

Conflict and Resolution of Waqf Disputes: Perspectives of Islamic Law and Positive Law in Indonesia

M. Akmal Razak^{1*}, Hamdan¹, Hifni Syauqi Thalib¹, Kurniati¹

¹Universitas Islam Negeri Alauddin Makassar, Indonesia

*Corresponding Author: 10100123065@uin-alauddin.ac.id

Abstract: The potential for waqf in Indonesia is enormous, not only providing positive impacts in social and economic aspects, but also being vulnerable to conflict and waqf disputes. This is reinforced by the large number of uncertified waqf lands. This research is motivated by the low level of public understanding of the potential for conflict in waqf management in Indonesia. This study aims to analyze the forms of waqf conflicts in Indonesia and harmonize their resolution from the perspective of Islamic law and positive law. This research is a qualitative study using library methods conducted by collecting data from various literature such as books, journals, and relevant regulations related to waqf management and disputes. This study uses Islamic law and normative juridical approaches to address the focus of the study. The results show that the resolution of waqf conflicts through mediation and religious courts reflects an effort to harmonize the principles of Islamic justice with positive law mechanisms. This research emphasizes that synergy between Islamic law and national law is essential for creating effective, fair, and sustainable waqf dispute resolution.

Keywords: conflict, dispute resolution, Islamic law, positive law, waqf

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Abstrak: Potensi wakaf di Indonesia sangat besar, tidak hanya memberikan dampak positif dalam aspek sosial dan ekonomi, namun juga rentan akan terjadinya konflik dan sengketa wakaf. Hal ini diperkuat dengan banyaknya tanah wakaf yang belum tersertifikasi. Penelitian ini dilatarbelakangi oleh rendahnya tingkat pemahaman masyarakat terhadap potensi konflik dalam pengelolaan wakaf di Indonesia. Penelitian ini bertujuan untuk menganalisis bentuk konflik wakaf di Indonesia serta harmonisasi penyelesaiannya dalam perspektif hukum Islam dan hukum positif. Penelitian ini merupakan penelitian kualitatif dengan metode kepustakaan yang dilakukan melalui pengumpulan data dari berbagai literatur seperti buku, jurnal serta regulasi yang relevan terkait dengan pengelolaan dan sengketa wakaf. Penelitian ini menggunakan pendekatan hukum Islam dan yuridis normatif untuk menjawab fokus kajian. Hasil penelitian menunjukkan bahwa penyelesaian konflik wakaf melalui mediasi dan peradilan agama mencerminkan upaya harmonisasi prinsip keadilan Islam dengan mekanisme hukum positif. Penelitian ini menegaskan bahwa sinergi antara hukum Islam dan hukum nasional penting untuk menciptakan penyelesaian sengketa wakaf yang efektif, adil, dan berkelanjutan.

Kata kunci: hukum Islam; hukum positif; konflik; penyelesaian sengketa; wakaf

Introduction

Waqf comes from the Arabic word "waqafa," which means to hold, stand, remain in place, or remain standing. According to Islamic law, waqf is the act of maintaining ownership of property that can be used for good purposes without reducing or destroying its original form.¹ Meanwhile, Waqf Law No. 41 of 2004 explains that waqf is a legal act carried out by an individual, group of people, or legal entity by separating part of their property and making it a permanent institution for the purposes of worship or public welfare according to the principles of Islamic teachings. The formulation of this definition is in line with the understanding of waqf as stated in the Compilation of Islamic Law in Indonesia in Article 215.² Waqf is a highly valued form of worship in Islam because it involves the use of assets for the benefit of the community. The virtue of waqf is reflected in its characteristic as a continuous charity, meaning a

¹ Izhar and Mhd. Yadi Harahap, "Penyelesaian Kasus Sengketa Wakaf (Analisis Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf)," *Rayah Al-Islam* 7, no. 1 (2023): 140-51, <https://doi.org/10.37274/rais.v7i1.636>.

