



Legal Analysis of Regional Government Obligations to Provide Burial Land from the Maslahah Mursalah Perspective (Case in Brohol Village, Sei Suka District, Batu Bara Regency)

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Abstract: This study aims to analyze the government's obligation to provide burial land based on the perspective of positive law in Indonesia and the theory of maslahah mursalah in Islamic law. This study focuses on the case of Brohol Village, Sei Suka District, Batu Bara Regency, which faces the unavailability of burial land due to the lack of attention and active role from the government. The research method used in this study is empirical juridical. The approach used by the researcher is a qualitative approach with descriptive analysis. with primary data collection based on observation and interviews while secondary data is based on literature studies. The results of this study indicate that Brohol Village still does not have land for burial. Based on the Law and the perspective of maslahah mursalah, the Regional Government and Village Government have an obligation to provide burial land used for the Brohol Village community. However, in reality, the government has not yet fulfilled this obligation until the time this research was conducted.

Keywords: Burial Ground, Government Obligations, Maslahah Mursalah.

1. Introduction

Indonesia is a country divided into provincial regions, each with limited public cemeteries (TPU). Due to the increasing death toll and the increasing population, burial land is a necessity for the people and should be protected by the state (Regina P. Lainata, 2022). Thus, the land for burials is the government's obligation in terms of land provision, management, use and regulation.

The government's obligation to provide land for burial purposes is regulated in Government Regulation Number 9 of 1987 concerning the provision and use of land for burial purposes, commonly referred to as PP No. 9 of 1987 in Article 5 which states "responsibility for the provision and management of land for public burial purposes is given to the level II regional government and village government". Thus, the provision of land for burial places is one form of regional government obligation that is very important. It is important for society that death is a certainty, it cannot be hastened or postponed by anyone.

However, not all regions or villages have cemeteries. One example is Brohol village, located in the Sei Suka sub-district of Batu Bara Regency. Interviews with village officials revealed that Brohol village lacks a cemetery, either for Muslims or non-Muslims. For 16 years, until the time of this research, Brohol residents had been requesting burials on waqf land from other villages.

In this case, the village community wants the government to assist in procuring/releasing land for land use rights (HGU) for burial land used for the burial of

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Brohol village residents amounting to 1 hectare above the HGU of PT. Emha Trading Company Plantation, Industry and Trade Company abbreviated (PT. EMHA) covering an area of 651.64 hectares which is currently in the Brohol village area.

However, until this research was conducted there has been no real realization of the actions taken by the local government. In this case, it is not in accordance with the principle of *Maslahah Mursalah* and is not in line with the objectives of sharia, namely the determination of this obligation refers to the *maqasid* of sharia which emphasizes maintaining religion (*Hifdz Ad-Din*) and maintaining property (*Hifz Al-Mal*). In the provision of burial land has a function that is utilized for the public interest, the purpose of land acquisition for the public interest is to provide land for burial purposes in order to maintain the orderly life of religious communities. The unavailability of burial land can cause various economic problems, namely social conflict and land disputes.

In this case, the government's obligation to provide burial land has not met public expectations. Therefore, more serious attention is needed in the form of specific regulations for local governments regarding burial land. In fact, burial land, as a necessary facility for the community, tends to be neglected. (Regina P. Lainata MJ, 2022).

The purpose of the research from the description above is to analyze how important the government is in providing land for burial purposes, what are the factors that cause the unavailability of burial land and what are the government's obligations regarding the provision of burial land in the perspective of laws and regulations and *maslahah mursalah*. The importance of this research is to provide an overview of the government as a stakeholder to pay more attention to the needs that must be met and how local governments can improve regulations related to the provision and management of burial places to be more responsive to community needs.

2. Materials and Methods

The research method used in this research is empirical juridical, empirical juridical research is legal research that analyzes and studies how law works in society. (Ramadan, 2021) The approach used by the researcher is a qualitative approach with descriptive analysis. The main data used is classified into two types, namely primary data and secondary data. Primary data sources are sources of information obtained directly from the research location. In this context, researchers collect data from the relevant institutions and the local community. The data collection is carried out through observation and interview techniques. Meanwhile, secondary data sources are information collected from library research, such as books and journals that are related and support the problems studied. This study uses data collection techniques through direct observation in the field and interviews with related parties. Data analysis is carried out descriptively analytically, namely by systematically describing the data to gain a deep understanding of the problems studied. This study conducts descriptive qualitative research analysis, namely research by assessing and describing social conditions or phenomena, in this case, describing the opinions of community leaders and laws and regulations. This study aims to analyze how important it is for the government to provide land for burial purposes, what factors contribute to the unavailability of burial land and what the government's obligations are regarding the provision of burial land from the perspective of laws and regulations and the interests of the poor.

