



Examining the Taxation Conundrum of Religious Endowment: Legal Dimensions of the Vulnerability of Waqf Lands to Current Taxation System

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Abstract

This research delves into the perplexing issue of certain waqf lands still being susceptible to taxation, presenting a compelling exploration of the root causes and potential solutions. The research engages with relevant legal frameworks, notably Law Number 12 of 1985 on Land and Building Tax, and subsequent amendments in Law Number 20 of 2000. Despite these regulations, the persistence of waqf lands became subject to the Land and Building Rights Acquisition Fee (*Biaya Perolehan Hak Atas Tanah dan Bangunan*/BPHTB) raises critical questions regarding implementation and compliance. The study aims to unravel the intricacies surrounding this phenomenon, shedding light on the gaps in the legal framework and administrative processes. This research uses a qualitative research design. The research design adheres to normative juridical methods, emphasizing the examination and interpretation of legal norms and principles relevant to waqf land and taxation. Research analysis uses a descriptive approach. The results of this research indicate that examination of the taxation status of waqf land in Indonesia has revealed important insights into the legal, managerial and administrative dimensions of waqf management. Theoretically, this research provides the implication that waqf land should be exempt from tax which makes sense, but its realization requires a stronger and more transparent administrative process. Practically, overcoming the challenges identified in waqf land taxation requires a multi-faceted approach.

Keywords: Waqf Lands; Land Tax; Basic Agrarian Law; Legal Framework; Religious Purposes

Abstrak

Penelitian ini menyelidiki permasalahan yang membingungkan mengenai tanah wakaf tertentu yang masih rentan terhadap pajak, dan menyajikan eksplorasi yang menarik mengenai akar permasalahan dan potensi solusinya. Penelitian ini menggunakan kerangka hukum yang relevan, khususnya Undang-Undang Nomor 12 Tahun 1985 tentang Pajak Bumi dan Bangunan, serta perubahan selanjutnya dalam Undang-Undang Nomor 20 Tahun 2000. Meskipun terdapat peraturan-peraturan tersebut, tetap adanya tanah wakaf yang menjadi subjek Biaya Perolehan Hak Atas Tanah dan Bangunan (BPHTB) menimbulkan pertanyaan kritis mengenai implementasi dan kepatuhan. Studi ini bertujuan untuk mengungkap seluk-beluk fenomena ini, menyoroti kesenjangan dalam kerangka hukum dan proses administrasi. Penelitian ini menggunakan desain penelitian kualitatif. Desain penelitian menganut metode yuridis normatif, menekankan pada pengujian dan penafsiran norma dan prinsip hukum yang relevan dengan tanah wakaf dan perpajakan. Analisis penelitian menggunakan pendekatan deskriptif. Hasil penelitian ini menunjukkan bahwa pemeriksaan status perpajakan atas tanah wakaf di Indonesia telah mengungkapkan wawasan penting mengenai dimensi hukum, manajerial, dan administratif pengelolaan wakaf. Secara teoritis penelitian ini memberikan implikasi bahwa tanah wakaf seharusnya dibebaskan dari pajak merupakan hal yang masuk akal, namun realisasinya memerlukan proses administrasi yang lebih kuat dan transparan. Praktisnya, mengatasi tantangan-tantangan yang teridentifikasi dalam perpajakan tanah wakaf memerlukan pendekatan multi-sisi.

Kata Kunci: Tanah Wakaf; Pajak Tanah; Hukum Pokok Agraria; Kerangka Hukum; Tujuan Keagamaan

Introduction

In Indonesia, every citizen possesses constitutional entitlements to actualize personal well-being, reflective of the democratic principles upheld in the nation. Grounded in the 1945 Constitution of the Republic of Indonesia, the pursuit of prosperity becomes pivotal in gauging welfare, elucidating who stands to benefit and the means by which such benefits are attained. Article 33, paragraph (3) of the 1945 Constitution delineates that the state exercises control over land, water, and the inherent natural resources, directing their utilization toward the optimal well-being of the populace. The state's intrinsic control over natural resources, as mandated, fundamentally aims at enhancing the standards of living across diverse facets of life, encompassing housing, attire, sustenance, healthcare, education, and more. Additionally, the realization of economic objectives is intricately tied to questions of ownership, constituting a substantial aspect of the legal framework. This convergence of economic and legal realms underscores their interdependence, where each complements the other. While economics and law inherently differ in focus, their symbiotic relationship becomes evident. Within the governance paradigm, the state bears the responsibility of safeguarding its citizens' interests, spanning welfare, security, defense, and the preservation of life's intelligence. State finances derive from various income sectors, prominently

featuring taxes as a citizenry obligation that bolsters developmental initiatives. Taxation emerges as a paramount revenue source for the state, constituting a primary funding stream for developmental endeavors, notably in the Indonesian context.¹ The collection of taxes represents the appropriation of a portion of citizens' wealth for the state, with resultant benefits circumscribing back to the community.²