² Junaidi Abdullah and Nur Qodin, "Penyelesaian Sengketa Wakaf Dalam Hukum Positif," *ZISWAF: Jurnal Zakat Dan Wakaf* 1, no. 1 (2014): 37-54, <https://doi.org/10.21043/ziswaf.v1i1.1524>.

charity whose rewards continue to flow not only during the life of the waqf owner but also after his or her death. The sustainability of these rewards depends on the extent to which the waqf assets benefit the community, especially when utilized by scholars, religious scholars who adhere to the Sunnah, and preachers. Thus, waqf becomes an instrument of worship that provides long-term contributions to the community and serves as a source of continuous rewards for the waqf owner in the hereafter.³ Waqf has an equally important function: it functions as a means to improve the standard of living of the community in the economic and social spheres.⁴

Waqf is a crucial instrument in the Islamic financial system that has historically made significant contributions to socio-economic development. Through waqf, various social services such as education, healthcare, and welfare assistance can be provided sustainably. Furthermore, waqf plays a role in poverty alleviation efforts and serves as a mechanism for more equitable wealth distribution.⁵ Waqf is the management of assets intended for the public good, as a means for Muslims to utilize their wealth for the benefit and welfare of society.⁶ Therefore, safeguarding waqf assets is a shared responsibility.⁷ Abdul Manan explained that waqf practices in Indonesia are generally still carried out conventionally, potentially giving rise to various problems, even leading to

³ Lutfi El Falahy, "Alih Fungsi Tanah Wakaf Ditinjau Dari Hukum Islam Dan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *Al Istinbath: Jurnal Hukum Islam* 1, no. 2 (2016), <https://doi.org/10.29240/jhi.v1i2.117>.

⁴ Rahman Ardiansyah and Musyfikah Ilyas, "Wakaf Temporer Untuk Pemberdayaan Umat Perspektif Mazhab Al-Syafi ' I; Analisis Sosiologis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *SHAUTUNA : Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 03, no. 1 (2022): 379–88, <https://doi.org/10.24252/shautuna.vi.23985>.

⁵ Widya Sartika Hasibuan and Irsad Lubis, "Halal Value Chain Integration in Food Court Establishment throughssssss Cash Waqf Linked Sukuk: Evidence from Indonesia," *Cogent Business and Management* 11, no. 1 (2024), <https://doi.org/10.1080/23311975.2024.2385075>.

⁶ Munawir Nurum, Mukhtar Lutfi, and Asni, "Urgensi Kesadaran Hukum Masyarakat Dalam Paraktek Wakaf Produktif Di Kecamatan Tompobulu Kabupaten Gowa," *Jurnal Al-Qadau Peradilan Dam Hukum Kekeluargaan* 8, no. 1 (2021), <https://doi.org/10.24252/al-qadau.v8i1.18963>.

⁷ Upi Komariah, "Penyelesaian Sengketa Wakaf Di Dengadilan Agama," *JHP: Jurnal Hukum Dan Peradilan* 3, no. 2 (2014): 117–26, <https://doi.org/10.25216/jhp.3.2.2014.117-126>.

litigation. This problem is exacerbated by the misuse of waqf assets by certain irresponsible parties.⁸

The lack of optimization of waqf among Muslims may be influenced by several factors. First, because waqf is only classified as a voluntary act of worship, so the incentive to carry it out is weak. Second, the lack of transparency in the use of waqf assets has led some to doubt its purpose and benefits. Third, public understanding of the concept and importance of waqf remains limited.⁹ Therefore, the government passed Law Number 41 of 2004 concerning Waqf. This law brought new hope for a more dynamic development of waqf in Indonesia. In this regulation, the government is tasked with providing guidance to waqf institutions to support improved community welfare. This guidance task is not solely the responsibility of the government but also involves community participation through the establishment of the Indonesian Waqf Board (BWI).¹⁰ One of the reasons for the drafting of Law Number 41 of 2004 concerning Waqf is that the implementation of waqf in society has not been running orderly and effectively. This is evident in the large number of waqf assets that are poorly managed, neglected, or even transferred to third parties illegally.¹¹

