

IMPLEMENTING ALTERNATIVE DISPUTE RESOLUTION ON WAQF LAND CONFLICT OF ISLAMIC BOARDING SCHOOLS RAUDHATUL JADID AL JAZURI, MEUKEK DISTRICT, SOUTH ACEH

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Abstract

This article discusses a dispute over waqf land at the Raudhatul Jadid Al Jazuri Islamic boarding school in Meukek District, South Aceh Regency. A plot of land measuring 25 x 94 metres was donated by Lukman in 2005 and has been used for the boarding school's purposes. However, in recent years, a conflict has emerged due to differing views among the parties involved regarding the status and use of the land. This article highlights efforts to resolve the dispute so that the endowed land can continue to be used in accordance with its original vision. The author collected data from the field or within the community as part of the field research conducted for this study. Additionally, a qualitative approach was used, which is a research and understanding process based on methodologies that delve into social phenomena and human issues. Primary data was obtained through in-depth interviews, while secondary data was obtained from relevant literature surveys. The study's findings indicate that conflicting understandings about the nature of waqf land are the root cause of land conflicts at the Raudhatul Jadid Al Jazuri Islamic boarding school. Waqf land is considered permanent under Islamic law and Indonesian regulations. Any resolution related to waqf land must comply with applicable requirements.

Keywords: Waqf Land Disputes, Mediation, Non-Litigious Resolution, Islamic Boarding School.

Abstrak

Artikel ini membahas sengketa tanah wakaf di pesantren Islam Raudhatul Jadid Al Jazuri di Kecamatan Meukek, Kabupaten Aceh Selatan. Sebidang tanah seluas 25 x 94 meter disumbangkan oleh Lukman pada tahun 2005 dan telah digunakan untuk keperluan pesantren. Namun, dalam beberapa tahun terakhir, perselisihan muncul akibat perbedaan pandangan di antara pihak-pihak terkait mengenai status dan penggunaan tanah tersebut. Artikel ini menyoroti upaya penyelesaian sengketa agar tanah wakaf dapat terus digunakan sesuai dengan visi awalnya. Penulis mengumpulkan data dari lapangan atau dalam komunitas sebagai bagian dari penelitian lapangan yang dilakukan untuk studi ini. Selain itu, pendekatan kualitatif digunakan, yaitu proses penelitian dan pemahaman yang didasarkan pada metodologi yang mendalami fenomena sosial dan masalah manusia. Data primer diperoleh melalui wawancara mendalam, sedangkan data sekunder diperoleh dari tinjauan literatur yang relevan. Temuan studi ini menunjukkan bahwa pemahaman yang bertentangan tentang sifat tanah wakaf merupakan akar penyebab sengketa tanah di Pesantren Islam Raudhatul Jadid Al Jazuri. Tanah wakaf dianggap permanen menurut hukum Islam dan peraturan Indonesia. Setiap penyelesaian terkait tanah wakaf harus mematuhi persyaratan yang berlaku.

Kata kunci: Aceh Selatan, Mediasi, Pesantren, Penyelesaian Sengketa dan Tanah Wakaf

INTRODUCTION

Wakaf is a highly beneficial practice in Islam, benefiting both the community and the individual who makes the donation. How could it not be? If someone wants to receive continuous rewards after death, one way is by donating their wealth, which has been given by Allah, to other Muslims for the common good.¹

In the Indonesian legal context, disputes over wakaf land are governed by several laws and regulations that provide the legal basis for resolving such cases. The following is an explanation of the legal basis for resolving disputes over wakaf land, as outlined in the first piece of legislation, Law No. 41 of 2004 on Wakaf. This is the primary law governing wakaf. Article 62 states that disputes over wakaf may be resolved through mediation, arbitration, or litigation. This means that non-litigious resolution

¹Retno Ika Lestari Widiyanti, "Wakaf or Sadaqah Jariyah During Ramadan, Its Unique Characteristics," Indonesian Waqf Agency, 2022, <https://www.bwi.go.id/7915/2022/04/05/wakaf-atau-sedekah-jariyah-saat-ramadan-ini-keistimewaannya/>.

