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Ideal Reconstruction of Law Number 41 Year 2004 on the Position and the Authority of Money Wakaf Law Based on Justice Values Towards Improving the Moslem Economy

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Abstract: Research is a scientific activity related to analysis and construction that was done methodologically, systematically, and consistently. The approach used was normative juridical. Legal sources used by primary and secondary law sources. In order to realize the money waqaf law based on the values of justice in order to improve the people's economy, the provisions on the money waqf set forth in the Waqaf Law which is felt to be still weak must be strengthened and confirmed. The existence of legal stigma in the rules of money waqf, such as the existence of money waqf itself, Nazhir professionalism, BWI independence and community participation are needed in the management and development waqaf in Indonesia

Keywords: Reconstruction of Waqf Law

1. INTRODUCTION

Human life is in the form of the group, in each individual of the group need each other in building the community, and mutually manage all the difficulties in order to become a peaceful life.¹

Every human being has the ideals, desires, needs, minds and efforts, in the sense that every human. They have a series of interests of their respective needs. The interests of a person can be closely related to the interests of others. Sometimes the interests are interdependent, but can also be the same between the human bearers of these various interests. Every member of society maintains its own interests, so that there may be opposition among themselves. Such a matter is very dangerous to the public order, security and safety of the community itself. If not set, there will be "*homo homini lupus*".² Although every individual

in a particular society has different interests, but they still do not want chaos between members of society, they want a peace that allows their desires to materialize.

In the case of social life, culminating in an independent state organization, the order of society is guided by the basis of the country. If we review it from a legal point of view, then the order of society in the form of legal order must be based on the constitution of the country.³

The realization of stability in every relationship in society can be achieved by the existence of a regulatory regulation (*relegen/ amvullen recht*) and *dwingen recht* of every member of society to obey and obey the law. Any public relations shall not be contrary to the provisions of existing laws and apply in society.

Thus, the consequence is that the existing rules of law must be in accordance with the principles of justice in society, to keep the rules of law possible and accepted by all members of society.

A rule of law exists because of a society (*ubi-ius ubi-societas*). The law requires harmony and peace in the community of living together. The law fills an honest and peaceful life in all walks of life.

In Islamic law there are also various laws governing human life. Everything that exists in the heavens and on earth, whether inanimate or living things belongs to Allah SWT. Man is a creature of Allah SWT who is given soul, mind, feeling with some duty obligations in his life. They are endowed with God's possessions as a mandate to be preserved. The treasure is used for the benefit of mankind in general, and must be used according to His guidance. Allah SWT says in verse 29 of the Surah Al-Baqarah which reads:

Meaning: "*He is God, Who made all things in the earth for you and He wills (created) the heavens, and He made seven heavens. And He is All-knowing of all things* ":

In that verse Allah Almighty explains that all that is on the earth, and all that is in this world has been made by Allah SWT, for the benefit of all mankind.⁴ The perfection of Islam among them regulates the shari'a or law. Among the laws governed by Islam is the human relationship with humans called muamalah⁵. This provision of muamalah is basically the efforts made by humans to achieve the prosperity of life and economic welfare according to the rules outlined by Islamic law⁶. Islam always recommends that in human relationships with other people competing to do good. Therefore, the human created by Allah as the Caliph of this earth is with the aim that humans always maintain, manage, and organize this earth, and to worship Him. All things (possessions) possessed by a person must be morally believed that there is part of the property becomes the right of other parties, namely for the welfare of others who are economically lacking or inadequate.⁷ Islam teaches that the basic principle of acquiring property is not justified in taking away the rights of others, taking the property of others at will, and harming others.⁸ Islam also instructs and teaches adherents to charity in the form of alms, among them are by waqaf.

