The Construction of Commercial Building on Waqf Land Based on Indonesia Law

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Abstract. Management system of Waqf Utilization is one of the important aspects in developing new paradigm of waqf in Indonesia, including the construction and management of commercial building on the waqf land. This article examines the use and management of wakaf land for commercial building development. The method used is normative juridical, with comparative approach to commercial building development on wakaf land in Singapore and Malaysia. There is a need for partnership synergy especially with the business world in the development of waqf land for commercial building development. In relation to the provisions of the Waqf Law, the management of waqf assets must be in accordance with the principles of sharia. This also applies in Financing and Management of commercial building on waqf land. The benefits of managing the waqf land for commercial building development will be channeled to mauquf ‘alaih (waqf recipients) in accordance with the pledge of waqf.

Keyword: Waqf Land, Commercial Building

1. Introduction

The Benefit of Waqf is not only for the religious and social facilities but also to advance the general welfare by realizing the economic potential of waqf property. It allows the management of waqf properties to invest in economic activities in accordance with Shariah management and economic principles. The empowerment of waqf land for commercial building development is one the waqf management efforts that is economically profitable, where the results can be utilized to improve the welfare of the community. This is one of development of waqf asset management that can be done based on Indonesian Waqf Law. However, its implementation requires a more in-depth legal review that does not only examine the provisions of positive law but also the aspects of sharia management of the commercial building itself. Therefore, this article will review the practice of utilization of waqf land for commercial building construction according to Indonesian land law.

2. Methodology

The method used in writing this article is the method of legal research (Normative Legal Research). According to Bernard Arief Sidhartara, Normative law research is a type of research that is commonly carried out in the legal development activities. In the West, it is called Law Dogmatic. It is a science which scientific activities include inventory, explain, interpret, systematize, and evaluate. The positive law prevails in a given society or country with a set of concepts (meanings), categories, classifications, and methods established and developed specifically to carry out all activities whose overall activities are directed to prepare the effort. Find a juridical solution to legal issues (micro or macro) that may occur in the community [1]. Normative Legal Research is done by the approach of legislation. In addition to the legislative approach, this study uses an empirical legal approach by taking legal sources obtained from the observation in the field. This study also uses descriptive analytical method. Thus, this research is expected to give a detailed, systematic, and thorough description based on facts in the form of primary data obtained from interviews and direct visits to relevant agencies in the field of endowments.
The word ‘waqf’ is derived from the Arabic, which means causing a thing to stop and stand still, that is procedure of call letters, from where it starts and where to stop[2]. In terms of jurisprudence, waqf is generally defined as property that is durable, the benefits of which can be used without damaged or depleted, and are commonly used for charitable purposes. Waqf is also referred to as al-habs (al-ahbas, plural). Al-habs mean al-sijn (prison), silent, prevention, hindrance, impediment, custody, and security. Combined ahbasa word (al-habs) by al-mal (wealth) means waqf (ahbasa al-mal)[3]. The term of waqf is not mentioned in the Qurán. Waqf doctrinal legitimacy comes from the Hadith. Scholars argue that the waqf command is part of the command to carry out al-Khayr (literally goodness) as mentioned in Surat al-Hajj (22):77 which states to do good that you may gain the victory.

Waqf is one of economic distributions that are very potential to be developed. Muhammad Anas Zarqa said that Awqaf transfers wealth from private ownership to a beneficial social collective ownership [4]. Idris Ahmad argues that what is meant by waqf is to hold the treasures that might be taken by the people of his benefit, his eternal substance ('ain), to surrender it to the places that have been determined syara’, and prohibited freely on the objects he uses [5].

The definition of Waqf according to Article 1 number 1 of Law Number 41 Year 2004 regarding Waqf [6], which is "wakif legal action to separate and / or hand over some of his property to be exploited forever or for a certain period in accordance with his interests for worship purposes and / or welfare General according to shari’ah". The assets which can be represented under the Waqf Law include immovable objects and movable objects such as money, precious metals, securities, vehicles, intellectual property rights, lease rights, and other movable goods in accordance with the provisions of shari’a and regulations - the prevailing law.

Based on article 5 of Waqf Law, the purposes of Waqf not only for worship but also to serve and realize the potential economic to promote the general welfare. This provision is also affirmed in Article 22 of Waqf Law intended for:

a) facilities and religious activities;

b) facilities and activities of health, education;

c) assistance to the poor neglected children, orphans, scholarships;

d) advancement and economic improvement of the people; and / or

e) advancement of the general welfare of others that are not contrary to sharia and legislation.