(such as mediation) is legally permissible. Article 62(1) and Article 62(2). Thus, legally, consultation or mediation is the first recommended step in resolving wakaf disputes before proceeding to formal legal channels.²

Second, Government Regulation No. 42 of 2006 on the Implementation of the Wakaf Law. This regulation implements Law No. 41 of 2004. Article 55 also emphasizes that disputes regarding wakaf property must first be resolved through family-based consultation.³ Third, the Compilation of Islamic Law (KHI). Although not at the level of a law, the KHI serves as a reference in Islamic law in religious courts. In the KHI, waqf is part of Islamic property law, and its resolution may also be conducted through consultation before proceeding to formal legal proceedings.⁴ Fourth, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution reinforces that Alternative Dispute Resolution (ADR), including mediation, is a valid and legally recognized means of resolving conflicts outside of court.⁵

The resolution of disputes over endowed land, such as the case at the Raudhatul Jadid Al Jazuri Islamic Boarding School in Meukek District, is entirely in line with the national legal framework if conducted non-litigiously through mediation or consultation, as mandated by Law No. 41 of 2004 and Government Regulation No. 42 of 2006. If no agreement is reached, it may then be brought to court.⁶

Enhancing the importance of waqf is a wise step that can improve overall well-being. Unfortunately, waqf is often not implemented systematically or efficiently, resulting in the improper maintenance of waqf assets. These assets are frequently neglected or illegally transferred to other parties.⁷ The indifference or lack of understanding among the public

² Government of the Republic of Indonesia, "Law Number 41 of 2004 on Waqf," *Bwi.Go.Id*, no. 1 (2004): 1-40.

³ Government Regulation, "Government Regulation of the Republic of Indonesia No. 42 of 2006," 2006, 2-3.

⁴ RIDWAN Istanto Sukamto, "STUDY ON THE IMPLEMENTATION OF ARTICLE 218 OF THE COMPILATION OF ISLAMIC LAW ON WAQF LAW AT THE RELIGIOUS AFFAIRS OFFICE OF PATTALASSANG DISTRICT," 2017, 111.

⁵ Muladi, "Analysis of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution," *Islamic Circle 2*, no. 1 (2021): 41-51, <https://doi.org/10.56874/islamiccircle.v2i1.472>.

⁶ Government of the Republic of Indonesia, "Law No. 41 of 2004 on Waqf."

⁷ Bashlul Hazami, "The Role and Application of Waqf in Achieving the Welfare of the People in Indonesia as One Form of Worship to Draw Closer to God," *Journal of Analysis* XVI, no. 1 (2016): 173-204.

regarding the status of waqf assets, which should be protected for the public good in accordance with the purpose, function, and intent of waqf, also contributes to the current situation. This is also caused by Nazhir's negligence or inability to manage and develop waqf assets.⁸

Since Allah SWT owns all zakat (charity) in any form, including land and other assets, such charity cannot be taken or altered.⁹ A waqf's assets are often disposed of, either by the waqif or their family, leading to disputes over the assets. One common way for people to resolve differences without going through formal legal proceedings is through non-litigation dispute resolution, often known as out-of-court settlement. This is especially true at the village level. Because it helps maintain social ties between the parties involved while saving time and money, this method is considered more efficient. Mediation or dispute resolution is one of the most commonly used methods of non-litigation dispute resolution. In this procedure, the disputing parties meet with the assistance of a neutral mediator to reach a mutually acceptable agreement.¹⁰

In the case in question, the mediation process was conducted in two stages. The first mediation was conducted at the village level, facilitated by village officials, including the village head, traditional leaders, and other community figures. At this stage, each party to the dispute is allowed to express its opinions, present evidence, and state its reasons for doing so. This mediation aims to bring together the parties' perceptions and find common ground that can resolve the issue amicably. However, in reality, the first mediation failed to produce an agreement because both parties remained firm in their positions and were unwilling to compromise.

Seeing that the situation had not been resolved, the mediation was continued to the second stage with the involvement of more authoritative parties. The sub-district head attended the second mediation, along with the Head of the Religious Affairs Office (KUA) and waqf administrators. Their presence aimed to strengthen the mediation process with a more objective

<http://ejournal.radenintan.ac.id/index.php/analisis/article/viewFile/742/633>.

⁸ Puan Salsabila Afzal, "WAQF LAND IN KRUENG SABEE DISTRICT, ACEH JAYA REGENCY: THE RESPONSIBILITY OF THE WAQF ADMINISTRATOR IN MANAGING AND DEVELOPING WAQF LAND IN KRUENG SABEE DISTRICT, ACEH JAYA REGENCY INTRODUCTION Waqf is a form of charitable donation encouraged for those who are financially capable" 8, no. 1 (2024): 88-95.

