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## Reformulation of the Law on the Rights of Apartments Built on Waqf Land as an Effort to Synchronize Land Regulations and Waqf Regulations

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**Abstract:** Regulations regarding flats built on waqf land still face various legal problems, especially related to the synchronization between land and waqf regulations. The disharmony of these legal norms creates uncertainty in terms of ownership, utilization, and legal status of the flats. This study aims to reformulate the legal construction that can bridge the dualism of regulations between agrarian law and waqf law, thus producing a more integrative, fair legal system that provides legal certainty for all interested parties. The approach used in this study is a normative approach with comparative analysis and a conceptual approach. This legal reformulation is expected to be the basis for the new legal policy formulation that is adaptive to the development of community needs, especially in the provision of waqf-based housing.

**Keyword:** Legal reformulation, Flats, Waqf land

**Abstrak:** Pengaturan mengenai rumah susun yang dibangun di atas tanah wakaf masih menghadapi berbagai permasalahan hukum, terutama terkait sinkronisasi antara peraturan pertanahan dan wakaf. Ketidakharmonisan norma hukum tersebut menimbulkan ketidakpastian dalam hal kepemilikan, pemanfaatan, dan status hukum rumah susun. Penelitian ini bertujuan untuk merumuskan kembali konstruksi hukum yang dapat menjembatani dualisme peraturan antara hukum agraria dan hukum wakaf, sehingga menghasilkan sistem hukum yang lebih integratif, adil, dan memberikan kepastian hukum bagi semua pihak yang berkepentingan. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan normatif dengan analisis komparatif dan pendekatan konseptual. Reformulasi hukum ini diharapkan dapat menjadi dasar dalam perumusan kebijakan hukum baru yang adaptif terhadap perkembangan kebutuhan masyarakat, khususnya dalam penyediaan perumahan berbasis wakaf.

**Kata Kunci:** Reformulasi hukum, rumah susun, tanah wakaf.

## INTRODUCTION

The need for housing in Indonesia continues to increase along with population growth and massive urbanization, especially in big cities (Sagara, 2025). This phenomenon encourages a shift in people's preferences towards vertical housing forms such as flats (Prayogo & Ikhsan, 2024). In the same situation, social initiatives based on religious values have also emerged, one of which is the use of waqf land for building flats. This concept offers great potential in responding to the housing crisis, especially for underprivileged groups (Utami & Deni, 2024). However, amid this opportunity, complex legal issues arise, because waqf land has its own characteristics and legal provisions that are different from land that is individually owned or controlled by the state (Zamil, Lita, & Rubiati, 2024).

Flats, in the Indonesian legal system, are building units that can be owned individually, with joint ownership of the common parts and the land on which the building stands (Athallah, et al., 2024). When flats are built on waqf land, a gap arises that confuses: what is the status of the rights to waqf land which in principle cannot be transferred, assigned, or owned privately, while flats require the division of ownership rights over individual units? (Kresna, 2024).

It is the starting point of a deep problem because the two legal systems that regulate it — land law and *waqf* law — have different directions of protection and objectives. One is oriented towards ownership and transactions, the other towards protecting the value of worship and the permanence of land use. This is where the problem of legal inconsistency emerges clearly. The national land system, through the Basic Agrarian Law (UUPA) and its derivative regulations, such as PP No. 18 of 2021, regulates various land rights, including building use rights (HGB) and ownership rights over apartment units (Sarusun) (Meutia, 2024). Meanwhile, waqf law as regulated in Law No. 41 of 2004 and PP No. 42 of 2006 in conjunction with PP No. 25 of 2018, emphasizes the principle of eternity (*ta'bid*), namely that land that has been endowed may not be transferred, sold, or inherited (Abas, 2021). When a condominium is built on endowed land, and each unit is owned or occupied with a deed of ownership of the condominium unit, a conflict arises between the principle of eternity of endowed land and the principle of individuality of condominium unit ownership rights (Kurniati, 2022).

To understand and find common ground on this issue, a review of the legal theories underlying the regulatory system is needed. The theory of legal certainty, for example, emphasizes the importance of a consistent legal system that does not raise doubts about its application (Moho, 2019). When society is faced with two regulations that seem to run independently — one guarantees the rights to condominium units and the other prohibits the transfer of endowed land — then legal certainty becomes unclear. This ambiguity not only raises doubts for investors and the community but also opens space for legal conflicts in the future.

