

Discretionary Process Ruislag Waqf in The Settlement of Waqf Land Cases in The Sidoarjo Mud Disaster Area

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Abstract

This research aims to know the concept of waqf ruislag in positive law and Islamic law, the process of waqf ruislag in the Sidoarjo mud disaster area with all its problems, and know the concept of discretion as an alternative solution in solving its problems. From the results of the research conducted, it is known that waqf ruislag is indeed very complicated and the process is tiered. This situation is solely made by the government in order to keep waqf assets safe, not used by irresponsible nazhir individuals, but in natural disaster situations such as what happened in Sidoarjo, The complexity of the waqf ruislag process actually makes waqf land which by law has met the requirements for ruislag, difficult to do, so that until now, many waqf lands have not received the ruislag (change) process which causes the loss of benefits of waqf property as pledged by wakif, even though the purpose of waqf is that the benefits can be felt by the community. Therefore, discretion as a breakthrough process for Breaking through the regulatory deadlock needs to be done by authorized officials, although in this discretionary process care must be taken so that good intentions to carry out the task of serving the people result in lawsuits in the future.

Keywords: *Sidoarjo Mud Disaster, Ruislag Waqf, Discretion*

Abstrak

Penelitian ini bertujuan untuk mengetahui konsep wakaf ruislag dalam hukum positif dan hukum Islam, proses wakaf ruislag di daerah bencana lumpur Sidoarjo dengan segala permasalahannya, serta mengetahui konsep diskresi sebagai alternatif solusi dalam menyelesaikan permasalahannya. Dari hasil penelitian yang dilakukan, diketahui bahwa wakaf ruislag memang sangat rumit dan prosesnya berjenjang. Situasi ini semata-mata dibuat oleh pemerintah dalam rangka menjaga aset wakaf tetap aman, tidak digunakan oleh oknum nazhir yang tidak bertanggung jawab, tetapi dalam situasi bencana alam seperti yang terjadi di Sidoarjo, Kompleksitas proses wakaf ruislag justru menjadikan tanah wakaf yang secara hukum telah memenuhi syarat untuk ruislag, Sulit dilakukan, sehingga hingga saat ini banyak tanah wakaf yang belum menerima proses Ruislag (perubahan) yang menyebabkan hilangnya manfaat harta Wakaf sebagaimana yang dijaminkan wakif, padahal tujuan wakaf adalah agar manfaatnya dapat dirasakan oleh masyarakat. Oleh karena itu, diskresi sebagai

proses terobosan untuk menerobos kebuntuan regulasi perlu dilakukan oleh pejabat yang berwenang, Meskipun dalam proses diskresioner ini harus diperhatikan agar niat baik untuk melaksanakan tugas melayani rakyat menghasilkan tuntutan hukum di kemudian hari.

Kata Kunci: *Bencana Lumpur Sidoarjo, Wakaf Ruislag, Diskresi*

Introduction

Hot mud bursts at PT Lapindo Brantas drilling sites have occurred since May 29, 2006, The bursts made a number of villages in Tanggulangin, Porong and Jabon Districts, Sidoarjo Regency, East Java, sink and be affected by mud overflow. Tens of thousands of residents have had to flee and start new lives elsewhere.¹ The process of compensation for land has been carried out, both by PT Lapindo Brantas for land in the sinking area inside the embankment, as well as by the government through the state budget for land affected outside the embankment area after it was declared by the government as a national disaster.²

The mudflow disaster event also happened to land whose status was waqf, in the process of compensation, the status as waqf land was different from land owned by residents, because of Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 About waqf has regulated the exchange process (ruislag) with a very strict procedure, it is done in order to be careful, so that the waqf land is maintained and protected from the actions of irresponsible people. Law Number 41 of 2004 concerning Waqf in article 40 has stipulated that land that has been waqfed is prohibited: used as collateral, confiscated, granted, sold, bequeathed, exchanged, or, transferred in any other form of transfer of rights.³

The exchange process is carried out with a detailed and gradual procedure, in the Indonesian Waqf Board Regulation Number 1 of 2008 concerning the Procedure for Preparing Recommendations for Applications for Exchange/Change of Waqf Property Status, there are various stages that must be taken to obtain a permit for ruislag waqf land. The detailed and phased procedures are intended to safeguard and protect waqf assets. Although in its development, due to several cases of waqf ruislag stopped the process due to the complexity of the procedures taken, the government finally issued Government Regulation of the Republic of Indonesia Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, this new government regulation was issued to accelerate the management of ruislag (exchange roll) waqf land.