In terms of the prevailing economic conditions and the contemporary trajectory of national development, a prospective avenue for tax exploration is the Land and Building Rights Acquisition Fee (*Biaya Perolehan Hak Atas Tanah dan Bangunan*/BPHTB). This tax is designed with specific objectives outlined by Siahaan (2003)³ and Agitha (2019)⁴ emphasizing the imperative to levy taxes on the acquisition of land and building rights. This taxation serves as a strategic initiative contributing to national independence by generating revenues necessary for government expenditures related to its responsibilities in public administration and development.⁵ BPHTB constitutes a segment of state tax revenues sourced from individuals or entities engaged in transactions involving the transfer of rights to land and buildings. The acquisition of land and building rights is legally defined as an event resulting in the acquisition of such rights by an individual or legal entity. These rights encompass land rights, including management rights, along with any structures erected upon it.⁶ The payment of BPHTB is contingent upon the transfer of rights from one party to another, a process meticulously regulated by Article 20, paragraph (2) of the basic agrarian law. This legal provision stipulates that property rights to land are transferrable, necessitating the new right recipient to register the transfer of ownership rights. This registration requirement serves the dual purpose of ensuring the protection of rights for the new holder and fostering order in the administration of land registration.⁷

Moreover, the legal landscape is delineated by Law Number 12 of 1985 on Land and Building Tax, Article 3, paragraph 1, and Law Number 20 of 2000,

¹ Kenny, Sue, Azwar Hasan, and Ismet Fanany. "Community development in Indonesia." *Community Development Journal* 52, no. 1 (2017): 113.

² Ortman, Scott G., Andrew HF Cabaniss, Jennie O. Sturm, and Luís MA Bettencourt. "Settlement scaling and increasing returns in an ancient society." *Science advances* 1, no. 1 (2015): e1400069.

³ Siahaan, Marihot Pahala. *Bea perolehan hak atas tanah dan bangunan: teori & praktek*. Jakarta: RajaGrafindo Persada, 2003.

⁴ Agitha, Baiq Nadya Sari, Lalu Husni, and Sahnun Sahnun. "Legal Consequences of Verification and Validation on Fees for Acquisition of Land and Building Rights (BPHTB) By the Regional Revenue Service to Conveyancer Deed." *International Journal of Multicultural and Multireligious Understanding* 6, no. 5 (2019): 945.

⁵ Nasution, Anwar. "The government decentralization program in Indonesia." *Central and Local Government Relations in Asia: Achieving Fiscal Sustainability* 601 (2017): 279.

⁶ Kusumawati, Lanny. "*Hukum Pajak: Sebagai suatu pengantar*." Sidoarjo: Laros, 2005. See also: Tiley, John, and Glen Loutzenhiser. *Revenue Law: Introduction to UK tax law; Income tax; Capital gains tax; Inheritance tax*. Bloomsbury Publishing, 2012.

⁷ Ramadhani, Rahmat. "Legal Protection for Land Rights Holders Who Are Victims of the Land Mafia." *International Journal Reglement & Society (IJS)* 2, no. 2 (2021): 89.

amending Law Number 21 of 1997 on BPHTB, Article 3, paragraph 1, points e and f. These statutes explicitly declare that tax objects acquired from individuals or entities through waqf or for religious purposes are exempt from fees related to acquiring land and building rights. Contrastingly, a noteworthy discrepancy emerges in practice, as observed in some instances where waqf lands are still subjected to taxation, presenting an intriguing issue warranting in-depth exploration and resolution.⁸ This study is consequently poised to scrutinize and analyze the challenges inherent in waqf lands that remain subject to the BPHTB. The discrepancy between legal provisions and on-the-ground realities prompts a critical examination into the root causes of these occurrences and seeks viable solutions to rectify these anomalies.⁹

This research embarks on a comprehensive investigation into the perplexing phenomenon where certain waqf lands persistently find themselves subjected to the BPHTB, despite legal provisions exempting them. The primary purpose of this study is to unravel the underlying reasons behind this discrepancy between statutory regulations, notably encapsulated in Law Number 12 of 1985 and its subsequent amendments, and the practical imposition of taxes on waqf lands. By delving into the intricacies of these occurrences, the research aims to provide a nuanced understanding of the factors contributing to the imposition of taxes on lands dedicated to religious and charitable purposes. The ultimate goal is to contribute valuable insights that can inform policymakers, legal practitioners, and stakeholders, facilitating the development of more effective and equitable mechanisms aligning with the intended exemptions for waqf lands.

This research makes a significant contribution to the field by shedding light on the real-world challenges and discrepancies surrounding the tax treatment of waqf lands. By bridging the gap between legal provisions and on-the-ground realities, the study aims to propose informed solutions for rectification and improvement in the administration of tax exemptions for waqf lands. Furthermore, the research's findings have broader implications for the intersection of legal frameworks, economic practices, and societal values. The insights generated are anticipated to inform policy adjustments, legal reforms, and administrative enhancements that can foster a more coherent and equitable taxation system, ensuring the preservation of waqf lands' intended use for religious and charitable purposes.