⁹ Rachmadi Usman, *Waqf Law in Indonesia* (Jakarta: Sinar Grafika, 2009).

¹⁰ Baiq Ratna Mulhimmah, *Alternative Dispute Resolution Based on Local Wisdom* (CV. Alfa Press Creative, 2023).



perspective and enforce regulations based on applicable laws. The sub-district head represented the sub-district government and had the authority to assist in resolving administrative and social issues within his jurisdiction. Meanwhile, the KUA was present because the issue discussed involved religious matters, specifically regarding waqf, thus requiring an explanation of Islamic law and the regulations governing waqf. The waqf administrators also played a crucial role in explaining the origin and status of the waqf land to prevent misuse or misinterpretation of the donor's intentions.

Mediation at this stage is more serious and guided because it involves parties with a higher level of legal understanding and authority. After hearing explanations from each party and considering existing documents and legal considerations, a mutual agreement is reached and signed by all parties. This agreement typically includes clarity on land boundaries, rights to use the land, and a commitment from each party to resolve the issue peacefully and refrain from pursuing legal action. In practice, such mediation is highly beneficial for communities in resolving conflicts without causing social discord. The community feels more valued, and the resolution process is fair and transparent.

Waqf land disputes are one of the issues that often arise in society, especially when there are differences in understanding between the waqf donor and their heirs regarding the status and legal position of the land that has been donated as waqf. However, from an Islamic legal perspective, waqf is a charitable act that is binding and perpetual (*muabbad*), and cannot be revoked after it has been declared, either by the waqf donor or by their heirs. Waqf assets should be used sustainably for the benefit of the community in accordance with the original purpose of the waqf donor.¹¹

Such issues also arise at the Raudhatul Jadid Al Jazuri Islamic Boarding School located in Meukek District, South Aceh Regency. The land in question was originally private property belonging to a resident named Lukman, measuring approximately 25 meters by 94 meters. Lukman's original intention was for the land to be used to build an Islamic boarding school that would benefit the community, particularly in the fields of education and the development of Islamic values. This intention was realised with the official establishment of the Raudhatul Jadid Islamic Boarding School on May 22, 2005, and since then, the boarding school has been actively conducting religious education activities.

¹¹ Sulaiman, *Waqf Management in Indonesia* (Yogyakarta: UII Press., 2018).

However, some time after the donor (the late Lukman) passed away, a claim to ownership of the endowed land was raised by the late donor's biological children. This claim sparked a dispute between the heirs and the Raudhatul Jadid Al Jazuri Islamic boarding school. This dispute has caused significant tension, as the boarding school maintains that the land was legally endowed and has been used for educational and religious purposes all along. The boarding school argues that this dispute not only contradicts the principles of Islamic law regarding the perpetuity of waqf but also has the potential to disrupt social stability and hinder the continuity of educational processes that have provided tangible benefits to the surrounding community.

The issue becomes even more complex when considering the public's limited awareness of the positive legal rules governing endowments, as well as their limited understanding of Islamic law regarding the perpetuity of endowed property. Therefore, it is essential to examine the resolution of the endowed land dispute from multiple perspectives, including Islamic law and positive law in Indonesia, as well as the community's perception of the issue.

Thus, this study aims to comprehensively examine the issues surrounding wakaf land disputes at the Raudhatul Jadid Al Jazuri Islamic Boarding School in Meukek District, including tracing the background of the conflict, understanding the community's views on the dispute, and analysing the perspectives of Islamic law and positive law regarding the status of wakaf assets that have been utilised for the benefit of education and the wider community.

RESEARCH METHOD

Empirical legal techniques were used in the qualitative investigation of this study. The resolution of land disputes related to waqf land at the Raudhatul Jadid Al Jazuri Islamic Boarding School in Meukek District was explained and analysed in detail using this technique. By examining the procedures used to resolve this property dispute through the lens of positive law and fiqh muamalah (Islamic law in transactions), this study aims to gain a better understanding of the applicable Islamic legal framework. Content analysis, as a qualitative research approach, is used to identify the principles, standards, and ideals of justice embedded in field data, legal texts, and the

