

Settlement of Productive Waqf Disputes from the Perspective of Law Number 41 of 2004 on Waqf

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Abstract:

Waqf as a solution to achieve the economic stability of the ummah certainly aims to gain benefits. Waqf is inseparable from the potential for disputes that will actually reverse the purpose of waqf from benefit to the emergence of harm. One of the disputes arising from this is the dispute over productive waqf in the form of rice fields in Panyampa Village, Campalagian District. The rice field was endowed by the As-Salafi Foundation as a productive waqf. As a result of the lack of proof of ownership of the rice field by the previous owner, a dispute arose with a claim from another person over the rice field. This research was conducted with the aim of providing understanding and raising awareness to the community, especially in Campalagian District, of the importance of paying attention to the management and management of waqf assets. The method used in this research is empirical research with a qualitative approach. The research was conducted by conducting semi-structured interviews with several informants related to waqf assets. The results showed that the dispute occurred due to a claim from the family of the original owner of the rice field, more precisely Puang Hasan's brother-in-law. The settlement was carried out by mediation without going through the deliberation process. The mediation was conducted by the Police, because the Religious Affairs Office felt that it did not have the responsibility to resolve waqf disputes. The settlement of productive waqf disputes in Panyampa Village is in accordance with the provisions of Law No. 41/2004 on Waqf.

Keywords: Productive Waqf, Dispute, Settlement.

Penyelesaian Sengketa Wakaf Produktif Perspektif Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf

Abstrak:

Wakaf sebagai solusi untuk mencapai kestabilan ekonomi umat tentunya bertujuan untuk mendapatkan kemaslahatan. Wakaf tidak terlepas dari potensi terjadinya sengketa yang justru akan membalikkan tujuan wakaf dari kemaslahatan menjadi timbulnya kemudharatan. Salah satu sengketa yang timbul akibat hal tersebut adalah sengketa wakaf produktif berupa sawah di Desa Panyampa Kecamatan Campalagian. Sawah tersebut diwakafkan oleh Yayasan As-Salafi sebagai wakaf

produktif. Akibat dari tidak kuatnya bukti kepemilikan sawah oleh pemilik sebelumnya adalah timbulnya sengketa dengan adanya klaim dari orang lain atas sawah tersebut. Penelitian ini dilakukan dengan tujuan memberikan pemahaman dan membangkitkan kesadaran kepada masyarakat khususnya di Kecamatan Campalagian atas pentingnya memperhatikan pengurusan dan pengelolaan harta benda wakaf. Metode yang digunakan dalam penelitian ini adalah penelitian empiris dengan pendekatan kualitatif. Penelitian dilakukan dengan melakukan wawancara semi terstruktur kepada beberapa informan yang berkaitan dengan harta wakaf. Hasil penelitian menunjukkan bahwa sengketa terjadi akibat adanya klaim dari pihak keluarga pemilik awal sawah tersebut lebih tepatnya ipar Puang Hasan. Penyelesaian dilakukan dengan mediasi tanpa melalui proses musyawarah. Mediasi dilakukan di Kepolisian, karena Kantor Urusan Agama merasa tidak punya tanggung jawab untuk menyelesaikan sengketa wakaf. Penyelesaian sengketa wakaf produktif di Desa Panyampa ini telah sesuai dengan ketentuan dalam Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf.

Kata Kunci: Wakaf Produktif; Sengketa; Penyelesaian.



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Introduction

Wakaf has become a focal point and a source of hope for the Muslim community, particularly in Indonesia. The government, through the Ministry of Religious Affairs, has also made various efforts to advance the economic well-being of the community through productive wakaf. However, productive wakaf is not without challenges that still need to be addressed. One of the most common issues in the management of assets is disputes, including ownership, status, and other related matters.

Wakaf derives from the Arabic term "al-waqf," which means to hold something back or withhold it from ownership or transaction¹. In legal terms, wakaf is understood as the act of preserving something and channeling its benefits toward the common good of humanity as a means of drawing closer to Allah SWT². Law No. 41 of 2004 defines wakaf as the legal act of the wakif (donor) to separate part of their property for use in perpetuity or for a set period, in accordance with Islamic principles, for the purposes of worship and/or public welfare³. The wakaf property must be managed and utilized to prevent it from becoming abandoned, losing its asset value, or losing its perpetuity⁴.

Specifically, while the term wakaf is associated with the withholding of assets, its legal basis is not explicitly outlined in the Qur'an or Hadith. However, numerous verses

¹ Ahmad Muhammad Abdul Azim al Jamal, *Daur Nizam Al-Waqf Al-Islamiy Fi at-Tanmiyah Al-Iqtishadiyyah Al-Mu'ashirah* (Kairo: Daar al Salam, 2007), 15.

