

**JURNAL ILMIAH DOSEN UNIVERSITAS GRESIK**  
**KARYA ILMIAH : JURNAL ILMIAH**

Judul Jurnal Ilmiah (Artikel) : The Irregularity Release of Rights to Waqf Land in Land Acquisition For Public Interest.  
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**LEMBAR**  
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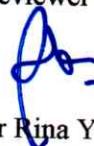
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<b>No</b>	<b>Item</b>	<b>Tanggal</b>
1	Submission article and acknowledgement of submission <b>Pengajuan artikel dan pengakuan penyerahan</b>	27 September 2022
2	Review Process (Manuscript Needs Revision) <b>Proses Review (Naskah perlu direvisi)</b>	Revisi pada 08 Oktober 2022
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### Metadata pengiriman

#### Penulis

Nama Suyanto Suyanto  
Afiliasi Universitas Gresik  
Negara Indonesia  
Pernyataan Bio Fakultas Hukum  
Kontak utama untuk korespondensi editorial.

#### Judul dan Abstrak

Judul Pelepasan Hak Atas Tanah Wakaf Dalam Pengadaan Tanah Untuk Kepentingan Umum  
Abstrak

Penelitian ini bertujuan untuk mengetahui peraturan pemerintah dalam pengadaan tanah untuk kepentingan umum yang berasal dari tanah wakaf, mekanisme pelepasan hak oleh nazhir kepada negara, dan kedudukan nazhir dalam UU Wakaf sebagai pengelola tanah wakaf. Penelitian ini menggunakan jenis penelitian hukum normatif, dengan menggunakan bahan hukum primer dengan pendekatan filosofis, perundang-undangan dan pendekatan konseptual. The rhasil adalah tanah wakaf yang pendaftaran haknya atas nama Nazhir tidak dapat dialihkan dalam bentuk hak pengalihan dalam bentuk apapun, kecuali pengalihan untuk kepentingan umum setelah mendapat izin tertulis dari Menteri dengan persetujuan badan wakaf Indonesia yang dapat ditukarkan untuk benda yang manfaat dan nilai tukarnya sekurang-kurangnya sama. Pemberian ganti rugi dalam pengadaan tanah setelah mendapat pengganti hak atas tanah wakaf dilepaskan oleh pemegang wakaf (nazhir) kepada negara. Mekanismenya tidak melalui pelepasan hak, karena nazhir bukan pemilik tanah, tetapi melalui mekanisme pencabutan hak atas tanah, setelah nazhir mendapat ganti rugi tanah,

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## #26620 Ringkasan

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## THE IRREGULARITY RELEASE OF RIGHTS TO *WAQF* LAND IN LAND ACQUISITION FOR PUBLIC INTEREST

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### **Abstract**

*This study purpose was to investigate government regulation in land acquisition for public interest originating from waqf land, mechanism of release rights by nazhir to the state, and nazhir's position in the Waqf Law as waqf land manager. This study used normative legal research type, by using primary legal materials with philosophical approach, legislation and conceptual approach. The results were waqf land whose rights registration in the name of Nazhir can't be transferred in any form of transfer rights, with exception of the transfer for public interest after obtaining written permission from the Minister with approval of the Indonesian waqf body which can be exchanged for objects whose benefits and exchange value are at least similarly. The provision of compensation in land acquisition after obtaining replacement land rights to waqf land are released by the waqf holder (nazhir) to the state. The mechanism doesn't go through the waiver of rights, because Nazhir is not the owner of the land, but through the mechanism of revocation of land rights, after Nazhir received compensation for land compensation, the state revoked the rights to the waqf land because the Law on the revocation of land rights in land acquisition is still in effect.*

**Keywords:** Acquisition; Land; Interest; Public; Waqf.

### **A. INTRODUCTION**

The Basic Agrarian Law recognizes the existence of *waqf* institutions in the provisions of Article 49, namely, land ownership rights of religious and other social legal entities as long as they are used for business in the religious and social fields are recognized and protected, the agency is guaranteed to obtain sufficient land for its buildings and businesses in the religious and social fields.<sup>1</sup> From these provisions, it is clear that the LoGA recognizes the elements of ownership of land rights that rely on religious law which is in accordance with spiritual principles in the order of land law which emphasizes the principle of agrarian law as a religious community.

