

The Problematic of *Waqf* Representatives and The Settlement of Disputes

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Abstract. *The problems in this research are how the problems of Waqf that often occur, the settlement of Waqf land disputes that are asked for back by the heirs, the obstacles faced in resolving the Waqf land disputes that are asked back by the heirs at the Semarang Religious Court. Based on the results of the research, it was found that the Waqf dispute that arose was triggered by, among others, the denial of the Waqf pledge, the desire to withdraw the assets that had been donated. Waqf dispute resolution is pursued in several stages which are carried out stratifically, namely deliberation, mediation, arbitration and the High Religious Court. The obstacle in the process of resolving Waqf disputes is the absence of orderly administration in the practice of Waqf, especially based on authentic evidence such as Waqf pledges and evidence of records at the local KUA District.*

Keywords: Waqf; Dispute; Sharia.

1. INTRODUCTION

In the content of such a large potential of *Waqf* with management that has not been fully handled professionally and with a productive vision, *Waqf* also has the potential to generate potential conflicts or disputes in its management. In Indonesia, the issue of donated land belonging to the field of Agrarian Law. In the framework of reforming the National Agrarian Law, ownership of land belonging to the government is given special attention as seen in the Basic Agrarian Act No. 5 of 1960 Chapter IX Article 49 paragraph 3 which provides the following provisions "Representation of property is protected and regulated by a Government Regulation." In addition, *Waqf* is also supported by Government Regulation no. 28 of 1977 regarding the representation of owned land.²

The pouring of ownership of land ownership in the UUPA and Government Regulation is the realization of the recognition of elements that rely on religious law.³This is in

¹ Alhaddafi, Muhammad Fatih Wahab & Akhmad Khisni. (2019). *The Role Of Notary And Land Deed Official (PPAT) In The Process Of Waqf (Endowments) Deed Making*. JURNAL AKTA: Vol 6, No 2, Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/5010>

² Zulfirman. (2003). *Wakaf Dalam Perundang-Undangan di Indonesia*. Paper for International Seminar on Waqf as a Private Legal Entity, Held in Medan on 6-7 January 2003 p. 5.

³ Harsono, Boedi. (2003). *Sejarah Penyusunan, Isi dan Pelaksanaan UUPA*. Volume 1. Jakarta: Jambatan, Revised Edition 2003: p. 220.

accordance with the National Agrarian Law Politics and Pancasila as the principle of state spirituality which covers the entire order of Indonesian law. Thus, in interpreting and implementing applicable agrarian (land) regulations, it must be based on and sourced from Pancasila.⁴ The *Waqf* Law began to be set forth in separate legislation in 2004 with the issuance of Act No. 41 of 2004 concerning *Waqf*. The birth of the Law of the Republic of Indonesia No. 41 of 2004 concerning *Waqf* in addition to being able to provide productive empowerment of *Waqf*⁵, namely the management pattern of modern *Waqf* potential empowerment is expected to be able to become a guideline for resolving cases of *Waqf* disputes that arise in social reality. If in Government Regulation No.28 of 1977 concerning Ownership of Owned Land, the concept of *Waqf* is identical to owned land, in the new *Waqf* Law the concept of *Waqf* contains a broader dimension. It includes immovable and movable property, and its use is not limited to the construction of places of worship.⁶

In the view of Islam, the assets that have been donated are no longer the property of the *Waqf* and will not be transferred to the property of the people or entities that are the purpose of the *Waqf*. *Waqf* assets have been separated from the ownership rights of the *Waqf* since the pledge of *Waqf* was carried out, which later became the property of Allah whose benefit is the right of the recipient of the *Waqf*. Thus, the *Waqf* property becomes the mandate of Allah to individuals or legal entities to manage and manage it. The person or body that administers *Waqf* is called *Nadzir* or mutawalli. The understanding of Muslims in Indonesia about *Waqf*, apart from being obtained from religious teachings derived from the Prophet's hadith and fiqh books, is also obtained from customary law or community habits. Because customary law that develops in Indonesia is heavily influenced by Islamic teachings, including regarding *Waqf*.⁸

2. METHODS

The type of this research is a Normative Legal Research. Normative legal Research is a research which uses the law as foundation of norm. This means that this research is based on the library research focusing on reading and analyzing of the primary and secondary materials. In this research, the author describes the case, seek, and process a variety of data from the document study (libraries) to generate a report of research findings.

