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

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Abstract: The essence of social function in Article 20 of Basic Regulation 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 to analyzing the various rules relating to wakaf land, while this study uses an empirical legal approach by taking legal analysis obtained from the social behavior related in social aspect. 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 which not only 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 that could be further developed for construction of potential assets contemporary societies.

Keywords: Social Function Principal, Waqf Land, Social Welfare

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I. INTRODUCTION

Social function defines a complimentary concept in many aspect in human life. All property rights have a social function as means in Article 6 of Law No. 5 Of 1960 Concerning Basic Regulations On Agrarian Principles. therefore it cannot be abolished because the implementation of the principle of development in the social interest. No one shall be deprived of his property except for reasons of public utility or social interest and in the cases and according to the forms of established law. Article 18 of Law Number 5 Of 1960 Concerning Basic Regulations On Agrarian Principles provides "For public interest such as national interest. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest and in the cases and according to the forms of established law."

The purpose of social function concept, The law of 1953 year 1999 concerning human rights recognize the social function of property in article 36 (3) states the right to ownership has a social function. The social function of property principle has been reflected chapter XIV Bab VII concerning economy and social welfare whereas human beings, as creations of God Almighty 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 is limited to a right recognized by law nor to ownership rights. Which means "libertas Sublege". To what extent does the welfare state erode individual freedom? Therefore it is not fully rightful ownership, but concerning with social interest or socialization (*vermaatschappelijke functie*) (Achmad Sodiki, 2013).

The essence of social function of property rights has been reflected in part XI of the law No. Law No. 5 Of 1960 Concerning Basic Regulations On Agrarian Principles which states The right of ownership on land of religious and social institutions as far as it is utilized for purpose in the 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.

As one of Islamic Institutions has become support to protect waqf land. Waqf land is merely for social and should be performed in ways determined by Islam toward social welfare (Onny Medaline, 2017)

The point of view of waqf itself is a principle that entails generous application in increasing the social welfare in society, provides the necessary institution for social welfare, which produce a lot of service by *nazhir*.

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Social welfare is not only a concept but also theory was subject to the conditions provided for by Law No. 11 Year 2009 concerning Social welfare repeals Law No.6 Year 1974 on basic provision and conditions for social welfare. Social welfare is as condition in which material, spiritual and social needs of citizen are fulfilled.

Reality of waqf land have big potential for economic development of religious community and development of public welfare in west Sumatera which the number waqf land is 5.694 l location as wide as 7.501 001,15 m2 in 19 district.

Unfortunately, the research have not yet discussed the social function principal in productive waqf land . This reasearch to analyze how the social function principal in productive waqf land through improving social welfare on people's economy in west sumatera then discuss the supporting and inhibiting factors in developing the productive waqf in West Sumatra.

II. METHODOLOGY

This reasearch method used in this study is The juridical approach to analyzing the various rules relating to wakaf land, while this study uses an empirical legal approach by taking legal analysis obtained from the social behavior related in social aspect. This paper provides the implementation of the principal of social function

For supporting data from study of documents, field research is conducted by using methods of interview, aiming to get further understanding over data of document study. Interviews were conducted with some sources that have connection with waqf registration of communal land. Data analysis will be initiated by choosing relevant data. Then, they will be 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 ulayat Waqf for economic development in west sumatera.

III. RESULT AND DISCUSSION

Result

Social Function of Waqf land as tool rendering social welfare

The "waqf" is an expenditure of wealth in good way, becomes the alternative thing offered by Islam as a mean 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 that, according to Al-Quran and Hadist, the Muslim Scholars agree (ijma') to take the "waqf" as one of the deeds which declared in Islam Laws. There is no one can neglect or reject the deed of the "waqf" in Islam in the case of it becomes the deed that always implemented and conducted by the Prophet's friends and Moslems from the beginning 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 "Land for religious purposes ("Tanah pe kafan") with the right of ownership shall be protected and regulated by Government Regulation". When Government Regulation No. 28 year 1977 applied the islamic teaching in waqf In Article 1(1) stated Waqf indicates that legal action or legal institution can be separated from part of wealth related to right of the land and institution for religious or social interest based on islamic law.

Based on Article 5 Law No. 41 Year 2006 concerning Waqf state the function of waqf as as complementary structures for policy reforms in the economic scheme while creating the suitable basis for institutional diversity for economic freedom and democratization of the modern Islamic societie".

The principle of welfare in nomokrasi Islam aims to realize social justice and economic justice for all members of society or people. The task was charged to the organizers of the Stateand society. The notion of social justice in the Islamic nomokrasi is not merely the fulfilment of material or material needs, but includes also the fulfillment of spiritual needs of the people. The State's obligation to pay attention to the two kinds of needs that and provide social securityto those who are less capable or not.). classification of welfare related with Utilitarian Theory as 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 that states 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, described utility as the sum of all pleasure th results from an action, minus the suffering of anyone involved in the action.Teori utilitarinisme. The most common variant defines "Welfare" in standard economic terms.Hence Economic Welfare Utilitarianism argues that alternative that provides "the

greatest good for the greatest number" comes down to the alternative that provides the greatest net economic welfare of 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 repeals Law No.6 Year 1974 on basic provision and conditions for social welfare. Social welfare is a condition in which material, spiritual and social needs of citizens are fulfilled.