On the other hand, the theory of social justice is also relevant to discuss in this context. The construction of flats on waqf land generally aims to help lower-middle-class groups obtain decent housing (Aziz, 2020). In this case, the use of waqf land can be seen as a form of contribution to social justice, as long as it does not violate the principles of waqf itself (Syarifuddin, 2020). So, the legal challenge is not just about clarifying which rules apply, but how the law can accommodate the good intentions and real needs of the community without sacrificing the sharia values inherent in waqf.

The theory of land ownership and control is also an important basis for understanding this intersection. In national law, ownership rights to land or buildings are usually individual, registered, and can be inherited or sold (Sumiati, 2021). Meanwhile, in the context of waqf, land rights are trustworthy and must be managed by the *nadzir* by the objectives of the waqf

(Kamariah, 2021). When a flat is built on waqf land, the question that arises is: can the flat unit be fully owned individually, or only limited to certain usage rights? And what is the legal form of the land system?

To answer all of that, it is necessary further to explore two main concepts: waqf and flats. Waqf, according to Law No. 41 of 2004, is a legal act that separates and/or hands over part of one's property to be used permanently for the benefit of worship or public welfare (Hidayah, 2022). Meanwhile, flats, according to Law No. 20 of 2011, are multi-story buildings built in an environment divided into structural parts that can be owned separately (Ramadhani, 2023). This is where the difference in paradigms lies: waqf talks about the separation of property for eternal social benefits, while flats open space for individual ownership of building units.

However, this does not mean that the two do not have common ground. It is precisely where it is important to pay attention to the differences and similarities between waqf land and land in agrarian law. In general, land in agrarian law can be owned or controlled by the state, legal entities, or individuals (Sari, 2020). In waqf law, land is no longer private property but public property for social or religious purposes (Juliati & Addin HRP, 2024). In practice, these two systems can coexist if there is caution in management, supervision, and the creation of a legal scheme that guarantees clarity of the rights and obligations of all parties involved.

Normatively, the current legal framework is still moving sectorally. In land law, PP No. 18 of 2021 has regulated in detail the status of land rights and apartment units, including the registration system (Hasmi, 2022). However, this regulation has not specifically touched on the possibility of waqf land being used as land for building apartments. Meanwhile, in waqf law, PP No. 42 of 2006 in conjunction with PP No. 25 of 2018 regulates the management and development of waqf assets, including the possibility of use for development (Naja, 2022). Unfortunately, there are no explicit regulations on how to build and regulate ownership of apartments on waqf land.

This is where caution is needed in reading and aligning the two legal systems. In legal practice, it is not enough to rely only on normative provisions; a conceptual and responsive approach to social change is also needed. The reality of today's society requires a legal model that is not only based on formal principles but also on the principles of utility and substantive justice. In other words, the law should bridge the need for affordable and legally safe vertical housing, without sacrificing the basic principles of waqf land. Therefore, even though the legal challenges are quite complex, the opportunity to find a solution remains open. The important point is not to sacrifice one of the legal systems, but to build a bridge of understanding between the two. Waqf-based flats can be a sustainable and socially just housing model if accompanied by clear, harmonious regulations that guarantee the protection of the rights of all parties: waqif, nadzir, residents, and the state. In the future, this synchronization will not only be a necessity but also a necessity in building a legal system that is inclusive and adaptive to the dynamics of modern society.

## METHOD

This study uses a normative legal method, which emphasizes the analysis of applicable legal norms as the main material for the study. This method was chosen because the problems raised are related to the disharmony between laws and regulations about land and endowments, especially in the context of building flats on endowment land. The approaches used include a statute approach, a conceptual approach, and a comparative legal approach. The statutory approach examines various relevant regulations, such as the Basic Agrarian Law, Law Number 41 of 2004 concerning Endowments, Law Number 20 of 2011 concerning Flats, and their implementing regulations, such as PP No. 18 of 2021 and PP No. 42 of 2006 in conjunction with PP No. 25 of 2018. The conceptual approach is used to explore basic ideas about ownership rights, land control, and endowments from the

perspective of national law and Islamic law. Meanwhile, a comparative approach compares legal practices and regulations in other countries that have previously regulated the integration between the apartment and waqf systems. The data used in this study are sourced from primary and secondary legal materials, which are then analyzed qualitatively to find a more integrative legal formulation and provide certainty for all interested parties.