Indonesia with a majority Muslim population has its own style in carrying out the provisions of the Islamic religion, including by separating their personal assets in the form of land ownership rights for worship, public and social purposes. Article Number 41 of 2004 concerning *waqf* defines the *waqf* for a certain period of time in accordance with the interests of the

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1 Indonesia Konstitution, *Article No. 5 of 1960 Concerning Agrarian Principles*, 1960.

wakif.<sup>2</sup> *Waqf* institutions in Indonesia as religious institutions have the potential and economic benefits for the benefit of worship and the prosperity of the general welfare that grows and develops in society.

To provide legal certainty for the *waqf* process on the land, the *waqf* process is registered in the land registration as the mechanism regulated in the *Waqf* Law is registered in the name of *Nazhir* for the benefit of wakif as intended in the *Waqf* Pledge Deed made by the *Waqf* Pledge Deed Official from the Ministry of Religion, *Nazhir*. as a *waqf* recipient has the task of administering *waqf* assets, managing and developing *waqf* assets in accordance with their objectives, functions and designations, supervising and protecting *waqf* assets and reporting on the implementation of tasks to the Indonesian *Waqf* Board.

*Waqf* assets have a special legal status, and legal status that cannot be transferred in any form can not even be carried out further legal actions such as being used as collateral, confiscated, granted, sold, inherited, exchanged, or transferred in other forms, the special nature of the property the *waqf* object is excluded for the public interest in accordance with the general spatial plan with the mechanism that it must be exchanged for property whose benefits and value are the same as first obtaining permission from the Minister with the approval of the Indonesian *Waqf* Board.

In order to carry out infrastructure development in Indonesia, President Joko Widodo provides a policy of accelerating development for public purposes such as access to toll roads, reservoirs, highways, government offices and other public interests which also have an impact on land acquisition, so it is necessary to accelerate land acquisition through land bank, one of the efforts to accelerate this is to amend Act No. 2 of 2012 concerning Land Procurement for development in the public interest with Article Number 11 of 2020 concerning Job Creation, as well as the Government Regulation implementing the Act, the latest with using Government Regulation Number 19 of 2021 concerning the implementation of land acquisition for development in the public interest as the implementing regulation of the provisions of Articles 123, 173 and 185 letter b, of the Job Creation Law.<sup>3</sup>

The study in Malaysia found that the success or failure of management and development of *waqf* assets is depend on *Nazhir* competencies. The development of *waqf* is still a lot of obstacle such as community's understanding.<sup>4</sup> Other study in Indonesia found that the system of *waqf* management still not as expected, some of *waqf* disputes

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2 Indonesia Konstitusi, *Article No. 41 of 2004 Concerning Waqf*, 2004.

3 Indonesia Konstitusi, *Article No. 2 of 2012 Concerning Land Acquisition for Development in the Public Interest*, 2012; Indonesia Konstitusi, *Article No. 11 of 2020 Concerning Job Creation*, 2020; Indonesia, *Government Regulation No.19 of 2021 Concerning Implementation of Land Acquisition for Development in the Public Interest.*, 2021.

4 Miftachul Ibrahim, Duski, Zainuri, Ahmad, Huda, Empowering Wakaf (Islamic Endowment) for Economic Development: An Insightful Value of Nazir Waqf in Indonesia, *UMRAN-International Journal of Islamic and Civilizational Studies*, Vol. 7, No. 1, 2020, page. 101–12



and the first alternative solution use non-Litigation.<sup>5</sup> Current research results showed lack of detailed information about *waqf* assets, transparency of *waqf* documentation, incomplete file information, and the requirements to provide timely and sufficient information to the related stakeholders are caused factors difficulty to distribute *waqf* benefits. It's need success factors of *waqf* information management system in Malaysia.<sup>6</sup>

Other research recommend applied in universities the management system of *waqf* called the model theory of al-wilayah. This model promoting development of *waqf* in Malaysia with more significant role of Selangor Islamic Religious Council and universities.<sup>7</sup> Sustainable model source of financing for *waqf* institution use modelling crowdfunders' behavioral intention and theory of technology acceptance model. Findings research that both the perceived usefulness and perceived easy to use and have a positive impact.<sup>8</sup>

The Law on *Waqf* with the Job Creation Act as described in Government Regulation 19 of 2021 and the Basic Agrarian Law, there is a lot of ambiguity in the norms in the implementation of land acquisition, especially regarding the relinquishment of *waqf* land rights to the state and legal subjects as parties who replacement the *waqf* land. Few of articles that discuss management system of *waqf* development, but no literature explain the release of rights to *waqf* land in land acquisition for public interest. Therefore, this study purpose was to investigate government regulation in land acquisition for public interest originating from *waqf* land, mechanism of release rights by *nazhir* to the state, and *nazhir*'s position in the *Waqf* Law as *waqf* land manager.