⁴ Notonagoro. (1984). *Politik Hukum dan Pembangunan Agraria di Indonesia*. Jakarta: Bina Aksara, p. 69.

⁵ Sukarmi & Ong Argo Victoria. (2018). *Cash Waqf in Sustaining Of Indonesian Society "In Legal & Economic Perspective"*. AL-ITQAN: Journal of Islamic Sciences: IIUM Malaysia. Retrieved from: <https://journals.iium.edu.my/al-itqan/index.php/al-itqan/article/view/43>

⁶ Ministry of Religion. (2008). *New Paradigm of Waqf in Indonesia*. Directorate of Waqf Development. Jakarta: Directorate General of Islamic Community Guidance.

⁷ Farhati, Dewi & Akhmad Khisni. (2018). *Legal Review Of Implementation Endowments Authority Relating To The Under Hand Agreement Made By Waqif (Case Study In Kua Wonosalam, Demak)*. JURNAL AKTA: Vol. 5, No. 3. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/3256/2392>

⁸ Mubarok, Jaih. (2008). *Wakaf Produktif*. Bandung: Dimbiossa Rekatama Media, p. 22.

3. RESULT AND DISCUSSION

3.1 *Waqf*'s Problems That Often Occur

As social beings, humans always interact with each other. Therefore, for this interaction to run well, it is necessary to regulate both in statutory regulations and other forms of regulation. Basically, all the provisions in the rule must be obeyed by all parties involved in it. Everything must be carried out voluntarily or in good faith, but in reality this is often violated, so that in the end it has the potential to create a dispute between the parties.

Basically every dispute that arises, including a *Waqf* dispute, has three aspects, namely:⁹

- a. Juridical aspects,
- b. Sociological aspects,
- c. Psychological aspects.

Likewise with *Waqf* activities that exist in the life of the Muslim community in Indonesia. So far, the potential for disputes in the field of *Waqf* includes:¹⁰

- a. First relating to *Wakif*, pledge, *Nadzir* and witnesses. Usually it concerns whether or not the act of donating is valid.
- b. Second, related to the *Bayyinah* (evidence for the administration of *Waqf* property), such as the *Waqf* pledge deed, the replacement deed for the *Waqf* pledge, proof of ownership of *Waqf* property or other matters relating to the recording and registration of *Waqf*.
- c. Third, which are related to the management and use of *Waqf* assets, such as misuse of *Waqf* assets by *Nadzir* and others.

The term dispute is usually always associated with conflict. There are people who equate the two terms, but there are also those who distinguish them. For those who differentiate it is stated:¹¹

- a. Conflict is a situation where the parties are aware or know about the feeling of dissatisfaction.
- b. A dispute is a situation where the conflict is stated in public or by involving a third party.

This means that a dispute is a continuation of the conflict, where a conflict will turn into a dispute if it cannot be resolved. Conflict can be defined as "conflict" between the parties to resolve problems that, if not resolved properly, can disrupt the relationship between them. As long as the parties resolve the problem properly, the dispute will not

⁹ Arto, A. Mukti. (2001). *Mencari Keadilan, (Kritik dan Solusi Terhadap Praktek Peradilan Perdata)*. Yogyakarta: Pustaka Prolajar, p. 38.

¹⁰ Hamami, Taufiq. (2003). *Perwakaan Tanah (Dalam Politik Hukum Agraria Nasional)*. Jakarta: PT. Tatanusa, p. 170-171.

¹¹ Kriekhoff. (1993). *Mediasi (Tinjauan dari Segi Antropologi)*. Jakarta: Yayasan Obor Indonesia, p. 223.

occur. But if the opposite happens; the parties cannot reach an agreement on a solution to the problem; then disputes arise.¹²

3.2 Settlement of the Land *Waqf* Dispute Requested by the Inheritance at the Semarang High Religious Court

These social, economic, political and cultural changes will continue. This needs to be followed by the development of a system to deal with conflicting values from differences of opinion. The system is expected to be able to reduce the possibility of disputes, or to resolve quickly, accurately, and to satisfy the disputing parties in society.¹³

In principle, the disputing parties want a fast, precise, fair and cheap settlement. This has become a general principle in dispute resolution. This is also the case with *Waqf* disputes. In article 62 of Act No. 41 of 2004 concerning *Waqf* it is stated that:

- 1) The settlement of *Waqf* disputes is taken through deliberation to reach consensus.
- 2) If the dispute settlement as referred to in paragraph (1) is not successful, the dispute can be resolved through mediation, arbitration or court.