3. Results and Discussion

3.1 *The Importance of Government in Providing Land for Cemetery Needs*

Control over land is regulated in Law Number 5 of 1960 concerning basic regulations on agrarian principles, which in this case, is a representation of the 1945 Constitution Article 33 paragraph (3) which states that "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the benefit of the people".

Thus, as the party with authority over land management, the state is obligated to regulate and distribute it fairly and effectively, including to meet the community's need for burial land. Burial land is a fundamental need for society, particularly in the context of public services encompassing social and religious aspects. Therefore, its availability is part of the state's utilization of resources for the welfare of all citizens.

The need for burial land is a crucial aspect that requires collective attention, both by the government and the community. Provision of burial land is also an obligation that must be fulfilled by local governments. This is closely related to the fulfillment of human rights, which guarantee every individual, both during life and after death, access to justice and well-being in their place of residence or settlement (Rosita, 2023).

Batu Bara Regency experiences continuous population growth every year. One important social facility is the cemetery. Undeniably, land for burial is a vital human need. However, as a public facility, cemeteries tend to be neglected (Sadyohutomo, 2008). Based on the author's observations, this is evidenced by the increasing population, which also triggers an increase in the need for land availability. This condition is reflected in the proliferation of housing developments in suburban areas. The opening of new residential areas triggers population growth, both from the arrival of new residents and the presence of existing residents who had settled before the area developed. As new residential areas, especially on a large scale, should be equipped with burial facilities that are categorized as open space. However, in reality, most housing does not provide such facilities.

Based on interviews with several residents of Brohol village, Sei Suka District, Batu Bara Regency, researchers found that for 16 years, up until the time of this research, Brohol villagers had continued to request burials in other villages. This has often led to social conflicts between villagers.

This can occur due to insufficient or unequal distribution of burial land, which has the potential to lead to disputes between residents and between the community and the government, especially in areas with high population density. Therefore, local governments need to be proactive in addressing agrarian issues arising from limited burial land (Prabowo, 2017).

3.2 *Factors Causing the Unavailability of Cemetery Land*

One of the most pressing needs of the community today is the availability of burial land. This is related to the rapid development of Batu Bara Regency, accompanied by a growing population and the development of residential areas as part of urban expansion. The limited availability of burial facilities is a critical issue that requires immediate

attention, as available land is increasingly limited. This situation can lead to a decline in the quality of services and potentially lead to social conflict within the community.

The weak regulatory and oversight aspects of local government in the provision of burial land indicate a lack of clear policy formulation and minimal implementation of regulations governing burial land management. This is due to the absence of regional regulations (Perda) specifically governing the procurement and management of burial land. This contrasts with several other regions that are more serious about the issue of burial land availability, as evidenced by the existence of regional regulations specifically addressing the provision and management of burial land. Weak oversight has resulted in the spread of unplanned land use practices, difficulties in public access to adequate burials, and an increased potential for social conflict due to the lack of burial land.

Procuring land for burials requires significant funding, while local government budget allocations often prioritize other sectors. As a result, land procurement for burials is often inadequately budgeted. Spatial planning and land use often fail to consider the long-term need for social facilities such as cemeteries. This results in the absence of plans or reserve land for burials in Regional Spatial Plans. Consequently, local governments allocate funds to less pressing needs, while land provision for burials is a highly pressing need given the rising death rate and dwindling land availability (Firman Firdausi, 2022).

Based on Law Number 12 of 2012 concerning Land Acquisition for Public Interest Development, the procurement of cemeteries falls under the public interest category. Article 4 explains: "The Government and Regional Governments guarantee the availability of land for public purposes and its funding." This means that regional governments, as technical implementers, must prepare and plan spatial planning and prepare regional budgets to support the realization of land for cemeteries.

