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Implementation of the Land Swap Agreement (Ruislag) for Waqf Land for the Construction of a Toll Road

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This study aims to determine the process of implementing land swap agreements for waqf land used for toll road construction and to analyze the government's responsibilities in the implementation of the swap.

The research method used is empirical juridical, interviewing directly the land owners, Nazhir, and the Office of Religious Affairs. The novelty of this study is the swap of waqf land to be built as public facilities in the form of a toll road with the assistance of Nazhir and the Office of Religious Affairs.

The novelty of this research lies in the application of information technology and digital management systems to accelerate and simplify the ruislag (land exchange) procedure for waqf land. This may involve the use of digital platforms that enable more transparent and efficient monitoring processes and facilitate better communication between relevant parties such as the nazhir, the Ministry of Religious Affairs, the Indonesian Waqf Board (BWI), and the land office.

The results of this study indicate that the implementation of the land exchange agreement for endowed land is carried out by the Nazhir, the District Religious Affairs Office (KUA), and the local District Land Office. The exchange process involves replacing the endowed land with land of equal or higher value.

The conclusion drawn is that when the exchange is carried out, the Nazhir, as the administrator, must be transparent and prepare all necessary documents with the assistance of IWN to measure the evaluation instruments developed to assess the performance of waqf management at the national level, from waqf management, regulations, institutions, processes, systems, to results and impacts. while the guidelines used are Law Number 41 of 2004 on Endowment and Law Number 2 of 2012 on Land Acquisition for Public Interest Development.

Keywords: Land Swap; Endowed Land; Toll Road Development

Abstrak

Penelitian ini bertujuan untuk mengetahui proses pelaksanaan perjanjian tukar guling tanah wakaf yang digunakan untuk pembangunan jalan tol dan menganalisis tanggung jawab pemerintah dalam pelaksanaan tukar guling.

Metode penelitian yang digunakan adalah yuridis empiris, mewawancara langsung pemilik tanah, Nazhir dan Kantor Urusan Agama. Kebaruan pada penelitian ini adalah tukar guling pada tanah wakaf yang akan dibangun fasilitas umum berupa jalan tol dengan bantuan Nazhir dan Kantor Urusan Agama.

Kebaruan penelitian dengan menerapkan teknologi informasi dan sistem manajemen digital untuk mempercepat dan mempermudah prosedur ruislag (pertukaran tanah) atas tanah wakaf.

Ini dapat melibatkan penggunaan platform digital yang memungkinkan proses pemantauan yang lebih transparan, lebih efisien, dan memungkinkan komunikasi yang lebih baik antara pihak terkait seperti nazhir, Kementerian Agama, Badan Wakaf Indonesia (BWI), dan kantor pertanahan.

Hasil penelitian ini menunjukkan bahwa Pelaksanaan perjanjian tukar guling tanah wakaf dilakukan oleh Nazhir, KUA Kecamatan dan Kantor Pertanahan Kabupaten setempat, proses tukar guling dilakukan dengan cara mengganti tanah wakaf dengan yang nilainya sama atau lebih tinggi.

Kesimpulan yang didapat adalah pada saat tukar guling dilaksanakan, Nazhir selaku yang menguruskan wajib transparan dan mempersiapkan segala hal terkait dokumen yang dibutuhkan dibantu oleh IWN untuk mengukur instrumen evaluasi yang dikembangkan untuk menilai kinerja pengelolaan wakaf di tingkat nasional mulai dari pengelolaan wakaf, regulasi, kelembagaan, proses, sistem hingga hasil dan dampaknya, sedangkan pedoman yang digunakan adalah Undang-Undang Nomor 41 Tahun 2004 tentang wakaf dan Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum.

Kata Kunci: Tukar Guling; Tanah Wakaf; Pembangunan Jalan Tol

1. INTRODUCTION

Indonesia is an agrarian country with enormous potential in the agricultural sector, as evidenced by the estimated rice harvest area of 10.05 million hectares in 2024 according to the Indonesian Central Statistics Agency. This figure does not include rice fields planted with various other food crops spread throughout the archipelago.¹ There are provisions in Law No. 5 of 1960 concerning the Basic Principles of Agrarian Law, which explain that the earth, including land, air, water, and outer space, are gifts from God Almighty, whose role is very important in achieving a just and prosperous society. It also regulates the hierarchy or strata of land ownership rights, such as customary rights, individual or legal entity rights, endowed land, and rights to apartment buildings.²

This enormous agricultural potential has prompted the government to improve infrastructure throughout Indonesia, particularly in the renovation and construction of new toll roads, which has been intensively carried out over the past ten years during the presidency of Joko Widodo. The data mentioned above shows an increase in the infrastructure development budget of 213.8 trillion compared to the previous president's term. This is done to help accelerate economic growth, which is the government's program to achieve a developed Indonesia in terms of food security and standard of living. Adequate infrastructure development can provide services or facilities and facilitate access or distribution of natural resources, which is crucial to consider. In some areas, road infrastructure conditions are severely inadequate, making the distribution of food and other goods difficult. The easier and

¹ Badan Pusat Statistik, "Luas Panen Dan Produksi Padi Di Indonesia 2024," October 15, 2024, <https://www.bps.go.id/id/pressrelease/2024/10/15/2376/luas-panen-padi-tahun-2024-diperkirakan-sebesar-10-05-juta-hektare-dengan-produksi-padi-sekitar-52-66-juta-ton-gabah-kering-giling--gkg--.html>.

