

**Judicial Interpretation of Waqf Land Validity in Indonesia: A
Comparative Analysis of Positive Law and Islamic Law through Case
Decision No. 453/Pdt.G/2020/PA. Kdi)**

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Abstract: The practice of waqf plays a significant role both as a form of worship and as a social asset that supports development. However, disputes often arise concerning the management and utilization of waqf land that do not comply with applicable legal regulations. One such case occurred in Kadia Subdistrict, Kadia District, Kendari City, where a nazhir filed a lawsuit over waqf land because the land was still controlled by the previous nazhir who claimed to retain rights over it. This issue arose because the wakif had donated the land as waqf twice to two different individuals. The research conducted in this writing falls under the category of normative legal research with a case approach. The type of data used is secondary data. The results of the study show that the judge's decision invalidates and the waqf conducted without an authentic deed, as it does not meet the requirements under statutory regulations. Although the court granted the Plaintiff's lawsuit to revoke the waqf status, from the perspective of Islamic law, the waqf remains valid as it fulfills the pillars of waqf. Thus, it can be observed that there

are differences between positive law and Islamic law. This research is expected to serve as a reference for the development of legal knowledge and practices related to waqf disputes in Indonesia.

Keywords: Validity of Waqf, Positive Law, Islamic Law.

Introduction

Waqf as a religious institution is used with the function of worship to Allah SWT and for social. In the function of waqf worship, it is expected to be a charity for life in the hereafter, while in the social function, it is as an asset that has value in development.¹ Considering that most of the objects of waqf are land, as a protector to regulate the provisions and clarity of the law regarding waqf land, the Government issued Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf and Compilation of Islamic Law. The purpose of this regulation is to ensure that waqf assets are managed and used in the public interest in accordance with the principles of waqf in Islam.

Over time, the management of waqf benefits is sometimes not in accordance with the purpose at the beginning of the waqf. The use of waqf is also often not in accordance with the provisions of the Law on Waqf. In addition, the waqf process that occurs is often not the same as the current legal provisions so that the waqf becomes the object of dispute.²

One of the facts that occur in the community related to waqf land disputes is the existence of lawsuits against land that has been endowed, with the aim that the land loses its binding legal force or is no longer recognized as waqf land. For example, in Kadia Village, Kadia District, Kendari City, nazhir sued for waqf land because the land was still

¹ Abdul Rahman, "Penyelesaian Sengketa Tanah Wakaf (Studi Kasus di Kampung Haji Pemanggilan Kecamatan Anak Tuha Kabupaten Lampung Tengah)" (Skripsi, IAIN Metro, 2019), <https://repository.metrouniv.ac.id/id/eprint/1989/1/ABDUL%20RAHMAN%20296459.pdf>

² Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab: Ja'fari, Hanafi, Maliki, Syafi'i, Hambali*, (Jakarta: Lentera, 2011), 670.

controlled by the previous nazhir who felt that he had rights to it. He argued that the waqf carried out at first was invalid, so the previous nazhir as the person in charge of the waqf object had no legal basis. Therefore, an act of physical control, either by occupying or occupying waqf land, either partially or fully, without the consent of the legitimate nazhir is considered an unlawful act and without rights.

The dispute that is the main concern in this matter is the object of waqf in the form of a plot of land that has been built on it. This is due to the fact that the land waqf process carried out by the waqf is not in accordance with the applicable legal provisions. The land waqf is only based on a waqf letter that is prepared informally (not an authentic deed), and the letter is not made in front of the Waqf Pledge Deed Making Officer (PPAIW) and is not followed by the issuance of a waqf land certificate. Therefore, the waqf process does not meet the requirements set out in the Law.

In decision number 453/Pdt.G/2020/PA. Kdi, it was explained that in 1994, H. Husein bin Awad (Defendant III) had donated a piece of land to the Regional Executive of Al-Irsyad Al-Islamiyyah Southeast Sulawesi (Defendant II). The waqf process is only based on a waqf letter made informally and not in front of the Waqf Pledge Deed Making Officer (PPAIW). The purpose of the waqf is for the benefit of Muslims, but Defendant III argues that its management is not carried out optimally. Therefore, in 2015, Defendant III re-endowment the waqf object to H. Naguib Husein (Plaintiff), who also acted as a nazhir. In this second waqf process, Defendant III carried out in accordance with the applicable provisions of the Law. However, in the management of all waqf objects, the Plaintiff faced various obstacles and obstacles related to the renovation plan of the building for the educational interests of the An-Nur Kendari Foundation, caused by the actions of Ibrahim (Defendant II) who occupied the building. The Plaintiff had several times politely asked Defendant II to leave the building immediately, but Defendant II refused on the grounds that he was part of the management of Al-Irsyad Al-Islamiyah and felt entitled to manage the waqf object.

In the settlement of waqf disputes, the first step taken is to seek peace between the Plaintiff and the Defendant, with the aim of resolving

this issue peacefully and kinship through a mediation process carried out in the Religious Court by involving a mediator. However, in this case, the two parties agreed not to reach a peace agreement, so the case was brought to the legal realm and submitted to the Kendari Religious Court to be examined and tried in accordance with the authority possessed by the Religious Court.