3.3 The Government's Legal Obligation to Provide Land for Cemetery Purposes

Autonomous regions are a form of authority granted by law to regulate and manage their own regional interests. Under public law, the obligations that must be fulfilled by regional governments are their legal responsibilities in carrying out their duties and functions, most importantly meeting the basic needs of the community. One important basic need is one that has a social function or is in the public interest, namely burial land.

In providing burial land, the government's obligations are regulated in Article 5 of Government Regulation Number 9 of 1987 concerning the provision and use of land for burial purposes, which states that "responsibility for the provision and management of land for public burial purposes is given to the level II regional government and village government." Based on the provisions of this article, the responsibility for providing land for burials is carried out by the regional government as the implementer, and must be based on the principle of decentralization. In every application of regional government authority, the principle of decentralization is inherent, namely the principle that requires regions to manage and regulate their own regional affairs. Regional government affairs are divided into mandatory government affairs and optional

government affairs (Sirajuddin, 2020). Including funeral services and provision is a mandatory regional government affair as a basic service.

Provision of burial land is an activity of providing land by providing fair and appropriate compensation to the entitled parties (Muwahid, 2020). There are several important things in this understanding, namely the process of land acquisition. In other words, land that previously did not exist will be sought to provide a solution to the needed land. The path taken is by providing compensation. Land has a social function dimension, where its function is not limited to the ownership rights of a particular legal entity, but rather as an object of common interest. This is regulated in Article 6 of Law Number 5 of 1960 concerning basic regulations on the principles of Agrarian Law, which states that "All rights to land have a social function." In this context, land must be viewed as common property whose use must be prioritized by all parties, without being bound or dominated by the interests of certain individuals or groups. Land plays a vital role in various areas of human life, encompassing four strategic aspects: economic, political, legal, and social. Given the role of land in various aspects of life, the value and function of land that is the object of acquisition must not be ignored. These aspects must be considered, especially for the original owner before their rights are relinquished. This means that even though land rights have been relinquished, the previous owner still has the opportunity to experience the benefits of development carried out on the land (Sutedi, 2008).

Land acquisition for burial purposes cannot be realized without the transfer of ownership rights. Ownership rights are the strongest and most comprehensive form of rights. In this context, ownership rights from the original owner must be transferred to the government because the land will be used for public purposes, not private purposes. Once ownership rights are transferred, the government then acts as an intermediary to distribute the land to those in need for the public interest. In the land acquisition process, the release or assignment of rights from the land owner to another party is a mandatory step. Generally, these ownership rights are transferred through a compensation mechanism, thus legally relinquishing their rights to the land. While transfers of rights can be made without compensation, such as through a gift, in practice this rarely occurs (Syah, 2007). This is because land acquisition procedures place more emphasis on the relinquishment of rights with compensation, rather than a deliberative approach as the initial step.

Land acquisition for burial purposes is defined as the process of providing land through fair and adequate compensation to those holding rights. This process is implemented based on spatial planning, followed by the release of land rights. Before the release of rights is carried out, the government will assign representatives to hold discussions with relevant parties to discuss the land acquisition plan.

However, based on the results of interviews conducted with Brohol village officials, the community really wants a burial land in Brohol village, but considering that the village allocation budget is insufficient to carry out and organize land acquisition for the burial place of the Brohol village community. While the level of welfare of the Brohol village community, can be seen from the economic level which is classified as lower middle. So the community and the village government want assistance from the local

government through a letter of request to be able to assist in procuring/releasing land for the right to cultivate (HGU) for burial land used for the burial of Brohol village residents amounting to 1 hectare above the HGU of PT. Emha Trading Company Plantation, Industry and Trade Company abbreviated (PT. EMHA) covering an area of 651.64 hectares which is currently in the status of the Brohol village area.

In line with the results of the author's interview with the local government, where the local government has received a letter of request for assistance in procuring cemetery land submitted by the head of Brohol village in response to the community's strong desire for cemetery land, however, in terms of land procurement, the process is not easy and requires a large budget. In this case, the Batu Bara district government as a facilitator must create conducive conditions for the implementation of development by assisting with land procurement to bridge various community interests in optimizing regional development. However, until this research was conducted there has been no concrete realization of actions taken by the local government.