Waqf is one of the most important parts of Islamic Law. He has a connection between the spiritual life with the socio-economic field of Muslim society. Waqf besides the dimension of *Ubudiyah Ilahiyah*, also functions socially. Wakaf as glue relationship, "*hablum minallah, wa hablum minannas*", vertical relationship to God and horizontal relationship to fellow human beings⁹. Therefore Allah has made waqf endowments, advocated it and made it as one way to get closer to Him¹⁰. One form of worship is a waqf. Waqf in general is one of the Islamic Shari'ah which on the one hand serves as worship to Allah and on the other hand serves as a social act. Waqf is a manifestation of faith in God. Therefore, in its function as worship, it can be expected to be a provision for the waqif after the end of life in this world, as a form of deeds whose

rewards will continue to flow as long as the wakaf treasure is utilized. While in its social function, “wakaf is one of the methods in empowering the Islamic community. Wakaf has been prescribed and has been practiced by Muslims all over the world since the time of Prophet Muhammad SAW until now, including by the Islamic community in the State of Indonesia.”¹¹

The first source of wakaf is the Qur’an, although explicitly not found explicitly in the Qur’an, a meaningful word of wakaf gives the treasure as the meaning of zakat. Waqf is the interpretation of the scholars against the verses that talk about the donation of treasure in the form of charity.¹²

The verse is surah Al-Baqarah verse 262: It means: “*Those who spend their wealth in the way of Allah, then they do not accompany what they spend by mentioning their gift and without hurt (the recipient’s feeling), they get a reward in side of their Lord. there is no fear for them, neither shall they grieve.*” (Q.S Al-Baqarah: 262)

The moslem scholars understand the verse as wakaf worship. The second source of wakaf is the hadith. Hadith about Wakaf one of which is narrated by Ibn ‘Umar about the Caliph Umar who inaugurated his land in Khaibar.¹³ Then the legal basis that can be used as a reinforcement of the importance of wakaf can also be seen in a hadith of the Prophet SAW follows:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا مَاتَ الْفُلَانُ انْقَطَعَ عَنْهُ بِرٌّ مِنْ ثَلَاثٍ مِّنْ صَقَاةٍ جَارِيَةٍ وَوَعْمٍ يُتَّقَعُ بِهِ وَوَلَدٍ يَصْلَحُ؟ ذُعُولُهُ (رواه مسلم)

Meaning: “*From Abu Hurairah Radīyallāhu ‘anhu that the Messenger of Allaah allallhu alaihi wa Sallam said:” If any man dies his charity is cut off except from three things, namely: Alms jariyah (flowing), or useful science, or pious son who prayed for her (her parents)*”¹⁴. (HR Muslim).

The scholars interpret the alms of the hadith in the above hadith with wakaf. Jabir said that none of the companions of the Messenger of Allah had deposits but was reincarnated.¹⁵ In the concept of Islam, known term jariyah means flowing. Thus or wakaf issued, as long as the wakaf objects are used for the benefit of good then during that time the wakif get reward continuously though have died.¹⁶

2. RESEARCH METHODS

The research method comes from the word “method” which means the right way to do something, and “research” is an activity to search, record formulates and analyzes to compile the report. Meanwhile, according to Mardalis method is a technical way done in the research process, while the research is defined as an effort in the field of science that is run to obtain facts and principles consciously and systematically to realize the truth.¹⁷

Research is a scientific activity related to analysis and construction that is done methodologically, systematically, and consistently. Therefore, with systematic and controlled activities it will be easy and satisfactory results in a study.

To meet these, researchers have characteristics that refer to:¹⁸

- 1) The objectivity in a descriptive, systematic, and analytical presentation acts in accordance with current facts and conditions
- 2) Relatively, that the scientific truths proposed are not absolute and the results may be denied or tested for truth.

- 3) Skepticism, there is doubt over the assertion that does not yet have the power of evidentiary foundations.
- 4) Neutral, in revealing facts that are not really related to good or bad values.
- 5) Simple, not too complicated in the framework of thinking, the formulation of statements and verification remains based on scientific truth.

