwakafan di Indonesia telah mengalami modernisasi, termasuk dalam pengelolaan harta benda wakaf yang sering dilakukan melalui pertukaran atau tukar guling untuk memaksimalkan manfaatnya. Meskipun legalitas tukar guling telah diatur secara tegas dalam Undang-Undang Nomor 41 Tahun 2004, masih ada kasus di lapangan yang menunjukkan pelanggaran terhadap aturan ini. Kondisi tersebut dipicu oleh rendahnya kesadaran akan pentingnya menjaga harta wakaf demi kesejahteraan masyarakat serta kurangnya pemahaman terhadap ketentuan hukum yang berlaku. Penelitian ini bertujuan untuk menginvestigasi praktik tukar guling (*ruislag*) terhadap tanah wakaf milik masjid yang dilakukan tanpa memperhatikan aspek kepentingan umum, dengan fokus pada kerangka hukum yang diatur dalam UU Nomor 41 Tahun 2004 tentang Wakaf. Studi ini dilaksanakan dengan menggunakan pendekatan kualitatif, dengan desa Wringinputih, kecamatan Muncar, kabupaten Banyuwangi sebagai studi kasus. Metode penelitian melibatkan observasi, wawancara mendalam dengan pihak terkait, dan analisis dokumen hukum terkait. Penelitian mengungkapkan bahwa praktik tukar guling tanah wakaf masjid di Desa Wringinputih, Kabupaten Banyuwangi, yang tidak terkait kepentingan umum, terjadi karena adanya tawaran dari pihak tertentu untuk bertukar tanah. Namun, status tanah tersebut belum secara resmi diserahkan kepada pihak masjid. Sebelumnya, telah ada kesepakatan antara ahli waris dan pelaku tukar guling. Setelah penyerahan, pihak masjid setuju dan menerima wakaf tersebut. Tinjauan terhadap UU Nomor 41 Tahun 2004 menunjukkan bahwa praktik tukar guling tanah wakaf Masjid Bustanul Arifin di Desa Wringinputih, Banyuwangi, tidak sepenuhnya sesuai aturan. Ketidaksesuaian ini meliputi: alasan tukar guling untuk kepentingan pribadi, status tanah yang belum bersertifikat, dan nilai tanah penukar yang lebih rendah dari tanah awal.

Kata Kunci: Tukar Guling, Tanah Wakaf Masjid,

INTRODUCTION

The legality of the exchange of waqf assets is regulated in Law Number 41 of 2004, Chapter IV Article 41, with the condition of obtaining approval from the Minister of Religious Affairs of the Republic of Indonesia and a clear reason, namely for the public interest. This regulation allows for the optimal use of waqf assets for the benefit of the community, although it is contrary to the view of the majority of scholars who follow the opinion of Imam Syafi'i, who prohibits changing the function of waqf assets, even for the purpose of benefit.¹

Swapping or in Islamic law is called *istibdal*, differentiated from *ibdal* or *badl*. Swapping or in Islamic law is called *istibdal*, is defined as buying

¹ Sarmo, "Hukum Perubahan Status Harta Benda Wakaf (Studi Kasus Perubahan Status Kepemilikan Tanah Wakaf Di Desa Keniten Kecamatan Kedungbanteng Kabupaten Banyumas)," *Al-Manāhij: Jurnal Kajian Hukum Islam* Vol. 14 No. 41 (2020): 239–50, <https://doi.org/DOI:https://doi.org/10.24090/mnh.v14i2.3216>.

goods in cash to be used as waqf goods or taking goods as a replacement for the previous position of goods. Meanwhile, ibdal refers to the sale of waqf goods in cash. Badl or tabadul, on the other hand, is al-muqayadah, namely the process of exchanging or bartering waqf assets, or selling waqf goods for other goods in exchange.²

Basically, waqf that has been handed over cannot be asked for back or exchanged for other objects. One of the foundations is the history of Umar ibn Khattab who donated his strategic land in Khaibar.³ However, in some cases, the practice of exchanging waqf land often occurs. This action is usually carried out with careful consideration, with clear reasons whether for public interest, personal interest, or because the waqf land can no longer be used in accordance with the waqf pledge.⁴ Law Number 41 of 2004 concerning Waqf firmly states that waqf land, especially that related to mosques, must be managed for the public interest and welfare of the community. If the exchange of waqf land does not follow sharia principles, this can have a negative impact on the stability and initial purpose of waqf.