The government has tried to solve the problem by forming a special team starting from the National Team for Combating Sidoarjo Mudflows (PPLS National Team) which

¹ MT Ir. Pattiasina Jefry Recky, *Booklet Pengendalian Lumpur Sidoarjo* (Surabaya: Pusat Pengendalian Lumpur Sidoarjo, 2020).

² Hamdan Zoelva, "Ketua MK Jelaskan Putusan MK Soal Ganti Rugi Lapindo," n.d., <https://www.mkri.id/index.php?page=web.Berita&id=9799>.

³ Pemerintah Indonesia, "Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf" (Lembaran Negara RI tahun 2006, No. 159. Sekretariat Negara. Jakarta, 2004).

was formed through Presidential Decree of the Republic of Indonesia Number 13 of 2006 dated September 8, 2006. After the team was disbanded, the Government then established and formed the Implementation Agency - Sidoarjo Mud Management Agency (Bapel - BPLS) through Presidential Decree Number 14 of 2007. To make this body effective, the president has amended the Presidential Regulation five times, the last is the fifth amendment through Presidential Regulation Number 33 of 2013. Finally, this Agency was dissolved through Presidential Regulation No. 21 of 2017, and as a replacement, the Sidoarjo Mud Control Center was established through PUPR Minister Regulation no. 3 of 2019.⁴

The three teams formed by the government, starting from the PPLS National Team, then changed to BP-BPLS and the last one was changed again to PPLS, the handling of waqf land that was the victim of mudflow is still not optimal, different in interpreting regulations from various parties related to policy making related to waqf, the scattering of various parties in the field related to waqf land, and the loss of waqf documents due to disasters causes non-optimal settlement of waqf land.

That difficulty has caused the process of ruislag waqf land to be completed very slowly, from the beginning of the incident from 2006 to 2022, counting 16 years, of the 53 waqf land locations that have submitted data for ruislag, only 15 locations have been issued their decrees for ruislag. This number does not include waqf land that has not submitted data, and also does not include waqf land that is submerged in dikes.⁷ If you look at the completeness of the administration needed, it is difficult for the remaining waqf land data to be carried out by the ruislag process. In fact, in the case of the mud disaster, according to the author, ruislag must be done because the waqf land has disappeared, even though the waqf assets must be maintained for their existence, because the wakif as the original owner of the property hopes that by endorsing the land, it will get eternal continuous rewards.

The presence of the waqf law and government regulations on waqf aims to, among others, maintain the existence of waqf land, but in the event of the Sidoarjo mudflow disaster, with the difficulty of fulfilling the documents and procedures that must be taken, the ruislag process is difficult to do, the waqf land does not immediately get a change, so the purpose of the wakif so that the land that is entrusted can provide benefits in accordance with the pledged purpose is not achieved. It will be achieved by the disappearance of waqf land that is not immediately exchanged. This condition is an irony, the regulations that were originally present with the aim of maintaining the existence of waqf assets, actually seem to prevent the existence of waqf assets from being saved. Therefore, the author views that the Sidoarjo mud disaster event is an extraordinary event, Efforts that can be taken so that the ruislag process can be done are to exercise discretion. Based on Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration, article 1 Number 9 states that discretion is a decision or actions

⁴ Ir. Pattiasina Jefry Recky, *Booklet Pengendalian Lumpur Sidoarjo*.

determined and/or taken by government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there is government stagnation. What is meant by government stagnation is the inability to carry out government activities as a result of deadlock or dysfunction in government administration, for example: natural disasters or political turmoil.