² Ade Nur Rohim dan Ahmad Hasan Ridwan, "Wakaf dalam Perspektif Al-Qur'an dan Hadis: Esensi dan Signifikansi pada Tataran Ekonomi dan Sosial, *Al-Quds: Jurnal Studi Al-Qur'an dan Hadits*, vol. 6 no. 2, (2022), 663. <https://doi.org/10.29240/alquds.v6i2.3742>

³ Pasal 1, Undang-Undang No. 41 Tahun 2004 tentang Wakaf.

⁴ Ainul Mardiah, "Analisis Masalah Mursalah Terkait Sertifikasi Harta Wakaf dalam UU No. 41 Tahun 2004" *Al-Muamalat: Jurnal Hukum dan ekonomi Syariah* (2018), 128. <https://journal.iaolangsa.ac.id/index.php/muamalat/article/view/706>

in the Qur'an and Hadith encourage believers to dedicate part of their wealth. In the Qur'an, the fuqaha (Islamic jurists) link the legal foundation of wakaf to the command of doing good⁵. Allah's command to perform acts of kindness is used as the legal basis for wakaf, as illustrated in Surah Al-Hajj (22:77), which states, "O you who have believed, bow and prostrate, and worship your Lord and do good that you may succeed."⁶ The phrase "do good" is interpreted by jurists as a command to engage in actions that benefit both the relationship between the servant and their Lord, as well as between people. This verse serves as the foundation for the Islamic legal principle of wakaf, even though the term itself is not explicitly mentioned⁷.

The practice of wakaf dates back to the early days of Islam and was adopted by the companions of the Prophet Muhammad (SAW). An example of this practice is described in a hadith narrated by Anas RA: "When the Prophet (SAW) arrived in Madinah and instructed the building of a mosque, he said, 'O Banu Najjar, set the price of your land that I should pay.' They responded, 'By Allah, we do not ask for any price except that from Allah SWT.'"⁸ This hadith illustrates the act of wakaf through the dedication of land, which the Prophet (SAW) then used to build a mosque. This event became a model for dedicating the best of one's wealth in the service of Allah. The practice of wakaf by the companions of the Prophet further emphasizes the significance of wakaf for the welfare of the community.

The implementation of wakaf requires several essential elements, which form the pillars and conditions of a valid wakaf. According to Islamic jurisprudence, a wakaf is considered valid if it meets four conditions:

- a. *Wāqif* (the person who donates the property),
- b. *Mauqūf bih* (the property being donated),
- c. *Mauqūf 'Alaih* (the recipient or purpose of the wakaf),
- d. *Ṣhīghat* (a declaration or confirmation by the *wāqif* to dedicate part of their property for wakaf)⁹.

Wakaf is one of the solutions offered by Islam to address social inequalities within society. It also represents a significant economic asset with considerable productive potential that can be further developed. Given the immense potential of wakaf, it needs to be managed professionally and with a productive vision. Proper management is crucial, as mismanagement of wakaf can lead to conflicts or disputes. The issue of wakaf disputes in Indonesia has received increasing attention due to the complexities of managing wakaf assets, particularly as the management practices evolve with the development of Islamic law.

Wakaf disputes in Indonesia have become a point of concern, particularly as the management of wakaf assets grows more complicated. As a social worship practice grounded in Islamic law, wakaf has significant potential to support the socio-economic development of society, especially in the sectors of education, health, and economic empowerment. However, in practice, there are often issues related to the management,

⁵ Jaharuddin, *Manajemen Wakaf Produktif (Potensi, Konsep dan Praktik)*, (Jogjakarta: Kaizen Sarana Edukasi, 2020), 24.

⁶ Tim Penerjemah, *Al-Qur'an dan Terjemahnya Edisi Penyempurnaan, Penyempurnaan* (Jakarta: Kementerian Agama, 2019), 483.

⁷ Imam AbdurRauf, *Kitab Taysir Al Wuquf*, (Riyadh: Maktabah Nizar Mustafa alBaz, 1998), 18.

⁸ Al-Bukhari, *Shohih Bukhari*, (Damaskus: Dar Tuq an-Najah, 1422 H), No. ١٨٦٨.