The practice of waqf in society is still not running orderly and efficiently as expected. As a result, in some cases, waqf assets are not well maintained, neglected, or even transferred to third parties illegally. This is not only caused by the negligence or inability of waqf managers to care for and manage the assets, but also by the lack of understanding and awareness of the community who are less concerned or do not fully understand the status of waqf assets. In fact, waqf assets should be maintained for the public welfare in accordance with their objectives and designations.⁵

In its implementation, there are still incidents that are not in accordance with the main purpose of waqf. Unorganized and suboptimal management can reduce the benefits that should be enjoyed by the community from the waqf property. One example of waqf practice is the exchange of waqf land that occurred about twenty years ago. In this case, it is known that before he died, a waqif expressly stated his desire to be buried in the mosque area. In accordance with the mosque regulations regarding burial, he had determined that the land he owned would be donated to the mosque. However, after the waqif died and was buried in the mosque area, the land that had been designated as waqf was exchanged with other land belonging to the waqif's brother.

The exchange of waqf land was carried out after the wakif died, before the land was officially handed over to the mosque. The wakif's

² Wahbah Al-Zuhaili, *Al-Fiqh Al-Islamiy Wa Adillatuh* (Damaskus: Dar al-Fikr, n.d.)

³ Moh. Syifa'ul Hisan, *Pengantar Manajemen Ziswaf Di Indonesia*, ed. Badrut Tamam (Yogyakarta: CV. Bildung Nusantara, 2024).

⁴ Fahrurroji, *Wakaf Kontemporer* (Jakarta: Badan Wakaf Indonesia, 2019).

⁵ Kamariah, Sukman, and Nirwana, "Problema Wakaf Di Indonesia," *Ats-Tsarwah: Jurnal Hukum Ekonomi Islam* 1 (2021): 52–68.

brother carried out the exchange. After going through negotiations, the land belonging to the wakif's brother was handed over as a waqf by the heirs as replacement wakifs. This incident occurred without strong consideration of the public interest or the welfare of the community. The exchange occurred more driven by personal reasons, potential economic value, and changes in regional spatial planning.

The practice of exchanging mosque waqf land that occurred in Wringinputih village created an urgency to conduct in-depth research related to the community's understanding of the provisions of Law Number 41 of 2004 concerning Waqf. By assessing the effectiveness of existing laws and looking at possible shortcomings, this study can provide recommendations for better policy changes in managing religious assets, including waqf land.

Based on the explanation above, the practice of exchanging mosque waqf land in Wringinputih Village is interesting to be studied further, especially in relation to the provisions of Law Number 41 of 2004 concerning Waqf. To reveal the results of this study, the researcher raised the title "Review of Law Number 41 of 2004 on the Practice of Swapping (Ruislag) of Mosque Waqf Land Outside the Context of Public Interest in Wringinputih Village, Banyuwangi Regency".

RESEARCH METHODS

In this study, the method used is a qualitative approach with a case study as the research design. The types of data collected are primary data and secondary data. Primary data sources were obtained through interviews with related parties, such as the perpetrators of the exchange, the management of the mosque, and nazhir as key informants, then the researcher also involved community leaders and the village government to obtain information. Meanwhile, secondary data was obtained from related documents, such as legal documents, laws and regulations, and literature related to waqf.

The data collection techniques used were observation, in-depth interviews, and document analysis. The collected data were analyzed qualitatively using content analysis techniques to identify emerging patterns and themes. The variables considered in this study include the practice of waqf land exchange, compliance with Law Number 41 of 2004 concerning Waqf, the waqf implementation process, and the legal implications of the practice of waqf land exchange outside the context of public interest. Measurement of variables was carried out through qualitative analysis of the collected data.

DISCUSSION/RESULTS AND DISCUSSION

A. General Provisions for the Exchange (Ruislag) of Waqf Property

Ruislag known as the term exchange. In the Big Indonesian Dictionary (KBBI), exchange is also referred to as exchange, which means the exchange of goods without involving additional money.⁶

Article 1541 of the Civil Code explains that:

"Exchange is an agreement in which both parties commit themselves to giving each other an item reciprocally in exchange for another item."⁷

If these two meanings are combined, then *ruislag* or barter can be interpreted as an agreement between two parties who are committed to exchanging goods as a substitute for other goods without involving additional money from either party.