² Hadhika Afghani Imansyah, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Ruislag Tanah Kehutanan Menjadi Milik Warga Sebagai Upaya Reforma Agraria Bagi Warga Terdampak Bencana," *Jurnal Pacta Sunt Servanda* 4, no. 1 (2023): 1–8, <https://ejournal2.undiksha.ac.id/index.php/JPSS>.

faster access available to the public will undoubtedly make it easier for farmers or plantation workers to market their harvests or products. Good infrastructure can help realize a developed Indonesia that provides access to all regions for the wider community. To build toll roads on the island of Java, a large area of land is needed that connects the tip of the island, namely Banyuwangi Regency, East Java Province, to Cilegon Regency, West Java Province. In its connection, the Trans-Java toll road passes through Nganjuk Regency, where there is a problem with land acquisition.

When conducting toll road land acquisition, the process is not always smooth and straightforward; there are inevitably some issues, such as disputes over compensation amounts because landowners are unwilling to accept the compensation offered for their land. However, in this study, a specific issue was identified in Nganjuk Regency: the land intended for the toll road is land donated as waqf (religious endowment), which has become the central problem. In carrying out land acquisition for toll road construction, it is necessary to purchase land from previous owners and offer compensation to those affected. To achieve this, a mutual agreement must be reached between landowners and the toll road developer acting on behalf of the government. This process, from agreement to acquisition, must be conducted openly, transparently, and with the knowledge of the community, including village officials from the areas affected by the land acquisition. Therefore, the management of endowments requires the creation of productive assets for future generations while remaining steadfast to the purpose of the endowment in terms of utilization.³

Waqf land is obtained from individuals or organizations that donate their property in the form of land for the benefit of the community, such as religious or social activities, in accordance with Islamic law, either permanently or for an indefinite period. The largest Muslim population is found in Indonesia, providing opportunities to implement the obligation of waqf.⁴ Regulations regarding waqf are widely regulated in Indonesia because the majority of Indonesians are Muslim, so issues related to waqf are also diverse, making it necessary to have a legal framework to protect all parties from creating new problems. Waqf land is a complex and difficult issue to resolve because it involves various components in terms of society, policy, trade, and psychology.⁵

Islam promotes socioeconomic balance, known as the concept of wealth distribution in the economy. By distributing wealth to those in need, this concept aims to encourage equality and ensure that income does not flow only to the wealthy through zakat, infaq, and wakaf, thereby guaranteeing social justice and economic equality.⁶ The first regulation regarding

³ Siti Masriyah et al., "Peran Wakaf Produktif Dalam Kesejahteraan Masyarakat," *Jurnal Ilmiah Ekonomi Islam* 10, no. 1 (2024): 627–31, <https://doi.org/10.29040/jiei.v10i1.12064>.

⁴ Variahatul Ratnasari and Ahmad Ajib Ridlwan, "Persepsi Nazhir Dalam Pendaftaran Tanah Wakaf," *Muqtasid* 10, no. 2 (2019): 80–84, <https://doi.org/https://doi.org/10.18326/muqtasid.v10i2.80-94>.

⁵ Ai Rosidah Rosidah and Shindu Irwansyah, "Analisis Undang-Undang Tentang Wakaf Terkait Penyelesaian Sengketa Tanah Wakaf Sawah," *Jurnal Riset Hukum Keluarga Islam* 3, no. 2 (December 23, 2023): 111–16, <https://doi.org/10.29313/jrhki.v3i2.2917>.

⁶ Amir Mu'allim, "Ijtihad Ekonomi Dalam Pengelolaan Aset Wakaf," *Al-'Adalah* 14, no. 2 (2017): 291–310, <https://doi.org/http://dx.doi.org/10.24042/adalah.v14i2.2212>.

waqf was Government Regulation No. 28 of 1977, which was subsequently developed and finally enacted as Law No. 41 of 2004. In Arabic, waqf means "to hold or prevent," which means to remain in one place and not change hands once the waqf has been completed. Therefore, when the land on which the waqf is located is released, this becomes a problem.

