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CULTIVATING GOVERNMENT LAND FOR PERSONAL INTERESTS FROM ISLAMIC LAW AND POSITIVE LAW

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Abstract. One of the problems that is almost difficult to solve in Indonesia is the problem of land that is managed by both regional and central governments and then cultivated and used by the community individually and for personal interests not the interests of the general public. government land that is used for the welfare of the people for personal interests according to Islamic law and positive law, secondly how are the sanctions for cultivating the land for personal interests according to Islamic law and positive law. In this study the author uses a normative/doctrinal legal research method, namely discussing and reviewing the law contained in fiqh books or laws. Through this normative method, it can be seen that working on government land for the welfare of the people for personal interests is an act of land grabbing which can be categorized as an unlawful act and can be threatened with imprisonment for a maximum of 3 (three) months, or a fine of up to IDR 5,000. (five thousand rupiahs). Whereas in Islamic law that working on government land which is a public facility for the benefit of the community is a vanity act and the act is illegal, there are two strict sanctions in fiqh, first, the government has the right to strictly prohibit someone who builds on the land of public facilities. Second, anyone, especially the government, has the right to demolish the building

Keywords: government land; land cultivation; land concession

I. INTRODUCTION

The government is an official state organization that is responsible for natural wealth for the welfare of the people's lives. In Indonesia, the government that is officially responsible is the Indonesian government, with regard to the responsibility for natural wealth, in the UUD 1945 Article 33 paragraph 3 Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The scope of the earth includes the earth's surface, namely land. Thus land is part of Agrarian. Land that is meant here is not land in all its aspects but only regulates one of its aspects. That is land in a juridical sense called land tenure rights. In the right of control over land there are powers, obligations, and or prohibitions for the holder of the right to do something about the land being entitled. Something that is allowed, obligated or forbidden to do. which is the content of the right of tenure that is the criterion or benchmark for the difference between the land tenure rights regulated in the Land Law. In land tenure rights, there are powers that can be exercised, obligations that can be carried out and prohibitions that are not allowed for the holder of the rights **[1]**.

One of the land tenure rights is the State's right to control the land. The State's right to control land is regulated in Article 2 of the UUPA (Basic Agrarian Law). The authority of the State's right to control land is contained in Article 2 paragraph (2) of the UUPA, namely:

a. Regulate and administer the designation, use, supply, and maintenance of earth, water and space;
b. Define and regulate the legal relationships between people and the earth, water, and space.
c. Determine and regulate legal relations between people and legal actions concerning earth, water, and space.

The exercise of state control over land can be authorized or delegated to the Regional Government and customary law communities as necessary and does not conflict with national interests according to the provisions of government regulations. This statement can be harmonized with Law no. 22 of 1999 concerning Regional Government and Law no. 32 of 2004 concerning Regional Government **[2]**.

The provisions of Article 4 paragraph (1) of the UUPA stipulates that stemming from the State's right to control over land, various types of rights over the earth's surface are called land, which can be given to and owned by people, either alone or together with other people, and legal entities. Land rights can be granted to and owned by individuals from Indonesian citizens, foreigners domiciled in Indonesia, several people jointly, Indonesian legal entities or foreign legal entities that have representatives in Indonesia, and legal entities. private or public legal entity. The types of land rights mentioned in Article 4 paragraph (1) of the UUPA are described by Article 16 paragraph (1) of the UUPA and Article 53 of the UUPA **[2]**.

Land tenure rights that can be controlled by local governments are use rights and management rights. The authority of the local government over land with the status of usufructuary is to use the land for the purpose of carrying out its duties. If the land has the status of management rights, then the authority is to plan the allocation and use of the land, to use the land for the purpose of carrying out its duties, and to hand over parts of the land with management rights to

Volume 06, Number 01, March 2022, Page 040-044
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third parties and/or cooperate with third parties. local governments are not authorized to lease land with usufructuary rights and management rights to other parties **[1]**.

One of the problems that are almost difficult to solve in Indonesia is the land issue which is managed by both regional and central governments and then cultivated and used by the community individually and for personal interests not the interests of the general public. The government is given the mandate to take care of the land in Indonesia for the welfare and prosperity of the people. Not also for personal gain and take advantage of it personally.

This paper will discuss how to work on government land privately according to Islamic law and positive law, where the government land is actually managed by the government, the results are given to the people for the welfare of the people, but it turns out that there are some individuals who work on the government land privately and enjoy it. the results are also personal.