The researcher found it in a thesis entitled "Settlement of Waqf Land Disputes: A Study of Banda Waqf Land, Great Mosque of Semarang" by Ismawati. It was explained that in 1999 after the election, a major case emerged about waqf land, namely the case of misuse of waqf land for the Great Mosque of Semarang. The issue raised by the author is the settlement of the waqf land dispute of the Great Mosque of Semarang and the obstacles it faces. The point of difference with the author's research is that this thesis talks about waqf land which is problematic due to lack of supervision and management from responsible parties so that waqf land is controlled by other parties or cannot be utilized optimally.⁵ This is in line with research on community understanding of the concept of waqf related to the exchange of waqf land, mosque, mosque in Sibargot village, Tanjung Purba Hamlet, West Billah District, Labuan Regency according to the perspective of Islamic law and want to know the extent of the benefits obtained by the people of Sibargot Village by exchanging the mosque waqf land.⁶

In relation to the process of ruislag waqf land, the purpose of ruislag is for waqf to again provide benefits and problems for the people in accordance with what was pledged by the wakif when the waqf contract. In the case of the Sidoarjo mud disaster, waqf land that has been submerged and affected by mud, which should be able to get replacement land soon, is difficult to do. The process is with existing regulations due to the situation and circumstances, therefore, in order for waqf land to immediately get a replacement, the government with its authority can exercise discretion so that the ruislag process can be carried out.

Based on these problems, the purpose of this study is to discuss solutions from various literature to get answers and also alternative solutions to the application of discretion in solving the Sidoarjo mud disaster waqf land case in the perspective of positive law and Islamic law, urgency. From this research, among others, discretion is expected to break the deadlock and provide alternative solutions so that waqf land immediately gets a replacement and provides benefits and problems for the people in accordance with what was pledged by the wakif when the waqf contract was carried out so that the positive impact is expected to be a consideration to immediately implement discretion as part of an effort to accelerate the settlement of waqf land in the Sidoarjo

⁵ Ismawanti, "Penyelesaian Sengketa Tanah Wakaf Studi Terhadap Tanah Wakaf Banda Masjid Agung Semarang," n.d., http://eprints.undip.ac.id/17878/1/ISMAWATI%2C_SH.pdf.

⁶ Ridawani Ritonga, "Penukaran Tanah Wakaf Mesjid Dalam Pespektif Hukum Islam (Studi Kasus Desa Sibargot Dusun Tanjung Purba Kecamatan Billah Barat Kabupaten Labuhan Batu)" (n.d.), <http://repository.uinsu.ac.id/2929/>.

mud disaster area. While negative impact analysis as an early warning so that tactical steps can be taken, so that the possibility of negative risks in the future can be avoided.

Method

This type of research uses empirical research which is one type of legal research that analyzes and examines the work of law in society.⁷ This research uses a sociological juridical legal research approach, the task of researchers is to examine "what is behind what appears from the application of laws and regulations" (something behind the law).⁸ The research location is in Sidoarjo Regency, the Sidoarjo mud disaster occurred in 3 districts, namely; Tanggulangin, Porong and Jabon. The process of ruislag waqf land in these 3 sub-districts is used as the object of research. Data collection techniques by observation and interviews with people who are seen as knowing about the social situation. The determination of data sources in interviewees is carried out purposively, that is, selected with certain considerations and goals. Researchers explore information materials by referring to two types of research data sources, namely primary data from nadzir waqf and the government while secondary data from laws and regulations, books, research results, journals, theses, scientific magazines, newspapers, articles, and the internet or material related to this research. The processing of this research data consists of the following stages (1) Editing, the collection will be re-examined, then data editing is carried out by completing deficiencies and eliminating errors contained in raw data; (2) Classifying, the process of grouping all data both derived from interviews, regulations, case data and field notes; (3) Verifying, re-checking data, by checking data that has been obtained in the field to test the validity of the data so that it can be used in research; (4) Concluding, drawing conclusions based on data sets and information obtained according to research objectives.⁹