Waqf property exchange or *ruislag* is the exchange of waqf assets with other assets or benefits to increase their value and usefulness for the benefit of the community. However, this process must still follow the principles of Islamic sharia, which prioritize public interest, justice, and sustainability. The practice of exchange needs to consider the agreement of the related parties, the benefits for the community, and the value of the assets exchanged, so as not to harm the party making the waqf.

In the view of Islamic jurisprudence, the Shafi'i school of thought holds that it is not permissible to exchange waqf goods (including *ruislag*), while the Hanafi school of thought actually permits it.⁸ This is reinforced by the view of Imam al-Syarqawi who said:

وَلَا يَجُوزُ اسْتِبْدَالُ الْمَوْقُوفِ عِنْدَنَا وَإِنْ خَرَبَ ، خِلَافًا لِلْحَنَفِيَّةِ . وَصُورَتُهُ عِنْدَهُ أَنْ يَكُونَ الْمَحَلُّ قَدْ آلَ إِلَى السُّقُوطِ فَيُبَدَّلُ بِمَحَلٍّ آخَرَ أَحْسَنَ مِنْهُ بَعْدَ حُكْمِ حَاكِمٍ يَرَى صِحَّتَهُ

Meaning: Exchange (*istibdal*) of waqf objects (*mawquf*) according to our *madhhab* (Shafi'i) is not permissible even if the object is damaged. In contrast, the Hanafi *madzhab* tends to allow it. As an illustration, according to them, the object (land) that was donated was really on the verge of collapsing, then the object was exchanged for another place that was better than it, after being determined by the judge taking into account its suitability.⁹

⁶ Syamsurizal Abas, "Tukar Guling Tanah Wakaf Dan Penarikan Kembali Harta Benda Wakaf," *Jurnal Al-Mizan* Vol. 17, no. No. 2 (2021): 259, <https://doi.org/DOI:10.30603/am.v17i2.2334>.

⁷ Sekretariat Negara Republik Indonesia, "KUH Perdata" (1847).

⁸ Imam Nawawi Al-Bantani, *Nihayah Al-Zain Fi Irsyad Al-Mubtadi'in* (Beirut: Dar al-Kutub al-'Ilmiyah, 2002).

⁹ Al-Syarqawi, *Hasyiyah Al-Syarqawi* (Beirut: Dar al-Kutub al-'Ilmiyah, 1997).

Furthermore, the view of the Hanafi madzhab which allows the exchange of waqf objects (*istibdal*) can be seen in the following explanation by Ibn 'Abidin:

اعْلَمْ أَنَّ الْإِسْتِبْدَالَ عَلَى ثَلَاثَةِ وُجُوهِ: الْأَوَّلُ: أَنْ يَشْرُطَهُ الْوَاقِفُ لِنَفْسِهِ أَوْ لغيرِهِ أَوْ لِنَفْسِهِ وَغيرِهِ، فَلَا يُسْتَبَدَّلُ فِيهِ جَائِزٌ عَلَى الصَّحِيحِ وَقِيلَ اتِّفَاقًا. وَالثَّانِي: أَنْ لَا يَشْرُطَهُ سِوَاءَ شَرْطِ عَدَمِهِ أَوْ سَكَتٍ لَكِنْ صَارَ بِحَيْثُ لَا يُنْتَفَعُ بِهِ بِالْكُلِّيَّةِ بَأَنْ لَا يَحْصُلَ مِنْهُ شَيْءٌ أَصْلًا، أَوْ لَا يَفِي بِمُؤْتَتِهِ فَهُوَ أَيْضًا جَائِزٌ عَلَى الْأَصَحِّ إِذَا كَانَ بِإِذْنِ الْقَاضِي وَرَأْيِهِ الْمَصْلَحَةِ فِيهِ. وَالثَّالِثُ: أَنْ لَا يَشْرُطَهُ أَيْضًا وَلَكِنْ فِيهِ نَفْعٌ فِي الْجُمْلَةِ وَبَدَلُهُ خَيْرٌ مِنْهُ رِبْعًا وَنَفْعًا