⁹ Tim Penyusun, *Fiqih Wakaf* (Jakarta: Proyek Peningkatan Pemberdayaan Wakaf Dirjen Bimas Islam, 2004), 19.

utilization, and allocation of wakaf assets that do not align with the initial intentions of the wakif. This leads to disputes between various parties involved, such as the wakif, nazhir (trustee), the community, and legal institutions.¹⁰

The practice of wakaf in Indonesia is not limited to a single school of thought but is guided by Law No. 41 of 2004 concerning wakaf, which regulates its implementation. This law is further elaborated in Government Regulation No. 42 of 2006 on the implementation of Law No. 41 of 2004. Indonesia's positive law has regulated the issue of wakaf, specifically in Law No. 41 of 2004 concerning Wakaf. This law stipulates the provisions related to wakaf property, the wakif, the nazhir, the institutions involved, and even the resolution of wakaf disputes. The resolution of wakaf disputes under the law is regulated in Article 62, which states: (1) Disputes over wakaf should be resolved through deliberation to reach a consensus. (2) If deliberation fails, disputes can be resolved through mediation, arbitration, or court proceedings.¹¹

According to this law, the resolution of wakaf disputes follows a series of steps;¹² The first step is through deliberation to reach a consensus. If deliberation does not result in agreement, mediation can be employed with the help of a third party (mediator) agreed upon by the parties involved. This mediation is not organized by the Religious Court. If mediation does not yield satisfactory results, the next step is arbitration, facilitated by the National Sharia Arbitration Agency (Basyarnas), which is capable of resolving Islamic legal disputes outside the court system. Arbitration remains a rarely applied method in the resolution of wakaf disputes. If all these non-litigation methods fail, the final resort is litigation, i.e., taking the dispute to the Religious Court. The Religious Court handles wakaf disputes through civil procedures and legal provisions applicable in the general judiciary.¹³

In communities that still adhere strongly to traditional customs, the procedures for wakaf regulated in the Wakaf Law have not been fully implemented. In rural areas, many wakaf properties, especially immovable properties such as land, are not properly documented according to wakaf procedures. Consequently, many rural wakaf lands are embroiled in disputes, and the potential for conflict is high. Problems include land that is not certified and nazhirs whose statuses are unclear because the wakaf declaration has never been updated.¹⁴

The Kecamatan Campalagian in Polewali Mandar Regency is one such area where traditional practices regarding land ownership, including both customary and wakaf land, are still prevalent. Many lands in Campalagian are still owned according to traditional practices rather than legal certifications such as the Land Ownership Certificate (SHM). The lack of awareness about the importance of obtaining SHM has created opportunities for disputes over ownership. Numerous land disputes, both personal and wakaf-related, occur in Campalagian, particularly in the village of Panyampa.

Productive wakaf refers to assets donated for productive purposes, where the proceeds are allocated according to the intended goals of the wakaf. Examples of

¹⁰ M. Natsir, *Hukum Wakaf di Indonesia* (Jakarta: Raja Grafindo Persada, 2017), 75.

¹¹ Pasal 62, Undang-undang No. 41 Tahun 2004 tentang Wakaf.

¹² Muhammad Rifqi Hidayat dan Parman Komarudin, "Penyelesaian Sengketa Wakaf Melalui Jalur Litigasi dan Non Litigasi" *Al-adl No. 2* (2019), 192. <http://dx.doi.org/10.31602/al-adl.v11i2.1936>

¹³ Hidayat dan Komarudin, "Penyelesaian Sengketa Wakaf", 192.

¹⁴ Pasal 62 Undang-Undang nomor 41 tahun 2004 tentang Wakaf.

productive wakaf include land used for agriculture, springs, and other resources¹⁵. While productive wakaf is increasingly practiced across Indonesia, it is not without its issues, particularly related to disputes. An example of this is a dispute over productive wakaf land in Panyampa Village.

Initially, a plot of rice paddy land owned by Puang Hasan was purchased by the As-Salafi Foundation. The sale was conducted without transferring the SHM. The land was later dedicated as wakaf. In the Wakaf Deed, the As-Salafi Foundation was appointed as the nazhir responsible for managing the wakaf¹⁶. In January 2022, Puang Hasan's in-law occupied several plots of land in Panyampa, including the wakaf land, with the help of a group of men. They took the produce from the land and justified their actions by claiming that the land was not entirely Puang Hasan's property but belonged to the extended family. This dispute over productive wakaf land eventually required mediation at the Campalagian Sector Police Station¹⁷.

The prevalence of wakaf disputes in Campalagian has piqued the interest of researchers to study these conflicts in order to understand the underlying causes. This research is critical for uncovering the issues that lead to wakaf assets being prone to disputes. The study will also provide references for finding solutions to these disputes. By educating stakeholders on the importance of following proper wakaf procedures in accordance with the law, the research aims to provide solutions for future wakaf disputes.

Research on the resolution of wakaf disputes has been conducted by several previous researchers. In general, this article will outline the similarities and differences between the previous studies and the current article. First, there is the research by Rufi'ah, which discusses wakaf land disputes arising due to boundary issues of the donated land. The results of this study show that the causes of the dispute stem from factors such as the lack of knowledge about wakaf, poor communication, and an ineffective administrative system¹⁸. The similarity between this study and Rufi'ah's research is that both examine issues concerning wakaf land disputes. Another similarity lies in the approach used, which is a juridical-empirical approach. However, the difference between this study and Rufi'ah's lies in the focus of the research. This study focuses on productive wakaf land disputes involving property ownership issues, whereas Rufi'ah's thesis addresses wakaf land disputes due to boundary issues.