In Sukardi's book, they need tools to solve the problem of alienation. Instrument tools that will be discussed widely and systematically are a research methodology that usually contains about ways to use some approaches to solve the problems faced.¹⁹

The things that need to be considered in determining this research method is the suitability between the problem with the method that will be used in a fixed study for things to be studied. In this case the researcher describes it as follows:

Research Paradigm

The paradigm according to Thomas Kuhn is used in two different meanings, namely paradigm meaning the entire constellation of beliefs, values, techniques, etc. shared by members of a particular society. On the other hand the paradigm also means pointing to a kind of element in the constellation, the solving of a concrete puzzle, which, if used as a model or example, can replace explicit rules as the basis for solving normal science puzzles that remain behind. Thomas Kuhn also explicitly argues that a change of paradigm can cause differences in looking at the reality of the universe. Reality is constructed by a certain mode of thought or mode of inquiry, then generates a specific mode of knowing.²⁰

According to Denzin and Lincoln the paradigm is seen as a set of basic beliefs (basic believes) associated with the principal or principle. Paradigm is a representation that describes the universe (world). The nature of the universe is where individuals are in it, and there is a possible distance of the relationship to the universe with its parts. Denzin and Lincoln divide the paradigm into three elements which include: ontology, epistemology, and methodology. Ontology deals with the basic question of the nature of reality. Epistemology asks about how we know something, and what the relationship is between researchers and knowledge. Methodology focuses on how we gain knowledge.²¹

Guba and Lincoln classify the paradigm into four, namely: positivism, post positivism, critical theory, and constructivism. The four paradigms are the development of two major paradigms of positivism that use quantitative approaches as the basis of truth-seeking and constructivism using a qualitative approach. For over three decades, there has been a fierce debate between the two paradigms behind the study of social science and behavior. The debate is based on a number of aspects that lie behind the use of both paradigms in research.²²

Constructivism paradigm emphasizes the knowledge gained from experience or research which is then constructed to the extent of the experience or research it has. This construction process will run continuously because of the discovery of a new idea, which then used as the basis for formulating a system or regulation in the form of legislation that can be applied in everyday life.

The constructivism theory is built on the theory that existed before, namely personal construction or personal construct by George Kelly. He claims that people understand his experience by grouping events according to their similarity and differentiating things through their differences.

Constructivism is theoretically the initial approach to communication science developed in the 1970s by Jesse Deli and his colleagues. Constructivism states that the individual engages in interpretation and acts according to the various concepts in mind. According to constructivism, reality does not show itself in its crude form, but must be filtered first through how one sees something.²³

Paradigm constructivism is a paradigm in which the truth of a reality is seen as a result of social construction is relative. This constructivism paradigm is in an interpretative perspective divided into 3 (three) types, namely: symbolic, phenomenological, and hermeneutic interaction.

Research Types

As it is known, Law Science recognizes two types of research, namely normative legal research. According to Peter Mahmud Marzuki²⁴ that normative legal research is “a process of finding a rule of law, legal principles, and legal doctrines to address the legal issues faced”. As for “sociological or empirical legal research, according to Mukti Fajar and Yulianto Acmad²⁵ which includes, research on legal identification and research on the effectiveness of law”.

The discipline of law has a very wide scope, so it requires that a researcher can choose the type of research, whether doctrinal or non-doctrinal legal research. In the initial context, the law is defined as *ius constitutum*, meaning that the law which is the object of study is related to law is in the books. By deepening such matters, the law is oriented to laws of law or positive law.

The law is understood as the positive norms in the national legal legislation system, and the type of pure legal teaching that examines law as it is written in the books of doctrinal research methods, deductive logic and positively oriented.

According Soerjono Sukanto Normative legal research method or method of library literature research is a method or method used in legal research conducted by examining existing library materials.²⁶ In this case, it concern on the Wildlife Ownership which is protected by the Law. The approach used in this research is statute approach or approach of legislation because it uses approach of legislation and regulation.²⁷

Nature of Research

Descriptive research is a study that aims to provide a concrete description or explanation of the state of the object or problem under study without taking conclusions in general. The specification of descriptive research by Soerjono Soekanto²⁸ in his book Introduction to Law Research is described as follows: Descriptive research is a study intended to provide as much data as possible with human, other circumstances or symptoms, and only explain the state of the object of the problem without intending to draw conclusions general.