Result and Discussion

Result

The ongoing and widespread overflow of Lapindo mud caused inundation of the surrounding area. The impact is not only that people's houses, fasums and fasos are inundated, but also have an impact on waqf land. There are 16 villages in three sub-districts, namely Porong, Jabon, and Tanggulangin, which were affected by the mudflow that occurred starting in 2006. In Porong District there are seven villages, namely Glagaharum, Renokenongo, Kelurahan Mindi, Jatirejo, Gedang, Siring, and Porong. In Jabon sub-district there are four villages, namely Besuki, Keboguyang, Pejarkan, and Kedungcangkring. Meanwhile, in Tanggulangin District there are five villages, namely

⁷ M.Hum Dr. Muhammin, SH., *Metode Penelitian Hukum* (Mataram: Mataram Univercity Press, 2020).

⁸ Ahmad Mukti Fajar ND dan Yulianto, *Sosiologi Hukum*, 2020.

⁹ Amiruddin dan Zainul Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Press, 2006).

Kedungbendi, Gempolsari, Ketapang, KaliTengah, and Kalisampurno.¹⁰ From the data collected, there are 99 plots of waqf land. Those affected are the task of BPLS as many as 69 fields, while those that are submerged in the embankment there are 30 plots of waqf land which are the obligations of PT Lapindo Brantas for the ruislagnya process¹¹ presented in Table 1 and Table 2.

Table 1. In BLPS Handling

| No. | DISTRICT | VILLAGE | SUM | TOTAL AMOUNT |
|-----|--------------|-----------------|-----|--------------|
| 1 | Jabon | Besuki | 10 | 15 |
| | | Pajarakan | 4 | |
| | | Kedungcangkring | 1 | |
| 2 | Porong | Mindi | 12 | 29 |
| | | Jatirejo | 2 | |
| | | Siring | 1 | |
| | | Gedang | 4 | |
| | | Pamotan | 10 | |
| 3 | Tanggulangin | Kalitengah | 5 | 25 |
| | | Ketapang | 18 | |
| | | Gempolsari | 2 | |
| Sum | | | | 69 |

Tabel 2. In the Responsibility of PT Lapindo

| No. | DISTRICT | VILLAGE | SUM | TOTAL AMOUNT |
|-----|--------------|-------------|-----|--------------|
| 1 | Tanggulangin | Kedungbendo | 10 | 10 |
| 2 | Porong | Renokenongo | 20 | 20 |
| Sum | | | 30 | |

Compensation for the community, has gradually been carried out by PT Lapindo (inside the embankment), as well as by BPLS (outside the embankment), but for waqf land, there has been no significant settlement process from the time of the mudflow starting in 2006, until now, both the responsibility of PT Lapindo Brantas and BPLS.¹²

Waqf land inside the embankment, actually the settlement is relatively easier than those outside the embankment, because the waqf land is related civilly with PT Lapindo Brantas, so when there is good faith from PT Lapindo Brantas, the process will run,

¹⁰ Kompas, "Akibat Bencana Lumpur Lapindo," Kompas, n.d., <https://regional.kompas.com/read/2021/05/31/212657778/akibat-bencana-lumpur-lapindo-pemkab-sidoarjo-ajukan-penggabungan-8-desa?page=all>.Kompas.com .

¹¹ Nazhir, *Dokumen Nazbir, KUA Tanggulangin, Porong, Jabon Dan Kemenag Sidoarjo* (Sidoarjo, n.d.).