Based on decision number 453/Pdt.G/2020/PA. Kdi, the judge fully granted the Plaintiff's lawsuit and stated that the waqf given by Defendant III to Defendant II in the form of a piece of land was invalid according to the law. The judge also ruled that the waqf letter dated May 7, 1994 did not have binding legal force. On the other hand, the waqf made by Defendant III to the Plaintiff in the form of a piece of land was declared valid according to the law. The judge stated that the Waqf Pledge Deed (AIW) with number KK.24-05-08/1-a/161/IX/2015, made before the Head of the Religious Affairs Office of Kadia District, Kendari City on September 28, 2015, as well as the Waqf Land Certificate No. 00002/Kadia Village issued on October 29, 2015 in the name of Nazhir H. Naguib Husein (the Plaintiff), are valid and have binding legal force on the waqf object. The judge also determined that the Plaintiff was a legitimate nazhir and stated that the actions of Defendant I, who claimed to be the legitimate manager of the waqf object, as well as the actions of Defendant II, who occupied and occupied the waqf object, were unlawful actions. Furthermore, the judge ordered the two Defendants to vacate the waqf object and hand it over to the Plaintiff.

As for the previous research related to waqf disputes, there was research by Ahmad Mathori, a student of UIN Syarif Hidayatullah Jakarta in 2022, with the thesis title "Analysis of the Consideration of the Decision of the Panel of Judges on the Waqf Dispute Case Between Waqf and Nadzir (Analysis of Decision No. 1509/Pdt.G/2019/PA. Dpk)." The type of research used is normative legal research through a statutory approach (*Statute Approach*).³ The research conducted by Ahmad Mathori

³ Ahmad Mathori, "Analisis Pertimbangan Putusan Majelis Hakim Atas Perkara Sengketa Wakaf Antara Wakif dengan Nadzir (Analisis Putusan No. 1509/Pdt.G/2019/PA.Dpk)" (Skripsi, UIN Syarif Hidayatullah Jakarta, 2022) <https://repository.uinjkt.ac.id/dspace/handle/123456789/65353>

emphasizes more on the basis of judges' considerations from a positive legal perspective, while this research adopts a perspective that includes both positive law and Islamic law.

Research by Agung Jupriandi, a student of the University of Muhammadiyah North Sumatra in 2022, with the thesis title "Analysis of the Decision on the Cancellation of Converted Waqf Land (Study of Decision No. 591/Pdt.G/2019/PA. Plk)." The type of research used is normative juridical research through a legislative approach.⁴ Agung Jupriandi's research focuses more on the basis of judges' considerations from a positive legal perspective, while this research uses a perspective that includes both positive law and Islamic law.

And research by Muhammad Nashirun, Abd. Qohar and Hilmi Yusron Rofi'I, students of UIN Raden Intan Lampung in 2022 with the journal title "Maslahah Mursalah's Analysis of Waqf Land Dispute Decisions (Study of Decision No. 0115/Pdt.G/2019/PA. Prw Prw Religious Court of Pringsewu Regency)." The type of research used is literature research through a normative juridical approach by collecting relevant sourced data.⁵ The research conducted by Muhammad Nashirun and his colleagues uses the perspective of maslahah mursalah, while this study adopts the perspective of positive law and Islamic law.

Based on the description above, this study will discuss "The Judge's Decision on the Validity of Waqf from a Positive Legal Perspective and Islamic Law (Study of Decision Number 453/Pdt.G/2020/PA. Kdi)."

The research conducted in this paper is included in the category of normative legal research with a *case approach*, which is a legal research method that is carried out by examining cases related to the legal issues

⁴ Agung Jupriandi, "Analisis Putusan Terhadap Pembatalan Tanah Wakaf Yang Dialihfungsikan (Studi Putusan No. 591/Pdt.G/2019/PA.Plk)" (Skripsi, Universitas Muhammadiyah Sumatera Utara, 2022) http://repository.umsu.ac.id/bitstream/handle/123456789/20050/SKRIPSI_AGUNG_%20JUPRIANDI_1806200063.pdf?sequence=1

⁵ Muhammad Nashirun, Abd. Qohar dan Hilmi Yusron Rofi'I, "Analisis Masalah Mursalah Terhadap Putusan Sengketa Tanah Wakaf (Studi Putusan No. 0115/Pdt.G/2019/PA.Prw Pengadilan Agama Kabupaten Pringsewu)," *AL-MAQASHIDI: Journal Hukum Islam Nusantara*, no. 2(2022) <https://journal.unugiri.ac.id/index.php/almazashidi/article/view/1322/899>

being researched.⁶ The type of data used is a type of secondary data with legal materials in the form of primary, secondary and tertiary legal materials. The technique of collecting legal materials used in this study is literature study through the stages of editing legal materials, classification of legal materials, verification of legal materials, analysis of legal materials and making conclusions.

Discussion

Waqf according to the language comes from the words *al-waqf* (waqf), *al-habs* (withholding) and *at-tasbil* (giving to sabilillah). The word waqf comes from the form of masdar *waqfu asy-syai'* which means to hold something. In the sense of the term, waqf is described as the act of withholding the use and giving of assets, where a person can utilize or use the proceeds of the asset for charitable purposes, as long as the goods still exist.⁷

Both *al-habs* and *al-waqf* have meanings related to the concepts of withholding, forbidding, and defending. The term "hold" is used because waqf is protected from damage, sale, and any actions that are not in accordance with the original purpose of the waqf. In addition, this term also refers to the withholding of benefits and proceeds from waqf that are prohibited from being accessed by unauthorized parties. In addition to being equated with *al-habs*, the term *al-waqf* also has similarities with *at-tasbil*, which means to flow its benefits to those who are entitled. As explained in the words of the Prophet:⁸

إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا

Meaning: "If you like, you hold the land and you give it away." (HR. Al-Bukhari).⁹

⁶ Johni Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, cet. III, (Bayumedia Publishing: Malang, 2007), 321.