Get to know that replacement (*istibdal*) has three forms:

First: If person the waqf (*waqif*) stipulates it for himself, or for another person, or for himself and another person, then the replacement in this case is permissible according to the sound opinion, and some argue that this is an agreement. **Second:** If he does not stipulate the replacement, either he stipulates the prohibition of replacement or remains silent, but this condition causes the waqf goods to be completely unusable, that is, no benefit is obtained from the goods, or they are unable to cover the maintenance costs. Therefore, replacement in this condition is also permissible according to the sound opinion, if with the permission of the judge and according to his opinion that there is benefit in it. **Third:** If he does not stipulate the replacement and the goods still provide benefits overall, but the replacement (*istibdal*) is considered more profitable, both in terms of results and other benefits.¹⁰

In the legal provisions applicable in Indonesia, the issue of waqf management is specifically regulated in Law Number 41 of 2004 concerning Waqf. In this law, it is regulated that every exchange of waqf objects must be carried out with transparency, careful consideration, and in accordance with Islamic law and the law, so that waqf management can provide maximum benefits to the community. Furthermore, Article 40 states that waqf assets that have been donated are prohibited from:¹¹

- 1) used as collateral;
- 2) confiscated;
- 3) granted;
- 4) for sale;
- 5) inherited;

¹⁰ Ibn 'Abidin, *Hasyiyah Radd Al-Muhtar* (Mesir: Mushthafa al-Babiy al-Halabiy, 1966).

¹¹ Sekretariat Negara Republik Indonesia, "Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf" (2004).

- 6) exchanged; or
- 7) transferred in the form of other transfer of rights.

Over time, sometimes waqf assets have the potential to experience a decrease in the productivity of benefits, so that nazhir sometimes needs to consider exchanging them. Based on Article 49 of Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, changes in the status of waqf assets are basically not permitted, unless there are certain reasons accompanied by written permission from the Minister of Religion with the approval of the Indonesian Waqf Board. These considerations include:¹²

- 1) The exchange of waqf assets is carried out on the basis of public interest in accordance with the General Spatial Planning Plan, in compliance with legislation, and in line with sharia principles.
- 2) The exchange was carried out because the waqf assets could no longer be used according to the initial pledge.
- 3) The exchange of waqf property is carried out because there is an urgent need for religious matters.
- 4) The property used as an exchange has a valid certificate of ownership.
- 5) The exchange property has a value and benefits comparable to the original waqf property.

The following is a flowchart of the waqf property exchange application process that reflects the strictness of the related regulations. This policy is strictly designed to ensure the protection of waqf property, so that exchange or replacement can only be done if all the established requirements are met.¹³



Mechanism of Permit for Change of Status/Exchange of Waqf Land

¹² Siska Lis Sulistiani, *Pembaruan Hukum Wakaf Di Indonesia* (Bandung: PT Refika Aditama, 2017).

¹³ Tim Penyusun, *Fikih Ruislag* (Jakarta: Badan Wakaf Indonesia, 2015).

The waqf regulation as explained previously confirms that the exchange of waqf assets is in principle not permitted, unless there is a valid reason and in accordance with applicable procedures, provisions, and requirements. Violation of the waqf asset exchange rules can result in criminal sanctions, as regulated in Article 67 paragraph 1 of Law Number 41 of 2004 concerning Waqf, which includes imprisonment or a fine.

B. The Practice of Swapping (Ruislag) of Mosque Waqf Land Outside the Context of Public Interest in Wringinputih Village, Banyuwangi Regency

1. Chronology of Waqf Land Exchange at Bustanul Arifin Mosque

Based on findings in the field, the practice of waqf land exchange in Wringinputih Village involves waqf assets owned by the Bustanul Arifin Mosque. The land that is the object of the exchange is a waqf asset that is intended for the maintenance of the mosque and to support the welfare of the surrounding community.

Starting from a person's request before his death to be buried in the mosque area, this process is continued by fulfilling the applicable requirements according to the rules of the mosque. The facts show that the Bustanul Arifin Mosque has an unwritten rule, but has been recognized for a long time, regarding burial on the mosque site. The regulation stipulates that the heirs or families of people buried in the mosque are required to donate part of their land to support the maintenance of the mosque, with a land area of around a sakwolon. Thus, the land waqf is a form of compensation for burial at the Bustanul Arifin Mosque.