II. RESEARCH METHODS

In this study the author uses a normative/doctrinal legal research method, namely discussing and reviewing the law contained in fiqh books or laws. Normative Legal Research is a legal research conducted by examining library materials or secondary data **[3].** "Normative legal research is also known as doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, as well as legal doctrines in order to answer the legal issues at hand"**[4]**. "In this type of legal research, law is often conceptualized as what is written in legislation or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate"**[5]**. Through this normative method, it can be seen that working on government land for the welfare of the people for personal interests is an act of land grabbing which can be categorized as an unlawful act and can be threatened with imprisonment for a maximum of 3 (three) months, or a fine of up to IDR 5,000. (five thousand rupiahs).

III. RESULTS AND DISCUSSION

Cultivation of Government Land for Personal Interest in a Positive Legal Perspective

Land is a treasure that exists on this earth which throughout the history of human civilization has constantly given up complicated problems. This is logical, given that the most important factor in determining the production of each phase of civilization is land.

In Indonesia, which has a very large land (land), has made the land issue one of the most urgent problems among other problems. So it's not surprising, after Indonesia's independence, the first thing that was done by the nation's leaders at that time was the "land reform" project which was marked by the promulgation of Law No. 5 of 1960 concerning Basic Agrarian Regulations, hereinafter abbreviated as UUPA.

A very revolutionary breakthrough was made by the UUPA, namely the abolition of the "Domain Verklaring" system. Domain Verlklaring is a system that determines that land that cannot be authentically proven will automatically become state property. This is clearly contrary to the legal awareness of the Indonesian people based on adat, where authentic evidence is not known before and only relies on the principle of mutual trust.

Land is a gift from God Almighty to mankind on earth. Therefore, it has become a human obligation to maintain and regulate its allocation in a fair and sustainable manner for the survival of mankind in the future. In the constitution of the Republic of Indonesia (UUD RI 1945) precisely Article 33 Paragraph (3) it is stated that: "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people" **[1]**.

What needs to be underlined from the sound of the article above is the word mastered. At first glance the word controlled shows the state is the owner. That's not the case though. In the general explanation of the UUPA it is stated that the state (government) is declared to control "only" control of the land. The definition of "controlled" land does not mean "owned" but is a meaning that gives certain authority to the state as an organization of power. This is clearly formulated in Article 2 paragraph (2) of the UUPA which emphasizes that the state's authority is:

1. Regulate and administer the designation, use, supply or maintenance.
2. Determine and regulate the rights that can be had on (part of) the earth, water and space.
3. Determine and regulate legal relations between people and legal actions concerning earth, water and space, all with the aim of achieving the greatest prosperity of the people in a just and prosperous society.

In responding to the issue of land acquisition, several regulations have been promulgated in Indonesia, including:

1. Law No. 20 of 2001 concerning Revocation of Land Rights and Objects On It.
2. Permendagri No. 15/1975 on provisions regarding procedures for land acquisition, followed by Permendagri No.2/1976 and Permendagri No.2/1985.
3. Presidential Decree No. 55 of 1993 concerning Land Procurement for Public Interest for Development.
4. Presidential Decree No. 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest; and the last.
5. Perores No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 concerning Land Acquisition for Implementation

Cultivation of land in the sense of taking or using and using land that is not privately owned can be categorized as land grabbing. Land grabbing is not something new and happening in Indonesia. The word usurpation itself can be defined as the act of taking rights or property arbitrarily or by ignoring the laws and regulations, such as occupying

Volume 06, Number 01, March 2022, Page 040-044
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other people's land or houses, which are not their rights. In Indonesia, confiscation in the sense of using, using government land for personal interests is very common and very difficult to overcome, usually the use of government land or land is often carried out by illegal traders and illegal parking. When they use and use public facilities, in this case government land, they can be categorized as having worked on government land for personal interests, and that means taking something that is not their right **[6]**.

Illegal land grabbing is an act that is against the law, which can be classified as a criminal act. As we know, land is one of the most valuable assets, considering that land prices are very stable and continue to rise along with the times. Illegal land grabbing can harm anyone, especially if the land is used for business purposes. There are various problems of illegal land grabbing that often occur, such as physical land occupation, cultivating land, selling a land right, and others.