Land acquisition for burial purposes is defined as the process of providing land by providing fair and appropriate compensation to parties who have rights (Rubaie, 2007). This process is implemented based on the spatial planning plan, followed by the land rights release stage. Prior to the release, the government will assign representatives to hold meetings with relevant parties to discuss the land acquisition plan.

3.4 Legal Obligations of the Government to Provide Land for Burial Needs from Maslahah Murlah's Perspective

Land acquisition is an action taken by the government to obtain land that will be used for various development purposes, one of which is development to provide a burial site, therefore the implementation of land acquisition for burial sites needs to consider Article 2 of Law No. 2 of 2012, by regulating the implementation of land acquisition for public interests to be carried out based on the principles of humanity, justice, benefit, certainty of openness, agreement, participation, welfare, sustainability and harmony.

Land acquisition for public purposes aims to provide the land necessary to support development, ultimately improving the welfare and prosperity of the state, society, and nation, while protecting the legal rights of legitimate landowners. This is in line with the objective of providing burial grounds, which is a fundamental need for the community, particularly in the context of public services encompassing social and religious aspects. Therefore, their availability is part of the state's utilization of resources for the welfare of all citizens. Therefore, land is fundamentally important for both life and the final resting place of the deceased (Tetty, 2022).

The land acquisition process for various purposes often gives rise to conflicts or obstacles in its implementation, triggered by inconsistencies between laws and regulations and the reality on the ground. Therefore, *maslahah mursalah* is a method of establishing Islamic law that aims to resolve these issues by considering the public interest (Fatimahzahara, 2025). Avoiding all forms of harm is part of the objectives of *sharia* (*maqashid sharia*) which must be realized in every application of the law. Based

on the principle of *maslahah murlah*, it is one of the most important principles in Islamic law which prioritizes the public interest and welfare of society.

Maslahah mursalah consists of two words, namely "*Maslahah*" and "*Mursalah*". *Maslahah* is defined as the benefit of something, while *mursalah* means separate. (Khallaf, 2002) *Mursalah* here does not mean physical separation, but rather not being bound or not explicitly mentioned in Islamic law, namely the Quran and Hadith. According to Usul Fiqh experts, *Maslahah Mursalah* is *maslahah* that is considered good by reason, but there is no provision in the text that indicates to adopt or reject it (Zahra, 1960). Thus, *maslahah murrasa* is a benefit that there is no guidance from the Shari'a to accept or reject, but by common sense these benefits are seen to be important in the life of Muslim society. Explaining the meaning of *al-maslahah* in terminology, Imam al-Ghazali put forward the following explanation: "Taking benefits and avoiding harm in order to maintain the goals of the Shari'ah."

Maslahah, in the context of sharia, is defined as the effort to obtain benefits and avoid harm in order to uphold the five main objectives of sharia: protection of religion, life, intellect, posterity, and property. Therefore, actions that focus solely on worldly gain without regard for harmony with sharia principles, especially if they conflict with them, are not considered *maslahah* but are considered *mafsadah*.

According to Imam Al-Ghazali, the requirements for *maslahah al-mursalah* to be used as a basis for establishing law are if it meets the following criteria: first, reasonable public interest. The need for burial land is a fundamental need for the community, but this is not met by the local government, thus contradicting reasonable public interest. Second, maintaining an interest based on the principle of avoiding hardship. Failure to fulfill the fundamental need, namely burial land for the community, can lead to conflict between communities. Third, the public interest is in line with sharia and does not conflict with the qathi text. Failure to fulfill the government's obligation to provide burial land, which is a fundamental need for the community, resulting in conflict between communities, is contrary to the path or rules of Islam.