In Indonesia, land is one of the most common forms of waqf. The waqf sector in Indonesia has shown significant growth. According to data from the Ministry of Religious Affairs' Waqf Information System (2022), waqf land has spread across 440,500 locations, totaling 57,200 hectares.¹² However, the majority of waqf land in Indonesia remains uncertified. According to data from

⁸ Rosdalina Bukido and Misbahul Makka, Munir, "Urgensi Akta Ikrar Wakaf Sebagai Alternatif Penyelesaian Sengketa Tanah," *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 6, no. 2 (2020): 244-57, <https://doi.org/10.36701/nukhbah.v6i2.161>.

⁹ Asni, "Perkembangan Hukum Perwakafan Di Indonesia," *Jurnal Al'Adl* 7, no. 33 (2014): 1-14, <https://doi.org/10.31332/aladl.v7i2.216>.

¹⁰ Junaidi Abdullah and Nur Qodin, "Penyelesaian Sengketa Wakaf Dalam Hukum Positif," *ZISWAF: Jurnal Zakat Dan Wakaf* 1, no. 1 (2014): 37-54, <https://doi.org/10.21043/ziswaf.v1i1.1524>.

¹¹ Chandra Munthe, Jamilah Jamilah, and Abdul Lawali Hasibuan, "Tinjauan Yuridis Penyelesaian Sengketa Terhadap Pengalihan Tanah Wakaf Sebagai Fasilitas Umum," *JUNCTO: Jurnal Ilmiah Hukum* 2, no. 2 (2020): 144-55, <https://doi.org/10.31289/juncto.v2i2.324>.

¹² Badan Wakaf Indonesia, "Indeks Wakaf Nasional 2022," [Bwi.go.id](https://www.bwi.go.id), 2023, <https://www.bwi.go.id/8706/2023/04/16/indeks-wakaf-nasional-2022/>.

the Ministry of Religious Affairs, approximately 42.58% of the total waqf land does not have official certificates.¹³ This raises concerns about future waqf conflicts and disputes.

Many previous studies have discussed efforts to resolve waqf conflicts and disputes. Among them, Muhammad Rifqi Hidayat and Parman Komaruddin (2019) argue that the resolution of waqf property disputes involves several stages that should be carried out stratified, namely deliberation, mediation, arbitration, and finally, the courts.¹⁴ However, this study only focuses on positive law in Indonesia. Muhammad Taufan Djafry et al. (2021) argues that, in a review of Islamic law, the resolution of waqf disputes and other issues can be facilitated through litigation and non-litigation.¹⁵ This research covers both Islamic and positive law perspectives, but has not yet been elaborated in a structured manner. Recent research by Artika Sandra Dewi and Mhd. Yadi Harahap (2023) suggests that waqf disputes, based on positive law traditions in Indonesia, are resolved through non-litigation, through peace, alternative dispute resolution (ADR), and court settlement in the final stage of dispute resolution.¹⁶ This research has included a structured discussion starting from the perspective of Islamic law and positive law, but focuses more on the discussion of positive law.

Based on the literature review, it can be seen that waqf practices in Indonesia still face various real problems, such as low public understanding, many uncertified assets, weak governance, and the emergence of conflicts and abuse. On the other hand, waqf regulations and principles require orderly, professional, transparent management, and are in line with the values of Islamic

¹³ Kementerian Agama Republik Indonesia, "Jumlah Tanah Wakaf Seluruh Indonesia," SIWAK Kemenag, n.d., https://siwak.kemenag.go.id/siwak/persen_jumlah_tanah_wakaf.php.

¹⁴ Muhammad Rifqi Hidayat and Parman Komarudin, "Penyelesaian Sengketa Wakaf Melalui Jalur Litigasi Dan Non-Litigasi," *Al-Adl: Jurnal Hukum* 11, no. 2 (2019): 184–96, <https://doi.org/10.31602/al-adl.v11i2.1936>.

¹⁵ Muhammad Taufan Djafri et al., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah)," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 2, no. 3 (2021): 396–412, <https://doi.org/10.36701/bustanul.v2i3.402>.