⁷ Ana Indah Lestari, "Revitalisasi Wakaf Untuk Kemaslahatan Umat," *Jurnal Zakat dan Wakaf*, no. 1(2019): 57
<https://journal.iainkudus.ac.id/index.php/Ziswaf/article/view/3031/2288>

⁸ Abdurrohman Kasdi, *Fiqh Wakaf Dari Wakaf Klasik Hingga Wakaf Produktif*, (Yogyakarta: Idea Press, 2021), 7.

⁹ Abi Abdullah Muhammad bin Ismail Al-Bukhari, *al-Jami' as-Shahih*, Juz 2, (Pakistan: al-Maktabah as-Salafiyyah, 1403 H), 297.

This hadith shows that waqf is a form of charity, where the property that is waqf remains and cannot be sold, granted, or inherited. The proceeds from the property can be used for social purposes, such as helping people in need. This hadith not only emphasizes the importance of waqf as a social instrument but also provides practical guidance on how to implement it correctly and in accordance with Islamic teachings.

Holding the principal means that the wakif (the waqf party) still has the right to the property, but cannot transfer its ownership. This emphasizes that waqf is not just about releasing property, but rather the management of property for the purpose of good. The proceeds of waqf can be donated to those in need, such as the poor, relatives, and people who are entitled to receive. It reflects the spirit of sharing and social care in Islam.¹⁰

Imam Shafi'i defines waqf as the process of releasing waqf assets from the ownership of waqf. The waqf may not do anything to the waqf property, for example by selling or exchanging it for other goods. After the wakif dies, the property should not be inherited to his heirs because what can be distributed is only in the form of benefits from the waqf goods.¹¹

According to Imam Maliki, waqf does not eliminate the right of the waqf to the property that is waqf; On the contrary, the waqf restricts the wakif from taking actions that can transfer its ownership to other parties. Thus, the ownership of the waqf remains with the giver, because there is an understanding that the recipient of the waqf functions like a servant who serves his master throughout his life. This means that the recipients of waqf do not have ownership rights to the waqf objects they manage.¹²

The Hanafi school of thought that waqf is an act that protects and shari'ah the property of the person who gives waqf for good. According to the Hanafi School, waqf property does not mean completely relinquishing

¹⁰ Administrator, "Sejarah dan Perkembangan Wakaf," *BWI Perwakilan Kota Malang*, 28 November 2019, diakses 5 September 2024, <https://bwikotamalang.net/read/113405ddf4e2986367-Sejarah-dan-Perkembangan-Wakaf>

¹¹ Juhaya S. Praja, *Perwakafan di Indonesia Sejarah, Pemikiran, Hukum, dan Perkembangannya*, (Bandung: Yayasan PIARA, 1995), 19.

¹² Muhammad Abid Abdullah, *Hukum Wakaf*, (Jakarta: IIMaN Press, 2004), 55.

ownership rights, because the wakif is still allowed to take back his property at any time and also has the right to sell it. Waqf assets can also be used by heirs if the waqf has died. However, there are exceptions: if the waqf is made through a will determined by the judge and the waqf property is used for the mosque, then according to the Hanafi School, the waqf cannot be withdrawn.¹³

Imam Hambali defines waqf as an act that restricts the freedom of the owner of property in using his useful property, while maintaining the integrity of the property and transferring all rights of control over it. The benefits of this waqf are used as a purpose of goodness that can get closer to Allah SWT.¹⁴ Imam Hambali is of the opinion that waqf property should not be sold, granted, or inherited to anyone. However, if the waqf object is no longer functional or no longer in accordance with the purpose set by the waqf, Imam Hambali is of the opinion that the sale, change, replacement, or transfer of the waqf object is allowed.

In general, there is no verse in the Quran that clearly explains the concept of waqf. Considering that waqf is included in the category of *infaq fi sabilillah*, scholars refer to the postulates of the Quran that discuss *infaq fi sabilillah* to explain the concept of waqf. Some of these verses include:¹⁵

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ ۖ وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ ۖ وَاعْلَمُوا أَنَّ اللَّهَ غَنِيٌّ حَمِيدٌ

O you who have believed, give some of your good deeds and part of what We have brought out of the earth for you. Do not choose a bad one for your infacin, even though you do not want to take it, except by squinting (reluctantly) at it. Know that Allah is Rich and Praiseworthy." (QS. Al-Baqarah Ayat 267)¹⁶

¹³ Suhrawardi K. Lubis, *Wakaf dan Pemberdayaan Umat*, (Jakarta: Sinar Grafika, 2010), 4.