¹² Mabruri, "Wawancara Staf Kemenag" (Sidoarjo, n.d.).

because the party who will be responsible for the ruislag process is PT Lapindo Brantas. As for waqf land outside the embankment, there are several obstacles to the ruislag process. Efforts to resolve through coordination meetings have been repeatedly carried out, but the meetings only revolve around the level of debate, because in the end the BPLS implementers did not dare to step up to process on the grounds that there was no authority and collided with the law regulating waqf land with the ruislag scheme while BPLS had the task of completing the sale and purchase scheme.¹³ In the period from 2006 to 2013, the Ministry of Religious Affairs of Sidoarjo Regency made various efforts to handle waqf land, in addition to continuing to intensely coordinate with nadzir, coordination was also carried out with the Sidoarjo Regency Government and the National Land Agency of Sidoarjo Regency. Vertical coordination is also carried out with the Office of the Provincial Ministry of Religious Affairs. East Java. In addition to coordination, it also makes efforts administratively (1) Sending data on sunken and affected waqf to the Ministry of Religious Affairs of the Republic of Indonesia in 2006; (2) Take the initiative to propose the formation of a Sidoarjo Regency Waqf Land Assessment Team which finally formed the team with the Regent Decree Number: 188/1687/404.1.3.2/2010 dated December 3, 2010; (3) Drs. H. ROCHMAD. MS, MM. The then Head of the Ministry of Religious Affairs Sidoarjo, together with BPLS in September 2011, went to the Office of the Ministry of Religious Affairs of the Republic of Indonesia in Jakarta, for consultation, but even the consultation meeting could not find a solution; (4) In November 2012, facilitating the Nadzir from Besuki Village, Jabon District to go to Jakarta for consultation with the Ministry of Religious Affairs of the Republic of Indonesia in Jakarta, the results of consultations with the Ministry of Religious Affairs of the Republic of Indonesia, the DPR and related parties, finally resulted in the emergence of amendments to the 5th Presidential Regulation in which it expressly mentions the settlement of waqf land.¹⁴

After the emergence of the fifth amendment through Presidential Regulation number 33 of 2013, there was hope for the resolution of the waqf land problem, but the coordination meeting remained deadlocked, because BPLS submitted a condition of approval from the Minister of Religious Affairs as a basis for execution, while the Ministry of Religious Affairs of the Republic of Indonesia requested that replacement land and buildings be prepared first before the approval decree. As if looking for the answer to which comes first between eggs and chickens, BPLS and the Ministry of Religious Affairs of the Republic of Indonesia demand that each other's requirements be fulfilled first.¹⁵

This condition is further complicated by the attitude taken by both BPLS and the Ministry of Religious Affairs of the Republic of Indonesia which still requires the process to run normally in accordance with regulations, even though conditions in the field with

¹³ Pemerintah Indonesia, "Perpres No. 14 Tahun 2007, No. 48 Tahun 2008, No.40 Tahun 2009, No.68 Tahun 2011, No.37 Tahun 2012," n.d.

¹⁴ Kemenag, "Dokumen Kemenag Sidoarjo," n.d.

¹⁵ Mabruji, "Wawancara Staf Kemenag."

the protracted settlement, more and more nadzir spread in various places, many documents have been lost and some nadzir died. This condition causes most waqf lands not to carry out the ruislag process. The settlement of this waqf ruislag finally began to find a bright spot when a coordination meeting was held with the BPKP of East Java Province. The result of this coordination meeting made the ruislag process possible through payment efforts made by BPLS to the Implementation Team for Replacement and Construction of Land and / Waqf buildings formed by nadzir. After going through various coordination and stages of completion, until 2023, a number of waqf lands have begun to succeed in the ruislag process. From the data that was successfully collected, the successful ruislag process was as follows at table 3¹⁶

Table 3. Ruislag Data and Replacement Land

| No. | Ruislag | Origin Address | Replacement Land |
|-----|-------------------------------------|---------------------------------------|-------------------------------------|
| 1. | SMK NUSANTARA DAN TK DARUSSALAM | Desa Mindi RT.13 RW.02 Kec. Porong | Desa Kesambi Kec. Porong |
| 2. | MASJID DAN PANTI ASUHAN NURUL AZHAR | Desa Jatirejo RT.02 RW.01 Kec. Porong | Desa Sedati Kec. Ngoro Mojokerto |
| 3. | MUSHOLLA SUBULUS SALAM | Desa Siring RT.03 RW.01 Kec. Porong | Desa Boro Kec. Tanggulangin |
| 4. | MUSHOLLA ROUDLATUL MUTTAQIN | Desa Mindi RT.09 RW.02 Kec. Porong | Desa Kesambi Kec. Porong |
| 5. | MUSHOLLA DARUL ULUM | Desa Mindi RT.13 RW.02 Kec. Porong | Desa Juwet Kenongo Kec. Porong |
| 6. | MASJID BAITUL KHAMDI | Desa Besuki Kec. Jabon | Desa Kejapanan Kec. Gempol Pasuruan |
| 7. | MUSHOLLA AINUL YAQIN | Desa Pejarkan Kec. Jabon | Desa Kejapanan Kec. Gempol Pasuruan |
| 8. | MUSHOLLA NURUT TAQWA | Desa Pejarkan Kec. Jabon | Desa Kejapanan Kec. Gempol Pasuruan |