¹⁶ Atika Sandra Dewi and Mhd. Yadi Harahap, "Penyelesaian Sengketa Wakaf Menurut Perpektif Islam Dan Hukum Positif," *Rayah Al-Islam* 7, no. 1 (2023): 199–215, <https://doi.org/10.37274/rais.v7i1.656>.

law and positive law. The difference between the factual conditions and normative demands is what creates a gap, so that a study is needed that can bridge the two through harmonization of the legal system in resolving waqf conflicts. The author attempts to identify the factors causing waqf disputes and describe the forms of disputes that commonly occur in Indonesia. This paper also explains the mechanism for resolving waqf disputes based on the perspectives of Islamic law and positive law in a proportional and systematic manner. In addition, this study presents a new focus that has not been found in previous studies, namely the analysis of the harmonization between Islamic law and positive law in resolving waqf disputes in Indonesia, which is a novel aspect in this study. The approach used is an Islamic law and normative juridical approach. Based on this theory, the author assumes that there is a correlation between Islamic law and positive law in Indonesia in resolving waqf disputes.

Method

This study is a qualitative study using library methods, conducted by collecting data from various literature such as books, journals, and relevant regulations related to waqf management and disputes. Data collection was conducted using a document study method, then analyzed using descriptive qualitative analysis through a process of data reduction, theme classification, and content analysis. This study uses an Islamic law and normative juridical approach to answer the focus of the study on the form of conflict in waqf disputes in Indonesia, efforts to resolve them according to positive law, and solutions to resolve waqf disputes from an Islamic legal perspective.

Result and Discussion

Factors Causing and Forms of Waqf Disputes in Indonesia

As previously known, the potential for waqf in Indonesia is enormous. This not only provides opportunities for the development of social and economic aspects in society, but also raises concerns about various types of conflicts in waqf disputes. Conflict is a situation where there is disagreement or disharmony between parties who are or will be collaborating. Essentially, conflict can arise in various settings as long as there is social interaction or relationship, both between individuals and groups.¹⁷

¹⁷ Nur Fadhilah, "Sengketa Tanah Wakaf Dan Strategi Penyelesaiannya," *De Jure Jurnal Syariah Dan Hukum* 3, no. 1 (2011): 71-85, <https://doi.org/10.18860/j.fsh.v3i1.1321>.

Among the triggers for conflict in waqf disputes are violations committed in waqf management or actions that violate Law Number 41 of 2004 concerning waqf. Law Number 41 of 2004 stipulates that violations of the procedures for administering waqf can be subject to sanctions, ranging from waqif who does not state a clear waqf pledge before the PPAIW and without two witnesses, nazhir who is not registered with the KUA or does not carry out the management and reporting duties of waqf assets, to PPAIW who does not submit a waqf registration application to the Regent/Mayor and the Head of the Land Agency who neglects to register waqf land. In addition, changing the allocation of waqf assets without permission is also a serious violation that is contrary to the objectives and regulations of waqf. Thus, every party involved in waqf management has legal obligations that must be fulfilled so that waqf remains valid, protected, and beneficial in accordance with sharia provisions and legislation.¹⁸

The various violations mentioned above can trigger conflict in waqf disputes. There are various conflicts in these waqf disputes, some of which the author will describe as examples of common cases that frequently occur in Indonesia.

a. Disputes over ownership of waqf land

Disputes over ownership of waqf land are common in Indonesia. One example is in 1922, when a man named DDA donated a plot of land located in Paloh Village, Kemukiman SP. II, Peusangan District, North Aceh Regency, for educational purposes. Two months after the waqf, a mosque was built on the land, followed by the establishment of a madrasah (Islamic school). At that time, HI, one of DDA's children, was appointed as the nazhir (guardian). HI later had a son, JH. After HI's death, JH claimed that the land had never been donated by his grandfather, claiming it was not registered in the waqf register at the local Office of Religious

¹⁸ Upi Komariah, "Penyelesaian Sengketa Wakaf Di Dengadilan Agama," *JHP: Jurnal Hukum Dan Peradilan* 3, no. 2 (2014): 117-26, <https://doi.org/10.25216/jhp.3.2.2014.117-126>.