Criminal Sanctions for Cultivating Government Land for Personal Interest

In Article 2 of Law Number 51 of 1960 concerning the Prohibition of Use of Land without a Permit with the Right or Their Proxy (Law No. 51 1960) states that the use of land without the permission of the rightful person or his legal proxy is a prohibited act, and can be threatened with punishment. imprisonment for a maximum of 3 (three) months, or a fine of a maximum of Rp. 5,000 (five thousand Rupiah) as stipulated in Article 6 of Law No. 51 1960.

The actions that can be punished in accordance with Article 6 of Law No. 51 1960 are:

1. (i) any person who uses land without the rightful permit or his legal proxies.
2. (ii) anyone who interferes with the rightful party or his legal proxies in using a plot of land.
3. (iii) any person who orders, invites, persuades or recommends orally or in writing to use land without the permission of the rightful person or his legal proxy, or interferes with the right or his proxy in using a plot of land.
4. (iv) any person who provides assistance in any way to use land without the permission of the rightful person or his legal proxy, or interferes with the party entitled or his proxy in using a parcel of land.

Other articles that are also often used in criminal acts of land grabbing are Article 385 paragraph (1) of the Criminal Code (KUHP), which carries a maximum penalty of four years, in which anyone with the intent to benefit himself or others against the law, selling, exchanging or burdening with creditverband a land right that has not been certified, even though he knows that someone else has the right or also has the right or also has the right to it.

Jurisprudence Perspective on Cultivating Government Land for Private Interest

In Fiqh there are several types of distribution of state-owned land, this division is contained in the Kitab al-Fiqh al-Islami wa Adillatuhu by Wahbah al-Zuhaili **[7]**:

أَحْكَامُ الْأَرَاضِي فِيْ دَاخِلِ الدَّوْلَةِ: الْأَرَاضِي نَوْعَانِ: أَرْضٌ مَمْلُوْكَةٌ وَأَرْضٌ مُبَاحَةٌ وَالْمَمْلُوْكَةُ نَوْعَانِ: عَامِرَةٌ وَخَرَابٌ وَالْمُبَاحَةُ نَوْعَانِ أَيْضًا: نَوْعٌ هُوَ مِنْ مَرَافِقِ الْبِلَادِ لِلْاِخْتِطَابِ وَرَعْيِ الْمَوَاشِي وَنَوْعٌ لَيْسَ مِنْ مَرَافِقِهَا وَهُوَ الْأَرْضُ الْمَوَاتُ أَوْ مَا يُسَمَّى الْآنَ أَمْلَاكُ الدَّوْلَةِ الْعَامَّةِ وَالْمَقْصُوْدُ بِالْأَرْضِ الْعَامِرَةِ هِيَ الَّتِي يَنْتَفِعُ بِهَا مِنْ سُكْنَى أَوْ زِرَاعَةٍ أَوْ غَيْرِهَا. وَأَمَّا الْأَرْضُ الْخَرَابُ فَهِيَ الْمَعْرُوْفَةُ بِالْأَرْضِ الْمَمْلُوْكَةِ الْغَامِرَةِ وَهِيَ الَّتِي اِنْقَطَعَ مَاؤُهَا أَوْ لَمْ يَسْتَغِلَّ بِسُكْنَى أَوْ اِسْتِثْمَارٍ أَوْ غَيْرِهَا

"There are two kinds of land that belongs to the state or the government, namely land that is owned (mamlukah) and land that has no man's land (mubahah). There are also two types of mamlukah, namely mamlukah 'amirah (property land used for housing, agriculture and the like and mamlukah kharab land that is no longer occupied for residence and not used for agriculture and so on. Likewise, mubahah land is of two kinds; namely mubahah min mar ± fiq al-balad (land supporting the area such as a place for herding and a place to look for wood and the like) and mubahah min al-ar±di al-maw±t (ie land that has no man's land and is not cultivated)".

From the explanation given by Sheikh Wahbah, it can be seen that in fiqh there are various types of state-owned land, namely:

1. Land owned (mamlukah)
2. No man's land (mubahah).

Based on the explanation above, the mamlukah land is divided into two, namely:

1. Mamlukah 'amirah (property land used for housing, agriculture and the like).
2. Mamlukah kharab land that is no longer occupied for residence and is not used for agriculture and so on.

Mubahah land is also divided into two types, namely:

1. Mubahah min marafiq al-balad (land supporting areas such as a place for herding and a place to look for wood and the like).
2. Mubahah min al-aradli al-mawat (ie land that has no man's land and is uncultivated).