## B. RESEARCH METHODS

This study used a normative legal research type, which seeks the truth of legal issues by using primary legal materials in the form of laws, jurisprudence and secondary legal materials such as books, journals, expert opinions, using a philosophical approach, legislation and a conceptual approach. This study used descriptive analysis.

5 Faisal, Waqf Land Disputes and Alternative Settlements, *Randwick International of Social Science Journal*, Vol. 2, No. 3, 2021, page.259–68,

6 Noor Habibah Janom, Norjansalika; Izham, Mohd Zairul, Mansor, Fairuz Suray, Aris, Syaripah Ruzaini Syed; Bashah, Nor Shahniza Kamal; Arshad, Review on Success Factors of Waqf Information Management System in Malaysia, *Indonesian Journal of Electrical Engineering and Computer Science*, Vol. 16, No. 1, 2019, page.412–19

7 Muhamad Rahimi Muhammad Don, Mohd. Ali; Osman, The Management of Waqf Universities in Selangor, Malaysia, *Journal of Contemporary Islamic Studies*, Vol. 6, No. 1, 2020, page.45–60.

8 Hasanudin Mohd Thas Thaker, Mohamed Asmy; Mohd Thas Thaker Anwar Alllah, Modeling Crowdfunders' Behavioral Intention to Adopt the Crowdfunding-Waqf Model (CWM) in Malaysia: The Theory of the Technology Acceptance Model, *International Journal of Islamic and Middle Eastern Finance and Management*, Vol. 11, No. 2, 2018, page. 231–49

## C. RESULTS AND DISCUSSION

### 1. The Law of *Waqf* Land in Indonesia.

Government Regulation No. 42 of 2006 as the implementer of Act No. 41 of 2004 concerning *Waqf*, positions *Nazhir* as the party who receives *waqf* property from the wakif to be managed and developed according to its designation within a certain period of time according to the interests of the wakif.<sup>9</sup>

The *nazhir* consists of individuals, organizations and legal entities that have the authority to register *waqf* assets on behalf of *nazhir* in accordance with the interests of the *waqf* pledge, individual *nazhirs* are appointed by the wakif and registered with the Minister and the *waqf* body through the Office of Religious Affairs, while organizational *nazhir* is an organization engaged in the field of social, educational, social and/or Islamic religion, while *nazhir* legal entities must be Indonesian legal entities and are engaged in social, educational, community and/or Islamic religion.

With respect to land rights that are *waqf*, then the land rights are removed from the date of the *waqf* pledge and the status is a *waqf* object, the *waqf* land can be in the form of property rights or customary land that has not been registered; right to cultivate, right to use building and right to use on state land; right to use building or right to use land with right of management or right of ownership; ownership rights to the apartment unit; and state land.

*Waqf* over land rights has its own place in the rule of law in the agrarian sector, the Agrarian Principles views the issue of *waqf* over land as having a very important meaning, so it is regulated separately in Article 49 paragraph (3) of the Agrarian Principles.<sup>10</sup> *Waqf* institutions only exist in Islam which are oriented to the welfare of the people through the surrender of land ownership rights forever whose land registration is regulated in the National Land Law. Furthermore, the registration of the *waqf* land is carried out in accordance with Government Regulation no. 24 of 1997, in the form of registration of titles, not a registration of deeds system and subject to the Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 2 of 2017 in the registration of *waqf* land.<sup>11</sup>

### 2. Land Acquisition for Public Interest on *Waqf* Land

The dynamics of the legislation on land acquisition for development in the public interest follow the political dynamics of land acquisition, it is based on legal politics and interests in the process of its formation, as reflected in the land acquisition regulations after the enactment of the Basic Agrarian Law through Article no. 5 of 1960, starting from Article no.

9 Indonesia, *Government Regulation No. 42 of 2006*, 2006; Indonesia Konstitution, *Article No. 41 of 2004 Concerning Waqf*.