Affairs (KUA). In response, MH and several colleagues filed a lawsuit with the Bireuen Religious Court to obtain validation of DDA's waqf.¹⁹

b. Changes in the designation of waqf

Changes in the designation of waqf are also a frequent source of conflict in waqf disputes in Indonesia. For example, in the 1970s, H. Dj donated a plot of land in Tanjung sub-district to the Tanjung branch of Muhammadiyah, with the intention of using it as a religious school. However, around the 1980s, the school's function was changed to an elementary school. As a result of this change, HH, one of the deceased H. Dj's heirs, filed a lawsuit against Muhammadiyah. He demanded the return of the land on two main grounds: first, that the land was no longer used for its original purpose (the religious school was converted into an elementary school), and second, that, according to the plaintiff, the land had only been loaned, not endowed permanently. In this situation, Muhammadiyah intended to return the land and the building on it once the new building, constructed elsewhere, was completed and ready for use.²⁰

c. Revocation of Waqf Land

Conflicts over the revocation of waqf land can be caused by various factors, one of which is the misuse or sale of waqf assets. This can be seen in the example of a waqf dispute that occurred in Kudus. A resident of Beru Genjang Village, Undaan District, Kudus, named Raginah, who had no children, donated a plot of rice fields in the Pereng block. The land was accepted and managed for the Al Mubarak Mosque, with Ridwan appointed as Nadzir. The waqf contract was executed by Raginah in 1974, witnessed by her younger sibling, thus declaring the waqf valid. Subsequently, after Raginah, the waqif and Ridwan, the Nadzir, died, Ridwan's heirs sold the waqf land to a third party. Raginah's two younger siblings, who had witnessed the waqf, objected to the sale. They attempted

¹⁹ Muhammad Rifqi Hidayat and Parman Komarudin, "Penyelesaian Sengketa Wakaf Melalui Jalur Litigasi Dan Non-Litigasi," *Al-Adl: Jurnal Hukum* 11, no. 2 (2019): 184-96, <https://doi.org/10.31602/al-adl.v11i2.1936>.

²⁰ Ibrahim Siregar, "Penyelesaian Sengketa Wakaf Di Indonesia: Pendekatan Sejarah Sosial Hukum Islam," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 36, no. 1 (2012): 122-37, <https://doi.org/10.30821/miqot.v36i1.111>.

an amicable settlement with the assistance of the Village Head and local religious leaders. However, because Ridwan's heirs insisted that the land belonged to the deceased, not a waqf, Raginah's family ultimately took the case to the Kudus Religious Court. Based on the available evidence and facts, the Kudus Religious Court ruled in favor of the lawsuit filed by Raginah's two younger siblings.²¹

In addition to the forms of conflict described in the previous section, various other disputes can arise within the Indonesian waqf practice. These include disputes regarding the validity or ratification of waqf status, issues regarding the exchange or barter of waqf assets, and conflicts related to inheritance claims over waqf assets. Issues regarding waqf cancellations are also common, sparking legal debates between the parties. Furthermore, other, varied forms of conflict are likely to arise, stemming from differing legal understandings, economic interests, and socio-cultural factors within the community. This demonstrates that the potential for disputes in the waqf sector is vast and complex, requiring clear regulations and appropriate resolution mechanisms to ensure that waqf's primary purpose as a means of worship and for the benefit of the community is maintained.