¹⁴ Jubaedah, "Dasar Hukum Wakaf", *Tazkiyya: Jurnal Keislaman, Kemasyarakatan dan Kebudayaan*, No. 2(2019): 258
<https://jurnal.uinbanten.ac.id/index.php/tazkiya/article/view/1153>

¹⁵ Badan Wakaf Indonesia, "Dasar Hukum Wakaf," diakses 24 Oktober 2023, <https://www.bwi.go.id/dasar-hukum-wakaf/>

¹⁶ Departemen Agama RI, *Al-Qur'an dan Terjemahannya*, (Jakarta: CV Indah Press, 2002), 46.

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

"You will never obtain virtue (perfect) until you give away some of the wealth you love. Whatever you do, Allah is Knowing." (QS. Ali 'Imran Ayat 92)¹⁷

The hadith that explains waqf is the hadith of Umar bin Khattab when endowment of land in Khaibar:

عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِحَيْرٍ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْذِنُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِحَيْرٍ لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ فَمَا تَأْمُرُ بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقَ بِهَا عُمَرُ أَنَّهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ وَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالضَّيْفِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ وَيُطْعِمَ غَيْرَ مُتَمَوِّلٍ

It means: *"From Ibn Umar ra, that Umar bin Khattab got a piece of land in Khaibar, then he went to the Prophet Muhammad (saw) to ask for directions. Umar said: 'O Messenger of Allah, I have obtained wealth in the form of very good land, which I have never obtained before. What will you suggest to me with that wealth?' The Prophet said: 'If you wish, you can endowment the principal and give alms with it.' Then Umar donated his land on the condition that it would not be sold, not granted, and not inherited. Umar gave his land to the poor, relatives, to free slaves, sabilillah, ibn sabil, and guests. It is not a sin for the one who takes care of it if he seeks or feeds from it in a good way and does not hoard."* (HR. Bukhari)¹⁸

In Indonesia, the legal basis of waqf is based on positive laws, such as Law Number 41 of 2004 concerning Waqf, Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf and Book III of the Waqf Law Compilation of Islamic Law.

¹⁷ Agama RI, *Al-Qur'an*, 63.

¹⁸ Abi Abdullah Muhammad, *al-Jami' as-Shahih*, 297.

The Judge's Decision on the Validity of Land Waqf from a Positive Legal Perspective in Indonesia in Decision Number 453/Pdt.G/2020/PA. Kdi

The implementation of waqf in Indonesia is regulated by positive legal regulations, including Law Number 41 of 2004 concerning Waqf. This Law serves as the main guideline in the implementation of waqf by regulating the terms and procedures of waqf, even including supervision of it. In addition, Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf and Compilation of Islamic Law (KHI) listed in Book III of Waqf Law is an important reference for judges in deciding waqf cases in Religious Courts.

Waqf as an important economic instrument in Islam, has a significant role in supporting the social and economic development of the ummah. The existence of the law is to comprehensively regulate waqf, providing a clear and comprehensive legal basis for the management and utilization of waqf assets. This law aims to ensure that the assets that are waqf can be managed properly and provide optimal benefits to the community.

Although there are already regulations governing waqf, there are still challenges in terms of understanding and implementing waqf governance in the field. Many parties need to better understand the basic principles of waqf and how to manage it in accordance with legal provisions. This includes aspects such as the intention of waqf, types of waqf, and the rights and obligations of nazhir as a manager of waqf assets.

In addition, another challenge faced is the lack of socialization of waqf laws and practices to the wider community. Education and counseling about waqf need to be improved so that more people understand the potential and benefits of waqf, as well as contribute to the economic development of the ummah through this instrument. Therefore, it is important to continue to explore and develop the understanding and practice of waqf governance, in order to have a greater positive impact on the community.¹⁹

¹⁹ Asep Lukman Daris Salam dan Aris Surya Lesmana, "Tata Kelola Wakaf Perspektif Hukum Islam dan Undang-Undang No. 41 Tahun 2004," 48

One of the waqf cases discussed in this study is about lawsuits. Nazhir filed a lawsuit over the waqf land because the land was still controlled by the previous nazhir so that he felt that he had the right to it. He argued that the waqf carried out for the first time was invalid, so the previous nazhir as the manager of the waqf object had no legal basis. This is because the land waqf process carried out by the wakif does not follow the applicable legal provisions. The waqf process is only based on a waqf letter under hand (not an authentic deed), which is not made in front of the Waqf Pledge Deed Making Officer (PPAIW) and is not followed by the issuance of a waqf land certificate.²⁰

Based on Law Number 41 of 2004 concerning Waqf, the waqf pledge must be made by the waqf to the nazhir in the presence of the Waqf Pledge Deed Making Officer (PPAIW) and witnessed by two witnesses. This pledge can be stated either orally or in writing.²¹ After the pledge is made, PPAIW will make a Waqf Pledge Deed that records all details related to the waqf, including the identity of the waqf, nazhir, and the property that is waqf. This deed is an official document that proves that the waqf process has been carried out in accordance with the applicable legal provisions.

In this case, the wakif cannot be physically present or cannot declare the pledge orally, he can appoint his power of attorney with a power of attorney strengthened by two witnesses. This process ensures that all waqf-related actions are carried out with transparency and accountability, as well as protecting the rights of all parties involved. Thus, the law also stipulates that the property that is waqf must have long-term durability and long-term benefits, so that it can make a positive contribution to society. Thus, waqf is not only a means to charity, but also an instrument to improve social welfare in a sustainable manner.

In Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, it is explained about the making of waqf pledge deeds. The statement of the waqf's will is stated in the Waqf Pledge Deed (AIW) which is held in the Waqf Pledge Assembly with the presence of nazhir, *mauquf 'alaih* and at

²⁰ Copy of Decision Number 453/Pdt.G/2020/PA. Kdi

²¹ Article 17 of Law Number 41 of 2004 concerning Waqf

least two witnesses. In movable object waqf, the presence of nazhir and/or mauquf alaih can be stated through a statement letter. If *mauquf 'alaih* is public, its presence is not mandatory. The statement of the waqf's will can be in the form of khairi waqf or member waqf, where the member's waqf is intended for the welfare of blood relatives. If the relatives of the expert waqf become extinct, their status will change to khairi waqf determined by the Minister based on the consideration of the Indonesian Waqf Agency (BWI).²²

In the process of making AIW, PPAIW (Waqf Pledge Deed Making Official) is responsible for ensuring that all administrative requirements are met and that the waqf pledge is carried out in accordance with applicable regulations. The Waqf Pledge Deed that has been prepared will include all important information regarding waqf, nazhir, *mauquf 'alaih*, as well as details of the property that is waqf. A copy of this deed is then submitted to the relevant parties to ensure transparency and accountability in the management of waqf assets.

This Government Regulation emphasizes the importance of clear procedures in the implementation of waqf to protect the rights of all parties involved and ensure that the social objectives of waqf can be achieved effectively.

In the Compilation of Islamic Law (KHI) Book III on the Law of Waqf, the waqf procedure is explained, where the party who wants to waqf his property can declare the waqf pledge in front of the Waqf Pledge Deed Making Official. The implementation of the pledge and the making of the Waqf Pledge Deed is considered valid if it is attended by two witnesses. When carrying out the pledge, the party who makes the waqf is obliged to submit proof of ownership of his property. If the property that is waqf is in the form of a movable object, it must be accompanied by a certificate from the Village Head which is strengthened by the local Sub-district Head, stating the ownership of the immovable object along with a written document that completes the object.²³

²² Article 30 of Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf

²³ Article 223 Compilation of Islamic Law Book III of Waqf Law

After all requirements are met, PPAIW will prepare a Waqf Pledge Deed which lists all details related to waqf, including the identity of the waqf, nazhir and the assets that are waqf. This deed serves as legal proof that the waqf process has been carried out legally and in accordance with applicable regulations.

Furthermore, PPAIW will issue a letter of ratification for nazhir and register waqf land with the Indonesian Waqf Agency and the local Land Office to obtain a waqf certificate. This process is important to ensure that waqf assets are managed properly and the benefits can be felt by the community in accordance with the intention of the waqf.

The above provision explains that waqf which is only based on a waqf letter made informally (not an authentic deed) has no legal force. Therefore, any form of physical control of waqf land, whether partial or total, that is carried out without the consent of the legitimate nazhir is considered an illegal and unlawful act.

In positive law, to ensure validity, waqf must also be fulfilled several elements such as waqf, nazhir, waqf property, waqf pledge and the allocation of waqf objects must be used as for the purpose set by the waqf in its pledge.²⁴ In the waqf pledge, the wakif (the waqf party) submits his property as waqf and is carried out in front of the Waqf Pledge Deed Making Officer (PPAIW).

The validity of waqf in positive law in Indonesia is highly dependent on the fulfillment of the above elements. If all these elements have been met, then waqf is considered valid and legally valid. If there is one element that is not fulfilled, such as a pledge not made in front of PPAIW or the waqf object that is waqf is still in dispute, then the waqf can be considered invalid according to the law.

In the decision Number 453/Pdt.G/2020/PA. It can be seen that the judge granted the Plaintiff's lawsuit in its entirety. The judge determined that the waqf carried out/pledged by Defendant III to Al-Irsyad Islamiyah Southeast Sulawesi was invalid according to the law because the implementation procedures were not based on the Law. In this case, it shows that the judge decided by considering the formality criteria in the

²⁴ Pasal 6 Undang-Undang Nomor 41 tahun 2004 tentang Wakaf

procedure for the implementation of waqf, as stipulated in Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf and Compilation of Islamic Law (KHI).

The judge also determined that the waqf letter between Defendant III and Al-Irsyad Islamiyah Southeast Sulawesi did not have binding legal force. This is because the letter was not officially made in accordance with the provisions stipulated in the Law. This affirmation shows that the judge prioritizes the legality aspect of the waqf document, which must be made officially and follows the formality process set by law. In the legal context, the importance of the legality of waqf documents cannot be ignored, because the document serves as valid evidence of the waqf's intention to waqf his property.

Non-compliance with this procedure may cause the waqf document to be considered invalid, as happened in this case. The judge seeks to maintain the integrity of the waqf system by emphasizing the importance of following the applicable legal procedures. Thus, the judge's decision reflects a commitment to ensure that all waqf transactions are carried out in a transparent manner and in accordance with the principles of Islamic law and existing laws and regulations.

In addition, the judge ruled that the waqf exercised or pledged by Defendant III to the Plaintiff was legal according to the law, and the Plaintiff was recognized as a legitimate nazhir to manage the waqf object. This decision shows that the judge considers the agreement between the relevant parties and the fulfillment of the waqf conditions stipulated in the Law and Compilation of Islamic Law. In this case, the judge assessed that all the procedures necessary to endow the property had been carried out correctly, including the waqf pledge made in front of PPAIW and witnessed by the necessary witnesses.