10 Indonesia Konstitution, *Article No. 5 of 1960 Concerning Agrarian Principles*.

11 Indonesia, *Government Regulation No. 24 of 1997 Concerning Registration of Titles*, 1997; Indonesia Minister of Agrarian Affairs and Spatial Planning, *Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 2 of 2017 in the Registration of Waqf Land*, 2017.

20 of 1961 concerning the revocation of land rights and objects on it, Article no. 2 of 2012 concerning Land Procurement for development in the Public Interest, and most recently regulated in regulations that use the omnibus law concept, namely Article Number 11 of 2020 concerning Job Creation, all of which are regulations at the level of Law.<sup>12</sup>

As the implementing regulation of the Job Creation Act, Government Regulation No. 19 of 2021 concerning the Implementation of Land Procurement for development for the public interest has been ratified which revokes and declares that Presidential Regulation No. 30 of 2015 concerning the Third Amendment to Presidential Regulation No. 71 of 2012, Presidential Regulation No. 148 of 2015 concerning the Fourth Amendment to Presidential Regulation No. 71 of 2012, Presidential Regulation No. 99 of 2014 concerning the second amendment to Presidential Regulation No. 71 of 2012, Presidential Regulation No. 40 of 2014 concerning amendments to Presidential Regulation No. 71 of 2012 and Presidential Decree No. 71 in 2012.<sup>13</sup>

In order to provide convenience and smoothness in land acquisition for the benefit of job creation, the Job Creation Law changes, deletes, or stipulates new regulations in Article no. 2 of 2012 and Article no. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, one of these provisions is that the parties who are entitled and those who control the object of land acquisition for the public interest must comply with the provisions of the law.<sup>14</sup> This provision also applies to land acquisition objects including forest areas, village treasury lands, *waqf* lands, ulayat lands/customary lands, and/or asset lands of the Central Government, Regional Governments, BUMN, BUMD.

Article on Job Creation in Chapter VIII of Land Procurement Part Two land acquisition for development for the public interest Article 123 which amends several provisions in Article no. 2 of 2012 which amends Article 36 which mentions the provision of compensation in the form of money<sup>15</sup>, replacement land, resettlement, share ownership, and other forms agreed by both parties, specifically on land acquisition on *waqf* land Article 46 paragraph (6) is amended by confirming that the object of

12 Indonesia Konstitusi, *Article No. 11 of 2020 Concerning Job Creation*.

13 Indonesia, *Presidential Regulation No. 30 of 2015 Concerning the Third Amendment to Presidential Regulation No. 71 of 2012*, 2015; Indonesia, *Presidential Regulation No. 148 of 2015 Concerning the Fourth Amendment to Presidential Regulation No. 71 of 2012*, 2015; Indonesia, *Presidential Regulation No. 99 of 2014 Concerning the Second Amendment to Presidential Regulation No. 71 of 2012*, 2014; Indonesia, *Presidential Regulation No. 40 of 2014 Concerning Amendments to Presidential Regulation No. 71 of 2012 and Presidential Decree No. 71 in 2012*, 2014.

14 Indonesia Konstitusi, *Article No. 2 of 2012 Concerning Land Acquisition for Development in the Public Interest*; Indonesia Konstitusi, *Article No. 41 of 2009 Concerning the Protection of Agricultural Land for Sustainable Food*, 2009.

15 Ong Argo Victoria, *Waqf Al-Nuqūd In Indonesia (In Law Perspective)*, *Jurnal Pembaharuan Hukum Universitas Sultan Agung*, Vol. 5, No. 1, 2018, see to Sukarmi, S., & Victoria, Argo, Cash Waqf in Sustaining of Indonesian Society In Legal & Economic Perspective, *Al-Itqan: Journal Of Islamic Sciences And Comparative Studies*, Irkhs-Iium, Malaysia, Vol. 2, No. 1, 2018, page.83–97;

land acquisition for the *waqf* property is determined to be the same as the value of the appraiser's assessment of the *waqf* property being replaced.

Explanation of Number 10 Article 40 in the Job Creation Article states that compensation in principle must be submitted directly to the party entitled to compensation. from one person who is entitled to compensation, among those entitled include the holder of land rights; management rights holders; *nazhir* for *waqf* land; the owner of the former customary land; the legal community exists; parties who control State lands in good faith, among others, abandoned lands, lands ex-western rights; the holder of the basic control over the land; and/or owners of buildings, plants or other objects related to land.