Law.¹²

The results of this study were compiled using primary and secondary sources of information. Primary sources include records kept by Islamic boarding schools and other organisations, such as waqf deeds, land ownership evidence, and documents related to dispute resolution. Additionally, individuals familiar with the conflict resolution process from the Religious Affairs Office, as well as guardians, heirs, community leaders, and other relevant stakeholders, were interviewed directly to collect primary data. Academic books, scientific journals, previous research, and other reading materials discussing waqf law, land dispute resolution, fiqh muamalah (Islamic law in transactions), and national laws related to waqf form the secondary data set.¹³

RESULTS AND DISCUSSION

A. The Concept of Waqf According to Positive Law and Islamic Law

1. Term of Waqf

Wakaf is a term derived from the Arabic words al-waqf and al-habsu, which themselves originate from the verb habasa-yahbisu-habsan, meaning to hold back, stop, or restrict. Another meaning of al-habsu in this context is the seizure of private property and its transfer to a public or religious entity for the benefit of that entity's mission. This changes the legal status of the property from private property that cannot be sold or inherited to property provided for religious purposes and future benefits.¹⁴ Additionally, waqf, in its technical definition, is the process of transferring ownership of immovable property (land, buildings, etc.)¹⁵ To public interest organisations or religious institutions, please Allah SWT. Due to the dissolution of private ownership, the property cannot be inherited, sold, or given away. However, the community may utilise the benefits of the property, provided that it does not

¹²T. Le, J. K., & Schmid, *Innovation in Research Methods. Organisational Research Methods*, 2022.

¹³ Literature Research is a series of activities related to the methods of collecting library data, reading, and recording as well as processing research materials.

¹⁵ Zawawi et al., "Waqf and Sustainable Development Law: Models of Waqf Institutions in the Kingdom of Saudi Arabia and Indonesia," *Ijtihad: Journal of Islamic Law and Humanitarian Discourse* 23, no. 1 (2023): 93–114, <https://doi.org/10.18326/IJTIHAD.V23I1.93-114>.

damage the core of the property.¹⁶

The practice of waqf in Islam is highly valued as an act of charity because it continues to provide benefits even after the donor (waqf) has passed away. The words of the Prophet Muhammad are recorded in a sahih hadith narrated by Muslim, which states: "*When a child of Adam dies, his deeds come to an end except for three things: ongoing charity, beneficial knowledge, and a righteous child who prays for him*" (HR. Muslim)

Wakaf falls under the category of ongoing charity, which is a type of charity whose rewards continue to flow as long as the asset is used for a good purpose. This is why wakaf is referred to as an investment for the afterlife, as its benefits are not only felt by the recipients but also by the donor themselves, who continues to receive rewards even after their death.¹⁷ For example, someone donates a piece of land for the construction of a mosque, a boarding school, a hospital, a school, or a clean water well. As long as the community uses the building or facility, the rewards continue to flow to the donor. Even when the building is renovated or expanded by future generations, the benefits do not cease, because the original intention of the endowment was for the community's benefit.

In Indonesia, regulations regarding waqf have undergone significant development in line with the increasing public awareness of the importance of waqf as one of the instruments of Islamic economics. To date, the Indonesian government has issued approximately 13 regulations related to waqf. These regulations encompass various aspects, including definitions and implementation, as well as management and supervision of the waqf. The latest regulation that serves as the legal basis for implementing waqf in Indonesia is Law No. 41 of 2004 concerning Waqf, reinforced by its implementing regulation, namely Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004. This law was enacted as a manifestation of the government's commitment to regulate and develop the potential of waqf to be more productive and make a genuine contribution to national development, particularly in the fields of religion, education, social welfare, and the community's economy. One of the critical points in Law No. 41 of 2004, as stated in Article 1 paragraph (1), states that:¹⁸ "*Wakaf is a legal act*

¹⁶ Retno Ika Lestari Widianti, "Wakaf or Sadaqah Jariyah During Ramadan: Its Unique Characteristics."

¹⁷ Sri Maharani, "Cash Waqf from the Perspective of Scholars," *METADATA Scientific Journal* 2, no. 3 (2020): 170-86, <https://doi.org/10.47652/metadata.v2i3.29>.

¹⁸ Government of the Republic of Indonesia, "Law No. 41 of 2004 on Waqf."

by the Wakif to separate and/or transfer part of his property to be utilised permanently or for a specific period in accordance with his interests for worship and/or public welfare in accordance with Sharia law."