The second study is by Andi Dian Noviati, which discusses efforts to prevent wakaf disputes through the certification of wakaf land and the obstacles encountered in the certification process. The findings show that wakaf disputes occur due to a lack of written clarity and poor communication between the wakif, nazhir, PPAIW, and the National Land Agency (BPN)¹⁹. The similarity between this study and Andi Dian Noviati's research is the focus on wakaf issues and the use of field research. The difference, however, is in the research approach. Noviati's research uses a normative and sociological approach, while this study employs an empirical approach. Additionally, the focus of the

¹⁵ Choiriyah, "Wakaf Produktif dan Tata Cara Pengelolaannya", *Islamic Banking* vol.2 no.2 (2017), 27. <https://doi.org/10.36908/isbank.v2i2.29>

¹⁶ Muntaha, wawancara, (Polewali Mandar, 15 Agustus 2024)

¹⁷ Puang Hasan, wawancara, (Polewali Mandar, 15 Agustus 2024)

¹⁸ Rufi'ah, "Penyelesaian Sengketa Tanah Wakaf", (Skripsi, Institut Ilmu Al-Qur'an Jakarta, 2022), 89. <http://repository.iiq.ac.id/handle/123456789/2966>

¹⁹ Andi Dian Noviati, "Peran Kantor Urusan Agama dalam Sertifikat Harta Wakaf sebagai Mitigasi Sengketa Wakaf", (Skripsi, Institut Agama Islam Negeri Palopo, 2021), 66-67. <http://repository.iainpalo.ac.id/id/eprint/3788/>

research is different. Noviati's study examines the issuance of wakaf land certificates to prevent disputes, whereas this research focuses on the resolution of productive wakaf land disputes.

The third research is by Muhammad Taufan Djafry, which addresses wakaf disputes and their resolution at Wahdah Islamiyah. This research indicates that Wahdah Islamiyah employs both litigation and non-litigation methods for dispute resolution, including family-based approaches or consensus-based deliberation in accordance with Islamic law²⁰. The similarity between this study and Taufan Djafry's research is the discussion of wakaf land disputes. Both studies utilize field research. However, the difference lies in the focus of the research. Taufan Djafry's study centers on disputes within a community organization, namely Wahdah Islamiyah, whereas this research discusses the resolution of productive wakaf land disputes within the As-Salafi Foundation's scope.

The fourth study, conducted by Islamiyati and colleagues, examines the implementation of the Wakaf Law in the resolution of wakaf disputes, with examples from Kendal Regency, Demak, and Semarang City between 2006 and 2015, including the causes and stages of dispute resolution. This study shows that the resolution of wakaf disputes in North Central Java uses methods consistent with Article 62 of the Wakaf Law, with mediation being the most commonly used approach by the disputing parties²¹. The similarity between Islamiyati's research and this study is that both address the resolution of wakaf disputes from the perspective of Law No. 41 of 2004. The difference lies in the research approach. Islamiyati's study uses a qualitative approach with a combination of quantitative analysis, while this research adopts a purely qualitative approach. Furthermore, Islamiyati's research focuses on general wakaf disputes, while this research focuses on the resolution of productive wakaf land disputes, which are resolved in institutions not directly related to wakaf.

The fifth study is by Muhammad Syamsul Arifin, which discusses the resolution of wakaf land disputes between nazhir and the heirs of the wakif, and the role of the Indonesian Wakaf Board (BWI) in resolving wakaf land disputes. This study finds that BWI plays a role in resolving disputes at the Tawakkal Mosque using mediation in accordance with the Wakaf Law²². The similarity between this study and Syamsul Arifin's research is that both discuss the resolution of wakaf land disputes using field research. The difference lies in the focus of the research. Syamsul Arifin's study specifically addresses disputes between nazhir and the heirs of the wakif, while this research concerns disputes involving the wakif, the initial property owner, and the family of the initial property owner. This study also focuses on the resolution of productive wakaf land disputes.