⁸ Munandar, Mutiara Hamdalah, and Yudha Chandra Arwana. "Legal Protection of Uncertified Waqf Land in Indonesia." *Nurani Hukum* 4 (2021): 6.

⁹ Malik, Iqbal, and Yahya Munawar. "Book Review: Waqf Laws and Management by Syed Khalid Rashid (Ed.) Reviewed by: Yahya Munawar Malik." *Journal of King Abdulaziz University: Islamic Economics* 31, no. 1 (2018). See also: Hussin, Rohayati. "An Overview of the Regulatory Framework for WAQF Implementation in Higher Educational Institutions in Malaysia." *J. Legal Ethical & Regul. Issues* 24 (2021): 5.

Methods

This research employs a qualitative research design with the overarching objective of comprehensively understanding and addressing the discrepancies observed in the taxation of waqf lands, particularly focusing on the Land and Building Rights Acquisition Fee (*Biaya Perolehan Hak Atas Tanah dan Bangunan*/BPHTB). The primary research objective is to investigate the factors contributing to the imposition of taxes on waqf lands despite legal provisions exempting them. The qualitative approach is chosen for its suitability in exploring complex legal and societal phenomena, allowing for an in-depth analysis of the interplay between legal frameworks and real-world practices. The research design adheres to the normative juridical method, emphasizing the examination and interpretation of legal norms and principles relevant to waqf lands and taxation. This approach involves a systematic review of statutory laws, including Law Number 12 of 1985 on Land and Building Tax, as well as subsequent amendments like Law Number 20 of 2000, which modifies Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights. These legal instruments serve as the foundational basis for the study, guiding the exploration of exemptions and regulations related to waqf lands.

The research analysis adopts a descriptive approach, providing a comprehensive account of the existing legal provisions and the practical implementation of taxation on waqf lands. This involves a detailed examination of case studies, precedents, and administrative practices, aiming to uncover the discrepancies and challenges faced in the application of tax exemptions for waqf lands. The analysis focuses on elucidating the gap between legal stipulations and their actual implementation in the field. To enhance the credibility and reliability of the findings, the research employs a verification process through triangulation. This involves cross-referencing information from diverse sources, such as legal texts, case studies, and interviews with relevant stakeholders. Triangulation allows for a more robust validation of findings, ensuring a comprehensive and accurate portrayal of the complexities surrounding the taxation of waqf lands. The triangulation process is particularly crucial in navigating potential biases and obtaining a more holistic understanding of the multifaceted issues under investigation.

Result and Discussion

a. Integrating Waqf in Modern Taxation

The term waqf originates from the Arabic language, signifying the actions of holding, ceasing, or remaining silent. In this case, withhold denotes the exclusion of trading, inheritance, or gifting of the property. Alternatively, waqf is construed as an act of dedicating one's possessions, typically enduring in nature, to another

individual or institution for benevolent purposes.¹⁰ Waqf, also known as waqf, constitutes a well-established institution within the Islamic religion. In Islamic jurisprudence, waqf falls under the category of social worship (*ijtimaiyyah worship*). Therefore, this underlines that according to Islamic Fiqh, waqf covers various kinds of objects. While numerous traditions and hadiths predominantly address waqf in the context of land, scholars contend that non-land waqf is permissible, provided the object does not immediately deteriorate or deplete upon utilization.¹¹ Consequently, waqf is construed as the cessation or withholding of the transfer of property, particularly assets with enduring utility, ensuring that the benefits accrued from these assets are directed towards seeking the pleasure of God (Allah SWT). In accordance with the Maliki School, waqf entails directing the benefits derived from the waqif's assets, be it in the form of rent or proceeds, to deserving recipients for a specified duration in alignment with the waqif's intentions.¹² Additionally, it is emphasized that the waqif retains ownership of fixed assets, and the validity period of the waqf is not perpetual but rather limited to a specific duration as per the waqif's stipulations.

The Hambali School unequivocally advocates for the implementation of waqf, asserting the absolute restriction on the proprietor's autonomy in managing their beneficial property.¹³ This entails preserving the integrity of the property while relinquishing all ownership rights, with the property's benefits directed towards virtuous endeavors in drawing closer to Allah. In accordance with Law Number 41 of 2004 on Waqf, waqf is delineated as a legal action wherein the wakif voluntarily partitions or surrenders a portion of their property. This separation is intended for perpetual or predetermined usage in alignment with the wakif's interests, specifically for worship purposes and/or general welfare in accordance with Sharia principles (Article 1). The Compilation of Islamic Law (KHI) provides a parallel definition, characterizing waqf as a legal undertaking by an individual or legal entity to set aside a portion of their property in perpetuity. This institutionalization is dedicated to the advancement of worship or other communal interests, adhering to the tenets of Islamic teachings.¹⁴

Waqf signifies the intentional withholding of property from trade, inheritance, or gifting, constituting an act of dedication whereby eternal assets are

¹⁰ Aliyu, Shehu UR. "Reflections on the socioeconomic role of waqf in an Islamic economic system." *IJUS | International Journal of Umranic Studies* 2, no. 1 (2019): 39.