Based on the unwritten rules in the mosque, the heirs fulfill their obligations by donating land for the benefit of the mosque after the death of the wakif. However, the land that was donated turned out not to be the original property of the wakif, but rather the result of an exchange by an individual. After the death of the wakif, the individual offered the heirs to exchange land, including land that had been designated as a waqf. Through a negotiation process, both parties finally reached an agreement, and the exchange was carried out without involving the mosque management.

The heirs assume that they have full authority over all the assets left by their wife, which in this case is called the wakif, so that any action can be justified by them, including in the case of barter. This is because there is no written evidence related to the waqf statement that can bind the heirs themselves. Therefore, according to him, the land

that is donated does not have to be that land but can be any land, the point is that there is something that is donated.

Waqf with a will, whether in oral or written form, can only be implemented if it is witnessed by at least two witnesses who meet certain requirements, such as being of adult age, being Muslim, of sound mind, and having no obstacles to carrying out legal actions. Waqf with a will is carried out by the recipient of the will after the death of the testator.¹⁴In this case, the beneficiary of the will acts as the power of attorney for the wakif. The implementation must be in accordance with the procedures for wakif as explained in the Law. If the wakif with a will is not carried out by the beneficiary of the will, the court may instruct the person concerned to carry out the will at the request of the interested party. This shows that for wakif, the will must be documented in the form of a deed.

In accordance with the KHI and the Civil Code, both have provisions regarding the form of a will. However, there are differences in the form of a will recognized by the two regulations. In the KHI, the form of a will can be oral or written in the form of a private deed. If the will is made with at least two witnesses, either verbally or in writing in a private deed, then the will is considered valid according to the KHI. On the other hand, the Civil Code has different rules regarding the form of a will. Oral wills are not recognized in the Civil Code because Article 875 of the Civil Code requires that a will be drawn up in the form of a deed.¹⁵

The similarity between the form of a will according to the KHI and the Civil Code is that both recognize the form of a will in the form of a notarial deed. The main advantage of the form of a will in a notarial deed is its high evidentiary power because the notarial deed is considered authentic and has strong evidentiary power. In addition, a will in the form of a notarial deed is also safer from the risk of loss because the notary keeps a copy of the will among the official documents he has.

A will made orally and witnessed by two witnesses may face certain risks. For example, one or both witnesses die before the testator, causing information about the will made to be unable to be maintained after the testator's death. In addition, if the testator makes a will with a written document that is then submitted to one of the heirs, the document may be lost due to accident or negligence. This

¹⁴ Indonesia, Undang-undang Nomor 41 Tahun 2004 tentang Wakaf. Pasal 24, 26-27.

¹⁵ Putih Nurfitriani Triwahyuni, "Dampak Hukum Terhadap Wasiat Tanpa Akta Notaris," *JIMHUM: Jurnal Ilmiah Mahasiswa Hukum* Vol. 2, no. No.3 (2022).

shows that oral wills and written wills submitted in person are very vulnerable to the risk of loss, unlike wills made before a notary.

2. Handover of Waqf Land from the Heirs to the Bustanul Arifin Mosque

The ruiislag process that occurred in 2003 took place before the land was officially handed over to the mosque. However, the status of the land had actually been determined as a waqf based on the will of the wakif. The determination was conveyed by the wakif in front of witnesses, namely the heirs, the swap perpetrators and their children, and the mosque administrators.

After the wakif died, the heirs actually carried out a barter transaction for the land that had been designated as a waqf. This transaction was carried out with the perpetrator, who turned out to be his own sibling. This action was an initiative of the perpetrator, who wanted to own the land to be used by his child as a residence or house.

When handing over the land to the mosque, the heirs explained that the land given was different from that mentioned in the will because it had been exchanged with other land. In response, the mosque agreed and accepted the waqf from the heirs for the sake of maintaining the mosque, even though the exchange process was carried out without involving them. This happened because there was no written evidence showing a waqf pledge or agreement between the parties involved. As a result, the mosque did not have a strong legal basis to claim ownership of the land. This situation shows the weakness of the practice of waqf carried out verbally.