Efforts to Resolve Waqf Disputes in Indonesia

Waqf in Indonesia is regulated by Law Number 41 of 2004 concerning Waqf. Article 62 of this Waqf Law states that:

- (1) Waqf disputes shall be resolved through deliberation to reach a consensus.
- (2) If the dispute resolution as referred to in paragraph (1) is unsuccessful, the dispute may be resolved through mediation, arbitration, or the courts.²²

Meanwhile, based on the provisions of Article 226 of the Compilation of Islamic Law, the resolution of disputes related to waqf objects and Nazhir is carried out through the local Religious Court, while still referring to the provisions of applicable laws and regulations.²³

²¹ Upi Komariah, "Penyelesaian Sengketa Wakaf Di Pengadilan Agama," *JHP: Jurnal Hukum Dan Peradilan* 3, no. 2 (2014): 117-26, <https://doi.org/10.25216/jhp.3.2.2014.117-126>.

²² Republik Indonesia, "Undang-Undang RI Nomor 41 Tahun 2004 tentang Wakaf

²³ Chandra Munthe, Jamilah Jamilah, and Abdul Lawali Hasibuan, "Tinjauan Yuridis Penyelesaian Sengketa Terhadap Pengalihan Tanah Wakaf Sebagai Fasilitas Umum,"

Based on the provisions of Article 62 of Law Number 41 of 2004 concerning Waqf and Article 226 of the Compilation of Islamic Law, it is understood that the mechanism for resolving waqf disputes in Indonesia has been systematically regulated through several hierarchical stages. These stages begin with peaceful efforts through deliberation, which reflects the values of family and the principle of shura in Islam. If deliberation does not produce results, then mediation or arbitration can be continued as alternative dispute resolution outside the courts. However, if all non-litigation channels are unable to resolve the existing conflict, then the final step is through the litigation or judicial process. Thus, it can be classified that the mechanism for resolving waqf disputes in Indonesia basically prioritizes non-litigation channels, while litigation is positioned as a last resort instrument used if all previous peaceful efforts prove ineffective in achieving a resolution.

a. Non-Litigation

1) Deliberation

Deliberation is the initial step in resolving conflicts in waqf disputes, as stipulated in Law Number 41 of 2004 concerning Waqf. Deliberation is a negotiation process aimed at unifying views in resolving problems collectively, with the goal of reaching a joint decision or consensus. Consensus itself is defined as an agreement reached unanimously based on the principle of kinship. Ideally, conflict resolution in waqf disputes should be conducted through a mechanism of deliberation to reach consensus. This resolution method is considered very wise because decisions are made collectively for the common good, without the need for a third party to act as a mediator or intermediary in decision-making.²⁴

2) Mediation

If deliberation fails to resolve a waqf dispute, the next step is mediation. Mediation is a peaceful dispute resolution method that is considered effective and efficient, and provides a greater opportunity for the parties

JUNCTO: *Jurnal Ilmiah Hukum* 2, no. 2 (2020): 144-55,
<https://doi.org/10.31289/juncto.v2i2.324>.

²⁴ Faisal Riza and Zainuddin, "Penyelesaian Sengketa Harta Benda Wakaf Melalui Musyawarah untuk Mencapai Mufakat," *Prosiding Seminar Nasional Hasil Penelitian dan Pengabdian Masyarakat*, no. 41 (2021): 161-70,
<https://dspace.uui.ac.id/handle/123456789/35300>.

to reach a fair and satisfactory outcome. In court, particularly for civil cases, mediation is mandatory before the judge can examine the merits of the case.²⁵

3) Arbitration

If mediation fails to resolve the dispute, the next step is arbitration. Arbitration is a dispute resolution method in which the disputing parties agree to submit their dispute to a neutral third party. In this mechanism, the arbitrator is empowered to make a decision to resolve the disputed issues.²⁶

b. Litigation

After all non-litigation steps have been taken but the waqf dispute has not been resolved, litigation will proceed. Litigation is a method of dispute resolution through the courts, where the disputing parties face each other to defend their rights. This process culminates in a court decision that results in a win-lose solution.²⁷ Waqf disputes fall under the absolute jurisdiction of religious courts in Indonesia, as mandated by Article 49 of Law Number 7 of 1989 concerning Religious Courts. However, it is important to understand that once a dispute reaches the courts, the process becomes complex and intricate. At this stage, the parties will face various issues such as lawsuits, status as plaintiffs or defendants, witness attendance, confessions, and oath-taking. Resolving the dispute through other available channels will be much faster and more effective. Therefore, filing a lawsuit should only be a last resort after all alternative resolutions have been exhausted.²⁸