Based on its objectives, waqf has two important purposes, namely to worship Allah and to improve social interaction among humans. Since the reward will continue to come as long as the waqf property is used, the role of waqf as worship can be understood as meaning that waqf is intended to provide provisions for the giver's life in the hereafter. Meanwhile, waqf has a social purpose and is a resource that can accelerate the growth of a nation.⁷ Waqf administrators, also known as Nazhir, are responsible for implementing waqf. Administrators create waqf that benefits the nation and society. Because Nazhir actively participates in documenting, supervising, and improving efficiency, their presence is significant.⁸ Meanwhile, the Indonesian Waqf Board (BWI) is an autonomous institution that promotes waqf in Indonesia, is accountable to the wider community, and cannot be influenced by any authority in the implementation of waqf.⁹ Following the enactment of the Waqf Law, BWI was established as a separate national organization.

Regarding the issue of waqf land, despite the existence of numerous legal frameworks governing waqf, public awareness of waqf remains limited, as illustrated by several issues to be discussed below. First, there is the customary practice of waqf in the community, which is conducted solely through verbal agreements between the waqf donor and the recipient, without any official documentation from the KUA (Religious Affairs Office). Second, the Nazhir or wakaf manager is often unprofessional, as there is no specialized certification for wakaf experts. As a result, when wakaf land is transferred to the Nazhir, no formal wakaf declaration is made, and only a general statement is provided.¹⁰ Third, as is common knowledge, waqf land cannot be exchanged, let alone sold. Fourth, regulations concerning BWI have legal loopholes, namely the lack of BWI throughout Indonesia, making its implementation complicated because there is no governing body.

In general, waqf land is prohibited from being encumbered with any form of liability, including if payments are delayed and the land is seized, given to children, traded, inherited by heirs, or transferred in any way. Article 41 of Law Number 41 of 2004 states that provisions regarding waqf are exempted for the use of RUTR. This is done to eliminate various issues and losses associated with the transfer of waqf land. Additionally, there are specific standards that

⁷ Dakum et al., "Peningkatan Pemahaman Hukum Dan Produktifitas Wakaf Di Pimpinan Ranting Muhammadiyah (PRM) Danurejo Kecamatan Mertoyudan Kabupaten Magelang," *Jurnal Pengabdian Hukum Indonesia* 3, no. 2 (2021): 176, <https://doi.org/https://doi.org/10.15294/jphi.v3i2.38316>.

⁸ Agung Abdullah, "Nadzir Dalam Perspektif Kelembagaan Wakaf Di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 6 (3) (2020): 404, <https://doi.org/10.29040/jiei.v6i3.1216>.

⁹ Nilwani, Hamdil Mukhlisin, and Wahdah, "Peran Badan Wakaf Indonesia Provinsi Kalimantan Barat Dalam Penyelesaian Problematika Perwakafan (Studi Kasus Tukar Guling Antaramasjid Mujahidin – Pt Pelindo II)," *Tarbawi Khatulistiwa: Jurnal Pendidikan Islam* 10, no. 1 (2024): 23–37, <https://doi.org/http://dx.doi.org/10.29406/tbw.v10i1.6500>.

¹⁰ Mohammad Syamsul Arifin, "Peranan Badan Wakaf Indonesia Dalam Penyelesaian Sengketa Tanah Wakaf," *Jurnal Hukum Dan Kenotariatan* 4, no. 1 (2020): 31, <https://doi.org/https://doi.org/10.33474/hukeno.v4i1.6446>.

must be met in the utilization of waqf land for public space purposes in accordance with RUTR. There are three interconnected activities that form spatial planning: spatial planning, land use, and land use control.¹¹ The existence of the RUTR serves as the basis for the formulation of patterns of management, control, utilization, and use of land, the results of which are incorporated into maps. Transfers must be carried out with the approval of the BWI and official approval from the Minister. Waqf land to be transferred must be exchanged for land of equal or greater value and benefit.¹²

The transfer of rights to land and/or buildings owned by individuals or legal entities to land and/or buildings owned by individuals or legal entities with equal value is known as *ruislag* or exchange.¹³ According to Article 1541 of the Civil Code, exchange is a contract whereby both parties agree to exchange one item for another. Relatively speaking, *ruislag*, or exchange, is the process by which two parties agree to exchange their land for the same or a higher price without any additional exchange of funds. A better exchange value indicates that the price of the exchanged object is located in a vital and easily growing area, and the Taxable Value of the Object (NJOP) is at least equal to the NJOP of the endowed property.¹⁴ In order for the competent authorities to grant permission for the exchange of waqf land, the legal objective is to determine the legal certainty, benefit, and fairness of this exchange agreement. The community will be aware of their rights and obligations when there is legal certainty.¹⁵ In this study, there was a problem with the agreement, namely that the land to be used as a replacement had not been paid for in full. This is because, in principle, land can be replaced or exchanged if the price is higher or the area is larger. However, when this agreement was implemented and the exchange procedure was about to take place, the payment from the toll road developer to the land manager had not been paid in full. From this, it can be seen that despite the presence of several institutions overseeing and regulating endowments, there remains weak legal protection for community land and inadequate enforcement of the law against certain parties.¹⁶

The research aims to deepen previous research, the first of which was published in a journal entitled “tukar guling anah wakaf dan penarikan kembali harta benda wakaf” (exchange of waqf land and withdrawal of waqf property).¹⁷ The second study is entitled “The

¹¹ Fatia Kultsum, “Implementasi Asas Berkelanjutan Dalam Penyusunan Rencana Tata Ruang Wilayah Provinsi Dan Kabupaten/Kota Di Indonesia,” *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 3, no. 1 (2023): 1–17, <https://doi.org/10.23920/litra.v3i1.1314>.