In terms of its nature, this research is analytical descriptive, ie data analysis is not out of the scope of the problem and based on general theory or concept applied to explain about a set of data or show comparison or relationship set of data with a set of other data.²⁹

Descriptive analysis begin by grouping the same data and information by sub aspect and then do the interpretation to give meaning to each sub-aspect and its relation to each other. Then after that done analysis or interpretation of all aspects to understand the meaning of the relationship between one aspect

with another and with the whole aspects of the subject of the research problem is done inductively so as to give a full picture of the results. In addition to getting the picture intact, sometimes set up a follow-up step with attention to special domain interesting to investigate.³⁰

Approach

The approach according to Vermon van Dyke is: “An approach consists of the criteria of selection-criteria of employment in which the data concerns are brought to bear: the content of the standards governing the inclusion of question and data.”³¹

Approaches in the various research, for example it is viewed from the point of study; juridical, historical, sociological, anthropological, political approach, comparative approach, and so on. Judging from the pattern of using the method there are normative approach, quantitative approach, and qualitative approach.³²

The normative juridical, the approach uses the positivist legit concept. This concept sees law as identical to written norms created and enacted by authorized institutions or authorities. This conception sees law as a normative system that is independent, closed and independent of real life society.³³

Legal Resources

In general research is distinguished between data obtained directly from the community and from library materials. Obtained directly from the community is called primary data (or baseline data), whereas those obtained from library materials are commonly called secondary data.³⁴

The data in this paper are secondary data or legal materials, ie library materials that include official documents, library books, legislation, scientific papers, articles, and documents relating to research. The secondary law includes three parts:³⁵

Primary Legal Material

Primary Legal Material According to Mukti Fajar and Yulianto Achmad³⁶ “legal material that is authoritative means to have authority, that is the result of actions or activities undertaken by the competent authority”.

The Law of waqaf is Regulation Number 41 Year 2004 About Waqf. The primary law material, namely binding legal materials. The primary legal material used in this study is legislation.

Secondary Legal Material

Secondary legal material, which provides an explanation of the primary legal material, namely the legal material that can provide explanation of the primary legal material. Secondary law materials can be: derivative regulation of wakaf legislation such as Government Regulation Number 42 Year 2006 About Implementation of Law Number 41 Year 2004 About Waqf, then also law books; legal journals; legal writings or views of legal experts contained in mass media and the Internet.

Tertiary Law Material

Tertiary legal matter, ie materials that provide guidance as well as explanation of the primary and secondary law; examples are dictionary, encyclopedia, cumulative index and so on

3. RESEARCH AND DISCUSSION

In the context of empowerment of money waqf, also required regulation that really accommodate the main interest in goal waqf itself that is to realize prosperity of public. Basically, Law No. 41 of 2004 on Waqf has contained the rules on the money waqf, namely Article 16 paragraph (2) a, then in Article 28 through Article 31, but as time goes by, the provisions must also developed and reformulated in order to adjust to the times that affect the sectors of life of Indonesian society.

In relation to the reconstruction of wakaf money law on the wakaf law, the new legal rules and / or legal provisions of the money waqf are more progressive and contain legal content that protects against the public interest,³⁷ especially for those managers with an interest in matters this is the Nazhir and BWI, is expected to be a wakaf regulation that has the power of the inhabitant so that the results are effective and effective in its application in the life of Indonesian society.³⁸ In other words, that basically the reconstruction of money waqf law in the Waqf Act is nothing but aimed at bringing in wakaf money that is efficient and empowered, by putting forward the principles of justice in the content of the material and paying attention to and basing the establishment of its rules on the principles of the establishment of legislation.

In the context of a prosperous country, basically the State of Indonesia from the beginning has a large economic and social capital to become a developed and prosperous country, of course still have to do various improvements that continue to be done in all sectors of society life.

The strength of Indonesia's economy comes from the demographic structure of its population. Indonesia actually has the potential of social capital (social capital) and domestic market is very large. Indonesia is endowed with Allah SWT of the 247 million populations (the fourth largest in the world) with the basic quality which is actually good, it means human capital and the potential of the domestic market is very big. As time goes on and up to now, Indonesia is beginning to enjoy the bonus of a large population, as the number of productive forces is much greater and starts to run.