In the context of the validity of waqf, it is very important to note that waqf must meet several conditions, including the existence of a clear intention of the waqf to waqf its property, as well as the management carried out by the nazhir in accordance with applicable regulations. In this case, the judge considers that all of these conditions have been met, so that the waqf can be considered valid.

The judge's decision not only serves to resolve legal disputes between related parties, but also plays a role in strengthening the waqf system as a whole, which is also an important step in encouraging the growth and development of waqf in the community and can ultimately have a positive impact on the social and economic welfare of the people.

The judge's decision on the validity of land waqf from the perspective of Islamic law in Decision Number 453/Pdt.G/2020/PA. Kdi

From the perspective of Islamic law, waqf has a very significant role as a means to support the social and economic welfare of the community. Waqf is not only considered as a deed of worship, but also as a tool that can provide long-term benefits to the community. This concept is based on sharia principles that regulate the fair use of property and provide benefits to society. In addition, waqf also strengthens the principle of social justice in Islam by supporting the redistribution of wealth and ensuring access to economic resources for all levels of society.²⁵

Waqf is a teaching in Islam that aims to improve welfare and encourage the development of a more advanced civilization. The concept of waqf has been proven to be successful in funding various projects of Islamic civilization from generation to generation, as well as contributing to social and economic development. Since the time of the Prophet Muhammad SAW, waqf has been an integral part of the social life of Muslims.²⁶

In the modern era, waqf has again gained attention as an important instrument in economic development, with the potential to overcome poverty and social inequality through productive investment. With good and transparent management of waqf assets, the results can be channeled to education and health programs, showing that waqf is not just a

²⁵ Ahmad Riza Hidayat, dkk., "Manajemen Wakaf Dalam Perspektif Hukum Islam dan Undang-Undang No. 41 Tahun 2004," *Filantropi: Jurnal Manajemen Zakat dan Wakaf*, no. 1(2023): 15 <https://doi.org/10.22515/finalmazawa.v4i1.8029>

²⁶ Saprida, dkk., "Manajemen Wakaf Dalam Perspektif Hukum Islam dan Undang-Undang No. 41 Tahun 2004," *Ekonomika Sharia: Jurnal Pemikiran dan Pengembangan Ekonomi Syariah*, no. 1(2022): 60 <https://doi.org/10.36908/esh.v8i1.450>

donation of property, but also a form of social responsibility in building a better civilization.²⁷

With waqf, Muslims can make a direct contribution to the development of social infrastructure that provides benefits to the community at large. Historically, waqf has successfully funded various projects that not only strengthen the foundations of religion but also improve the quality of life of the community. For example, many universities and educational institutions are established using waqf funds, providing better access to education for future generations.²⁸

In the practice of waqf, individual property is not only used for personal interests, but also for the benefit of the community more broadly, such as providing access to education and health services to those in need. Waqf not only functions as a legal tool, but also as a means to achieve the moral and social goals taught in Islam. Therefore, efficient and sustainable waqf management is very important, not only at the local level but also has a significant impact at the national level.²⁹

Although the term waqf is not explicitly mentioned in the Qur'an, there are many verses that support the concept of giving property for the public interest and worship, which is basically related to the practice of waqf. Some verses of the Qur'an that explain the practice of waqf include QS. Al-Baqarah verse 267 and QS. Ali 'Imran Verse 92.

These two verses explain that giving our wealth for the public interest and worship is a very noble act and praised by Allah SWT. QS. Al-Baqarah verse 267 emphasizes the importance of spending part of our wealth for the good and glory of the hereafter. Meanwhile, QS. Ali 'Imran verse 92 also adds a moral and spiritual dimension to the giving of wealth. This verse shows that only when we are willing to give up something we love, including treasures, can we reach the level of perfection of faith and

²⁷ Redaksi BWI, "Simak Ini Lho! Manfaat Wakaf Produktif Bagi Pembangunan Ekonomi," *BWI*, 30 Oktober 2023, diakses 5 Oktober 2024, <https://www.bwi.go.id/9098/2023/10/30/simak-ini-lho-manfaat-wakaf-produktif-bagi-pembangunan-ekonomi/>

²⁸ Abdan Rahim, "Peran Wakaf Dalam Pengembangan Pendidikan Islam," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, no. 1(2019): 89-90 <http://dx.doi.org/10.35931/aq.v0i0.131>

²⁹ Ahmad Riza Hidayat, dkk., "Manajemen Wakaf Dalam Perspektif Hukum Islam dan Undang-Undang No. 41 Tahun 2004," 16.

piety. Thus, these two verses not only support the practice of waqf but also invite every Muslim to be generous and care about social life.