¹² Arba, *Hukum Tata Ruang Dan Tata Guna Tanah: Prinsip-Prinsip Hukum Perencanaan Penataan Ruang Dan Penatagunaan Tanah*, ed. Maya Sari, Ketiga (Jakarta Timur: Sinar Grafika, 2022).

¹³ Happy Hayat Helmi and Anna Erliyana, “Reformasi Hukum Pertanahan Pengaturan Komersialisasi Ruang Tanah (Land Law Reform: Arrangement for Commercialization of Land Spaces),” *Jurnal Rechtsvinding* 8, no. 3 (2019): 381–401, <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v8i3.354>.

¹⁴ Syamsurizal Abas, “Tukar Guling Tanah Wakaf Dan Penarikan Kembali Harta Benda Wakaf,” *Al-Mizan* 17, no. 2 (2021): 255–66, <https://doi.org/10.30603/am.v17i2.2334>.

¹⁵ Dwi Yuli Kusumaningtyas and Mohammad Fateh, “Kajian Mengenai Tukar Guling Tanah Bengkulu Guna Pendirian Pabrik” 2, no. 2 (2022): 1–18, <https://doi.org/https://doi.org/10.28918/manabia.v2i02.834>.

¹⁶ Iwan Permadi, “Potensi Sengketa Hak Atas Tanah Di Indonesia,” *Justisi* 9, no. 2 (2023): 201–16, <https://doi.org/10.33506/jurnaljustisi.v9i2.2345>.

¹⁷ Syamsurizal Abas, “Tukar Guling Tanah Wakaf Dan Penarikan Kembali Harta Benda Wakaf.”

legal implications of the release of village land on the salaries of village officials affected by the Semarang-Surakarta toll road construction project in Susukan subdistrict, Semarang regency.”¹⁸ The third study is “land acquisition for public purposes on waqf land.”¹⁹ The fourth study is “waqf asset depreciation.”²⁰ and the fifth or final study is “the law on changes in the status of waqf property (a case study of changes in the ownership status of waqf land in Keniten Village, Kedungbanteng Subdistrict, Banyumas Regency).”²¹ The five previous researchers raised issues regarding changes in the use of waqf land and land swaps, while the weakness of the five previous studies was that they only discussed land swaps and matters related to waqf. while this study introduces an update in the form of the land swap or ruislag process on waqf land designated for public facilities, specifically a toll road, with the assistance of the Nazhir and the Religious Affairs Office. The issue in this study is that there has been no full payment made at the time of the land swap. Therefore, this study identifies two research questions: the procedures for implementing the ruislag agreement on waqf land for toll road construction and the government's responsibilities in implementing the land swap agreement in Watudandang Village, Prambon District, Nganjuk Regency. The objectives of this study are to discuss the procedures for implementing the ruislag agreement on waqf land for toll road construction and to examine the government's responsibilities in its implementation.

2. METHOD

The research design used is empirical legal research, which is research conducted using sources from the community. The study was conducted through case studies, legislative studies, and sociological studies, using primary data sources such as legislation, secondary data sources such as legal journals, and other sources. The research was conducted by collecting data through direct surveys in the field, specifically on the affected endowment lands, using documentation methods, and interviews with key informants, namely the local Religious Affairs Office officials. After the data was collected, it was analyzed by reducing the data through organizing and compiling a comprehensive description, displaying the data to illustrate the challenges, and verifying the data according to the problem patterns. Finally, conclusions were drawn from the data to present the results.²²

3. DISCUSSION

¹⁸ Vella Ade Sayita, I Gusti Ayu Gangga Santi Dewi, and Agung Basuki Prasetyo, “Akibat Hukum Pelepasan Tanah Kas Desa Terhadap Gaji Perangkat Desa Yang Terkena Proyek Pembangunan Jalan Tol Semarang-Surakarta Di Kecamatan Susukan Kabupaten Semarang,” *Diponegoro Law Journal* 11, no. 4 (2022), <https://doi.org/10.14710/dlj.2022.34958>.

¹⁹ Muhamad; Fahmi, Evy; Indriasari, and Bha’iq Roza Rakhmatullah, “Pengadaan Tanah Untuk Kepentingan Umum Diatas Tanah Wakaf (Studi Kasus Proyek Jalan Tol Di Musholla Qubatul Jannah Desa Adiwerna Kecamatan Adiwerna Kabupaten Tegal),” *I Philanthropy* 4, no. 1 (2024): 46–64, <https://doi.org/https://doi.org/10.19109/iphil.v4i1.23135>.