*Waqf* property in the form of land is of social interest, so that if the land acquisition for the public interest is for *waqf* objects, it must include several parties or stakeholders, and stakeholders. The administration of land for the public interest must not ignore the interests of the community and individual rights holders.<sup>16</sup>

From a historical perspective, since the enactment of Article no. 5 of 1960, there are 3 (three) legal institutions that regulate activities to obtain land for development purposes by providing compensation to those who are entitled, namely revocation of land rights, liberation of the land and land acquisition.<sup>17</sup>

The revocation of land rights is regulated in Article 18 of Article no. 5 of 1960 which was implemented by Article no. 20 of 1961 with Government Regulation no. 39 of 1973, while land acquisition is regulated in *Permendagri* No. 25 of 1975 concerning Provisions on procedures for land acquisition and *Permendagri* No. 2 of 1976, the term land acquisition was first recognized in 1993, with the issuance of Presidential Decree no. 55 of 1993 concerning Land Procurement for the implementation of development in the public interest, then Article no. 2 of 2012, further regulated in Article no. 11 of 2020, the Job Creation Article does not abolish all provisions on land acquisition for the public interest in Article no. 2 of 2012 but added and changed several provisions of several articles.<sup>18</sup> The basic concept of land acquisition for the public interest is carried out through deliberation based on the agreement of the parties, namely the land owner and the party who needs the land.<sup>19</sup>

Procurement of land for development in the public interest is carried out through deliberation to determine the form and amount of the loss, deliberation is carried out by the holder of land rights with the

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16 Arba, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Sinar Grafika, Jakarta, 2019

17 Suyanto, *Hapusnya Hak Atas Tanah Akibat Penitipan Ganti Kerugian Dalam Pengadaan Tanah Untuk Kepentingan Umum*, Jakad Publishing, Surabaya, 2019

18 Suyanto, *Pengadaan Tanah Untuk Kepentingan Umum Atas Tanah Kas Desa Pasca Undang-Undang No. 11 Tahun 2020 Tentang Cipta Kerja*, Scopindo Media Pustaka, Surabaya, 2021

19 Achmad Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Bayu Media, Malang, 2017

land agency to determine the amount of compensation.<sup>20</sup>

Land acquisition regulations, both in Article No. 2 of 2012 and in Article No. 11 of 2020 provides compensation to land owners, in PP No. 29 of 2021 as the implementer of Article no. 11 of 2020 states that compensation is given in the form of money; replacement land; resettlement; shareholding; or other forms agreed by both parties. Article 79 PP No. 29 of 2021 states that compensation in the form of replacement land is carried out based on a written request from the chief executive of land acquisition, the replacement land is given for and on behalf of the entitled party, and is carried out simultaneously with the release of rights by the entitled party without waiting for the availability of replacement land. Meanwhile, the value of compensation for the object of land acquisition in the form of *waqf* property is determined to be the same as the value of the appraiser's assessment of the replaced *waqf* property.

### 3. Release of Right to *Waqf* Land for Public Interest

The release of land rights is an activity to release the legal relationship between the holder of land rights and the land they control by providing compensation on the basis of deliberation. This release can only be carried out on the basis of approval and agreement from the right holder, both regarding the implementation technique and regarding the form of compensation to be given to the land.

In land acquisition for the public interest, based on Article 100 PP No. 29 of 2021, it is stated that the relinquishment of the rights to the object of land acquisition is carried out by the party entitled to the state before the Head of the local Land Office or an official appointed by the head of the land procurement executive. In the implementation of the waiver of rights, the right holder is obliged to sign the official report of the waiver of rights, the holder may give power of attorney to another party, namely a person in a blood relationship up, down or sideways to the second degree or husband/wife for an individual party; a person appointed in accordance with the provisions of the articles of association for the party entitled to the status of a legal entity; or heirs in the event that the entitled party dies prior to the implementation of the provision of compensation. In the event that the entitled party is absent due to article, the exercise of the right is carried out by the guardian.

Legal problems arise when the land acquisition is on *waqf* land, whether *Nazhir* can be categorized as a holder of *waqf* land rights and can represent to relinquish the *waqf* land rights to the land acquisition committee for the public interest, even though Article 18 of the Government Regulation states that the party entitled is wrong. the other is *nazhir* for *waqf* land, and emphasized in Article 21, *Nazhir* for *waqf* land is the party who receives *waqf* property from the wakif to be managed and developed according to its designation, but the manager

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<sup>20</sup> Muwahid, *Hukum Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum*, Duta Media, Pamekasan, 2020

and the owner are two very different things.

