

The Principle of Social Function in *Waqf* Productive Land through Improving Social Welfare in West Sumatera

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Abstract: The essence of social function in Article 20 of Basic Regulation of Agrarian Principles (*UUPA*) is a hereditary right, the strongest and fullest to possess the land of the provision in Article 6. The research method used in this study is legal empirical research. The juridical approach is used to analyze various rules relating to *Waqf* land. This study uses an empirical legal approach by taking legal analysis obtained from the social behavior related to social aspects. This paper provides the implementation of the principal of social function, balancing the individual and social interest that could be achieved for purposes of *UUPA*. *Waqf* is an important institution in the Islamic socio-economic system, not only for religious purpose but also social aspect. This research endeavours to examine how the *waqf* sector can play an enhanced role in the socio-economic development. The structure of *waqf* instruments could be further developed for the construction of potential assets of the contemporary societies.

1 INTRODUCTION

Social function is defined as complimentary concept in many aspects in human life. All property rights have a social function as mentioned in Article 6 of Law No. 5 Of 1960 Concerning Basic Regulations On Agrarian Principles. Therefore, it cannot be abolished owing to the implementation of the principle of development in social interest. No one shall be deprived of his property except for reasons of public utility or social interest according to the forms of established law, Article 18 of Law Number 5 Of 1960 Concerning Basic Regulations on Agrarian Principles.

The purpose of social function concept, The law of No. 39 year 1999 concerning human rights recognize the social function of property in article 36 (3) stating the right to ownership has a social function.

The social function of property principle has been reflected in chapter XIV and Chapter VII concerning economy and social welfare whereas human beings, as creations of God Almighty are charged with the task of managing and protecting the universe, with total devotion to and responsibility for the welfare of humanity.

Limitations on rights to land are recognized by law by means of "*libertas Sublege*", that is to show individual freedom. Therefore there is no full ownership right; all should be related to social interest (*vermaatschappelijke functie*) (Achmad Sodiki, 2013).

The essence of social function of property rights has also been reflected in part XI of the law No. 5 of 1960 Concerning Basic Regulations On Agrarian Principles which states that the right of ownership on land of religious and social institutions as far as utilized for the purpose of social and religious fields, is recognised and protected. Those institutions are also guaranteed to obtain sufficient land or buildings and for undertakings the social and religious fields".

Waqf land is to be protected. *Waqf* land is merely for social functions and should be performed in ways determined by Islam towards social welfare (Onny Medaline, 2017).

The point of view of *waqf* itself is a principle that entailing generous application in increasing the social welfare of society, providing a lot of services by *nazhir*.

Social welfare is not only a concept but also theory subjected to the conditions provided by Law No. 11 Year 2009 concerning Social welfare of Law

No.6 Year 1974 on basic provision and conditions. Social welfare is condition in which material, spiritual and social needs of people are fulfilled.

Waqf land has a big potential for economic development of religious community and development of public welfare in west Sumatera and *waqf* land is in 5.694 1 locations of 7.501 001,15 m² in 19 districts.

This research is to analyze the principle of the social function productive *waqf* land through improving social welfare on people's economy in West Sumatera and the supporting and inhibiting factors in developing the productive *waqf* land in West Sumatera.

2 METHODOLOGY

The research method used in this study is the juridical approach to analyze various rules relating to *waqf* land. The supporting data from study of documents, field research are conducted by means of interview, aiming to get further understanding on the object. Interviews are conducted with sources related to *waqf* registration of communal land. Data analysis is initiated by choosing relevant data, then systematically and consistently elaborated in relation to certain symptoms. The analysis is conducted qualitatively towards primary, secondary and tertiary legal materials by using law dictionaries in the attempt to understand inconspicuous legal concepts, analyzing them normatively, and towards many legal regulations related to *waqf* registration of communal land, and qualitative through legal theories regarding *Ulayat Kaum* land in West Sumatera.

This work is a qualitative descriptive research, which attempts to explore and analyse the data holistically regarding the social function of *ulayatWaqf* for economic development in west Sumatera

3 RESULT

3.1 Social Function of *Waqf* Land as Tool Rendering of Social Welfare

The "waqf" is an expenditure of wealth in a good way, and becomes an alternative thing offered by Islam as a means of getting closer to Allah. The Commandment of Al-Quran to do the good deed can become the common foundation to the deed of the

"waqf". Besides, according to Al-Quran and Hadist, the Muslim Scholars agree (ijma') to take the "waqf" as one of the deeds in Islamic Laws. There is no one who can neglect or reject the deed of the "waqf" in Islam as the deed is always implemented and conducted by the Prophet's friends and Moslems from the beginning of Islam until today. (Onny Medaline, 2018)

Law Protection on *waqf* land in Article 49 (3) of Law No. 5 Of 1960 Concerning Basic Regulations On Agrarian Principles states that "Land for religious purposes with the right of ownership shall be protected and regulated by Government Regulation"

Government Regulation No. 28 year 1977 applied in Islamic teaching on *waqf* in Article 1(1) states that *Waqf* indicates legal action or legal institution that can be separated from part of wealth related to right of the land and institution for religious or social interest.