There has been no research to date that specifically addresses disputes involving productive wakaf. As indicated in the previous studies outlined above, it is clear that dispute resolution typically takes place within institutions directly involved with wakaf. The dispute resolution process discussed in this study will provide new references for the

²⁰ Muhammad Taufan Djafry dkk. "Permasalahan dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 dan Hukum Islam." *Bustanul Fuqaha: Jurna Bidang Hukum Islam* Vol. 2 No.3 (2021), 411. doi.org/10.36701/bustanul.v2i3.402

²¹ Islamiyati dkk. "Implementasi UU Wakaf dalam Penyelesaian Sengketa Wakaf di Wilayah Pesisir Jawa Tengah". *Jurnal Masalah-Masalah Hukum* vol. 4 no.4, (2019), 339. doi.org/10.14710/mmh.48.4.2019.331-340

²² Muhammad Syamsul Arifin, "Peranan Badan Wakaf Indonesia dalam Penyelesaian Sengketa Tanah Wakaf", *Jurnal Hukum dan Kenotariatan* vol. 4 no.1 (2020), 39. doi.org/10.33474/hukeno.v4i1.6446

resolution of productive wakaf disputes in Indonesia, as the resolution is conducted outside institutions directly related to wakaf. In this case, the dispute resolution takes place within the police. Additionally, the social conditions and customs that prevail in the research area significantly influence the dispute and its resolution process.

This article presents two key research questions to be addressed: First, why do disputes over productive wakaf land occur in Panyampa Village, Campalagian District? Second, how are the disputes over productive wakaf land in Panyampa Village, Campalagian District, resolved according to the perspective of Law No. 41 of 2004 on Wakaf? The objective of this research is to analyze the nature of the wakaf land dispute in Panyampa Village and to examine the efforts to resolve the dispute based on the provisions of Law No. 41 of 2004 on Wakaf.

Method

This study adopts a juridical-empirical research method, which explores the application of normative legal provisions within the context of real-life legal events occurring in society²³. The primary objective of this approach is to understand how the normative legal framework of Law No. 41 of 2004 on Wakaf is applied in practical situations in the community. Juridical-empirical research combines both legal theory and actual practices, aiming to bridge the gap between law as written (normative law) and law as implemented or enforced in society. This method is particularly useful in studying legal institutions or processes in action, as it looks at how laws are interpreted, implemented, and experienced by people in their everyday lives.

The qualitative approach is central to this research, which involves a comprehensive, non-numerical exploration of social phenomena. Qualitative research is particularly effective in examining issues that cannot be easily quantified, such as understanding people's behaviors, beliefs, or motivations, or in exploring complex legal issues within a specific cultural or social context. This research approach focuses on the deeper meaning of social events and processes, allowing the researcher to gain insights into how individuals and communities perceive and experience legal norms, specifically those related to the management and resolution of wakaf disputes.

The study aims to uncover the underlying social issues and dynamics within the community that influence the application of the normative legal provisions related to wakaf. By focusing on the Campalagian District of Polewali Mandar Regency in West Sulawesi Province, this research delves into a region where land disputes, including those involving wakaf, are particularly prominent compared to other villages in the area. The choice of location is critical for understanding how legal principles are applied in a specific socio-cultural setting where traditional customs and practices may influence the resolution of land disputes, including those involving wakaf.

The data for this research is derived from two main sources: primary data and secondary data. Primary data is collected through semi-structured interviews with key informants, including local community leaders, religious figures (such as nazhir), landowners, and members of the local government. Semi-structured interviews are chosen for their flexibility, as they allow the researcher to explore specific topics while still enabling informants to provide in-depth, open-ended responses. This approach ensures that important aspects of the social and legal dynamics are captured, while also allowing for a deeper understanding of how the community views and practices wakaf. Secondary

²³ Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004), 134.

data consists of existing legal texts and literature related to wakaf, including Law No. 41 of 2004 on Wakaf, relevant regulations, and other academic materials such as books and articles that discuss both the legal and sociocultural dimensions of wakaf. These documents serve as the foundational legal framework for understanding how wakaf disputes should be addressed and provide a normative backdrop against which the empirical findings can be compared.

The collected data will undergo a multi-step analysis process. Data inspection involves reviewing all the collected data to ensure it is accurate and complete. This step ensures that the data gathered from interviews and secondary sources is reliable and relevant to the research questions. Classification organizes the data into themes and categories, allowing the researcher to systematically organize and analyze the various components of the data. This step will help group similar ideas, events, or issues together, making it easier to analyze them later. Verification will ensure that the data collected is credible and consistent across multiple sources. For example, triangulation will be used by comparing interview results with secondary data sources to identify any inconsistencies or discrepancies. Analysis involves examining the data to identify patterns, trends, and connections. The analysis will explore how the legal provisions related to wakaf are applied in practice and will address the issues of dispute resolution, particularly the challenges and successes in implementing the provisions of Law No. 41 of 2004. Finally, conclusion formulation will synthesize the findings and offer insights into the effectiveness of current legal practices, the challenges faced by the community, and potential solutions for improving wakaf dispute resolution in the Campalagian District. Through this detailed methodology, the study seeks to provide a comprehensive understanding of the implementation of wakaf law in the community, contributing valuable insights to both legal theory and the practical management of wakaf disputes in Indonesia.