²⁰ Umami Salamah and Lubis, “Ruislag Harta Wakaf,” *DELEGALATA: Jurnal Ilmu Hukum* 6 (2021): 95–107, <https://doi.org/https://doi.org/10.30596/dll.v6i1.4658>.

²¹ Sarmo, “Hukum Perubahan Status Harta Benda Wakaf (Studi Kasus Perubahan Status Kepemilikan Tanah Wakaf Di Desa Keniten Kecamatan Kedungbanteng Kabupaten Banyumas),” *Al-Manahji: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 239–50, <https://doi.org/10.24090/mnh.v14i2.3216>.

²² Salim Hasan and Ahmad Rajafi, “Pengelolaan Tanah Wakaf Masjid Di Kota Manado” 3, no. 2 (2018): 281–301, <https://doi.org/http://dx.doi.org/10.30984/ajip.v3i2.726>.

In Indonesia, the development of waqf law has undergone various changes and adjustments. The Waqf Law and other related regulations have been formulated to establish a solid legal foundation for waqf management. The acquisition of land for public purposes is regulated in Article 1 paragraph (2) of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Purposes, which states that land acquisition is intended to provide land for public purposes while providing fair and appropriate compensation to the previous owners. The provision of land for toll roads is for public interest and must comply with the above regulations, including in the case of this study, where the status of wakaf land must comply with the above regulations. However, the procedure for its transfer will distinguish wakaf land from non-wakaf land.

Some experts have established strict guidelines regarding the transfer of waqf land in relation to this ruislag, while others have not.²³ The existence of a waqf management institution, namely BWI, is very important and strategic in addressing social issues and economic welfare demands currently faced by the Indonesian people. Waqf is not only one aspect of Islamic teachings, but also emphasizes the importance of economic welfare.²⁴ Waqf assets can be divided into three categories: immovable property, movable property other than money, and movable property in the form of money.²⁵ In this case, immovable property in the form of land must be regulated as well as possible in accordance with the objectives of the waqf donor.²⁶

3.1. Procedures for the Exchange of Waqf Land for the Construction of a Toll Road

The change in status is classified as a modification and transfer of rights over waqf land as regulated in the legislation and is considered a violation of Indonesian law, but there are several exceptions if the prerequisites are met. Pursuant to Article 49 of Government Regulation No. 25 of 2018, the transfer of the status of endowed assets requires written permission from the Minister based on approval from the BWI, and such permission may only be granted for specific reasons, including public interest in accordance with the RUTR that does not violate Sharia principles. Endowed assets may not be utilized as specified in the endowment deed, and such transfers are only permitted for urgent religious purposes. This is closely related to the purpose of endowment, which is to enable individuals to perform sustainable acts of kindness by providing benefits and well-being for the community as a whole.²⁷ The inclusion of requirements in this process also serves to educate the public that

²³ Sarmo, "Hukum Perubahan Status Harta Benda Wakaf(Studi Kasus Perubahan Status Kepemilikan Tanah Wakaf Di Desa Keniten Kecamatan Kedungbanteng Kabupaten Banyumas)."

²⁴ Mahmud Syukri and Syaeful Bahri, "Wakaf Sebagai Sumber Ekonomi Syariah," *Journal of Management Review* 7, no. 1 (2023): 875–84, <https://doi.org/10.25157/jmr.v7i1.9473>.

²⁵ Mahmud Syukri and Syaeful Bahri.

²⁶ Abdul Mujib Arijuddin and Nurwahidin Nurwahidin, "Optimalisasi Peran Wakaf Dalam Pengembangan Pariwisata Halal Di Indonesia," *Jesya: Jurnal Ekonomi Dan Ekonomi Syariah* 6, no. 1 (2023): 422–35, <https://doi.org/10.36778/jesya.v6i1.928>.

²⁷ Mohammad Wahyu Maulana, Siska Lis Sulistiani, and Encep Abdul Rojak, "Tinjauan Hukum Islam Dan Uu No 41 Tahun 2004 Tentang Wakaf Terhadap Pencatatan Tanah Wakaf Produktif Di Ponpes Hikmatas Sunnah Kota Palu Timur," *Jurnal Riset Hukum Keluarga Islam*, July 28, 2023, <https://doi.org/10.29313/jrhki.vi.1917>.

the mandate placed on waqf land must be fulfilled.²⁸

Before proceeding to the procedures involved in land swap, there is a basis for the Change of Waqf Land Ownership as stipulated in Article 12 of the Minister of Religious Affairs Regulation Number 1 of 1978, which states that in order to transfer the status of waqf land, the nazhir must submit a request to the Head of the Regional Office of the Ministry of Religious Affairs through the Head of the KUA along with the reasons, then the Head of the Regional Office of the Ministry of Religious Affairs will consider the reasons. If deemed clear, appropriate, and in accordance with applicable laws and regulations as well as Islamic law, the request for the change in the use of endowed land will be approved or rejected in writing. If the request is approved, pursuant to Article 13, the Head of the Regional Office of the Ministry of Religion must forward it to the Minister of Religion. If the approval is granted, the status of the endowed land may be changed.