These rules reflect an effort to create balance in the realization of society as part of the implementation of social justice in Islam

3. Findings

Waqf can be invested in a wide range of economic activities to ensure that the subject of waqf is not reduced or exhausted. Specifically, the management for waqf is regulated in the Law of Waqf article 43 paragraph (3) states that the management of productive waqf that requires the guarantee institution must be in accordance with sharia principles. Waqf can be managed productively for the welfare of society. In neighboring countries, waqf institutions have developed and are able to contribute to economic and social issues. Several countries also have been successfully implemented the management of waqf productively, for example Malaysia and Singapore. In Egypt, waqf property is in the form of buildings and agricultural lands that are leased or subdivided to those who are willing to work on a profit-sharing system, giving shares in various business fields [7].

Nazhir of waqf requires partnership cooperation with various professional institutions. In its formulation, partnership cooperation should pay attention to the principles of shariah / Islamic fiqh according to wakaf, namely the principle of immortality (ta’bidul ashli) and the principle of benefit (tashbihul manfaah), which gives the consequence that there should be a guarantee of protection of waqf objects as well as an ability to increase the productivity of waqf for the benefit of public worship and welfare [8].
The principle of immortality of waqf (ta'bidul ashli) and the principle of utility (tashbilul manfaah) in its management is made into assets that produce goods or service in business investment to get profit in system musharaka or mudlarabah to the institution Credible Islamic finance as well as entrepreneurs and other trustworthy and professional parties. Nazhir has a very important role to develop waqaf assets productively. According to Article 11 of the Waqf Law, nazhir conducts administrative, management, and development of waqf properties in accordance with their objectives, functions, and designations, including overseeing and protecting waqf properties, and reporting on the implementation of duties to the Indonesian Waqf Board.

There are several concepts of commercial building development on waqf land. First, Waqf land is managed and developed operationally by Nazhir. To improve the benefits of waqf land according to the pledge of waqf, nazhir can manage it by establishing commercial buildings on waqf land, where the results of the management of commercial buildings will be channeled for waqf purposes as stated in the pledge of waqf. However, in this case, nazhir must seek to find funds for the construction of the building. Nazhir can cooperate with other partners in financing the building, among others through the bank. Second, in addition to alternative financing from the bank, nazhir can manage the waqf money to finance the construction of commercial buildings. This is done among others by the foundation Wakaf Nurani Bangsa who manages the waqf money to be a share in the construction of ESQ tower in Simatupang Street, South Jakarta. This building became a core business building managed through the funding of waqf money invested by YWNB as the largest shareholder in PT. Graha who manages and operates the ESQ Tower commercial building. And at last, the concept of cooperation of commercial building development on waqf land can also be done in cooperation with land leasing by landowner and built building infrastructure by the partner, then after so many years of operational building, the land tenant will be in charge of the land, while the building has been standing before and has been operated to make a profit.

The construction of a commercial building that was officially established on the waqf land in Indonesia has not shown significant development compared to some countries that have successfully developed waqf assets through commercial building development, such as Saudi Arabia, Egypt, Turkey, Singapore, Malaysia and so on. However, there is a commercial building that is now an icon of successful management of waqf through participation in its management such as Tower 165 in Simatupang Street, Jakarta. It is one of the development strategies of waqf money that is included through a stock investment for the ownership of the building.

4. Conclusion

Law No. 41 of 2004 on Waqf has expanded the utility scope of waqf land for commercial building construction that serves to fulfill the interests of worship as well as to promote the common prosperity. However, the utilization of waqf land for long-lasting investment has not developed significantly. We can learn the lesson from Singapore and Malaysia where waqf properties were used for business purposes through profit-sharing system or partnership. Here, the Nazhir has a fundamental role on the utilization by managing the funding of the construction, whether it comes from banks or collective funding through waqf money.

The most ideal condition in financing the construction of buildings on wakaf land is the readiness of the funds themselves. The combination between waqf land and waqf money programs in this case is an appropriate integration to finance commercial buildings on waqf land. Thus, the wakif should synergize the management of waqf land and waqf money. They need partnership synergy especially with the business parties in the development of waqf land for commercial building development.
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