The Case of the Productive Wakaf Dispute in Panyampa Village, Campalagian District

Wakaf serves as a solution to economic inequality and can benefit the community in alignment with the goals of wakaf, especially when managed productively. As a concept intended to bring benefits, wakaf inevitably faces the potential for disputes, both in its administration and management. Disputes over wakaf are common in relation to the properties involved. One such case is a dispute involving wakaf land, in the form of rice fields, which was managed productively by the As-Salafi Foundation. The management process of this wakaf by the As-Salafi Foundation was handled by a teacher from the As-Salafi Islamic Boarding School at the Campalagian District Office of Religious Affairs (KUA). The land, however, did not have official ownership proof in the form of a Land Ownership Certificate (SHM). When the land was bought by the As-Salafi Foundation, the initial owner only provided a family history of ownership. Later, when the wakaf deed was processed, the KUA accepted the Sale and Purchase Deed (AJB) as proof of ownership, along with a Certificate of No Dispute. The lack of strength in the land's ownership proof triggered the emergence of a potential dispute. The Sale and Purchase Deed and the family history of ownership were not sufficient to establish clear land ownership, leaving room for others to claim ownership of the land.

The productive wakaf in the form of rice fields by the As-Salafi Foundation was officially registered with a Wakaf Deed on February 20, 2020, by the KUA. Since then, the management of the rice fields as productive wakaf was overseen by the Foundation.

However, one year after the wakaf was established, the family of the original landowner, specifically the brother-in-law of Puang Hasan, came to occupy the rice fields in Panyampa, including the one designated as productive wakaf. The brother-in-law of Puang Hasan, accompanied by others carrying machetes, occupied the land, which included both the private property of Puang Hasan and the property belonging to the As-Salafi Foundation. In the Mandar region, including Campalagian District, when disputes regarding land arise, it is customary for a parang (machete) to be involved, symbolizing the seriousness of the situation. This cultural practice led to a tense situation where those involved in the dispute carried machetes to take possession of the land.

The wakaf land dispute would not have occurred without underlying potential causes. The ownership of the land by Puang Hasan over the rice fields in Panyampa, including those sold to the As-Salafi Foundation, was not backed by a Land Ownership Certificate. The land, originally owned by Puang Hasan's grandfather, was once a royal (*maraqdia*) land, later cultivated into rice fields by Puang Hasan, the grandson of the former royal landowner. The ownership of the land by Puang Hasan was supported by the customary law of the Mandar people, which implements a collective system primarily among men. Article 5 of Law No. 5 of 1960 on Basic Agrarian Regulations states that, "The agrarian law applicable to the earth, water, and space is customary law, as long as it does not conflict with national and state interests, which are based on the unity of the nation and social justice." According to this article, the agrarian law applied to the land is customary law, which must also take into account religious law. The ownership of land by Puang Hasan also aligns with Islamic law, particularly the principle of *iḥyā' al-mawāt*, meaning that anyone who revives barren land has the right to it. In this case, the land, according to customary law, belonged to Puang Hasan's grandfather, and Puang Hasan revived and cultivated it. Therefore, it can be argued that Puang Hasan had a legal basis for claiming ownership of the land and the rice fields.

Puang Hasan's ownership of the land was also in line with Islamic law, which provides that a person who revives barren land gains ownership of it. The principle of *iḥyā' al-mawāt* refers to the revival of uncultivated land, which had no owner. In this case, the land, according to customary law, was originally owned by Puang Hasan's grandfather, and Puang Hasan revived it. Thus, it can be said that Puang Hasan had the basis to claim ownership of the rice fields. However, since the ownership was based solely on a written document provided by the As-Salafi Foundation from Puang Hasan's grandfather, the brother-in-law of Puang Hasan still found an opportunity to claim the rice fields.

According to data compiled by the researcher through interviews with informants, drawing from Ibrahim Siregar's theory on Wakaf Disputes, the dispute occurring in Campalagian can be classified as a "dispute over the status of wakaf land." This is based on information that the brother-in-law of Puang Hasan contested the ownership status of the rice fields in Panyampa, including those that had been designated as wakaf by the As-Salafi Foundation.

Resolution of the Productive Wakaf Dispute in Panyampa Village, Campalagian District, in Light of Law No. 41 of 2004 on Wakaf

The wakaf dispute in Campalagian, specifically the rice fields designated as productive wakaf by the As-Salafi Foundation, has undergone several efforts to resolve the issues at hand. The process of resolving the dispute was ultimately brought back to Puang Hasan. According to data gathered from interviews with Puang Hasan, the

resolution process did not proceed through deliberation. One of the reasons for this was that Puang Hasan's brother-in-law was known to be stubborn and often intoxicated. As a result, Puang Hasan sought resolution through the police. The mediation in this case was different from the usual wakaf dispute resolution, which is typically assisted by the Office of Religious Affairs (KUA).