¹¹ Al Alabij, Adijani. "Perwakafan tanah di Indonesia dalam teori dan praktek." Jakarta: Raja Grafindo Persada, 2016.

¹² Abd Jalil, Mohamad Isa, Sofri Yahya, and Anwar Allah Pitchay. "Building committed Waqif: the role of information disclosure." *Journal of Islamic Accounting and Business Research* 10, no. 2 (2019): 186.

¹³ Lange, David L., and H. Jefferson Powell. *No law: Intellectual property in the image of an absolute First Amendment*. Stanford: Stanford University Press, 2008.

¹⁴ Tanjung, Hendri. "An integration of waqf and ventura capital: a proposed model for Indonesia." *Journal of Islamic Monetary Economics and Finance* 3 (2018): 134.

handed over for benevolent purposes.¹⁵ Within the Islamic religion, waqf emerges as a well-established institution, classified under social worship (*ijtimaiyyah*) in Islamic law. The scope of waqf, as elucidated in Islamic Fiqh, extends beyond land to encompass various objects, permitting non-land waqf as long as the object retains utility and is not immediately depleted upon benefit extraction. Legally, as stipulated in Law Number 41 of 2004 on Waqf, waqf is defined as a legal act wherein the wakif voluntarily separates or surrenders part of their property for perpetual or predetermined use, aligning with their interests for worship and/or general welfare according to Sharia. Similarly, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) characterizes waqf as a legal act where an individual or legal entity separates and institutionalizes part of their property indefinitely for the benefit of worship or other public interests in accordance with Islamic teachings. This dual legal perspective underscores the multifaceted nature of waqf, blending legal, religious, and social dimensions in its enduring practice.¹⁶

b. Taxes in Islamic Law

In Islamic legal discourse, the term for taxes in Arabic, etymologically speaking, is *dharibah*, encompassing various meanings such as obligation, determination, imposition, explanation, and charge, among others.¹⁷ Yusuf Qardawi¹⁸ interprets the term tax as derived from *dharabah*, signifying a debt, land tax, tribute, or any obligatory payment regarded as a burden. Linguistically and traditionally, *dharibah* has many connotations, but can be interpreted as property that is collected compulsorily by the state, excluding *jizyah* and *kharaj*, although both can be classified as types of *dharibah*. Subsequently, scholars have expounded on the definition of taxes, emphasizing that taxes are mandatory obligations imposed on taxpayers, to be remitted to the state in adherence to prescribed regulations. The payment does not yield direct returns from the state, serving dual purposes, namely financing general expenses and contributing to the realization of economic, social, political, and other goals pursued by the state. Provides an Islamic viewpoint on taxes, characterizing them as essential assets mandated by Allah SWT for Muslims. These financial resources are indispensable for meeting diverse obligatory needs and expenditures, particularly in cases where the *baitul*

¹⁵ Rashid, Syed Khalid. "Potential of waqf in contemporary world." *Journal of King Abdulaziz University: Islamic Economics* 31, no. 2 (2018). See also: Baqutayan, Shadiya Mohamed S., Aini Suzana Ariffin, Magda Ismail A. Mohsin, and Akbariah Mohd Mahdzir. "Waqf between the past and present." *Mediterranean Journal of Social Sciences* 9, no. 4 (2018): 152.

¹⁶ Al Alabij, Adijani. "*Perwakafan tanah di Indonesia dalam teori dan praktek*." Jakarta: Raja Grafindo Persada, 2016.

¹⁷ Anggraini, Puspita Ghaniy, Putri Werdina Ciptaning Ayu, Arfah Habib Saragih, and Muhammad Try Dharsana. "Do Sharia and Non-Sharia Listing Securities Investors Respond Differently to Tax Avoidance?." *Jurnal Akuntansi dan Keuangan Indonesia* 18, no. 1 (2021): 5.

¹⁸ Al-Qardawi, Yusuf. *Hukum Zakat*, Jakarta: Pustaka Literatur Antarnusa, 1991

maal lacks monetary resources.¹⁹ These interpretations highlight the multifaceted nature of taxes in Islamic law, encompassing obligations, financial burdens, and instruments for achieving societal and state objectives.

Taxation is perceived as an obligatory act of spending assets mandated by Allah SWT, levied on citizens and collected in cash to fund various state requisites. This financial imposition serves the dual purpose of meeting state needs and actualizing economic, social, and political objectives, as well as contributing to the overall development of the country.²⁰ When the term *dharibah* is employed in a non-Islamic context, it refers to taxes collected from the *akyat* for the purpose of state regulation. This distinction arises from the potential confusion in terminologies associated with taxation, necessitating that the value provisions and tax regulations align with the respective countries or regions regulations.