The author will analyze the application of ruislag of waqf objects from a positive law perspective in this section. This is to determine whether the ruislag that occurred on the waqf land of the Al-Muttaqien Mosque was in accordance with the procedures for changing waqf objects as stipulated in laws and government regulations. This is based on the results of discussions with the Nazir administrators that took place at the Al-Muttaqien Mosque in Prambon in February 2022. Following the discussion, all members reached an agreement on the procedures for the ruislag of Masjid Al-Muttaqien and submitted a request through the KUA to the Minister of Religion. All Nazir and field officers agreed that exchanging the endowed land for a toll road project would undoubtedly benefit the community. For now, the land must be purchased for public use. As in other countries such as Malaysia, which also implements endowments for social and economic development contributions to a nation, such as education, health, and agriculture.²⁹

Ultimately, all landowners must agree to transfer their property for public use, including the payment of compensation to those who refuse. The compensation, known as consignment, is paid to the local district court, and the land is considered state property. After the application and justification are accepted, the Head of the Religious Affairs Office of Prambon District will forward them to the Religious Affairs Department of Nganjuk District. The Ministry of Religion will then assign the Indonesian Waqf Board of Nganjuk District to handle the application for the transfer of land ownership of the Al-Muttaqien Mosque.

At the time of the interview, the transfer of rights was already at the stage of assessing the value of the waqf land. The waqf land in question is productive land with Waqf Certificate Number 00054, registered in the name of the following individual Nazhir: H. Mashari, Faisal Feri Muzaka, Imam Rofi'I, Miftaql Arifib, Moch. Sulaeman. With Survey Certificate Number (SU) 01663/2014, covering an area of 1,344 square meters, valued at Rp 1,008,000,000 (One

²⁸ Aisyah Ayu Musyafah et al., "Optimalisasi Kinerja Pegawai Pembuat Akta Ikrar Wakaf (PPAIW) Dalam Pelaksanaan Hukum Wakaf Tanah Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 160, <https://doi.org/https://doi.org/10.14710/jphi.v5i1.154-171>.

²⁹ Raditya Sukmana, "Critical Assessment of Islamic Endowment Funds (Waqf) Literature: Lesson for Government and Future Directions," *Heliyon* 6, no. 10 (2020): e05074, <https://doi.org/10.1016/j.heliyon.2020.e05074>.

billion eight million rupiah). This amount cannot be paid in cash, and the nazhir must find another productive land of equal value. If it is possible to obtain a larger area than the land being exchanged, this would be preferable, as the original purpose of the land will continue to be fulfilled. Therefore, it can be stated that the replacement land must be equally productive and usable for the prosperity and welfare of Masjid Al-Muttaqin. In determining the price, the nazhir is not permitted to set the value of the endowed land or the replacement land. The Head of the Office determines the value and benefits of the exchanged property in accordance with Article 50 of Government Regulation No. 25 of 2018.

The procedure for the transfer of endowed property was previously regulated in Article 12 of Minister of Religion Regulation No. 1 of 1978, which is the implementing regulation of Government Regulation No. 28 of 1977 on the Endowment of Land, and is now regulated in Article 49 of Government Regulation No. 42 of 2006 on the Exchange of Endowed Property, which states that the change in the status of endowed property in the form of exchange is prohibited except with written permission from the Minister based on the consideration of the BWI, and such permission is only granted under the following conditions: a. The change in the status of the endowed property is for public interest in accordance with the spatial planning regulations (RUTR) based on applicable laws and regulations and does not conflict with the principles of Sharia; b. The endowed property cannot be used in accordance with the endowment declaration; or c. The exchange is conducted for direct and urgent religious purposes. Additionally, supplementary rules state that the replacement property must have a certificate or valid proof of ownership in accordance with applicable laws and regulations; and the value of the replacement property must be higher or equal and commensurate with the endowed property. The exchange value must be based on the recommendation of an appraisal team consisting of the district/city government; the local land office, the Indonesian Ulama Council, the Department of Religion office, and the relevant wakaf land administrator.