In this case, the Campalagian KUA was only responsible for issuing the Wakaf Deed and recording wakaf data. Their responsibility was limited to managing the Wakaf Deed. During the administrative process, KUA always requested a Certificate of No Dispute regarding the land to be designated as wakaf. This was because their role was merely to carry out their function and ensure that the land being wakafed, which was intended for the public good, would not lead to disputes that could cause harm.

The dispute that could not be resolved through deliberation or mediation by the KUA was eventually mediated by the police. Although the mediation process faced some disagreements, it was ultimately successful and resulted in an agreement between both parties. The police also informed that the Wakaf Certificate for the rice fields owned by the As-Salafi Foundation had been issued. As a result, after this mediation, Puang Hasan's brother-in-law no longer claimed the rice fields as productive wakaf. However, the rice fields surrounding the wakaf land that did not yet have certificates were still claimed by Puang Hasan's brother-in-law.

The Wakaf Deed for the rice fields managed by As-Salafi was issued in 2020, and the Wakaf Certificate itself was issued two years later, just before the researcher conducted the interviews. This means that the Wakaf Certificate was issued two years after the Wakaf Deed was issued by the Campalagian KUA, specifically in 2022. According to the information obtained, it was also shared that the claimant had occupied the rice fields designated as productive wakaf before the Wakaf Certificate was issued. Ultimately, after the Wakaf Certificate was issued, the issues related to the productive wakaf land in the form of rice fields were resolved through mediation and no further disputes arose between Puang Hasan's brother-in-law and the As-Salafi Foundation, who had been harmed in the process.

Positive law in Indonesia has regulated issues related to wakaf, particularly in Law No. 41 of 2004 on Wakaf. The Wakaf Law regulates provisions concerning the wakaf property, the wakif, the nazhir, the institutions involved, and even the resolution of wakaf disputes. The resolution of wakaf disputes in Law No. 41 of 2004 is outlined in Article 62, which reads: "(1) The resolution of wakaf disputes should be pursued through deliberation to reach a consensus. (2) If the resolution through deliberation as mentioned in paragraph (1) fails, the dispute may be settled through mediation, arbitration, or court proceedings." This article clarifies that the first step in resolving wakaf disputes should be through deliberation. When deliberation is not feasible, alternative methods such as mediation, arbitration, or litigation are to be used as the last resort.

The resolution of the wakaf dispute in this case was carried out step by step, as outlined in Article 62 of the Wakaf Law. After deliberation did not yield a result, mediation was pursued, and if it was unsuccessful, it was followed by arbitration in the National Sharia Arbitration Agency (Basyarnas) as the final non-litigation method. If non-litigation methods could not resolve the dispute, litigation in the court system would serve as the final step in resolving the wakaf dispute.²⁴

²⁴ Hidayat dan Komarudin, "Penyelesaian Sengketa Wakaf, 192.

In this case, the wakaf dispute pertains to a productive wakaf issue. However, the resolution of both productive and non-productive wakaf disputes is essentially the same. All types of wakaf disputes, when they arise, will refer to Article 62 of the Wakaf Law to resolve them. In the case being studied, the wakaf dispute was resolved through mediation. However, according to the data the researcher found, deliberation was not carried out before mediation was pursued to resolve the wakaf dispute in Panyampa Village. This happened because the wakaf claimant, as is customary in the Campalagian community when disputes over land arise, used a machete to resolve the matter. As a result, efforts to resolve the dispute through deliberation could not be carried out.

Given the circumstances on the ground, mediation was chosen as the means of resolving the dispute. Mediation, in general, is divided into two types: court-based mediation and out-of-court mediation. Court-based mediation is regulated in the Supreme Court Regulation (PERMA) of the Republic of Indonesia Number 1 of 2016 regarding Mediation Procedures in Court, which replaced PERMA Number 1 of 2008. On the other hand, out-of-court mediation is not regulated in Indonesia's positive law²⁵. The resolution of disputes through mediation is not detailed in Article 62 of the Wakaf Law. There are no clear provisions regarding who is authorized and responsible for being the mediator when a wakaf dispute reaches the mediation stage. Therefore, mediation for wakaf disputes can be conducted anywhere and with any mediator. Mediation is an effort to negotiate a solution to the dispute to reach an agreement with the help of an agreed-upon mediator²⁶.