Moreover, specific conditions must be considered in the imposition of taxes.²¹ First, there must be a genuine need for financial resources, and no alternative sources are available to the government to address its comprehensive requirements. Scholars stress that this condition should be observed diligently, and some assert permissibility only when the *baitul-mal* is entirely devoid of funds. Second, equitable distribution of the tax burden is emphasized. If the assets are truly necessary and no alternative sources are available, the decision to impose taxes is not merely permissible but obligatory in accordance with Sharia. Equity in this context does not imply uniformity, as forcing equality on dissimilar entities would be unjust. Instead, the distribution should be fair, considering economic and social factors, allowing for varied amounts based on these considerations.²²

Taxes should be directed towards financing the welfare of the people, prioritizing societal well-being over indulgence in immorality and personal desires. The rationale supporting the imposition of tax obligations, in addition to *zakat*, is grounded in several arguments. Firstly, the obligation of social security and solidarity necessitates the existence of taxes. Secondly, *zakat* has limitations in its scope, whereas state financing encompasses a much broader spectrum of needs. Taxes, serve not only financial objectives but extend to funding the comprehensive requirements of the state. Acknowledging tax obligations is crucial for a nation's progress, emphasizing equitable tax conditions. This argument posits that all taxes

¹⁹ Zallum, Abdul Qadim. "Nizam al-Hukmi fi al-Islam." *Bairut, Dar al-Ummah li al-Thiba'ah wa al-Nasyr wa al-Tauzie* (1996).

²⁰ Buchanan, James M., and Richard A. Musgrave. *Public finance and public choice: two contrasting visions of the State*. Cambridge: MIT press, 1999. See also: Akintoye, Victor Adejumo, and Oluwabunmi Adejumo Opeyemi. "Prospects for Achieving Sustainable Development Through the Millennium Development Goals in Nigeria." *European Journal of Sustainable Development* 3, no. 1 (2014): 33.

²¹ Al-Qardawi, Yusuf. *Hukum Zakat*. Jakarta: Pustaka Literatur Antarnusa, 1991

²² Maulidizen, Ahmad. "Ibn Khaldun's Economic Thought; The Fair Tax and its Relevance to the Modern Economy: Islamic Economics; Economic Thought; Modern Economy; Fair Tax Management." *International Journal of Islamic Business and Economics (IJIBEC)* 3, no. 2 (2019): 79.

are collected for social solidarity and state financing rather than for individual use, aligning with the goal of addressing the country's financial needs.²³

The fundamental principles of tax laws in Islamic jurisprudence find expression in Quranic verses, notably in Surah At-Taubah (9): 29 and Surah An-Nisa' (24): 59. These verses convey that in a just government, those who violate regulations will incur fines (*Jizyah*). The determination of the fee amount (levies) must adhere to a fair agreement, and in the absence of alternatives, the matter rests with Allah and the Messenger. This concept resonates with contemporary life, where taxes are levied to meet the state's needs, and the establishment of tax rates must adhere to principles of fairness, aligning with the teachings of the Quran and hadith.²⁴

In a prophetic hadith, it is affirmed that Islam recognizes assets beyond zakat that must be contributed for the collective welfare of both the people and the state, exemplified by the imposition of taxes (*dharibah*). The opinion of the prominent scholar, Abu Yusuf, articulated in his work *Al-Kharaj*, asserts that the caliphs, particularly Umar, Ali, and Umar bin Abdul Aziz, stressed the importance of collecting taxes with justice and compassion. It was emphasized that tax collection should not surpass the citizens' capacity to pay, ensuring they can still meet their fundamental daily needs. Abu Yusuf additionally supports the ruler's prerogative to adjust taxes in accordance with the citizens' financial burdens.

Advocates of taxation argue that when state resources are insufficient to meet public interests, the state has a legitimate need to raise funds from the populace. If the benefits derived from such expenses are genuinely enjoyed by the people, it becomes their obligation to contribute to the costs. Some proponents, considering social objectives and fair income distribution, find resonance with Islamic goals in the implementation of a progressive taxation system. In light of the above assertions, contemporary taxation is framed as a civic duty, grounded in the necessity to augment government funds for various expenditures. The rationale posits that if these expenses remain unfunded, detrimental consequences may ensue. Therefore, the avoidance or non-payment of taxes is deemed perilous, posing adverse consequences across diverse aspects of society. To illustrate, firstly, it poses a threat to the financial stability of the country, leading to a decline in tax revenues. This may necessitate either an augmentation of existing tax rates or the imposition of new tax obligations to offset the shortfall arising from numerous defaults or non-payment. Secondly, it jeopardizes public interests, as the contraction of state finances results in the abandonment of beneficial initiatives, such as developmental projects. Taxes, as citizens' obligations in an Islamic state, impose a corresponding duty on the government to meet two essential

²³ Nurunnabi, Mohammad. "Tax evasion and religiosity in the Muslim world: the significance of Shariah regulation." *Quality & Quantity* 52, no. 1 (2018): 383.