One of the hadiths that also explains the practice of waqf is a hadith about Umar bin Khattab who donated land in Khaibar, which means: *"From Ibn Umar ra, that Umar bin Khattab got a piece of land in Khaibar, then he went to the Prophet Muhammad (saw) to ask for directions. Umar said: 'O Messenger of Allah, I have obtained wealth in the form of very good land, which I have never obtained before. What will you suggest to me with that wealth?' The Prophet said: 'If you wish, you can endowment the principal and give alms with it.' Then Umar donated his land on the condition that it would not be sold, not granted, and not inherited. Umar gave his land to the poor, relatives, to free slaves, sabilillah, ibn sabil, and guests. It is not a sin for the one who takes care of it if he seeks or feeds from it in a good way and does not hoard."* (HR. Bukhari)

Based on the hadith, it can be understood that waqf is a form of charity that is highly recommended in Islam, where a person can donate his property for the public benefit and worship. In this context, Umar bin Khattab gave an example of how waqf is carried out in the right way and in accordance with the instructions of the Prophet Muhammad SAW. Waqf carried out by Umar is not only about handing over property, but also regulating its use for various social interests, such as helping the poor, relatives, freeing slaves, and supporting activities in the way of Allah. This shows that waqf has an important social dimension because the assets that are donated can provide sustainable benefits to the community.

This hadith emphasizes that the property that is waqf is not intended for sale, grant, or inheritance, to ensure that the benefits of the property can continue to be given to those in need.³⁰ Thus, the implementation of waqf exemplified by Umar bin Khattab became an example for Muslims in charity and sharing wealth, as well as strengthening social solidarity among community members. This is a real

³⁰ Muchlis Bahar, "Commercialization of Waqf Assets in the Perspective of Legislation and Islamic Law," *Legal Brief*, no. 4(2022): 2219-2226 <https://doi.org/10.35335/legal.v11i4.458>

example of productive waqf, where the assets that are waqf can still provide long-term results and benefits for many people.

The validity of waqf in Islamic law can be assessed based on the fulfillment of the established waqf pillars. These principles consist of several important elements that are interrelated, namely:³¹ First, *waqif* is a party who endows his property or assets with the intention of providing benefits to the community. Waqif must have a clear legal capacity and intention to waqf, so that there is no element of coercion or misunderstanding in the process.

Second, *mauquf 'alaih* is the party who receives the benefits of the waqf. *Mauquf 'alaih* can be an individual, group, or institution that is entitled to receive benefits from the goods that are waqf. In this context, it is important to ensure that *mauquf 'alaih* meets the conditions specified in Islamic law so that the beneficiaries can manage and utilize the waqf property properly.

Third, *mauquf* refers to goods or property that are waqf. This item must be something that has value and can be used sustainably. In this case, waqf can be in the form of movable objects such as money or vehicles, or immovable objects such as land or buildings. The existence of *a clear and well-defined mauquf is very important to ensure that waqf can be managed and utilized according to its original purpose.*

Fourth, *sighat* is a *statement of waqif* that shows the meaning of waqf, both explicitly (*sharih*) and implicit (*kinayah*). *This sighat* is an expression that must be said by the waqif when making the waqf pledge, and must be clear and not cause doubt about the waqf's intention to waqf his property. *This sighat* can be done orally or in writing, as long as it meets the applicable legal requirements.

Regarding the pillars of waqf that have been stipulated in Islamic law and are linked to the legal facts in the decision Number 453/Pdt.G/2020/PA. Kdi, it can be concluded unequivocally that Defendant III who has donated his land to Al-Irsyad Islamiyah Southeast Sulawesi has fulfilled all the necessary waqf pillars. These pillars include *waqif, mauquf 'alaih, mauquf, and sighat*. In this case, *the waqif* is the party

³¹ M. Mubasyar Bih, dkk., *Fikih Wakaf Lengkap Mengupas Problematika Wakaf, Masjid dan Kenaziran*, (Kediri: Lirboyo Press, 2018), 8.

who endows the land (Defendant III), while *the mauquf 'alaih* is Al-Irsyad Islamiyah Southeast Sulawesi as the recipient of the waqf. The goods that are waqf, namely the land that clearly has value and can be used for the public interest. Therefore, the waqf is valid.

The *sighat* or waqf statement made by Defendant III was made either orally or in writing in a valid waqf letter. This shows that the waqf pledge process has been carried out in accordance with the applicable legal provisions. *This sighat is* important because it is one of the pillars of waqf that must exist in order for waqf to be considered valid, this statement must be clear and does not contain conditions that can cancel the intention of the waqf. With the fulfillment of all these pillars, the waqf carried out by Defendant III is declared valid and has binding legal force.

In the decision Number 453/Pdt.G/2020/PA. It can be seen that the judge granted the Plaintiff's lawsuit to revoke the waqf status carried out by Defendant III to Al-Irsyad Islamiyah in the Southeast Sulawesi region. The judge said that the waqf was invalid and not based on the law and also stated that the waqf letter that had been made was invalid and did not have binding force against the object of the waqf. However, when viewed from the perspective of Islamic law, the waqf is considered valid because it has fulfilled all the pillars necessary for its implementation.

The practice of waqf in Islamic law emphasizes that the property that has been waqf cannot be withdrawn. This is based on the principle that after a person has donated his property, ownership of the property passes to Allah SWT, so that the wakif does not have the right to claim or take back the property that has been endowed. In a hadith narrated by Ibn Umar, the Prophet Muhammad PBUH emphasized that waqf should not be sold, granted, or inherited. This shows that waqf is permanent and must be used for public interest or worship. Imam Shafi'i and Imam Maliki emphasized that after the waqf is implemented, the waqf loses the right to ownership of the property. This is because waqf is a legal action that aims to separate and hand over part of their property so that it can be used permanently. In fact, if there are heirs who ask for the return of the property that has been waqf, it is considered a violation of the law. The

withdrawal of waqf assets by the heirs is not allowed and must be resolved through deliberation or mediation in the event of a dispute.³²

It is related to the practice of waqf as taught in Islamic law and is related to the problem in decision Number 453/Pdt.G/2020/PA. It can be concluded that the waqf made by Defendant III to Al-Irsyad Islamiyah Southeast Sulawesi cannot be withdrawn. This is because when the wakif waqf his property and pronounces the waqf pledge, the property is legally no longer the personal property of the waqf. In the context of Islamic law, waqf is considered a permanent act.