## **RESULT AND DISCUSSION**

### **Legal Problems of Apartments on Waqf Land**

The disharmony of regulations between agrarian law and waqf law is the central point of the problem in the construction of flats on waqf land. In agrarian law regulated through the Basic Agrarian Law (UUPA) and clarified through PP No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, various forms of land rights are recognized, such as ownership rights, building use rights (HGB), and usage rights. These rights are individual and can be transferred, inherited, and used as collateral. Meanwhile, in waqf law regulated in Law Number 41 of 2004 and detailed through PP No. 42 of 2006 in conjunction with PP No. 25 of 2018, waqf land has eternal characteristics and cannot be transferred or traded. Article 40 of Law No. 41 of 2004 explicitly states that waqf property is prohibited from being used as collateral, confiscated, donated, sold, inherited, exchanged, or transferred in the form of other rights transfers.

When flats are built on waqf land, a legal dilemma arises because a flat unit (Sarusun) according to Law No. 20 of 2011 concerning Flats is an ownership right to a certain unit of a multi-story building that can be owned and traded individually. Ownership of Sarusun includes the right to a certain space, common areas, common objects, and the common land area on which the building stands, as stated in Article 46 paragraph (1) of Law No. 20 of 2011. This raises the question: what is the status of the right to common land if the land is waqf land that cannot be owned or transferred? This condition causes a direct conflict between the principle of individuality in flats and the principle of eternity in waqf.

The ownership conflict becomes more apparent when the general public buys flat units on waqf land. Administratively, a certificate of ownership of a condominium unit (SHM Sarusun) requires certainty based on land rights. Usually, developers use HGB as the basis for development, which can then be upgraded to SHM Sarusun. However, waqf land cannot be burdened with HGB or ownership rights because it has been released from private ownership for the public interest of a religious and social nature. This poses a serious obstacle in legality because there is no clear mechanism for issuing SHM Sarusun certificates on waqf land without violating waqf principles.

In management, legal entities such as waqf nadzir are vital in maintaining and developing waqf assets. However, in the construction of flats, the involvement of a legal entity developer or manager who is responsible for the construction, marketing, and management of the flats is required. It raises questions regarding the legal status of the management body: does it act as a waqf manager or a building owner? According to Article 11 of Law No. 41 of 2004, nadzir is a party authorized to manage and develop waqf assets, but there is no detailed regulation regarding the possibility of cooperation between nadzir and private developer legal entities. This irregularity creates a legal loophole that can be misused or cause disputes in the future.

The legal uncertainty is increasingly felt when we realize that until now there has been no explicit norm in Indonesian laws and regulations that specifically regulates the construction of flats on waqf land. PP No. 42 of 2006 in conjunction with PP No. 25 of 2018 does regulate the management and development of waqf assets, including the possibility of managing productive waqf. However, the term "productive waqf" in the regulation is still general and does not cover the scheme of flats in detail, especially in the context of unit

ownership by third parties. As a result, there is no strong enough legal guarantee for nadzir, developers, or prospective residents regarding the legality of the property status.

When people buy flats without understanding that the building stands on waqf land, they face significant legal risks. One of the most obvious risks is the inability to legally register the SHM Sarusun because the basis of land rights does not meet land provisions. If at some point a legal problem occurs, such as an ownership dispute or a third-party lawsuit, the buyer's legal position could be weak. Besides, buyers could also lose their right to use the apartment unit as collateral for a loan due to the limited legal status of their land which does not allow for transfer.

This condition is certainly a big challenge for parties who want to develop a waqf-based housing model because normatively there is no adequate legal umbrella to guarantee the sustainability and legal security of the project. Meanwhile, on the other hand, the community's need for vertical housing continues to increase, especially in densely populated cities. If this situation is not addressed with a firm and integrative legal reformulation, then there will continue to be an imbalance between practices in the field and applicable normative provisions.

Thus, the problems of disharmony, ownership conflicts, and legal uncertainty in the construction of flats on waqf land are not only technical in nature but also involve fundamental aspects of the national legal system. The problem reflects the need for legal reform that can respond to social dynamics and the real needs of the community, without ignoring the principles of sharia and the characteristics of waqf land. A new legal formulation is needed that can bridge this gap and provide certainty for all parties involved in the waqf-based housing system.

### **The Analysis and Reformation of Law**

In responding to the legal reality of the imbalance between land and waqf provisions, the need to synchronize regulations is becoming increasingly apparent. The legal system cannot be allowed to run on two paths that do not intersect when dealing with the same object, namely land and apartment buildings. Norms in land law emphasize individual ownership and market mechanisms, while waqf norms prioritize socio-religious functions and the principle of non-commercialization. When these two norms are not united in a coherent legal framework, what emerges is normative confusion and legal uncertainty regarding existing objects, including waqf-based apartments.