With this definition, wakaf is not merely understood as the physical transfer of assets such as land or buildings for a mosque or madrasah, but has evolved to include cash wakaf (wakaf uang) and other assets that can be managed productively. Article 22 of Law No. 41 of 2004 states that the Nazhir, who is the party receiving and managing the wakaf property, is obligated to manage and develop the wakaf property in accordance with its purpose, function, and designation. The article states:¹⁹ *"The Nazhir is obligated to manage and develop wakaf assets in accordance with their purpose, function, and intended use."*

This means that waqf assets must not be left unused but must be utilised to achieve optimal value and results for the benefit of the community. The government has also provided a legal framework for professional nazhir by establishing the Indonesian Waqf Board (BWI) as an independent institution tasked with fostering, supervising, and developing national waqf. Through this legal framework, it is hoped that wakaf can become an essential component in the economic development of the Muslim community in Indonesia. The immense potential of wakaf, whether in the form of land, buildings, or cash, can serve as an effective alternative solution to various social issues, such as poverty, education, and public health services, if managed properly and professionally.²⁰ To achieve the vision and functions of wakaf, wakaf assets can be categorized as follows:

- 1) Religious facilities and activities
- 2) Educational institutions and events, including healthcare services
- 3) Assistance for the poor, orphans, abandoned children, and scholarships
- 4) Progress and growth in the national economy, along with
- 5) Developing other public welfare that does not conflict with Sharia law and regulations.

Enhancing the importance of waqf is a wise step that can improve overall welfare. In many cases, waqf assets are not adequately maintained because waqf is not implemented systematically and effectively in society. These assets are often neglected or illegally transferred to other parties. This

²⁰ Muhammad Syaiful Bahri, *Management and Development of Unregistered Mosque Endowment Land in Soreang District, Parepare City* (State Islamic Institute, 2021).

issue stems from the community's attitude, as well as Nazhir's inability or negligence in managing and developing waqf assets, which should be preserved for the benefit of all parties, in line with the waqf's vision, function, and objectives.²¹

2. Principles and Conditions of Waqf

In Islamic law, the mujtahid imams, who are distinguished scholars with authority in *ijtihad* and legal rulings, hold varying views on various aspects of waqf implementation. These differences arise due to the methods of *istinbath* (derivation of legal rulings) and the approach to the legal evidence (*dalil syar'i*) used by each school of thought, such as the Hanafi, Maliki, Shafi'i, and Hanbali schools. Although there are differing opinions on specific technical aspects of the implementation of waqf – such as the requirement for the perpetual nature of waqf property or the permissibility of waqf for a particular period – they agree that the establishment of a waqf institution requires certain essential elements and conditions that must be fulfilled for the waqf to be valid according to Islamic law.

The rukun of wakaf are the fundamental elements that form the basis of a wakaf transaction. In Arabic, the term "*rukun*" means "corner" or "pillar," which in legal terms refers to the most fundamental and indispensable components of an act or transaction. Without these rukun, a legal act such as a waqf would be incomplete or even invalid. The rukun of waqf, as agreed upon by the majority of scholars, includes four elements:²²

- 1) Waqif, or the person donating their property
- 2) Mauquf bih, or the property being donated
- 3) Mauquf alaih, the purpose for which the waqf is intended. Mauquf alaih can be considered the party entitled to the proceeds from the management of the waqf.
- 4) Sighat, or the declaration of the endowment made by the waqif.

According to the Hanafi school of thought, the elements of waqf differ significantly from those of other schools of thought. Hanafi scholars argue that there is only one element of waqf, namely the waqf contract itself, which is manifested in the form of an offer or statement from the waqif (the person donating the property).

²¹ Ahmad Mujahidin, *Indonesian Waqf Law and the Process of Dispute Resolution*, (Jakarta: Kencana 2021), p. 235.

²² Abdul Halim, *Law on Waqf in Indonesia* (Jakarta: CIPUTAT PRES, 2005).

In their view, the acceptance (statement of acceptance of the waqf) by the recipient is not included in the elements, as, according to the Hanafi school, the waqf contract is not mutually binding like a sale or gift. Therefore, once the wakif clearly states the declaration of wakaf, the wakaf contract is considered valid and binding, without the need for approval or acceptance from the recipient of the wakaf (*mauquf 'alaih or nazhir*). The Hanafi school also emphasises that since wakaf is an act of charity of a *ta'abbudi* (worship) nature, the intention and statement of the wakif are sufficient to make it valid. The contract itself is of a "ghairu lazim" (non-binding) nature, and thus differs from commercial transactions.