²⁵ Kurniati, Baso Madiong, and Zulkifli Makkawaru, "Analisis Penyelesaian Sengketa Tanah Melalui Jalur Mediasi Di Desa Bontomanai Kecamatan Manngarabombang Kabupaten Takalar," *J. Paradigma Administrasi Negara* 3, no. 2 (2021): 144-51, <https://doi.org/10.35965/jpan.v3i2.662>.

²⁶ Khoiru Nisa et al., "Analisis Penyelesaian Sengketa Wakaf Dalam Perspektif Hukum Peradilan Agama Di Indonesia," *Al-Hukmu: Journal of Islamic Law and Economics* 03, no. 2 (2024): 79-92, <https://doi.org/10.54090/hukmu.208>.

²⁷ Syufa'at, "Penerapan Prosedur Mediasi Dalam Penyelesaian Sengketa Wakaf Di Pengadilan Agama," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (2018): 21-36, <https://doi.org/10.24090/volksgeist.v1i1.1678>.

²⁸ Muhammad Rifqi Hidayat and Parman Komarudin, "Penyelesaian Sengketa Wakaf Melalui Jalur Litigasi Dan Non-Litigasi," *Al-Adl: Jurnal Hukum* 11, no. 2 (2019): 184-96, <https://doi.org/10.31602/al-adl.v1i2.1936>.

Islamic Legal Solutions to Endowment Dispute Resolution Efforts and Their Harmonization with Positive Law in Indonesia

From an Islamic legal perspective, the resolution of waqf disputes and various other issues within the scope of Islamic law can be achieved through litigation or non-litigation. The principle of peace (al-iṣlah) and deliberation to reach an agreement are always prioritized. The selection of alternative resolution methods is expected to end conflicts without creating new problems (lā darara wa lā dirāra). The development of Islamic law demands innovation in providing solutions to various problems in human life. This also applies to the practice of waqf and its accompanying problems, which require appropriate resolution mechanisms. All forms of dispute resolution are aimed at creating just laws, strengthening justice in society, and realizing the welfare of the community in accordance with the maqāṣid al-syarī'ah.²⁹

In addition to deliberation based on the principle of al-iṣlah, another method highly recommended in Islam for resolving disputes, or in this case, disputes, is mediation or arbitration. In other words, Islam encourages the use of a third party or mediator who can help provide a solution to a problem or dispute.³⁰ This is reinforced by Allah SWT's words in Surah An-Nisa, verse 35.

*“If you (the guardians) fear a dispute between them, send a peacemaker from the man's family and a peacemaker from the woman's family. If they both intend to reconcile, Allah will surely give them success. Indeed, Allah is All-Knowing, All-Aware.” (Al-Nisā/4:35)*³¹

In the context of resolving waqf disputes in Indonesia, positive law has essentially placed Islamic teachings as the normative foundation and primary guideline. This is reflected in the provision that any dispute resolution effort at the initial stage prioritizes non-litigation channels, such as deliberation, mediation, or other alternative mechanisms in line with sharia principles. However, if these non-litigation channels fail to reach an agreement and the

²⁹ Muhammad Taufan Djafri et al., “Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah).”

³⁰ Sandra Dewi and Harahap, “Penyelesaian Sengketa Wakaf Menurut Perpektif Islam Dan Hukum Positif.”

³¹ Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahnya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, Badan Litbang dan Diklat, Kementerian Agama RI, 2019), <https://pustakalajnah.kemenag.go.id/detail/135>.

dispute persists, Islamic law also legitimizes the use of litigation or court resolution mechanisms. Thus, both Indonesian positive law and Islamic teachings affirm that waqf dispute resolution ideally begins with a peaceful approach. However, if such methods are inadequate, formal legal proceedings through the courts are a legitimate and acceptable next step.