The waqf process involves several important pillars, including the sincere intention of the waqf to provide benefits to the community through the assets that are waqf. When the waqf pledges to voluntarily relinquish the ownership rights to the property and commit to transfer the benefits to *mauquf 'alaih*, in this case it is Al-Irsyad Islamiyah Southeast Sulawesi. Therefore, after the waqf pledge is pronounced, there is no longer any room for the waqf to withdraw the property, either orally or in writing. The judge's decision in this case emphasizes the importance of respecting the waqf pledge as part of a moral and legal commitment that must be complied with by all parties. It also reflects efforts to protect the integrity of the waqf system in Indonesia, so that people can feel safe and confident to participate in waqf activities without worrying about the withdrawal of assets they have donated.

In the decision Number 453/Pdt.G/2020/PA. It can be seen that the judge granted the Plaintiff's application to revoke the waqf status made by Defendant III to Al-Irsyad Islamiyah Southeast Sulawesi. The judge also granted the Plaintiff's application to make the Plaintiff a nazhir or the person in charge of the legal waqf object. However, if studied through Islamic law, the waqf is valid, irrevocable (revoked its waqf status) and cannot be transferred.

Table 1. The Difference Between Waqf Perspectives on Positive Law

³² Muhammad Wahyu Nugroho & Rozihan, "Penarikan Kembali Asset Wakaf Oleh Ahli Waris Wakif (Studi di Kecamatan Mranggen Kabupaten Demak)," *Jurnal Ilmiah Sultan Agung*, no. 1(2022): 1035
<https://jurnal.unissula.ac.id/index.php/IJMU/article/view/26834>

and Islamic Law

No.	Information	Positive Law	Islamic Law
1.	Pillars of Waqf	Wakif Nazhir Waqf property Waqf pledge Allocation of waqf property Waqf Term	<i>Waqif</i> (waqf) <i>Mauquf</i> (waqf thing) <i>Mauquf 'alaih</i> (the one who receives waqf) <i>Sighat</i> (Pledge of Waqf)
2.	Waqf Pledge	Carried out by the Wakif to Nazhir in front of PPAIW and witnessed by 2 witnesses Waqf pledge is carried out orally/in writing and stated in the waqf pledge deed	Waqf pledge is carried out orally/in writing The statement must be clear and does not contain conditions that can cancel the waqf
3.	Principle of Waqf	Forever or within a certain period of time in accordance with the waqf pledge	<i>Mu'abad</i> (forever/permanent)

Conclusion

Waqf is the act of withholding the use and giving of assets for charitable purposes, where the proceeds of the assets can be used without transferring ownership of the assets that are waqf. In the view of various sects, waqf does not only involve the management of property for social purposes, but also reflects the spirit of sharing in Islam. Waqf also emphasizes that waqf can hold the principal of property and donate the proceeds, making waqf a charity whose rewards continue to flow.

The concept of waqf in Islam is not explicitly explained in the Qur'an, but can be understood through verses that talk about *infaq fi sabilillah*,

such as QS. Al-Baqarah verse 267 and QS. Ali 'Imran verse 92, which emphasizes the importance of giving good wealth and loving the wealth that is given. The hadith of the Prophet Muhammad, especially the story of Umar bin Khattab who donated land in Khaibar, is also an important basis for understanding waqf as alms of jariyah whose rewards continue to flow. In Indonesia, waqf is regulated by positive laws, including Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006. This shows that waqf has become a respected and regulated practice in Indonesia's Muslim society, reflecting the social and spiritual value of this charity.

The implementation of waqf in Indonesia is regulated by Law Number 41 of 2004, Government Regulation Number 42 of 2006, and the Compilation of Islamic Law. The waqf pledge must be made in front of the Waqf Pledge Deed Making Officer (PPAIW) and witnessed by a minimum of two witnesses. The validity of waqf depends on the fulfillment of formal requirements, such as the existence of an official waqf letter. In the decision Number 453/Pdt.G/2020/PA. Kdi, the judge granted the Plaintiff's lawsuit because the waqf procedure between Defendant III and Al-Irsyad Islamiyah was not in accordance with the law. On the other hand, the waqf made by Defendant III to the Plaintiff was declared valid because it met the conditions set. Thus, the validity of waqf is highly dependent on the fulfillment of the provisions stipulated in the Law and the Compilation of Islamic Law.

The waqf given by Defendant III to Al-Irsyad Islamiyah Southeast Sulawesi is considered valid according to Islamic law because it has fulfilled all the pillars of waqf, namely waqif, mauquf 'alaih, mauquf, and sighat. Although the judge granted the Plaintiff's request to revoke the waqf status, from the perspective of Islamic law, the waqf was still recognized as valid. The principle of mu'abad is reflected in the nature of waqf which is permanent and irrevocable, so the validity of the waqf must be respected for the sake of the public interest and worship.

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