In the context of great economic potential, surely the existence of waqaf especially waqf money if managed and developed properly, efficient and successful use of course will be very strategic in the Indonesian economic system can even be one of the economic instruments of the nation breaking down economic downturn so as to be able to realize the life of society Prosperous Indonesia.

The welfare state according to Bagir Manan is a state or government not merely as security guard or public order, but the main bearer of responsibility for the realization of social justice, public welfare and the greatest prosperity of the people.³⁹ It also implies that the welfare state embraces a state-of-the-art system that emphasizes the importance of the welfare of its citizens. The purpose of the welfare state is not to eliminate differences in the economy of society, but to minimize economic disparities. Therefore, if there is a wide gap between the rich and the poor in a country, it not only shows the failure of the state to manage social justice, but also results in acute poverty with significant differences in economic control will have adverse impacts on all aspects of public life, and hinder the realization of a prosperous Indonesia.

There are five principles that characterize the welfare state, namely:⁴⁰

- 1) Important production branches concerning the livelihood of the people are controlled by the state. Examples of electricity, gas, petroleum, clean water, and cheap public transport.

- 2) Private enterprises outside the production branches that concern the livelihood of persons may be controlled by the private sector, but the state regulates, so there is no monopoly or oligopoly that can distort the market, or harm the people. For this second category alone, Indonesia cannot yet. The state even surrendered to the market mechanism.
- 3) The State is directly involved in the welfare efforts of its people, such as health services and educational services. These services must be accessible to its entire people.
- 4) Develop a progressive tax system, a tax system that imposes taxes with higher percentages for rich people and for large-scale enterprises.
- 5) All public policies are conducted democratically.

In this context the potential of money waqf is very urgent and has a role that has a high bargaining value in the economic development in Indonesia. Actually, money waqf can become economic corporation, so it contains the elements of future investment and develop productive assets for future generations in accordance with the purpose of waqf, either in the form of services and the utilization of the results directly.⁴¹ This means that, waqf can be managed for investment purposes and production of goods and services which then the results are distributed to those who are entitled.⁴² It will certainly give effect to the living standard of Indonesian society.

Investment is the main foundation for economic development. Investment itself has the meaning of directing some of the property owned by a person to form a production capital, which is able to generate benefits / goods and can be used for future generations. Investment in the form of investment ownership and the goal is able to generate profits that are planned economically and the results are channeled to those determined by wakif in the pledge of waqf. Thus, it can be said that economically, the money waqf is to build productive assets through investment activities for the benefit of those who need those established in the pledge of waqf.

Actually with the empowerment and utilization of money waqf in the aspect of the nation's economy, then by looking at the potential of money wakaf itself then in principle Indonesia can become a developed and prosperous country. Terms to be advanced are all available, including natural wealth, large population, infrastructure, and so forth. The combination of natural wealth and the excellence of technological knowledge and passion to move forward, and collaborated with productive waqf system which then synergize together will lead Indonesia into a prosperous and prosperous country.

In addition, one of the factors that influence the empowerment and utilization of money waqf is the wakaf bureaucracy itself. In general, the bureaucracy in Indonesia is organically overweight resulting in high costs in the maintenance of certain licenses and bureaucracy that is too long which in the process a lot of tables that must be passed in the administration and takes a long time. Therefore, the licensing bureaucracy in Indonesia is far from efficient.

In this regard, as with the reconstruction of the previous discussion, the improvement of the status of Indonesian Waqf Board into non-structural government institution is projected to cut the bureaucracy of the implementation of waqf, especially in the case of wakaf property registration or registration of wakaf certificate of money by Sharia Financial Institution.

Based on the above mentioned interests, and in the framework of empowerment and utilization of the money wakaf, the reconstruction of the money waqf law stipulated in Law No. 41 of 2004 on Waqf is a necessity and necessity, in order to realize the wakaf of money law based on justice so that it can be an instrument in the life of an advanced and prosperous society within the framework of the State of Indonesia prosperous.