The exchange value must be calculated and have a Tax Object Sales Value (NJOP) that is higher or at least equal to the NJOP of the waqf property, and the replacement property must be located in a strategic area that is easy to develop. The exchange process is further detailed in Article 51, which essentially follows the following sequence: the Nazhir submits a request to the Minister through the District Religious Affairs Office (KUA), which is then forwarded to the District/City Department of Religion to form an evaluation team. The team awaits the Regent/Mayor to issue a Decision Letter. After a survey is conducted, the District/City Department of Religion forwards the request to the Regional Office and the Minister. If the Minister approves the exchange, a written approval is issued, and the exchange may proceed, which involves submitting the request to the District/City Land Office for processing. In essence, when the exchange is carried out, the value of the land to be replaced must be appraised first. The trustee acting on behalf of the endowment must adhere to the rules and administrative procedures in accordance with the established sequence. Under Islamic law, the exchange of endowed land can be carried out under strict conditions. In this case, the conditions met include the presence of a significant public interest for urban planning

purposes, such as the construction of a toll road, the replacement value is higher, there is approval from the waqf donor and scholars who understand waqf, and there are no other options for the exchange because it returns to the fundamental principle of waqf, which is the holding of the property, meaning it cannot be inherited, sold, or donated, and the proceeds must be donated to the beneficiaries of the waqf.³⁰

3.2. The Government's Responsibility in the Implementation of Waqf Land Swaps (Ruislag)

This government regulation states that for Muslims who aspire to worldly and spiritual wealth, waqf is an important Islamic institution. This government regulation was established because previous waqf regulations were deemed insufficient and failed to meet the requirements for the administration of waqf in Indonesia. After the agreed-upon disbursement or payment process is completed, the Nazhir, as the responsible party for the waqf land, proceeds with the transfer of rights by drafting a deed or minutes of transfer of rights in the presence of a Notary. This document must be accompanied by a letter of authorization from the Ministry of Religion and the Indonesian Waqf Board (BWI) of East Java Province, stating that the waqf land has obtained permission for exchange. The Nazhir, in the presence of a Notary, signs the deed of relinquishment of rights over the endowed land, stating that the Nazhir agrees to relinquish the endowed land to the state. The next step is for the Nazhir to register at the Land Office of Nganjuk Regency to initiate the process of removing the rights from the endowed land certificate. The next step is for the Nazhir to register at the local land office, in this case the Nganjuk Regency Land Agency.

In the case of the release of the rights to the wakaf rice field land, the process is very lengthy and cannot be compared to the transfer of privately owned land, which can be quickly processed and immediately compensated by the land acquisition authority for the toll road construction. In the event of an exchange for public interest, there are specific provisions requiring that endowed land exceeding 5,000 square meters (5,000 square meters) must obtain approval for the change from the Provincial Ministry of Religion Office. Conversely, the Central Ministry of Religion has the authority to issue approval for exchanges for public interest purposes covering land exceeding 5,000 square meters and for purposes other than public interest.

With this land swap, the government, as the authority, must be accountable for the regulations it has established and ensure fairness for the community whose land is affected by the toll road construction. Therefore, the government must ensure that the affected community receives appropriate compensation. In this case, the government is represented by the Ministry of Religion, assisted by the BWI and the Land Office of Nganjuk District, as well as the Religious Affairs Office of Prambon Sub-district. To achieve this, various parties must collaborate. If any issues arise, whether related to the land where the endowment is located or

³⁰ Ahmad Riza Hidayat et al., "Manajemen Wakaf Dalam Perspektif Hukum Islam Dan Undang-Undang No. 41 Tahun 2004," *Filantropi: Jurnal Manajemen Zakat Dan Wakaf* 4, no. 1 (2023): 14–26, <https://doi.org/10.22515/finalmazawa.v4i1.8029>.

the disbursement of compensation funds, all parties involved must share responsibility. This is because, fundamentally, all processes related to endowments must be transparent so that the community can understand how and to what extent the processes have been carried out.

Wakaf land may be transferred provided it aligns with the Sunnah, which permits its reallocation. However, gifting, inheriting, or bequeathing wakaf land follows the general principle of "maqhasid al-syariah," meaning that the donated property may be sold for the greater good of the community and in accordance with current circumstances.³¹ Methods, efforts, and responsibilities of a nazhir and the government in conducting asset transfers in accordance with Sharia principles and applicable laws and regulations. The National Waqf Index (IWN) assists nazhirs in measuring evaluation instruments developed to assess the performance of waqf management at the national level, encompassing waqf management, regulations, institutional framework, processes, systems, outcomes, and impacts. Specifically, it assists trustees in assessing the condition of waqf in a particular region, comparing performance across regions, and providing direction for improvements in waqf management.³²

The government, as the holder of authority, must be accountable for the regulations it has established and ensure justice for communities whose land is affected by toll road construction. Therefore, the government must always ensure that compensation payments have been fully paid and settled. At the same time, it must oversee the land swap process to prevent misuse, ensure the value of the endowment remains unchanged, and that the purpose of the endowment is achieved even through the land swap. This includes protecting the rights of individuals whose land is to be swapped for endowment land. If there are any discrepancies in the process, the government should take firm action against any violations or misuse of the land swap. Wakaf assets must be preserved in their purity, just as one intends to donate their assets in the religion. This trust and responsibility must be upheld by every authority and person with power in the wakaf and land exchange process. As stated in the Quran, Surah Al Anfal, verse 27, which means, "O you who have believed, do not betray the trusts of Allah and the trusts of the Messenger." If issues or disputes arise, those authorized must hold consultations or involve the government through the Religious Court or other dispute resolution bodies to act as arbitrators, ensuring no party is disadvantaged in the exchange of endowed property.