Meanwhile, the waqf object whose decree has come down and is now in the development stage as follows at table 4

Table 4. Object Wakaf

| No | Waqf Objects | Village | Area (m2) | |
|----|---------------------------|--------------------|-----------|---------|
| | | | Soil | Build |
| 1 | Musholla Nurul Wusto | Besuki RT 09/RW 02 | 238,000 | 241,930 |
| 2 | Musholla Miftakhul Jannah | Besuki RT 03/RW 05 | 167,000 | 96,030 |

¹⁶ Kemenag, "Dokumen Kemenag Sidoarjo."

| | | | | |
|---|-------------------------|--------------------|---------|--------|
| 3 | Musholla Nurul Masa | Besuki RT 07/RW 02 | 93,000 | 97,720 |
| 4 | Musholla Nurussobah | Besuki RT 02/RW 01 | 138,000 | 95,710 |
| 5 | Musholla Sabilun Naja | Besuki RT 01/RW 06 | 71,000 | 62,210 |
| 6 | Musholla Basrun Najah | Besuki RT 02/RW 06 | 63,000 | 59,050 |
| 7 | Musholla Darul Muttaqin | Besuki RT 07/RW 07 | 114,000 | 99,050 |

Discussion

Based on the results of the study, in the completion of this waqf ruislag, there are three notes as stressing the waqf ruislag process in Sidoarjo as follows: (1) The waqf ruislag outside the embankment that is the responsibility of BPLS, runs very slowly, due to the many and complicated normal documents and procedures, it is difficult to apply to waqf land in the disaster-affected area. In addition, the process of acquiring land and replacement buildings also experienced regulatory constraints; (2) The waqf raft within the embankment that is the responsibility of PT Lapindo Brantas does not run at all, because there is no good faith to resolve from the Company; (3) Ruislag waqf in other Sidoarjo areas affected by the SUMO Toll road project, namely at the Sabilun Najah mosque, East Bebekan Taman Sidoarjo, It went quickly, because all the necessary data was available, people related to the waqf land were in place, and the process of acquiring land and replacement buildings was carried out immediately. Based on the problem of waqf ruislag in the Sidoarjo mud disaster area, it is eligible for discretion in order to speed up the process of ruislag without waqf.¹⁷

The discretion stipulated in the Government Administration Law, which should be a safeguard for policy making, has not been synergized with regulations related to general criminal law (Article 421 of the Criminal Code), corruption (Law No. 31/1999) and state administration (Law No. 5/1986). It is feared that the government apparatus does not dare to innovate, does not dare to discriminate because it is worried that it can be entangled in TUN disputes, general crimes, or even suspected of corruptive acts (special crimes). Until now, among self-government officials and law enforcement officials still polemic about discretion. In fact, most government officials are worried that exercising discretion in the future is interpreted as administrative irregularities (maladministration) which is the forerunner of general crimes and corruption. Previous waqf research should have been carried out professionally, the objectives and planning have been well designed so that in the future there are no more complicated problems¹⁸. In line with legal discretion in Indonesia which is not higher than positive values in society,

¹⁷ Pemkab Sidoarjo, "Wawancara Kabag Hukum Pemkab Sidoarjo," n.d.