4. CONCLUSION

Based on the discussion that has been described in the previous chapters, the results of research, it can be concluded several things as follows:

- 1) National Legal System is basically a legal system that is formed by accommodating Islamic law, therefore many rules of fiqh which is the teachings of Islamic law which became a positive law. Positivization of Islamic law, in the end also gave birth to the regulation of waqf that had not been specifically regulated. The arrangement of the wakaf is contained in Law Number 41 Year 2004 regarding Wakaf, which is then technical and implementation guideline based on Government Regulation Number 42 Year 2006 regarding Implementation with Law Number 41 Year 2004 regarding Waqf. The Waqf Act has regulated the existence of money waqf as set forth in Article 16 paragraphs (1) and (3), 28, 29, 30, and 31. Thus, the existence of Wakaf Law of money has been recognized in the National Law System, and the legal standing of the money waqf is definitely and clearly a positive law applicable in the legal system in Indonesia. With the position of a positive law, the money waqf law has binding and coercive power, let alone hierarchy of legislation, wakaf law of money embodied in the Act, it can also be a legal umbrella and legal basis for derivative rules, such as Government Regulation, Ministerial Regulations, Regional Regulations, and other technical regulations. Thus, in juridical terms the money waqf law has the power as a valid and binding law.
- 2) Provisions on the law of money waqf as stipulated in Law No. 41 of 2004 on Wakaf in general is that the money waqf is part of one type of wakaf property, which is included in mobile property, this is contained in Article 16 paragraph (3) letter a. Then based on Article 28, the implementation of the money waqf can be done by the wakif through the Sharia Financial Institution (LKS), appointed by the minister which is then called the Sharia Money Laundering Institution (LKS-PWU). In the process of wakaf property wakaf in the form of money, Wakif gives waqaf money to Nazhir through LKS, it is intended that the money that is represented is stored in savings / accounts Nazhir as deposit funds through LKS. Then as stipulated in Article 29 and Article 30, the Submission of money waqf shall be executed by a written statement of will to the Sharia Financial Institution. Furthermore, the relevant LKS shall issue a certificate of Waqf of money, which must be registered by the LKS to the Minister of Religious Affairs no later than 7 (seven) working days after the certificate is issued. Thus, in Law Number 41 Year 2004 regarding Waqf, the provisions on the Law of Endowments of Money are only stipulated in 4 (four) articles, while Article 31 is only a transitional article or an organic article that requires further regulation on the Government Regulation. With this provision, it can be said that the rules of money waqf are still very far from perfect, other than that other provisions in the Law of Wakaf associated with the implementation of money waqf such as the existence of Nazhir as

one element of waqf is still not clear, Nazhir was appointed by Wakif and only registered to the Waqf Board of Indonesia and the Minister of Religious Affairs. The acknowledgment of the Waqf Board of Indonesia and / or Minister of Religious Affairs in this case is still not explained by the Laws and Regulations. Under the provisions of the Wakaf Law also, the Indonesian Wakaf Board explicitly and expressly stated in the Law as INDEPENDENT AGENCY, but in its implementation, as regulated in the Wakaf Law, always guided and overshadowed by the Minister of Religious Affairs, this provision is something that illustrates the absence of harmonization between chapters per chapter. Therefore, the legal provision of money waqf in Law Number 41 Year 2004 regarding Wakaf is still considered to be lacking and other provisions related to the implementation of money waqf are also considered to be less relevant in order to realize a money-based justice.