The Nazhir and the KUA are two distinct institutions. The Nazhir may be an individual or a legal entity tasked with managing and executing the endowment process in accordance with the donor's mandate. The Nazhir handles all matters related to the maintenance and management of endowed assets, while the KUA in each district serves as the representative of the Ministry of Religion.³³ In managing waqf, the role of the local BWI is also needed. BWI is

³¹ Mia Luhfiana and Akmal Bashor, "Ruislag Tanah Wakaf Perspektif Imam As-Syafi'i Kasus Di Mushola Abdurrahman Al Jamil Bumen Bumirejo Kab. Wonosobo," *At-Ta'awun: Jurnal Muamalah Dan Hukum Islam* 2, no. 1 (2023): 54–69, <https://doi.org/https://doi.org/10.59579/atw.v2i1.4618>.

³² Yuliani Dwi Lestari et al., "The Development of National Waqf Index in Indonesia: A Fuzzy AHP Approach," *Heliyon* 9, no. 5 (2023): e15783, <https://doi.org/10.1016/j.heliyon.2023.e15783>.

³³ Hamli Syaifullah, Muhammad Khaerul Muttaqien, and Mohammad Fikri Nazhif Hasbillah, "Pengembangan Wakaf

independent and functions to promote and develop national waqf, even though BWI's funding source is still under the Ministry of Religious Affairs.³⁴ Thus, the three institutions, Nazhir, KUA, and BWI, work together for the benefit of waqf property. BWI and KUA provide guidance to Nazhir to ensure compliance with laws and regulations and to improve the skills of Nazhir themselves.³⁵

In the case of land acquisition for a toll road in Nganjuk Regency, several issues remain unresolved, including the failure to disburse funds. This poses a problem for Nazhir, who must decide whether to exchange the endowed land or not, as Nazhir's profession is crucial to the endowed land. To expedite the land swap process, Nazhir must coordinate with the BWI, KUA, Land Office, and local village officials, as well as the land acquisition authorities to prevent breaches of contract, such as the land acquisition authorities failing to pay compensation. In this regard, the Land Office will assist in identifying suitable replacement land that meets the legal requirements for waqf land. Additionally, the government must nurture and empower the Nazhir by providing education and training on the procedures for managing endowments, including the proper procedures for land swaps on endowment land, so that the Nazhir can assess and manage the endowment in accordance with Sharia law and established regulations.

The Nazhir is the primary or main actor in the land swap process, as they are the first to assess whether the endowment is still productive or not. The Nazhir must prove the existence of a religious necessity in accordance with religious rules, as explained above (for public facilities), appraise the land, submit a written request, complete the request, maintains transparency and accountability by providing written reports and explanations to the relevant parties, manages the process, and implements the new endowment. After the new endowment process has been completed, the Nazhir prepares a report on the completion of tasks addressed to the BWI, the Ministry of Religion, and the relevant parties.

4. CONCLUSION

The agreement to exchange waqf land for toll road construction is carried out through the Nazhir at the local Religious Affairs Office, which is also attended by the waqf donor or their heirs, as well as the Head of the local District Land Office and village officials. This process is carried out by exchanging the land for another plot that is not affected by the toll road construction, using an appraisal value that is equal to or higher than the previous land. During the implementation, the parties follow the guidelines of Law Number 41 of 2004 and Law Number 2 of 2012. In this process, the Nazhir is responsible for preparing all necessary documents and coordinating all parties involved. The author suggests that if land acquisition for infrastructure development continues, it would be advisable to conduct the process transparently between the Nazhir, the Land Office, the Village Officials, and the heirs of the

Produktif Oleh Nazhir," *MISYKAT AL-ANWAR: JURNAL KAJIAN ISLAM DAN MASYARAKAT* 5, no. 2 (2022): 278, <https://doi.org/https://doi.org/10.24853/ma.5.2.275-290>.

³⁴ Rahmat Dahlan, "Analisis Kelembagaan Badan Wakaf Indonesia," *ESENSI: Jurnal Bisnis Dan Manajemen* 6, no. 1 (2016): 115, <https://doi.org/10.15408/ess.v6i1.3125>.

³⁵ Lulu Sylvanie, "Kecakapan Nazhir Dalam Pengelolaan Wakaf Produktif Di Indonesia," *Ulu muddin: Jurnal Ilmu-Ilmu Keislaman* 13, no. 2 (2023): 199–220, <https://doi.org/https://doi.org/10.47200/ulumuddin.v13i2.1773>.

land, as endowed land is a trust that must be safeguarded and accounted for in all its dealings.

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