²⁴ Saad, A. Y. Q., and A. M. Al Foori. "Zakat and tax: A comparative study in Malaysia." *International Journal of Innovation, Creativity and Change* 10, no. 12 (2020): 143.

conditions.²⁵ Firstly, the utilization of tax proceeds must be characterized by transparency and efficiency, ensuring the honest realization of tax objectives. Secondly, the government must ensure an equitable distribution of the tax burden among those obligated to pay. The diverse opinions converge to indicate that Islamic scholars and economists endorse taxes under specific conditions, emphasizing the imperative that taxes must be fair, just, and devoid of undue burdens on the populace.

c. Legal Basis for Taxation on Waqf Land in Indonesia

In Indonesia, several tax regulations pertaining to waqf are outlined in specific laws. Law Number 16 of 2000, amending Law Number 6 of 1983 on General Provisions and Tax Procedures, addresses general provisions and taxation procedures. It serves as a replacement for Law Number 6 of 1983, aiming to enhance justice, improve service quality to taxpayers, and establish firmer legal certainty. This law delineates key aspects, including parties with tax obligations, the comprehensive scope of taxation, the function and mechanism of the Taxpayer Identification Number (*Nomor Pokok Wajib Pajak/NPWP*), factors concerning the recognition of taxable entrepreneurs, and procedural guidelines for correct tax payments. Additionally, Law Number 12 of 1985 concerning Land and Building Tax, specifically Article 3, Paragraph 1, outlines exemptions from land and building tax. Properties exempt from this tax include those utilized solely for public interest purposes such as worship, social services, health, education, and national culture without profit motives. Exemptions also apply to properties used for graves, ancient relics, or similar purposes. Moreover, land designated as protected forest, nature reserve forest, tourism forest, national park, village-controlled grazing land, and unencumbered state land, along with properties used by diplomatic representatives or consulates under reciprocal treatment, are excluded from land and building tax. Furthermore, bodies or representatives of international organizations identified by the Minister of Finance are also exempt from this tax.

Law Number 20 of 2000, amending Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights, Article 3, Paragraph 1, further expands on exemptions from land and building rights acquisition fees. This law excludes tax objects obtained from diplomatic representatives or consulates under reciprocal treatment, properties acquired by the state for government administration or development in the public interest, assets held by international organizations, and properties acquired through the conversion of rights or other

²⁵ Syarief, Elza. "Optimization of waqf land management in Indonesia." *International Journal of Research in Business and Social Science* (2147-4478) 10, no. 2 (2021): 273.

legal actions without changing the name. Additionally, exemptions cover assets obtained through waqf and properties utilized for religious purposes.²⁶

In examining waqf land that remains susceptible to taxation, it is crucial to understand that waqf, within the context of Islam, represents a societal contribution with a profound social impact, benefiting the community at large. Once objects are endowed as waqf, their ownership transforms into public property, extinguishing any private ownership claims. The enactment of Waqf Law No. 41 of 2004 marks a significant milestone; however, the focus should now shift towards enhancing the system and management patterns of waqf assets. The government, as the custodian of national policy, assumes a pivotal role in this regard. A forward-looking perspective is essential in comprehending waqf, with the Compilation of Islamic Law serving as just one pillar for effective management and development. Collaborative efforts from the Muslim community are imperative to fortify other pillars supporting waqf assets.²⁷

One protective measure for waqf assets, exercised by a *nazhir*, involves the administration of these assets, as stipulated in Article 11(a) of Law No. 41 of 2004 on waqf. Waqf land, in accordance with Law No. 12 of 1985 on Land and Building Tax, Article 3, Paragraph 1, Subsection (a), should be exempt from land and building tax. This provision specifies that tax objects exclusively utilized for public interests in worship, social services, health, education, and national culture, without profit motives, are exempt from taxation.²⁸ Additionally, Law No. 20 of 2000, amending Law No. 21 of 1997 on Fees for Acquisition of Land and Building Rights, Article 3, Paragraph 1, Subsection (f), elucidates that tax objects exempt from fees for acquiring land and building rights include those acquired from individuals, waqf bodies, or entities dedicated to worship purposes.