The formulation of idea of life that encompasses material and spiritual life, by not placing one more important aspect than the other, but rather trying to look at the effort to get the balance point. Some important points to balance spiritual and material life. (Onny Medalline, 2017). As the lead agency in social welfare and development, 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 formulated in the preamble of the 1945 Constitution on welfare social welfare has become an important function within its national development strategies as well as 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 as a legal action by 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 is based on Islam. In other hand, Waqf institution contribute in Social welfare and warranty is regulated in law of the republic of Indonesia No. 41 of 2004 concerning on Waqf, the purpose of waqf for social welfare.

Regarding the material, spiritual, and social needs mentioned in the definition of social welfare in the Law on Welfare which is important elements in achieving prosperity for society as a whole as 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 Sumatra

Waqf serve 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. With the end of waqf expected to create a condition of prosperous life in the fulfillment of material, spiritual and social interest in social balance.

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

Economic can be defined for growth in increasing in per capita real output. It also defined as a broad perception that refers to the process of economic growth that has capacity to raise the welfare of its people. (Jait Mubarak, 2008)

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

1. Direct Waqf which means asset that produce consumptive service to be utilized by beneficiaries such as school, hospital, and orphanages. The purpose of kind of Waqf may be general philanthropy, such as educational school or a private philanthropy.

2. Investment Waqf, which 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 descendants of the founder.

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

Potential of Ulayat Land Waqf in West Sumatra

Reality and potential of waqf in West Sumatra has important role in waqf development and social economic welfare. Wakaf assets in West Sumatra have widely as many as 5,694 locations with an area of 7,501,001.15 m² with 19 districts and cities of West Sumatra province. However, it is still traditional form, has not been managed productively and The capacity of Nazhir is not professional. Thus, the potential wealth of waqf worth the trillions of rupiah is not playing a role in resolving among various social issues such as poverty and unemployment are feared long-term impact.

Waqf land of ulayat kaum in West Sumatra 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 take place building project which there is a beneficiaries building has been around for a long time, so that the people agree with registering the waqf on the mosque which is built on the ulayat land of their people. 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 for waqf lands that have long existed in West Sumatra.

A form of empirical reality for some waqf land in the sub-districts of Payakumbuh and Lima Puluh kota, only a small portion of waqf land is located on community ulayat land 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 subdistrict in Payakumbuh and Lima puluh Some waqf lands is located in Kaum Ulayat land categorized as direct waqf. This Waqf classified as direct waqf according to the Religious Affairs Office and BWI of West Sumatra.

Recapitulation of Direct Waqf Ministry of Religious Payakumbuh

No	District	Village	Type of land waqf
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 Timur	Balai Batimah	Polyclinic, islamic boarding school

Recapitulation of Direct Waqf based on Ministry of Religious Payakumbuh Lima Puluh Kota

No	Kecamatan	Village	Type of alan Waqf
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
44	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
55	Payakumbuh Timur	Balai Batimah	Polyclinic and Islamic Boarding Schools.

This table show not all nagari Lima Puluh Kota have waqf land categorized as direct waqf, only nagari whoch mentioned above have many types of direct waqf.

Both data is 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 can not provide profit affected for community. Remember that parameters of social welfare is not only seen in terms of material, but also social welfare, spiritual and social aspects. In other words, the understanding of wakaf which gives impacts of social welfare for people while not being special ventures for profit uch as mosque buildings, if maximally managed and utilized by the surrounding community will also provide prosperity for the community.

IV. DISSCUSSION

As a whole, by laying down three parameters of social welfare and putting it into balancing of the material, spiritual, and social series. The perspective social welfare that affects the existence of wakaf land in West Sumatra, although it can be said that the achievement of the welfare level has not significantly affected to changes in the economy of society. But at least waqf give a big influence to the spiritual Landsocial welfare. This is evidenced by the continued preservation of the buildings inherited by the ancestors for example to make it a center of worship, thus will keep the cultural values and sense family

The measure of the beneficiary of waqf in West Sumatra in achieving social welfare, which is not only material achievement but also spiritual and social have been fulfilled in society. Based on parameters of social

welfare in social welfare legislation. However, welfare is measured from the utility theory and the beneficiary of waqf should be further enhanced towards direct waqf. With the management of waqf productively will be produced maximum utilization, thus the existence of waqf will provide happiness and welfare (welfare) as big as possible for the community.

V. CONCLUSION

The waqf land in West Sumatera can be broadly classified direct waqf (Consumptive), Waqf in many ways is more productive and income generating and so that land can be made for plantation, field and school. Therefore, the existence of waqf land can be improving the social welfare, mainly spiritual and social in West Sumatera. However, welfare come from the theory of utility, the beneficiary of waqf should be further upgraded towards direct waqf. With the management of waqf productively will be generated maximum utilization, so that the existence of waqf will give happiness and welfare for people.

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