As for oral waqf, it is the transfer of land verbally without going through administrative procedures, based on trust to a particular person or institution. This is due to the general view that waqf is a pious deed that is highly valued before God, and waqf property¹⁰³ is considered as belonging to Allah which cannot be disturbed without His permission. Because of the strong traditional view of Muslims on this matter, many figures or Muslims refuse to empower waqf so that it can have a broader social role and is not limited to the aspect of worship.¹⁶

The issue related to waqf land being exchanged with other land has a significant impact on the sustainability of the waqf system. When the exchange is carried out without paying attention to clear procedures and without adequate documentation, this opens up a gap for misuse and manipulation of waqf land. It should be understood

¹⁶ A.B. Zainul Fikri, "Aksanaan Wakaf Lisan Dalam Konteks Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf: Studi Di Kabupaten Blitar, Jawa Timur, Indonesia," *Jurnal Supremasi* Vol. 6, no. 1 (2016).

that waqf land itself is a right to land granted by a person or legal entity, which is intended for worship activities or public interests, not for personal interests, in accordance with the purpose of waqf. Land that can be waqf is land owned, because it has the strongest strength and integrity for its owner so that it will not interfere with the eternal and eternal nature of the waqf land itself.¹⁷

Based on the explanation above, the mosque is one of the witnesses when the wakif delivers the will of the wakif, in addition to the heirs and the wakif's family. Therefore, the heirs should involve the mosque in the exchange decision-making process to ensure transparency and fairness in the wakif procedure.

C. Review of Law Number 41 of 2004 Regarding the Practice of Swapping (Ruislag) of Mosque Waqf Land Outside the Context of Public Interest in Wringinputih Village, Banyuwangi Regency

1. Reasons for Swapping

The motive behind the actions of individuals who exchange waqf land owned by the wakif is personal interest, such as the desire to gain direct financial gain or obtain land with a higher economic value. This interest is usually related to plans to build a residence on the land because of its strategic location and proximity to the mosque.

Article 41 Paragraph 1 of Law Number 41 of 2004 and Article 49 Paragraph 2 point (a) of PP Number 42 of 2006 state that the exchange of waqf assets is basically prohibited. However, it is permitted if it is done for the public interest, as long as it is in accordance with the provisions of the law and sharia principles.

Based on Law Number 41 of 2004, the rules regarding the exchange of waqf assets are very limited, only permitted under certain conditions. Although in general the exchange of waqf assets is prohibited, an exception is given if the waqf assets are used for public interest in accordance with the General Spatial Plan (RUTR), on the condition that it is in accordance with laws and regulations and does not conflict with sharia principles.

2. Status of Waqf Land at the Time of Exchange

The unclear ownership of land, both the initial land and the exchange land that has not been certified when the exchange occurs, can trigger conflict and legal uncertainty for the parties involved. In addition, the absence of the Waqf Pledge Deed (AIW) also raises doubts about the legal status of the land as a waqf. As a result, various legal problems such as land disputes, ownership claims, or obstacles in the utilization and development of land can arise.

¹⁷ Fikri.

Article 49 Paragraph 3 point (a) of PP Number 42 of 2006 requires a certificate of legal ownership of the waqf property to be exchanged and the exchange land as a condition of the exchange, in accordance with the provisions of applicable regulations. Meanwhile, Article 31 stipulates that if an AIW is not made, but there is clear evidence and two witnesses, and the making of an AIW is not possible because the wakif has died or his whereabouts are unknown, then a Deed in Lieu of the Waqf Pledge Deed (APAIW) will be issued. This emphasizes the importance of recording every statement of the wakif regarding the waqf in the AIW to avoid potential legal problems.

Land certificates are legal and strong evidence of land ownership that confirms the owner's rights. To guarantee rights and legal certainty, the agrarian law requires land registration throughout Indonesia. This certificate contains physical and legal information. Physical information, based on Article 1 number 6 of PP Number 24 of 1997, includes the location, boundaries, and size of the land. Meanwhile, legal information, as regulated in Article 1 number 7 of the same regulation, contains the legal status of the land and the registered apartment units. These data are sourced from land books.¹⁸

As an alternative to protect waqf land, an official statement about waqf can be made before the Waqf Pledge Deed Making Officer (PPAIW) witnessed by witnesses who clearly understand. In addition, other written documents that support the claim of waqf land ownership, especially if the land is not yet certified, can also be used as additional evidence.¹⁹