This difference must be understood within the context of the fiqh system adopted, as in other schools of thought, such as the Shafi'i and Hanbali schools, where both *ijab* and *kabul* are considered part of the rukun wakaf. Therefore, in the context of comparative fiqh, the Hanafi school of thought provides a unique convenience in the practice of wakaf, especially in situations where the recipient cannot immediately give their consent.²³

The view of the majority of scholars from the Shafi'i, Maliki, and Hanbali schools of thought is that the pillars of waqf consist of four pillars, or primary elements of waqf:

- 1) the presence of the waqif (the person making the waqf),
- 2) the beneficiary (the recipient of the waqf),
- 3) The object of the waqf (the property being donated), and
- 4) *Sighat*.

B. Analysis of the Resolution of Waqf Land Disputes at the Raudhatul Jadid Al Jazuri Islamic Boarding School in Meukek District

Based on interviews with the head of the Islamic boarding school, Tgk. Mohd Jazuri Syam, it was found that a piece of land measuring 25 x 94 metres was donated by a resident named Lukman in 2005. The land was initially intended for the construction of an Islamic boarding school to benefit the community, and has been actively used for Islamic education activities. Over the years, no conflicts or claims have ever arisen from any party regarding the land.²⁴

However, after Lukman (the donor) passed away, differences of opinion

²³ Rachmadi Usman, *Waqf Law in Indonesia*.

²⁴ "Interview Results with the Head of the Meukek District Islamic Boarding School on 4 March 2025."

arose among his family members, particularly his biological children, regarding the status of the donated land. This has led to a conflict with the Islamic boarding school, which is the beneficiary of the funds. Legally, questioning the status of donated land contradicts the fundamental principles of donation, which are permanent (*muabbad*) and cannot be altered once declared. Tgk. Mohd Jazuri Syam explained that:

“Mohd Jazuri Syam explained that endowed land cannot be contested because its ownership has become the property of the state and falls under the authority of the Ministry of Religion (Kemenag). If any issues arise regarding the land, the resolution will involve the Indonesian Endowment Board (BWI). He also emphasized that the Islamic boarding school is prepared to report the matter to the endowment administrators for handling in accordance with applicable legal provisions”.

This statement demonstrates a strong understanding on the part of the *pesantren* regarding the status of waqf land as a legal entity protected by law. In this case, Law No. 41 of 2004 on Waqf and its implementing regulations stipulate that property donated as waqf cannot be transferred or withdrawn by heirs or other parties. Another issue complicating the situation is the legal status of the land certificate, according to Tgk. Mohd Jazuri Syam, the wakaf declaration deed has existed since the beginning, but the official wakaf certificate from the National Land Agency has not been issued due to a conflict.²⁵ He stated: “*The certificate does not yet exist; only the deed is available. It could not be issued earlier due to issues.*”

However, in the latest development, the wakaf certificate has been successfully issued, although the *nazhir* does not directly hold it. The certificate is now at the *Kuakeut* office as evidence that the land has been incorporated into state management through the Ministry of Religion and the Indonesian Wakaf Agency. “The wakaf certificate also exists... But it's not with the *nazhir*; the certificate is kept at the *kuakeut* office, so it belongs to the state.”

Tensions have escalated as the wakif's family continues to question the status of the wakaf land and plans to take the matter to court. In response, the *pesantren* has stated its readiness to face the legal process in accordance with applicable regulations. Tgk. Mohd Jazuri Syam noted that if the case is indeed brought to court, relevant institutions such as the prosecutor's office and the Indonesian Waqf Board (BWI) will be involved in the resolution process.

The land dispute at the Raudhatul Jadid Al Jazuri Islamic Boarding

²⁵ Government of the Republic of Indonesia, “Law Number 41 of 2004 on Waqf.”

School in Meukek District reached a critical point, drawing the attention of the Indonesian Waqf Board (BWI) and the Ministry of Religion. In an effort to resolve the issue, the parties involved have conducted various mediations; however, since the disputing parties remain steadfast in their claims, the case is planned to be brought to court. Furthermore, preparations have been made to proceed to the Supreme Court, involving the prosecution. If the case does indeed proceed to court, there is a high likelihood that the party making the claim will lack sufficient legal grounds to defend it.