¹⁸ Nur Azizah Latifah and Mulyono Jamal, "Analisis Pelaksanaan Wakaf Di Kuwait," *ZISWAF: Jurnal Zakat Dan Wakaf* 6, no. 1 (2019): 1, <https://doi.org/10.21043/ziswaf.v1i1.5607>.

the cause of discretion should indeed be carried out appropriately and according to benefit.¹⁹

Even more ironic, if political considerations have spoken, then the spirit is no longer objectivity by seeing the benefits felt by the community, but the spirit of how political opponents can fall so that the opportunity to reach power is more open. So in conditions like this, usually entangled articles will be sought to plunge opponents even though factually the policies taken benefit the community and there is absolutely no element of self-benefit. Waqf is indeed one of the government's protections in relation to many people such as places of worship and schools, but waqf protection needs easy regulation.²⁰ It may happen that policy makers by cutting requirements and procedures are considered maladministration, therefore to avoid unwanted things in the future of discretion in making a policy, the government or policy makers can invite coordination meetings of various parties and most importantly, enforcement officials Hukum is also involved in the decision-making process, so that if at any time there are certain parties who want to criminalize the law against the discretion, it will be protected because at the time of making the decision, law enforcement officials also approve.

Conclusion

From the results of research and analysis that has been carried out on the waqf ruislag process in the Sidoarjo mud victim area, it can be concluded that Ruislag waqf according to Islamic law is permissible, this is based on the opinion of the Imam Hanafi and Imam Hambali schools and some opinions of Maliki School scholars, some allow ruislag with the approval of the government (al-Qadhi). This is also reinforced by Imam Nawawi's opinion that it is permissible to sell damaged waqf property, then the proceeds are used to buy similar waqf replacements. This is done to keep waqf assets from vanity, Meanwhile, in positive law, waqf ruislag is allowed and even regulated in detail starting from Law No. 1 of 2004 concerning waqf and Government Regulation No. 25 of 2018, and supported by BWI Regulation number 1 of 2008 which in detail explains the documents that must be fulfilled for the waqf ruislag process.

Discretion as regulated by Law Number 30 of 2014 concerning Government Administration, can be done to accelerate the process of ruislag waqf in the Sidoarjo mud disaster area with consideration, because it concerns public interest, the emergence of the problem is suddenly outside the predetermined plan, the procedure cannot be completed according to normal administration, if the problem is not resolved quickly, then it will cause harm to the public interest. Meanwhile, according to the norms of Islamic law, that

¹⁹ Krishna Djaya Darumurti, "Perspektif Filosofis Konsep Kekuasaan Diskresi Pemerintah," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 41–60, <https://doi.org/10.24246/jrh.2014.v8.i1.p41-60>.

²⁰ Galih Abditya Rahman and Abdul Halim Mushtofa, "Protection of Waqf Land from Land Disputes through Programs Complete Land Registration System in Jarak Village Plosoklaten District Kediri Regency," *Jurnal Hukum Keluarga Islam LEGITIMA* 3, no. 1 (2020): 19–36, <http://setkab.go.id/presiden-jokowi-banyak-sengketa-tanah-wakaf-karena-tidak>.

in ruislag waqf, fiqh law is more flexible in its regulation. Fiqh law regulates movable and immovable property, emergency conditions are one of the reasons for the permissibility of ruislag, in the process it can even be done by selling although it must be bought again with similar or unsimilar property, and the authority that carries out the execution of the ruislag is the judge or even the Wakif.

The positive impact of discretion will benefit the community, the purpose of waqf that is disrupted due to mud disasters can be saved, Mauquf Alaih will get rights again as a beneficiary and last but not least, discretion will become jurisdiction for the same problem in other areas. However, the negative impact must also be taken into account, because discretion is prone to being the object of criminalization in the future. Therefore, coordination with law enforcement officials during the policy process is very important to provide a sense of security from possible legal prosecution in the future. The role of BWI to be a means of participation in waqf land affected in the Lapindo Sidoarjo mud is the right alternative in this problem, initially nadzir training can be carried out so that in the future there will be no more problems like this

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