- 3) To realize the law of money wakaf based on the values of justice in order to improve the economics of the people, the provisions on the money waqf as stipulated in the Law of Wakaf perceived still weak should be strengthened and reinforced. The existence of the stigma of the law in the rules of money waqf, such as the existence of the money waqf itself, the professionalism of Nazhir, the independence of BWI and the participation of the community in the management and development of waqaf in Indonesia, requires the reconstruction to realize the ideal legal construction of wakaf money, . Thus, in this dissertation is offered reconstruction of Law No. 41 of 2004 on Waqf by redefining the articles of endowment money and other related articles. The reconstruction is focused on the placement of money as a kind of waqf property, previously only 2 (types) ie immovable objects and movable objects, into 3 (three) types of wakaf property ie immovable objects, movable objects other than money and movable objects in the form of money. To reinforce the process of money embezzlement through the LKS designated by the Minister, placing the form of wakaf certificate of money in the rules of the Law previously only contained in the Government Regulation, and ensuring BWI involvement in the registration of money waqf to the Minister of Religious Affairs. Another thing that was reconstructed was that the previously unclear status of Nazhir became clear by adding the qualifications or requirements of nazhir as someone appointed by Wakif, then appointed and appointed by BWI by issuing a decree. Then another urgent thing is, the improvement of the status of BWI institutions that were previously only Independent institutions, (but still in the grip of the Minister of Religious Affairs), became a nonstructural government institution directly responsible to the President. Then another thing that is added is the participation of the community in fostering and supervising the management of waqf in Indonesia. The rules concerning the money waqf in the Waqf Act should be a responsive and progressive law, not afraid to develop in the interests of society, nation and state. Reflecting the values of justice, taking into account the principles and legal norms so as to make efficient and effective money wakaf in national development and in the context of realizing the common prosperity in the life of the nation and the State of Indonesia. Related to the study of money waqf, certainly this reconstruction will present new theories and concepts in the scientific treasury regarding the law of money waqf in Indonesia, where academics, researchers and thinkers can deepen it more comprehensively, as a new study material for new formulas also perfection of waqaf legislation in Indonesia.

Suggestions

Based on the results of these studies can be submitted some suggestions as follows:

- 1) To the public, in order to participate in building the nation and the State through the money waqf. It does not have to be a rich person to be able to give up his property for savings in the akherat, with the wakaf of money the community can denominate his property in the form of money not in amounts equal to the value of a piece of land or a building, but in the corridor of each ability. For the adherents of the syafi'iyah school of thought, we should as citizens put forward the interests of the nation and the State, narrow the aspect of the ideology of the beliefs of the school by opening the inclusive thinking horizon so that the tolerance between Muslims itself becomes realized, and in turn can accept the existence of waqf money and / or even participate in the successful management and development of money waqf in Indonesia.

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34. Soerjono Soekanto dan Sri Mamudji, 2011, *Penelitian Hukum Normatif. Suatu Tinjauan Singkat*, Jakarta: PT. Raja Grafindo Persada, hlm. 12.
35. *Ibid*, hlm. 13.
36. Mukti Fajar dan Yulianto Achmad. *Op. cit*. hlm. 192.
37. Dalam konteks perlindungan ini, maka penegakan hukum wakaf uang seyogyanya dapat berfungsi dengan berdasarkan 4 (empat) unsur, yaitu: 1) unsur kepastian hukum (*rechtssicherheit*); 2) unsur kemanfaatan hukum (*zweckmassigkeit*); 3) Unsur keadilan hukum (*gerechtigkeid*); dan 4) unsur Jaminan Hukum (*doelmatigkeit*). Lihat. Dardji Darmodihardjo, 2002, *Pokok-pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, Jakarta: PT. Gramedia Pustaka Utama, hlm. 36.
38. Dalam Kamus Besar Bahasa Indonesia, berdayaguna mempunyai arti: 1) berkemampuan mendatangkan hasil dan manfaat; bertepat guna; efisien; dan 2) berkemampuan menjalankan tugas dengan baik. Adapun makna berhasil guna adalah dapat membawa hasil; efektif. Lihat Kamus Besar Bahasa Indonesia, <http://kebbi.web.id/daya%20guna>, diakses tanggal 05 Juli 2017.
39. Abrar, 1999, *Hak Penguasaan Negara Atas Pertambangan Berdasarkan Undang-Undang Dasar 1945*, Disertasi. Bandung: PPS Universitas Padjajaran, hlm. 4.
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41. Munzir Kahaf, 2005, *Manajemen Wakaf Wakaf Produktif*, diterjemahkan oleh Muhyiddin Mas Rida, Jakarta: Khalifa, hlm. 59.
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