Article No. 41 of 2004 concerning *Waqf*, provides an understanding of *nazhir*, namely the party who receives *waqf* property from the wakif to be managed and developed according to its designation, who has the task of administering the *waqf* property, managing and developing the *waqf* property in accordance with its purpose, function and designation, supervise and protect *waqf* assets, report the implementation of tasks to the Indonesian *waqf* body.<sup>21</sup> The management and development of *waqf* assets is carried out productively, among others by collecting, investing, investing, producing, partnering, trading, agribusiness, mining, industry, technology development, building construction, apartments, flats, supermarkets, shops, offices, educational facilities or health facilities, and businesses that do not conflict with sharia.

Property rights that are *waqf* are right to use, namely *nazhir* only has the right to use the land as *waqf* for the purposes of worship or other social activities; there is no right of disposal, i.e. the *waqf* land cannot be transferred.

The control and use of land by anyone and any form of need must be based on a juridical basis (the basis of rights), with this juridical basis, a concrete legal relationship is created between the holder of land rights (land owners) and the land they control. Juridical control gives rise to authority on the subject of land rights holders to control physically with its designation and use, so that when discussing *waqf* land it must also be seen how the legal relationship between *Nazhir* and the land is.

So that the function of managing and developing *waqf* property is different from the function as the owner of *waqf* property who has the authority to release the rights to *waqf* property. *Nazhir* is not a legal subject of the owner of land rights, so he cannot be categorized as the owner of *waqf* property, therefore the mechanism for obtaining land in land acquisition for the public interest of *waqf* property should not be through the mechanism of release rights but through the mechanism of revocation of land rights. This study results seems similar with another research that the way forward for socio-economic development with much challenges and opportunities of *waqf* in Bangladesh. The recommendation for *waqf* developments it's deserve serious consideration on it.<sup>22</sup>

There is a difference in understanding and mechanism between the relinquishment of rights and the revocation of land rights, although both are the same for land acquisition for the public interest by providing compensation first, in PP 19 of 2021 the release of rights is an activity of terminating the legal relationship of the party entitled to state, while the revocation of rights according to Muhammad Yamin Lubbis and Abdul Rahim Lubbis is a severance of the legal relationship between the right

21 Indonesia Konstitution, *Article No. 41 of 2004 Concerning Waqf*.

22 Mohd FAzlul Ahmad, Abu Umar Faruq; Karim, *Opportunities and Challenges of Waqf in Bangladesh: The Way Forward for Socio-Economic Development*, *Palgrave Macmillan*, Vol. 1, 2019, page.193–212

holder and the object of his land which is carried out by the ruler unilaterally.<sup>23</sup>

Article no. 20 of 1961 states that the revocation of rights can only be carried out if the public interest really wants it and is accompanied by appropriate compensation.<sup>24</sup> Based on the provisions of the regulation and understanding, in the case of revocation of land rights, there are three elements for the implementation of a revocation of land rights in the public interest, namely the existence of a public interest; the provision of appropriate compensation and according to the provisions of the article.<sup>25</sup>

The difference in the mechanism for the transfer of rights from the right holder to the state, on land acquisition for the public interest in *waqf*, if through the concept of release rights, as in PP no. 19 of 2021, it will be difficult for anyone to relinquish the rights to *waqf* property in the form of land, even though the government regulation states that *nazhir* can represent, but in fact *nazhir* only functions as a manager and cannot transfer according to its designation in the procurement of the land, whereas if it is through a mechanism for revocation rights, then the rights of the *waqf* land are revoked by the state without any waiver of rights but still get compensation with the same value as in the Article on *Waqf*.