Based on Article 5 Law No. 41 Year 2006 concerning *Waqf* it is stated that the function of *waqf*s as complementary structures for policy reforms in the economic scheme, creating suitable basis for institutional diversity for economic freedom and democratization of the modern Islamic societies".

The principle of welfare in Islam aims to realize social justice and economic justice for all members of society. The task is charged to the organizers of the State and society. The notion of social justice in Islamic democracy is not merely the fulfilment of material or material needs, but includes also the fulfilment of spiritual needs of the people. The State's obligation is to pay attention to the two kinds of needs and provide social security to those who are less capable. Classification of welfare related with *Utilitarianism Theory* is developed by Jeremy Bentham which procures "the greatest happiness of the greatest number". Bentham introduces a method of calculating the value of pleasures and pains.

Utilitarianism is an ethical theory stating that the best action is the one that maximizes utility. "Utility" is defined in various ways, usually in terms of the well-being of sentient entities. Jeremy Bentham, the founder of utilitarianism, describes utility as the sum of all pleasures that result from an action, with no suffering of anyone involved in the action. The most common variant defines "Welfare" in standard economic terms. Hence Economic Welfare of Utilitarianism argues that alternative provides "the greatest good for the greatest number" and this comes down to the alternative that provides the greatest net economic welfare for the greatest number.

In Indonesia, the term social welfare can be found in Law No. 11 of 2009 concerning "Social Welfare". by Law No. 11 Year 2009 concerning Social welfare repeal Law No.6 Year 1974 on basic provision and conditions for social welfare. Social welfare is as a condition in which material, spiritual and social needs of citizen are fulfilled.

The formulation of idea of life encompasses material and spiritual life, by not placing one more important than the other, but rather trying to look at the effort to get the balance point. (Onny Medaline, 2017). As the leading agency in social welfare and development, the government should intervene for service and development on social welfare in planning, organising, and directing.

The involvement of the state in realizing juridical normative social welfare is formulated in the preamble of the 1945 Constitution on welfare. Social welfare has become an important function within its national development strategies in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice. Generally, *waqf* is a legal action of someone or a group of people or legal entity to separate the property owned and put it for religious purpose for the entire time or for another public needs based on Islam. On other hand, *Waqf* institution contributed in Social welfare and warranty is regulated in law of the republic of Indonesia No. 41 of 2004 concerning *waqf*.

The material, spiritual, and social needs mentioned in the definition of social welfare in the Law on Welfare is important element in achieving prosperity for society as a whole, individuals and social beings. Furthermore, these parameters are used as a reference in determining welfare towards the existence and development of *waqf* above, especially *waqf of ulayat* land in West Sumatera

Waqf serves the welfare of society, which includes institutions that have activities and programs towards the realization of general welfare, in which the business is managed with social services by *Nazhir*. *Waqf* also includes activities or activities organized by an institution, *BWI*, to achieve a prosperous condition. *Waqf* is also expected to create a condition of prosperous life in the fulfillment of material, spiritual and social interest in social balance.

Waqf can play important role, if the number and size of the one involved in social welfare activities can be increased

Economy can be defined for the growth of increasing the real output. It is also defined as a

broad perception that refers to the process of economic growth that has capacity to raise the welfare of the people. (Jait Mubarok, 2008)

Based on the nature of *waqf* output, *waqf* assets may be classified in two categories : (Jait Mubarok, 2008)

1. Direct *waqf* which means asset that produces consumptive service to be utilized by beneficiaries such as school, hospital, and orphanages. The purpose of this kind of *waqf* may be of general philanthropy, such as school or a private philanthropy.
2. *Waqf* investment is intended for investment. It produces marketable goods and services to be sold in order to generate a net income which will be distributed to the beneficiary. Beneficiary may be general charity such as a mosque or scientific research or private philanthropy consisting of the descendents of the founder.

Hence, *waqf* investment is not going to assume an important role in the development of our economic, the most important element for modern Islamic society.

3.2 Potential of Ulayat Land Waqf in West Sumatera

Reality and potential of *waqf* in West Sumatera has important role in *waqf* development and social economic welfare. *Waqf* assets in West Sumatera are as many as 5,694 locations with an area of 7,501,001.15 m² with 19 districts and cities of West Sumatera province. However, they are still in traditional forms, that have not been managed productively and the capacity of *Nazhir* is not professional. Thus, the potential wealth of *waqf* worth trillion of rupiahs without playing a role in resolving various social issues such as poverty and unemployment.

Waqf land of *ulayat* kaum in West Sumatera shows the form of direct or consumptive representation only to provide direct services to the surrounding community, such as mosque, mushalla, or surau. About 65% of the *waqf* land has been taken over to projects. People agree to register *waqf* for the mosque built on *ulayat* land. Registration of *waqf* land is carried out on initiatives and cooperation programs between the ministries of religion and *BPN*. The implementation of this program aims to continue to preserve and provide legal certainty of *waqf* lands that have long existed in West Sumatera.