This dispute has been experienced by MWC NU, Genuk District, Semarang City. In 1966 ± 600 m² of land was donated by a *Wakif* named Ahmad¹⁴ (deceased) for the benefit of the Islamic organization. In 2012 he was sued by a *Wakif* heir named Budi¹⁵ to the Semarang High Religious Court, because there is no evidence to confirm that the land is *Waqf* land.¹⁶

According to the author, basically the existence of the status of the *Waqf* land can be examined based on evidence from records in the local district KUA. However, MWC NU cannot do this because after *Wakif* has made a *Waqf* pledge, *Wakif* and *Nadzir* do not make a *Waqf* Pledge Deed in front of PPAIW. The actions taken by *Wakif* and *Nadzir* indicate that there is no orderly administration in the practice of *Waqf*.

3.3 Constraints Faced in the Settlement of the *Waqf* Land Dispute Requested by the Heirs at the Semarang High Religious Court

The mediation process is running smoothly, the parties who are currently litigating have not been able to end the dispute by establishing peace. The *Wakif* heirs are adamant that the ± 600 m² land on the Semarang-Purwodadi highway ± 5 km in

¹² Usman, Rahmadi. (2003). *Pilihan Penyelesaian Sengketa di Luar Pengadilan*. Bandung: PT. Citra Aditya Bakti, p. 2.

¹³ Margono, Suyud. (2000). *ADR Alternative Dispute Resolution dan Arbitrase (Proses Pelembagaan dan Aspek Hukum)*. Jakarta: Ghalia Indonesia, p. 13.

¹⁴ Ahmad's name has been changed according to the request of the *Wakif* heirs, to protect the good name of the deceased and his family.

¹⁵ Budi's name has been changed according to the request of the *Wakif* heirs, to protect the good name of the deceased and his family.

¹⁶ Mohammad Ridwan Sulhan (an advocate who accompanied MWC NU), Genuk District, Semarang City in resolving this *waqf* land dispute), interview, 20 May 2015 at 19.00 WIB.

Genuk District, Semarang City is not a *Waqf* land, but the land belonged to his late parents.¹⁷Initially, the heirs hoped that the judges of the Semarang High Religious Court would be able to make a decision on the status of the donated land, but in the end this *Waqf* land dispute could be resolved very simply by means of a mediation mechanism. MWC NU denied the claim and stated that the land had been donated to MWC NU by the parents of the heirs. The existence of the status of the *Waqf* land can be examined based on evidence from records in the local sub-district KUA. However, MWC NU could not do this because after *Wakif* had made a wakaf pledge, *Wakif* and *Nadzir* did not make a *Waqf* Pledge Deed in front of PPAIW. The actions taken by *Wakif* and *Nadzir* indicate that there is no orderly administration in the practice of *Waqf*.

From what the authors have described above, the authors conclude that the existence of a formal legal basis regarding the integration of mediation in the judicial system is from the provisions of Article 131 HIR and Article 154 RBg. If the mediation that is carried out fails to achieve the word peace, the case examining judge is obliged to continue the case examination in accordance with the provisions of the applicable civil procedural law. However, if the mediation carried out can reach the word peace, it will result in the authorities to notify the judge and request that a stipulation in the form of a peace deed be issued. However, in the opinion of the author, this *Waqf* dispute will feel much better so that it is resolved in a friendly manner first. So that the parties in dispute or litigation,

4. CLOSING

Waqf dispute resolution is pursued in several stages which are carried out stratifically. From the contents of Article 62 paragraph (2), it is known that the first solution recommended by this law is deliberation. This kind of *Waqf* practice, in the middle of its journey, can lead to problems in the future, for example the issue of the legal validity of the position of *Waqf* assets which leads to disputes, because there is no evidence to show that the objects in question have been donated.

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¹⁷ Written proof of Certificate (Proof of MWC NU Waqf Land), op. cit.

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