The Deed of Waqf Pledge (AIW) can be used to apply for a change in the status of waqf objects, such as changing the status of land from the property of the wakif to waqf land through the issuance of a waqf certificate. This process is carried out by submitting a request for a change in status to the National Land Agency (BPN) or the Indonesian Waqf Agency (BWI), after all administrative requirements have been met.²⁰

3. Comparison of Land Values as Objects of Swapping

In this exchange case, the benefit is only felt by the person who made the exchange, while the mosque feels disadvantaged. This is

¹⁸ Shely Melynia, Ema Fathimah, and Gibtiah, "Kedudukan Sertifikat Sebagai Alat Bukti Yang Kuat Menurut Hukum Positif Dan Hukum Islam," *Muqaranah* Vol. 6, no. 1 (2022): 45, <https://doi.org/https://doi.org/10.19109/muqaranah.v6i1.12253>.

¹⁹ Nurhaini, "Perlindungan Hukum Tanah Wakaf Yang Tidak Bersertifikat Di Kabupaten Enrekang," *Jurisprudentie* Vol. 6, no. 2 (2019): 226, <https://doi.org/https://doi.org/10.24252/jurisprudentie.v6i2.9767>.

²⁰ Margaretha, "Pelaksanaan Wakaf Wasiat Dan Akibat Hukumnya Ketika Harta Warisan Dipailitkan," *Acta Comitas: Jurnal Hukum Kenotariatan* Vol. 05, no. 1 (2020): 59.

because the value of the exchanged land is much lower than the original land. The original land is in a strategic location on the side of the road, while the replacement land is located in a remote area with difficult access. This exchange clearly shows the motivation to benefit certain parties without considering the balance of value and benefits for all parties.

In fact, Article 50 of PP Number 42 of 2006 stipulates that the exchange property must have a value equal to or higher than the previous waqf property, and be in a strategic location with good access to support development. The following is data on the Taxable Object Sales Value (NJOP) related to the land that is the object of the exchange.

Wringinputih Village Tax Data

The Land of Beginnings	Exchange Land
Name: Afandi	Name: Akhsinudin
Land area: Sakwolon / 875 m2	Land area: Sakwolon / 875 m2
NJOP: 64,000	NJOP: 48,000

Source : *DHKP (List of Sets of Decisions and Payments)2024 Wringinputih village.*

In the practice of exchanging waqf assets, although the regulation stipulates that the Taxable Object Sale Value (NJOP) of the exchange assets must be at least comparable to the NJOP of the waqf assets, the value of the exchange assets is usually higher. This is in accordance with the view of the Director General of Islamic Community Guidance, who stated that in exchanging waqf assets, the value of the exchange assets must be higher so that the benefits and results of the waqf can increase for the sake of mauquf 'alaih.²¹

The provision that the exchange property must have a better value than the waqf property is based on strong reasons, considering that waqf property is generally still functioning well or is not damaged. In situations such as the conversion of waqf land for public needs, for example the construction of a toll road, it is very important to ensure that the replacement land has a higher value, strategic location, and good development potential so that the benefits of the waqf are maintained or even increased.

²¹ Fahrurroji, *Wakaf Kontemporer*.

CONCLUSION

The practice of exchanging mosque waqf land outside the context of public interest in Wringinputih Village, Banyuwangi Regency, precisely at the Bustanul Arifin Mosque, began with the will of an individual (wakif) regarding the waqf which was witnessed by the heirs and also by the mosque management. However, after the death of the individual, the heirs did not carry out the will because they felt they had power over all the assets left by the wakif and there was no written evidence. The exchange occurred due to an offer from another individual to exchange land and the position of the land had not been officially handed over to the mosque. As a result, to avoid prolonged conflict, the mosque accepted the land from the exchange as a waqf.

Review of Law Number 41 of 2004 on the practice of exchanging mosque waqf land outside the context of public interest in Wringinputih Village, Banyuwangi Regency, precisely at the Bustanul Arifin mosque, is not entirely appropriate. There are three things that show this inconsistency. First, related to the reason for the exchange which was carried out for personal interests in the form of housing construction because of its strategic location. Second, related to the status of land that has not been certified, both the initial land and the exchange land. Third, related to the value of the exchange land which is not equivalent and tends to be lower.

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