The relinquishment of land rights or transfer of land rights emerged after the enactment of Presidential Decree no. 55 of 1993, the material legal aspect of the implementation of release rights or release land rights is basically the same as land acquisition, namely civil law, so that whether or not the release or surrender of land rights is a method of land acquisition is determined whether or not there is an agreement between the two parties, and whether or not the parties are legal in their positions, so that, among other things, the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code are valid. When the *nazhir* who relinquishes the *waqf* land rights is not the owner, then the competence of the *nazhir* does not meet the legal requirements in the agreement to release the rights.<sup>26</sup>

The revocation of land rights based on Article 18 of the LoGA confirms that for the public interest, including the interests of the nation and state as well as the common interests of the people, land rights can be revoked by providing appropriate compensation and in a manner regulated by article. Normatively, the revocation of land rights is still valid because the article has not been replaced with a new article, empirically, which is regulated in Article No. 2 of 2012 and Article no. 11 of 2020.

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23 Abdul Rahim Lubis, Muhammad Yamin; Lubis, *Pencabutan Hak, Pembebasan, Dan Pengadaan Tanah*, Mandar Maju, Bandung, 2017

24 Indonesia Konstitusi, *Article No. 20 of 1961 Concerning the Revocation of Land Rights and Objects on It*, 1961.

25 Djoni Sumardi Gozali, *Hukum Pengadaan Tanah Di Indonesia (Pengaturan Dan Prosedur Serta Tata Cara Pengadaan Tanah Untuk Kepentingan Umum)*, Citra Aditya, Bandung, 2019

26 Indonesia, *Presidential Decree No. 55 of 1993*, 1993.

The provisions for revocation of land rights are not implemented due to the existence of a article that regulates the acquisition of land for the public interest.<sup>27</sup> The revocation of land rights is not explicitly stated in the Article on land acquisition for the public interest, but with the concept of consignment, it has the same meaning, which is the article that land ownership rights are nullified.<sup>28</sup>

With the enactment (not yet revoked) of Article no. 20 of 1961 concerning the revocation of rights to land and objects above it, this provision is still valid and the method of revocation of rights is a legal method and does not conflict with the article.<sup>29</sup>

This study results differences with another research found that *Nazhir* position important in development of *waqf* assests. The significance of *Nazhir's* existence can be seen from *Nazhir* concept, it's duties and obligations. This study found that the provision of compensation in land acquisition after obtaining replacement land rights to *waqf* land are released by the *waqf* holder (*nazhir*) to the state. The mechanism doesn't go through the waiver of rights, because *Nazhir* is not the owner of the land, but through the mechanism of revocation of land rights, after *Nazhir* received compensation for land compensation.<sup>30</sup>

#### D. CONCLUSION

In the procurement of land for the public interest on *waqf* property in the form of land whose rights have been registered, after receiving compensation as stipulated in Government Regulation no. 19 of 2021, then the mechanism for the transfer of land rights should not be in the form of release rights from *nazhir* as the manager of the *waqf* land, in release the rights to *waqf* land, *nazhir* is positioned as the owner of the land while the legal status of *nazhir* is not as the owner of the *waqf* land but is limited to the manager in accordance with the designation determined by the wakif in the *waqf* pledge. The relevant legal mechanism in land acquisition for the public interest on *waqf* land is through revocation of rights, namely the unilateral termination of rights carried out by the state against *waqf* land rights after *Nazhir* as *waqf* manager has received compensation in the form of replacement land whose value is at least equal to the value of the land. *waqf*, the revocation of land rights is regulated in Article no. 20 of 1961 which until now the article has not been revoked. The suggestion that it is necessary to make changes to Government Regulation No. 19 of 2021, especially in the mechanism for release land rights originating from *waqf*

27 Urip Santoso, Eksistensi Berlakunya Pencabutan Hak Atas Tanah Setelah Berlakunya Undang-Undang Nomor 2 Tahun 2012, *Perspektif*, Vol. 22, No. 1, 2017, page.41–54

28 Iwan Erar Joesoef, Rekonstruksi Pencabutan Hak Atas Tanah Dan Konsinyasi Dalam Pengadaan Tanah Untuk Kepentingan Umum, *Masalah-Masalah Hukum*, Vol. 50, No. 3, 2021, page. 318–30

29 Rofi Wahanisa, Pencabutan Hak Atas Tanah Dan Benda Yang Ada Diatasnya: Antara Ada Dan Tiada, *Rechtsvinding*, Vol. 8, No. 3, 2019, page.443–60

30 Ibrahim, Duski; Zainuri, Ahmad; Huda, Empowering Wakaf (Islamic Endowment) for Economic Development: An Insightful Value of Nazir Waqf in Indonesia



land by using the revocation of land rights in accordance with Article No. 20 of 1961.

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