The issue of waqf land being subjected to taxation arises from shortcomings in the oversight conducted by the *nazhir* responsible for the waqf land. In this context, the *nazhir* has not fulfilled their duties as outlined in Waqf Law No. 41 of 2004, Article 11, which explicitly stipulates the following responsibilities for the *nazhir*: a) administering waqf assets, b) managing and developing waqf assets in alignment with their objectives, functions, and designations, c) supervising and safeguarding waqf assets, and d) reporting task implementations to the Indonesian Waqf Board. The legislation is clear in detailing that *nazhirs* are tasked with both the administration and supervision of waqf land. However, the reality on the ground diverges from the legal framework outlined in Law No. 41 of 2004, Article 11, concerning the oversight conducted by *nazhirs*. In practice, *nazhirs* have not

²⁶ Yumarni, Ani, Endeh Suhartini, and Mulyadi Mulyadi. "Legal Entity/Institutional Nazhir and the Concept of Maslahah in Indonesian Waqf Regulation, Journal of Islamic, Social." *Journal of Islamic, Social, Economics and Development (JISED)* 4, no. 23 (2019): 14.

²⁷ Yurista, Dina Yustisi, and Mohammad Noviani Ardi. "The Influence of Waqf Distribution and Promotion on Community Trust (Case Study: Tabung Wakaf Indonesia)." *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 3, no. 1 (2020): 115.

²⁸ Mardiasmo, M. B. A. *Perpajakan (Edisi Terbaru)*. Yogyakarta: Andi, 2016.

executed effective supervision or undertaken the comprehensive administrative processes, leading to issues with the managed waqf land. Notably, despite the certification of waqf land, it continues to be subjected to land and building tax. It is essential to recognize that the regulations governing the supervision and management of waqf land are not solely encapsulated in Law No. 41 of 2004 on waqf. Government Regulation No. 42 of 2006, Article 13, underscores that *nazhirs*, as referred to in Articles 4, 7, and 11, are obligated to administer, manage, develop, supervise, and protect waqf assets.²⁹

In addition to the deficient oversight by *nazhir* in the management and safeguarding of waqf land, a notable absence of coordination exists between *nazhir* and the local Office of Religious Affairs (*Kantor Urusan Agama/KUA*), which serves as the custodian for the deeds of waqf pledges. The enduring issue of inadequate collaboration between these two entities contributes to the prolonged predicament of waqf land. This persistent problem results in the continued imposition of land and building tax on waqf land. It is imperative for the KUA and the managing party to communicate unequivocally to all relevant stakeholders involved in the process of tax collection that the land in question has obtained certification as waqf and, therefore, should be exempt from taxation. The negligent stance adopted by *nazhir*, allowing waqf land to remain subject to tax despite certification, constitutes an erroneous approach and contradicts the provisions of Law Number 41 of 2004, Article 11, regarding waqf, as well as Government Regulation Number 42 of 2006, Article 13. These regulations explicitly state that one of the primary duties of a *nazhir* includes the supervision and administration of waqf assets. Administration, in this context, encompasses the proper documentation and resolution of matters related to waqf land, ensuring its exemption from land and building tax, akin to the status accorded to private land. The certification of waqf land signifies its exemption from land and building tax, making the omission by *nazhir* contrary to established legal frameworks.³⁰

In summary, the persisting issue of waqf land being subject to tax stems from the absence of reporting regarding the alteration in land status, transitioning from private property to waqf land. This crucial reporting responsibility lies with the *nazhir*, who functions as the manager of the waqf land, and it involves notifying the Regional Revenue Agency of the status change. Consequently, the land continues to be recognized as privately owned, subjecting it to taxpayer obligations, specifically land and building taxes. Even if a report has been submitted to the National Land Agency detailing the change in land status to waqf land, its efficacy is contingent on a corresponding update from the regional revenue agency. If the regional status remains unchanged, the land automatically

²⁹ Fanani, Ahmad, Ardhika Wahyu Kuncoro, Ahmad bin Muhammad Husni, and Elina Adi Wijayanti. "The contribution of waqf on poverty alleviation through digital platforms: A case of Indonesia." *Shirkah: Journal of Economics and Business* 6, no. 2 (2021): 251.

³⁰ Praja, C. B. E. "Intellectual property rights as a WAQF asset: the way to change an old paradigm in Indonesia." *International Journal of Innovation, Creativity and Change* 6 (2019).

retains its classification for land and building tax purposes. The genesis of this issue can be traced to the inadequate supervision by the waqf land manager, particularly the *nazhir*, during the administrative process. In this context, the *nazhir* has failed to execute the comprehensive administrative procedures, notably in terms of reporting the shift in land status from freehold to waqf.³¹

The intricate challenges surrounding waqf land taxation in Indonesia underscore the imperative for more vigilant and effective oversight mechanisms within the existing legal framework. The role of the *nazhir*, as elucidated in Law Number 41 of 2004 and Government Regulation Number 42 of 2006, is pivotal in the administration, supervision, and protection of waqf assets. However, the observed discrepancies between legal stipulations and practical implementation, such as the failure to report changes in land status to the Regional Revenue Agency, have perpetuated issues like waqf lands being erroneously subjected to land and building taxes. This misalignment highlights the need for improved coordination between *nazhir* and relevant administrative bodies, such as the local office of KUA, to ensure that the legal status changes are effectively communicated, preventing unwarranted taxation. Addressing the root causes of the problem requires a comprehensive approach that includes enhancing communication channels between stakeholders, streamlining administrative processes, and fostering a greater understanding of waqf-related regulations among *nazhir* and administrative bodies. Moreover, promoting awareness and adherence to existing legal frameworks, particularly those outlined in Law Number 41 of 2004 and Government Regulation Number 42 of 2006, will be instrumental in aligning practices with the intended objectives of waqf management. By fortifying these aspects, Indonesia can strive towards a more equitable and efficient waqf administration system that safeguards the intended societal contributions of waqf assets while adhering to established legal principles.