In this case, the dispute was resolved through mediation at the police station. This was the path both parties agreed upon to assert their rights. Mediation in wakaf disputes does not necessarily have to be handled by institutions involved in the management of wakaf, such as the Office of Religious Affairs (KUA) or the Indonesian Wakaf Board (BWI). In this case, as the data gathered by the researcher shows, the local KUA refused to get involved in the wakaf dispute, arguing that they had already issued a Certificate of No Dispute for the land intended for wakaf²⁷. As a result, mediation was carried out by the parties involved outside the KUA. The parties in this case chose to pursue mediation at the police station. This decision did not contradict the provisions outlined in Law No. 41 of 2004 on Wakaf, as the Wakaf Law does not specify the institutions responsible for handling wakaf dispute mediation.

In this case, deliberation was also not carried out due to safety concerns. Therefore, deliberation was deemed unfeasible, and it could not yield an acceptable result for the parties involved. As a result, mediation was pursued as a means of resolving the dispute. This mediation eventually led to a positive outcome. The result achieved through mediation was a peaceful agreement between the parties involved, including the wakif, nazhir, and the land claimant. As of now, the rice fields designated as productive wakaf have been properly managed by the As-Salafi Foundation, and their benefits are being

²⁵ Rifqani Nur Fauziah Hanif, "Penyelesaian Sengketa Non-Litigasi Melalui Proses Mediasi" *Kemenkeu RI*, 14 Oktober 2020, diakses 18 November 2024, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html>

²⁶ Syufa'at, "Penerapan Prosedur Mediasi Dalam Penyelesaian Sengketa Wakaf Di Pengadilan Agama," *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi* vol. 1, no. 1 (2018), 31. <https://doi.org/10.24090/volkgeist.v1i1.1678>

²⁷ Muhammad Kakis, wawancara, (13 Agustus 2024).

enjoyed by the residents of the As-Salafi Islamic Boarding School, as stipulated in the Wakaf Deed²⁸.

In general, the efforts to resolve the wakaf dispute in Panyampa Village, Campalagian District, have followed the steps outlined in Law No. 41 of 2004. The resolution of the wakaf dispute, which was initially intended to be handled through deliberation but ultimately could not proceed, was continued through mediation, which eventually reached a resolution. There are several aspects that need improvement in this dispute resolution process. The wakif, nazhir, and KUA certainly need to establish better communication. Although the KUA does not have an explicit responsibility outlined in the law to resolve wakaf disputes, the KUA is a state institution that is knowledgeable about wakaf matters within its jurisdiction.

Conclusion

Based on the explanation provided in the study on the Resolution of Productive Wakaf Disputes in the context of Law No. 41 of 2004 on Wakaf (Case Study in Panyampa Village, Campalagian District, Polewali Mandar), it can be concluded that the wakaf dispute in Panyampa Village pertains to a rice field that was designated as productive wakaf by the As-Salafi Foundation. The rice field is claimed by the family of the previous owner, specifically the brother-in-law of Puang Hasan, who asserts ownership over the land. The brother-in-law of Puang Hasan occupied the land and even took its produce. He justifies his claim by stating that the rice field, which is now designated as productive wakaf, was originally owned by his parents.

The resolution of the productive wakaf dispute in Panyampa Village was carried out through mediation, without going through the deliberation process, as deliberation was deemed difficult to implement. Therefore, it was necessary to involve a mediator to resolve the dispute. The process of resolving this wakaf dispute was in accordance with the provisions of Article 62 of Law No. 41 of 2004 on Wakaf, which outlines the sequential dispute resolution process, beginning with deliberation, followed by mediation, arbitration, and ultimately, litigation.

This study has several limitations, such as the lack of an in-depth analysis regarding the effectiveness of resolving disputes outside the institutions responsible for wakaf management, as well as the limited exploration of the long-term social impact of the resolution process. The mediation in this case, conducted outside the formal wakaf institutions, raises questions about the role of legal bodies like the KUA (Office of Religious Affairs) and BWI (Indonesian Wakaf Board) in facilitating dispute resolution, particularly in situations where informal or local channels are preferred by the involved parties. Furthermore, the lack of deliberation before mediation may suggest challenges in community engagement and trust in formal mechanisms for dispute resolution.

Therefore, further research is recommended to examine the mechanisms of wakaf dispute resolution in various regions with different social contexts and to evaluate the role of wakaf institutions in providing legal protection for wakaf assets to prevent similar disputes in the future. It would be valuable to explore how different legal frameworks and community practices interact in the resolution of wakaf disputes, particularly in regions where traditional customs heavily influence decision-making. In addition, future studies could assess how well current legal provisions align with the community's expectations

²⁸ Muntaha, wawancara, (15 Agustus 2024).

and practices to enhance the effectiveness of dispute resolution processes and prevent potential conflicts in the management of wakaf properties.

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