According to Wahbah al-Zuhaili, the land of Mamlukah 'amirah may not be used or used by other people without the permission of the owner of the land. While Mamlukah kharab land that is no longer occupied for residence and not used for agriculture and so on, if it is still officially owned by someone then the law is the same as Mamlukah 'amirah but if the land has no owner then the law is the same as luqatah (invented goods) **[7]**.

While the land of al-Marafiq al-Balad is used for herding livestock, then farming, besides that it is also used for graves for people who have died and even this land is also used for playgrounds, land like this cannot be categorized as reviving dead land (Ihy). ±' al-Maw±t) because this type of land is land intended for the general public **[7]**. While reviving the dead land (Ihy±' al-Maw±t), namely **[8]**:

إِصْلَاحُ الْأَرْضِ الْمَوَاتِ بِالْبِنَاءِ أَوِ الْغَرْسِ أَوِ الْكِرَابِ أَوْ غَيْرِ ذَلِكَ. وَالْمَوَاتُ: الْأَرْضُ الَّتِي لَا عِمَارَةَ وَلَا مَاءَ فِيْهَا، وَلَا يَمْلِكُهَا وَلَا يَنْتَفِعُ بِهَا أَحَدٌ

"Improvement of dead land by rebuilding it or replanting it or irrigating it and so on, al-Maw±t is land that is not prosperous, has no buildings and has no water, is not owned by anyone and no one uses the land."

Of the 4 land divisions above, those whose status is owned by the government or as public facilities are:

1. Mamlukah 'amirah (property land used for housing, agriculture and the like).
2. Mamlukah kharab land that is no longer occupied for residence and is not used for agriculture and so on.
3. Mubahah min marafiq al-balad (land supporting the area such as a place for herding and a place to look for wood and the like).

As for reviving dead land (Ihy±' al-Maw±t) it is not land that is owned by anyone, therefore in this case, the land is not subject to study regarding its personal use. In this paper, the problem is how to use the three lands above personally and take advantage of them. In this regard, there are several views of fiqh experts regarding the use of government land for private purposes.

First, Syihabuddin al-Ramli in his Fat±w±

(سُئِلَ) عَنْ النَّهْرِ كَنِيلِ مِصْرَ هَلْ لَهُ حَرِيمٌ وَمَا قَدْرُهُ وَهَلْ إذَا أَحْيَا شَخْصٌ فِيهِ بِنَاءً وَوَقَفَهُ مَسْجِدًا هَلْ تَثْبُتُ لَهُ أَحْكَامُ الْمَسْجِدِ أَمْ لَا وَهَلْ إذَا أَحْيَا فِيهِ دَارًا يَمْلِكُهَا أَمْ لَا وَهَلْ إذَا تَبَاعَدَ النَّهْرُ عَمَّا أَحْيَاهُ يَتَغَيَّرُ الْحُكْمُ الْمَذْكُورُ أَمْ لَا ؟ (فَأَجَابَ) بِأَنَّ لِلنَّهْرِ حَرِيمًا وَهُوَ مَا يَرْتَفِقُ بِهِ النَّاسُ بِأَنْ تَمَسَّ حَاجَتُهُمْ إلَيْهِ لِتَمَامِ الِانْتِفَاعِ بِهِ فَلَا يَجُوزُ تَمَلُّكُ شَيْءٍ مِنْهُ بِالْإِحْيَاءِ فَمَنْ بَنَى فِيهِ بِنَاءً وَوَقَفَهُ مَسْجِدًا لَمْ يَصِحَّ وَقْفُهُ لِأَنَّهُ مُسْتَحِقٌّ لِلْإِزَالَةِ فَلَا يَثْبُتُ لَهُ شَيْءٌ مِنْ أَحْكَامِ الْمَسْجِدِ وَمَتَى بَنَى فِيهِ دَارًا هُدِمَتْ وَلَا يَتَغَيَّرُ هَذَا الْحُكْمُ وَإِنْ تَبَاعَدَ عَنْهُ الْمَاءُ بِحَيْثُ لَمْ يَضُرَّ فِي حَرِيمِهِ لَهُ ذَلِكَ .

"Imam Syihabuddin al-Ramli was asked about a river which is a public facility like the Nile in Egypt, whether the river has a forbidden boundary, and what is the size of the boundary, whether someone who builds there and donates a mosque is then legal for the mosque to apply, is it legal? someone who builds a house there does he have ownership rights to the house or not, if his existence is far from the river then he builds something then the law turns into his? Syihabuddin al-Ramli replied that the river has a forbidden limit, namely while the river is a place of support (help) for the life of the general needs of the community, it is not permissible to own it personally by building something on it and then donating a mosque, the laws of both are building and waqf. the mosque is invalid, therefore both have the right to be demolished because the mosque law does not apply to mosques built in that place, whenever someone builds a building on it, the building is legal to be torn down and there is no law that changes from the construction on the river .