Furthermore, this issue has also attracted the attention of various community leaders and local government officials. Sub-district officials, village heads, and other elements have played a role in mediating the issue to prevent it from developing into a wider conflict. This demonstrates that the waqf land dispute encompasses not only religious aspects but also interrelated social, legal, and governmental dimensions.

Waqf is defined as a legal act by the wakif to separate and/or transfer part of their property to be used permanently in accordance with their interests for worship and/or public welfare based on sharia. Property that has been donated as waqf cannot be transferred, either by the wakif or their heirs, because it has become the property of Allah SWT. The wakaf process requires the presence of a wakaf declaration () made orally or in writing to the nazir as the manager. Provisions regarding wakaf are regulated in Law Number 41 of 2004 on Wakaf, and reinforced in the Compilation of Islamic Law (KHI) through Presidential Instruction Number 1 of 1991.²⁶

Although the endowment process is clearly regulated in Law No. 41 of 2004 on Endowment and reinforced through Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI), in practice, many endowment practices in society do not align with these legal provisions. One of the issues that frequently arises is the filing of lawsuits against wakaf land by the wakif themselves or their heirs after the wakif's death.

The dispute over waqf land at the Raudhatul Jadid Al Jazuri Islamic Boarding School in Meukek District is closely related to the weak formal legality of the waqf process. One of the leading causes is that the waqf process was only carried out verbally without being accompanied by a valid waqf deed (AIW). However, under Indonesian law, this document should be drawn

²⁶ PRESIDENT OF THE REPUBLIC OF INDONESIA, "Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law by the President," *Demographic Research*, 1992, 1-2.

up in the presence of a Wakaf Deed Officer (PPAIW) to ensure that the status of the wakaf land is officially recorded and legally protected. The absence of such formal documentation weakens the legal standing of the land, rendering it susceptible to future claims or disputes.²⁷

Second, in some cases, wakaf disputes may arise because the wakif or their heirs do not fully understand the meaning and legal consequences of the wakaf act. This lack of understanding can lead to future claims or disagreements, especially when subsequent generations feel they have a claim to the wakaf property. This condition is one of the triggers of waqf land disputes, as occurred at the Raudhatul Jadid Al Jazuri Islamic boarding school, necessitating appropriate legal and mediation approaches to resolve it.

This situation also occurred at the Raudhatul Jadid Al Jazuri Islamic boarding school located in Meukek District, South Aceh Regency. A piece of land measuring 25 x 94 metres was donated by a resident named Lukman, with the intention of building an Islamic boarding school on the land to provide Islamic education for the surrounding community. This endowment has been in effect since 2005 and has been actively utilised by the boarding school.

However, over time, after the death of the waqf, conflicts arose regarding the status of the waqf land. These conflicts were allegedly triggered by the absence of an official waqf certificate and a lack of understanding or acceptance on the part of the waqf's family regarding the legal and religious implications of a waqf, which is a permanent and irrevocable arrangement. This situation led to disputes that required resolution through legal and deliberative approaches to preserve the purpose of the waqf.

The intentions and objectives of the waqf were officially fulfilled with the establishment of the Raudhatul Jadid Islamic Boarding School on May 22, 2005. However, later on, a conflict arose between the waqf's family and the Islamic boarding school regarding the status of the waqf land. The Islamic boarding school considered that the actions of the waqf's family had violated Islamic law and disrupted the smooth operation of religious activities that had been ongoing for many years.

Regarding the resolution of the endowment dispute, the dispute can be resolved through two channels: litigation (court proceedings) and non-litigation (outside the court). The non-litigation channel is preferred, with the

²⁷ Samsidar, "The Urgency of Deed of Waqf as Evidence in Resolving Waqf Disputes," *Journal of Supremacy* 11, no. 2 (2016): 138–44.

resolution process proceeding through consultation for mutual agreement, mediation, arbitration, and, if necessary, through the court. The stages of the dispute resolution process for waqf are as follows:

1) Consultation

Dispute resolution begins with a consultation between the parties involved to reach a consensus. This is conducted between the pesantren and the heirs (Mr. Lukman's children). The purpose is to clarify that the land has been legally endowed (as evidenced by the deed of endowment) and is no longer private property. If the consultation is successful, a peace agreement can be drawn up.