From a legal standpoint, the implications of the observed discrepancies in waqf land taxation in Indonesia are significant. The failure of *nazhir*, as outlined in Law Number 41 of 2004 and Government Regulation Number 42 of 2006, to fulfill their duties, particularly in reporting changes in land status to the Regional Revenue Agency, raises questions about the enforcement and adherence to existing legal provisions. This not only undermines the integrity of the waqf system but also results in financial consequences for both the state and the waqf institution. The legal framework, needs to be fortified with stricter enforcement mechanisms and clearer reporting obligations, ensuring that waqf land enjoys the tax exemptions it is entitled to under law.³² This involves strengthening the

³¹ Fauziah, Najim Nur, Engku Rabiah Adawiah Engku Ali, and Asmaou Mohamed Bacha. "An analysis of cash waqf linked sukuk for socially impactful sustainable projects in Indonesia." *Journal of Islamic Finance* 10 (2021): 006.

³² Ghazali, Noor Azimah, Ibrahim Sipan, and Ahmad Che Yaacob. "Proposing waqf new form (WNF) in waqf land registration system in Malaysia." *UMRAN-International Journal of Islamic and Civilizational Studies* 8, no. 3 (2021): 12.

accountability of *nazhir* and establishing a more effective feedback loop with relevant governmental bodies to promptly communicate changes in land status. Managerially, the implications revolve around the need for a more robust and transparent administration process for waqf assets. *Nazhir*, as the key managers, must enhance their administrative capabilities to ensure that the entire process, from acquiring waqf status to reporting changes, is diligently executed. There is a necessity for training programs and capacity-building initiatives to empower *nazhir* with the requisite skills and knowledge to navigate the administrative intricacies of waqf management. Moreover, fostering collaboration and coordination between *nazhir*, the local office of religious affairs, and other administrative bodies involved in waqf land management is vital. This includes developing standardized procedures for reporting and verifying changes in land status to prevent discrepancies and facilitate a smoother administration process. In essence, strengthening both legal provisions and managerial capacities is pivotal to rectifying the observed challenges and optimizing the contributions of waqf assets to society.³³

Conclusion

The examination of the taxation status of waqf land in Indonesia has revealed crucial insights into the legal, managerial, and administrative dimensions of waqf management. The main findings underscore a significant gap in the implementation of legal provisions, particularly with regard to the duties of *nazhir* as outlined in Law Number 41 of 2004 and Government Regulation Number 42 of 2006. The failure to report changes in land status to the Regional Revenue Agency has led to waqf land being erroneously categorized as privately owned and subjected to land and building taxes. This legal lapse not only raises questions about the efficacy of existing legal frameworks but also highlights the need for enhanced enforcement mechanisms and clearer reporting obligations to ensure the proper treatment of waqf assets.

Theoretical implications stem from the recognition that a well-defined legal framework alone is insufficient for effective waqf management. The observed legal and administrative challenges underscore the importance of integrating theoretical principles with practical, on-the-ground managerial strategies. The theoretical premise that waqf land should be exempt from taxes is sound, but its realization requires a more robust and transparent administrative process. This suggests a theoretical shift towards emphasizing not just legal frameworks but also the practical capacities and competencies of those responsible for waqf management. The disconnect between theory and practice calls for a comprehensive approach that includes capacity-building initiatives, standardized

³³ Islamiyati, Islamiyati, Dewi Hendrawati, and Aisyah Ayu Musyafah. "The Legal Issues of Cash Waqf in Central Java, Indonesia." *Diponegoro Law Review* 6, no. 1 (2021): 67.

administrative procedures, and improved coordination among relevant stakeholders.

Practically, addressing the identified challenges in waqf land taxation necessitates a multi-faceted approach. The practical implications emphasize the urgency of capacity-building programs for *nazhir* to enhance their administrative skills and ensure compliance with reporting obligations. Furthermore, streamlining communication and coordination between *nazhir*, the local office of religious affairs, and other relevant governmental bodies is essential for a seamless administration process. Implementing technological solutions for efficient record-keeping and reporting could also contribute to the practical resolution of the issue. Overall, the practical implications point towards a holistic and collaborative strategy that combines legal adherence with strengthened managerial capacities to optimize the contributions of waqf assets to society.

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