Second, according to Imam Syarwani **[9]** :

مَا لَوْ بَنَى فِي حَرِيْمِ النَّهْرِ بِنَاءً وَقَفَهُ مَسْجِدٌ فَإِنَّهُ بَاطِلٌ لِأَنَّهُ مُسْتَحِقٌّ الْإِزَالَةُ

"If someone builds a building around a river and then donates a mosque, then that is indeed vanity and has the right for anyone to demolish it."

From the two fiqh experts' statements above, that Imam Ramli and Syarwani gave an example of a public facility that is under the responsibility of the government is a river in more detail Imam Ramli calls it the Nile river. The example presented in the form of a river is not the main object of the cultivation of government public facilities, because the core object of the discussion is cultivating land or using land for personal interests.

Based on the fiqh provisions, that working on government land which is a public facility for the benefit of the community is a vanity act and the act is illegal, for example, as has been stated above, namely building buildings and donating mosques, both of which are punished as invalid in fiqh provisions.

Fiqh Provisions Against Cultivating Government Land for Personal Interest.

In fiqh it has been mentioned above that working on government land for public purposes such as constructing buildings and mosques is not legal and such actions are considered evil in another sense, these acts are included in the category of haram. The sanctions in fiqh are not included in the seven al-Hudud, namely adultery, qazaf (accusing people of adultery), drinking alcohol, stealing, Hirabah (beheading), Bughat (rebels), apostasy. Strict sanctions in this case are only two, first, namely the government has the right to strictly prohibit someone from constructing buildings on public facilities, this was stated by Imam Qalyubi [10]:

وَيَجِبُ عَلَى الْإِمَامِ مَنْعُ مَنْ يَتَعَاطَى بِنَاءً أَوْ نَحْوَهُ بِجَانِبِ النِّيلِ

"It is obligatory for the rulers to prevent people from constructing buildings and so on beside the Nile."

The second sanction is that anyone, especially the government, has the right to demolish the building above the public facility as stated by Imam Syarwani [9]:

مَا لَوْ بَنَى فِي حَرِيْمِ النَّهْرِ بِنَاءً وَقَفَهُ مَسْجِدٌ فَإِنَّهُ بَاطِلٌ لِأَنَّهُ مُسْتَحِقٌّ الْإِزَالَةُ

"If someone builds a building around a river and then donates a mosque, then that is indeed vanity and has the right for anyone to demolish it."

IV. CONCLUSION

From the explanation and description that the author has explained above, it can be seen that in Article 2 paragraph (2) of the UUPA which emphasizes, the state's authority is to regulate and carry out the designation, use, supply or maintenance, determine and regulate the rights that can be owned by (part from) the earth, water and space,

Volume 06, Number 01, March 2022, Page 040-044
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determine and regulate legal relations between people and legal actions concerning earth, water and space, all with the aim of achieving the greatest prosperity of the people in a just and fair society. prosperous. Cultivation of land in the sense of taking or using and using land that is not privately owned can be categorized as land grabbing. confiscation in the sense of using, using government land for personal interests is very common and very difficult to overcome, usually the use of government land or land that often occurs is carried out by illegal traders and illegal parking. which is against the law, which can be classified as a criminal act, in Article 2 of Law Number 51 of 1960 concerning the Prohibition of Use of Land without a Permit with the Right or Their Proxy (Law No. 51 1960) states that the use of land without the permission of the rightful person or his proxies Lawful acts are prohibited acts, and can be threatened with imprisonment for a maximum of 3 (three) months, or a fine of a maximum of Rp. 5,000 (five thousand Rupiah) as regulated in Article 6 of Law No. 51 PRP 1960. Based on the provisions of Islamic law, that working on government land which is a public facility for the benefit of the community is a vanity act and the act is illegal, for example, as has been stated above, namely building buildings and donating mosques, both of which are punished as invalid in the provisions of fiqh. There are two strict sanctions in fiqh. First, the government has the right to strictly prohibit someone from constructing buildings on the land of public facilities. Second, anyone, especially the government, has the right to demolish the building.

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