This practice has been evident since the time of the Prophet Muhammad (peace be upon him) during his role as enforcer of justice while also serving as head of state. After Islam spread and its territory expanded, the Prophet assigned his companions to various regions to resolve disputes and disputes among Muslims. This practice continued as Islam developed in subsequent periods, each with its own distinct characteristics in the judicial system. During the era of the Caliphate, leaders appointed prominent companions with deep religious understanding to serve as judges. They were sent to new territories under Islamic rule with the aim of facilitating the resolution of disputes among Muslim communities. This measure was taken to facilitate Muslims in seeking justice as various disputes arose. This practice of appointing judges persisted for a long time, extending into the Ottoman Caliphate. During this period, the thinking of Islamic jurists underwent significant developments. One such development was the emergence of the view that permitted the appointment of special judges based on the type of disputed case. Furthermore, it was also permitted to appoint judges to serve at specific times to handle frequently occurring cases, such as the appointment of judges specifically to handle family disputes or other civil matters, such as commercial or social matters. Furthermore, the judicial system during the Umayyad era had two main characteristics. First, judicial practices were similar to those during the Caliphate, where judges conducted *ijtihad* and established laws based on their own reasoning. This *ijtihad* was carried out when judges did not find a clear provision (*nash*) in the Qur'an and Sunnah, and there was no prior consensus of scholars (*ijma'*) regarding the case at hand. Second, the judiciary during this period was free from political influence. Thus, judges enjoyed independence and were not subject to the wishes of the ruling ruler. During the Abbasid era, the judicial system exhibited a different dynamic. This period saw rapid development progress, the wider spread of Islam, and an increase in scientific, economic, and social activity. In addition, there was also a debate on

Islamic jurisprudence which gave birth to four schools of thought, the development of the tradition of taqlid (following the opinions of previous scholars), the weakening of the spirit of ijtihad, and the existence of differences of legal opinion among judges.³²

The discussion above demonstrates a clear alignment between Islamic law and positive law in Indonesia in the waqf dispute resolution mechanism, both through non-litigation and litigation. As the religion that gave birth to the concept of waqf, Islam has, from its inception, provided normative guidelines and directives covering all aspects of waqf, including mechanisms for resolving potential conflicts. These principles and guidance derived from Islamic law served as the primary reference in formulating waqf regulations in Indonesia, while taking into account prevailing social, cultural, and legal conditions in the country. This codification and legislative process, which took place over a long and complex period, ultimately resulted in a relatively comprehensive waqf regulation. This regulation not only serves as a positive legal instrument governing all aspects of waqf in Indonesia, but also demonstrates close integration and strong harmonization with the values and principles of Islamic law.

Conclusion

The potential for waqf in Indonesia is enormous, not only providing progress in social and economic aspects, but also creating the potential for conflict in waqf disputes. These conflicts include disputes over ownership and validity of waqf assets, management and allocation of waqf assets, disputes with the waqf's heirs, and many other forms of conflict.

Efforts to resolve waqf disputes in Indonesia are regulated in Article 62 of Law Number 41 of 2004 concerning Waqf, which begins with deliberation and consensus, mediation, and arbitration. Only then can the dispute proceed to court if the previous stages fail to resolve the dispute.

Similar to positive law in Indonesia, Islamic law also applies litigation and non-litigation channels to resolve waqf disputes. This demonstrates the

³² Ibrahim Siregar, "Penyelesaian Sengketa Wakaf Di Indonesia: Pendekatan Sejarah Sosial Hukum Islam," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 36, no. 1 (2012): 122-37, <https://doi.org/10.30821/miqot.v36i1.111>.

harmonization of Islamic law and positive law in Indonesia in resolving waqf disputes.

With this research, it is hoped that readers will pay attention to each stage of waqf dispute resolution in Indonesia, so that each stage can make a significant contribution to conflict resolution in waqf disputes. It is also hoped that conflict resolution in waqf disputes will be resolved at a non-litigation stage, so that disputes can be resolved amicably without resorting to court proceedings, which would place an undue burden on the parties involved.

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