2) Mediation

Mediation is a method of dispute resolution outside of court, facilitated by a neutral third party known as a mediator. The mediator assists the disputing parties in communicating, understanding each other's interests, and finding a mutually acceptable solution. In the context of a wakaf land dispute, mediation can be conducted if the meeting fails to produce results, with the hope of reaching a peaceful agreement without resorting to formal legal proceedings.²⁸ If mediation fails, assistance can be sought from the Indonesian Waqf Board (BWI) or the local Religious Affairs Office (KUA) as mediators. BWI can mediate and explain the legal status of the waqf land.

3) Arbitration

Arbitration is a method of dispute resolution outside of court, conducted by one or more arbitrators appointed and agreed upon by the parties to the dispute. The arbitrator will hear the arguments of both parties, examine the evidence, and then issue a final and binding decision. Arbitration is often chosen because the process is faster, confidential, and does not involve the complex legal procedures of a court. In cases of endowment land disputes, arbitration can be an alternative if mediation and conciliation fail to reach an agreement.²⁹ If mediation fails, the dispute

²⁸ Zephany Susanto, Renny Supriyatni, and Betty Rubiati, "A Legal Review of Mediation in Waqf Land Disputes in Religious Courts in Relation to Law No. 50 of 2009 on the Second Amendment to Law-Law No. 7 of 1989 on Religious Courts and Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts," *Journal of Law and Human Rights Wara Sains* 3, no. 02 (2024): 197–212, <https://doi.org/10.58812/jhhws.v3i02.1078>.

²⁹ KHANZA JASMINE, "Resolution of Waqf Disputes Through Litigation and Non-Litigation Muhammad," *Addition of Sodium Benzoate and Potassium Sorbate (Anti-inversion) and Stirring Speed as Efforts to Inhibit Inversion Reactions in Sugar Cane Juice XI* (2014): 184–96.

may be brought before a sharia arbitration body for resolution, provided that both parties agree to resolve the dispute through a sharia arbitration institution, such as the National Sharia Arbitration Board (BASYARNAS). The arbitration decision is final and binding and cannot be appealed or overturned.

- 4) Court: If all non-litigation efforts fail, the dispute may be resolved in a Religious Court or Sharia Court.

Regarding the dispute over wakaf land at the Raudhatul Jadid Al Jazuri Islamic Boarding School in Meukek District, the boarding school has rejected the claim filed by the wakif's family because the land was legally donated as wakaf and has been used for religious activities for nearly two decades. According to Islamic law and Article 40 of Law No. 41 of 2004, endowed property cannot be sold, inherited, exchanged, or seized. Article 42 states that a transfer may only be made under certain conditions, with the permission of the Minister of Religion and consideration by the Indonesian Endowment Board (BWI). Therefore, heirs have no authority to revoke the endowment. The Islamic boarding school has been fulfilling the late donor's trust by using the land for Islamic education since 2005.

CONCLUSION

The ownership dispute over the endowed land at the Raudhatul Jadid Al Jazuri Islamic boarding school in Meukek District reflects the limited understanding among some community members, particularly the heirs of the endower, regarding the fundamental principles of endowment under Islamic law and Indonesian positive law. However, from an Islamic legal perspective, waqf is perpetual (muabbad). It cannot be revoked once declared, as the property donated through waqf transfers ownership to Allah SWT and must be used for the benefit of the community on an ongoing basis. This dispute not only creates legal conflicts but also impacts the stability of the pesantren's activities, which have played a crucial role in education and religious upbringing for the surrounding community. --- If you wish to develop this further as a legal background or analysis, I am ready to assist.

Under national law, Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006 stipulate that disputes over waqf land must first be resolved through non-litigious means such as mediation and conciliation. In

this case, dispute resolution efforts were conducted gradually through village-level consultations and mediation by authorised parties such as the District Head and the Religious Affairs Office. Although the process encountered deadlocks, the wakaf land certificate was eventually issued, demonstrating that the state recognises the land of the " " as a valid and legally protected wakaf asset.

One of the triggers for the land dispute at the Raudhatul Jadid Al Jazuri Islamic boarding school in Meukek District is the absence of a waqf certificate at the time of the initial waqf, coupled with low legal literacy regarding waqf among the families of the waqf donors. Despite this, the boarding school possesses a valid waqf declaration deed and has been utilizing the land in accordance with the waqf's purpose, which is to provide Islamic education. Therefore, the claims made by the heirs lack a strong legal basis, both according to Islamic sharia law and Indonesian positive law. This issue underscores the importance of strengthening waqf administration and increasing public awareness of the legal status of property donated as waqf.

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