The integration of norms in the national legal system is not intended to equate all existing principles, but rather to bridge differences while maintaining the fundamental values of each. The principle of legal certainty which is a pillar in national law must be able to run side by side with the principles of eternity and usefulness in waqf law. The integration referred to here is to systematically reorganize norms so that they do not conflict with each other, and to provide a new legal space that can accommodate the social, economic, and spiritual realities of society. This means that the state must present a legal scheme that is not only normative but also operational in the field.

In the global context, several countries have developed a more adaptive approach to the construction of vertical houses on waqf land. Malaysia, for example, through regulations under the auspices of the State Islamic Religious Council (MAIN), has allowed the development of waqf property in condominiums or apartments. The units in the building are not sold but are rented in the long term (long-term lease) with a profit-return scheme to support social and religious activities. The existence of laws such as the National Land Code and Enakmen Wakaf provides a relatively stable legal framework for the management of waqf assets productively but still by Sharia principles.



An important lesson that can be learned from Malaysia's practice is how they position waqf land as a basis for development activities while maintaining its non-commercial nature. No scheme allows the transfer of land ownership rights, but rather the management of long-term use rights that are managed transparently by waqf institutions. Here, the state's recognition of the flexibility of the social function of waqf land is key so that these assets do not stagnate, but instead develop productively and have a broad impact on society. This concept can be an inspiration for compiling more applicable regulations in Indonesia.

As a concrete effort, one of the legal reformulations that can be proposed is the recognition of a form of special rights over waqf-based flats. This form of right is not the same as ordinary ownership rights or building use rights but is categorized as a limited residential right that is a long-term lease and cannot be traded. This right can be granted to parties who meet certain criteria—either individuals, families, or social institutions—with certain conditions and durations that are strictly regulated through waqf contracts and their implementing regulations. Recognition of this form of special right can be stated in the revision of laws and regulations in the field of flats or included in derivative regulations of the Waqf Law.

Furthermore, the collaborative management model needs to be formulated more firmly. Nadzir as the waqf manager cannot work alone in the construction of flats due to limited capital and technical aspects, while private developers cannot have full control over the waqf project due to their limited legal rights to waqf land. Therefore, a legally binding cooperation scheme is needed between nadzir, developers, and prospective residents. The role of the nadzir must be strengthened as the controller of the direction of waqf, while developers act as technical implementers, and residents have the status of users with legally protected lease rights.

To overcome legal obstacles in registering ownership, a hybrid legal model can be a more realistic solution. In this model, flat units are not registered as ownership rights, but as long-term lease rights to buildings, with the land remaining in waqf status. The certificate can be issued as proof of limited residential use rights (for example 30-50 years), and renewed according to the agreement with the nadzir. This mechanism can be included in the Government Regulation or the Minister of Agrarian Affairs Regulation that specifically regulates waqf-based flats. Thus, there is no transfer of land rights, but residents still receive legal protection of their homes.

Forming a new legal scheme like this does require regulatory courage and legal political willingness to adjust the existing system to the needs of the community. However, Indonesia which is rich in socio-religious values and faces complex urbanization challenges, an integrative approach to waqf and land law is not just an option, but an absolute necessity. Building a legal bridge between religious norms and positive state norms will be an important step towards more equitable and comprehensive social justice in land and housing governance in the future.

## CONCLUSION

The conclusion of this study confirms that there is a lack of regulatory synchronization between the land law system and the waqf law system, especially in the context of flats built on waqf land. The fundamental difference between the concept of ownership in agrarian law and the concept of management in waqf law creates normative confusion and legal uncertainty, for developers, nadzir, and the community as prospective residents. This disharmony not only raises doubts in the legal-formal aspect but may hinder the productive use of waqf assets in supporting the provision of affordable and sustainable housing. In such a situation, legal reformulation is a very urgent step to create a system that is more

integrative, fair, and responsive to the dynamics of social needs while still respecting the basic principles of applicable law.

As a recommendation, concrete steps are needed in the form of regulatory revisions, both to regulations regarding flats (such as Law No. 20 of 2011 and its derivative regulations) and endowment regulations (Law No. 41 of 2004 and PP No. 42 of 2006 in conjunction with PP No. 25 of 2018). These regulations must begin to accommodate endowment-based housing schemes by providing certain rights that do not conflict with the principle of the permanence of endowments but still provide legal protection for residents and managers. In addition, the government needs to build synergy between institutions, especially between the National Land Agency, the Ministry of Religion, and the Ministry of PUPR, to prepare technical guidelines that bridge implementation in the field. Solid coordination will be key in forming an effective, legal, and replicable model of endowment flat management in various regions with high housing needs but limited land.

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