There are several examples from the time of the Prophet Muhammad SAW and his companions that can be used as references regarding the revocation of land rights for public interests, namely, when the Prophet SAW built the Quba Mosque, he revoked the rights to land belonging to the surrounding community to be used as a construction site, by providing compensation according to the land's value at that time. A similar action was also carried out by Caliph Umar bin Khattab and the leaders after him when expanding the Prophet's Mosque in Medina, namely by evicting and revoking the rights to the land of the surrounding community, accompanied by providing appropriate compensation (Zaman, 1981). Thus, the transfer of land rights for public interest is permitted because the collective interest has a higher status than individual interests. The implementation of this takeover is carried out by providing compensation as a form of respect for the property rights transferred for the common good (*Maslahah 'Ammah*). *Maslahah Ammah* is a public good that concerns the interests of many people. Therefore, this good does not mean for the benefit of everyone but can be in the form of the interests of the majority of the people or most of the people (Taufiq, 2022). This is the basis of the government's obligation to provide burial land to the community for the

public interest or for many people, so that if the government's obligation to provide burial land is not fulfilled, it will give rise to social problems such as land that should not be used as burial land being forced to become burial land and the emergence of social conflict between communities.

Therefore, on the other hand, this benefit falls into the category of *daruriyyah* benefits, both personal and public. It is called *daruriyyah* benefits because burial land is a fundamental need for society, particularly in the context of public services encompassing social and religious aspects.

It is said that *maslahah* is *daruriyyah* because it intersects with the five goals of *syara'* or what is often known as *maqasid syari'ah*, namely protecting religion, protecting the soul, protecting the mind, protecting offspring and protecting property.

The implementation of the obligation to provide burial land is in line with the objectives of the above sharia, namely in terms of maintaining religion (*Hifdz Ad-Din*) and maintaining property (*Hifz Al-Mal*). It is said to maintain religion (*Hifdz Ad-Din*) because death is certain, cannot be accelerated or delayed by humans, based on Islamic law, every Muslim who dies must be buried, burying the body is an obligation for Muslims. Thus, burial land is a basic need of the people, this makes funeral services a form of local government service that is very important for the community. The importance of management in the provision of burial land so that it is well distributed, meaning that the government must ensure the availability of burial land evenly so that the community can feel the benefits, the importance of management and provision carried out by the government for the provision of burials in order to avoid social conflict between religious communities, meaning that the government must guarantee justice, maintain the environment and maintain order in religious life.

Maintaining wealth (*Hifz Al-Mal*) because land is a permanent, immovable asset that can be used as an investment for future human life, even in the end, land is part of the earth's surface and becomes the foundation for humans to stand on, which stretches out so that it creates a very close attraction between land and humans themselves, because all land is also the final resting place for humans when they change lives later.

The purpose of land acquisition for cemeteries is to provide land for development to improve welfare in the life of religious communities. Public facilities are a form of valuable assets, so the procurement process must be carried out in a structured and planned manner. The unavailability of cemetery land can cause various economic problems, namely social conflict and land disputes. When cemeteries are not available, this situation forces people to seek alternative land by using private land or land that should not be used as cemetery land, resulting in the conversion of assets that can reduce their economic value and cause social conflict.

The government's responsibility to provide and manage burial facilities is to ensure that burial costs are not burdened upon the public. This demonstrates the importance of the government providing and managing burials fairly to avoid social conflict and land disputes within the community. In addition, local governments are obligated to prioritize budget allocation for the procurement of burial land. Spatial planning and land use must consider the long-term need for social facilities such as cemeteries. This is to ensure adequate burial land availability and improve community welfare.

Land acquisition for burial purposes cannot be realized without a transfer of ownership. The land acquisition process, in other words, involves finding a way to acquire the needed land. This involves providing compensation. In this case, local governments, when procuring land, must provide fair and adequate compensation to those entitled to it.

4. Conclusion

Based on the research results, it can be concluded that the provision of burial land is a basic need of the community that has important social and religious values, so it is the legal responsibility of the government, especially the local government, to fulfill it fairly and equitably. The absence of burial land in Brohol Village is clear evidence of the weak role of the government in fulfilling the community's right to public facilities, as mandated in laws and regulations, such as Law Number 5 of 1960 and Government Regulation Number 9 of 1987. Factors causing the unavailability of burial land include weak regional regulations, limited budgets, and suboptimal regional spatial planning. From the perspective of *masalah mursalah*, the provision of burial land is included in the category of *masalah daruriyyah* because it is directly related to the protection of religion and property, as well as preventing the emergence of social harm such as conflict and land disputes. Therefore, the government is required to be actively present and responsible in realizing the provision of burial land as a form of basic service that ensures the welfare and order of the community in a sustainable manner.

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