A form of empirical reality for some *waqf* land in the sub-districts of Payakumbuh and Lima Puluh kota, is only a small portion of *waqf* land located on community *ulayat* land which has been managed and categorized as direct *waqf* according to the Religious Affairs Office and BWI of West Sumatra.

A small amount *waqf* land has been categorized as investment *waqf* such as in the subdistrict of Payakumbuh and Lima puluh. Some *waqf* lands located in Kaum Ulayat land are categorized as direct *waqf*.

This *waqf* is classified as direct *waqf* according to Religious Affairs Office and *BWI* of West Sumatra.

Table 1: Recapitulation of Direct *Waqf* from Ministry of Religion Payakumbuh.

No	District	Village	Type of <i>waqf</i> land
1.	Lamposi tiga Nagori	Sei Durian, Parambahan, Koto Panjang Dalam	Agriculture, fishpond, agriculture, Plantation
2.	Payakumbuh Selatan	Balai Panjang, Aur Kuning	Islamic Playgroup, Agriculture, IAIN's land, Fishpond and Musholla.
3.	Payakumbuh Barat	Bulakan Balai Kandi, Subarang Batuang, Tanhung Gadang, Tanjung Pauh	Rent house , Fishpond, And field.
4.	Payakumbuh Utara	Cubadak Air, Balai Jaring, Nan Kodok, Talawi, Payonibung, Kubu Gadang, Labuh Batu	Permanent building, agriculture land lot, property, dry land, and Mosque
5.	Payakumbuh	Balai	Polyclinic, islamic

	Timur	Batimah	boarding school
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Table 2: Recapitulation of Direct *Waqf* based on Ministry of Religion Payakumbuh Lima Puluh Kota.

No	Kecamatan	Village	Type of <i>Waqf</i> land
1.	Lamposi tiga Nagori	Sei Durian, Parambahan, Koto Panjang Dalam	Agriculture, fishpond, agriculture, Plantation
2.	Payakumbuh Selatan	Balai Panjang, Aur Kuning	Islamic Kindergarten, Agriculture land, IAIN's land Kolam Ikan, and Prayer Field
3.	Payakumbuh Barat	Bulakan Balai Kandi, Subarang Batuang, Tanhung Gadang, Tanjung Pauh	Rent House, Fishpond, Field, Land lot, and fishpond
4.	Payakumbuh Utara	Cubadak Air, Balai Jaring, Nan Kodok, Talawi, Payonibung, Kubu Gadang, Labuh Batu	Permanent building, Agriculture land, Land Lot, Property, Dry land, Musholla, Wet land, And Piece of land
5.	Payakumbuh Timur	Balai Batimah	Polyclinic and Islamic Boarding Schools.

This table shows not all *nagari* Lima Puluh Kota have *waqf* land categorized as direct *waqf*; only *nagari* mentioned above has many types of direct *waqf*.

Both data are the result of consideration from the Ministry of Religious Affairs that the *waqf* land

has been utilized not only for the purpose of worship, but also social welfare, such as rice fields, plantations, school buildings and office buildings.

Hence, the category of direct *waqf* is located in Payakumbuh and Lima Puluh Kota as mentioned above cannot provide profit for community. The parameters of social welfare are not only seen in terms of material, but also social welfare, spiritual and social aspects. In other words, the understanding of *waqf* gives impacts for social welfare if maximally managed and utilized by the surrounding community.

4 ANALYSIS

As a whole, the three parameters of social welfare are to be put into balancing of the material, spiritual, and social series. The perspective of social welfare that affects the existence of *waqf* land in West Sumatera can be said as the achievement of the welfare level, significantly not affecting the economy of society. But at least *waqf* gives a big influence to the spiritual and social welfare. This is evidenced by the continued preservation of the buildings inherited by the ancestors to be made as center of worship, keeping the cultural values sustainable.

The measure of the beneficiary of *waqf* in West Sumatera in achieving social welfare is not only material achievement but also spiritual and social fulfillment in society. However, welfare is also measured from the utility theory and the beneficiary of *waqf* should be further enhanced towards direct *waqf*. By a good management of *waqf* happiness and welfare could be made possible for the community.

5 CONCLUSIONS

The *waqf* land in West Sumatera can be broadly classified into direct *waqf* (Consumptive), *Waqf* in many ways is more productive and the income is generating so that the land can be made for plantation, field and school. Therefore, the existence of *waqf* land can improve the social welfare, mainly spiritual and social matters in West Sumatera. The beneficiary of *waqf* should be further upgraded towards direct *waqf*.

6 RECOMMENDATION

The existence of *waqf* has provided social welfare, hence, the management of *waqf* should be in professional ways in terms of *nazhir*. Therefore, it is necessary to regulate the system of *waqf* West Sumatera adapted from customs and culture of West Sumatera.

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