

## Reconstruction of the Waqf Pledge as a Juridical Acronym for Expert Waqf Dispute Resolution

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**Abstract:** productive waqf management can contribute to the economy of the poor. Waqf land that is managed as a business enterprise, in various countries, is able to contribute to the state's income to the level of urgency. However, after waqf land becomes productive, a problematic phenomenon often arises; the phenomenon of claiming ownership of waqf land by the heirs of the waqf. As a result, productive waqf land becomes disputed and harms many people. This research provides a solution to this problem through the reconstruction of expert waqf into normative regulations. This research is a literature study, where the researcher emphasizes on normative analysis for acronym regulation. However, the sample is taken from the results of field research. This research is desk-based with qualitative data, qualitative supported by secondary data from interview and documentary field research. The analysis is conducted on running content. The findings show two things; first, the social reconstruction of expert waqf is carried out in three forms; 1) the principle of mutual trust and kinship in the implementation of expert waqf is witnessed by two family members; 2) handing over waqf in front of the village government or customary tribe. 3) the land endowed to the nadzir has the consent of the successor heirs. Second, the reconstruction of the legislative acronym is formed on five things; 1) the waqf pledge deed gets a recommendation from the head of the local government as a strong document of the AIW; 2) individual or corporate nadzirs are determined by social figures who understand the procedures for waqf management and administration; 3) mauquf alaih witnesses the waqf between the waqif and nadzir; 4) expert waqf is intended for public welfare, witnessed by the nasab guardian; 5) expert waqf that has passed away is automatically transferred to waqf khairi.

**Keywords:** Waqf Pledge, Juridical Basis, Waqf Dispute, Expert Waqf

### Introduction

Waqf land that can be managed well can provide economic contribution to the poor (mauquf alaih). Waqf land managed in the form of hotels, water sources, lodging services, food courts and other forms of business has a positive impact. However, in many areas in Indonesia, as well as in Muslim countries such as Brunei, there is a problematic phenomenon. When the waqf land has been able to be productive, develop and support the community, the waqf land is claimed by the heirs as inherited land. As a result, waqf management is disputed and harms

many people.<sup>1</sup> The function of waqf as a socio-economic institution cannot be productive due to heir disputes. Therefore, a regulatory and normative reconstruction is needed.

In the midst of social problems and demands for economic welfare, the existence of waqf institutions becomes very strategic. Aside from being an aspect of Islamic teachings with a spiritual dimension, waqf also has a social dimension. Waqf plays an important role in helping the welfare of the people.<sup>2</sup> The discussion about waqf is often directed towards the waqf of immovable objects such as land, buildings, trees for their fruits, wells for their water.

In Muslim countries, waqf activities are known along with the development of Islamic propagation. In addition to preaching Islam, the scholars also introduced the teaching of waqf. This is evident from the many historic mosques built on waqf land.<sup>3</sup> The teaching of waqf continued to develop, both during the pre-colonial, colonial and post-colonial (after independence) da'wah periods.

In terms of its designation, waqf is divided into two: consumptive and productive. Consumptive waqf is where the assets or fixed principal of the waqf are used directly for the benefit of the people. In general, waqf in Indonesia is used for the construction of mosques, mushalla, schools, orphanages, tombs.<sup>4</sup> So far, the utilization of waqf from a social point of view, especially for the benefit of worship is quite effective. However, the impact is less positive in the economic life of the community if the allocation of waqf is only limited to the above matters. Without being balanced with waqf that is managed productively, the economic welfare of the community expected from waqf institutions will not be optimally realised. Meanwhile, productive waqf is an asset or fixed principal of waqf

<sup>1</sup> Hida Hiyanti, Indria Fitri Afiyana, and Siti Fazriah, "Potensi Dan Realisasi Wakaf Uang Di Indonesia Tahun 2014-2018," *Jurnal Ilmiah MEA (Manajemen, Ekonomi, Dan Akuntansi)* Vol.4 No.1, no. 1 (2020): 77–84.

<sup>2</sup> Wakaf Perkhidmatan and Menurut Perspektif, "WAKAF SERVICE FROM AN ISLAMIC POINT OF VIEW," *International Journal of Islamic Studies* 31, no. 2 (2023): 142–57, <https://doi.org/http://al-qanatir.com>.

<sup>3</sup> MPOC, lia dwi jayanti, and Jennifer Brier, "Konstruksi Pengembangan Wakaf Saham Dalam Rangka Mengoptimalkan Potensi Wakaf Produktif Di Indonesia Lokot," *Malaysian Palm Oil Council (MPOC)* 21, no. 1 (2020): 1–9, <https://doi.org/http://journal.um-surabaya.ac.id/index.php/JKM/article/view/2203%0Ahttp://mpoc.org.my/malaysian-palm-oil-industry/>.

<sup>4</sup> N A A Bakar, M N M Hussain, and A B Hamed, "Scrutinizing the Effects of Restructuring in Perbadanan Wakaf Selangor," *International Journal of Accounting* 2, no. 4 (2017): 13–21, [www.ijafb.com](http://www.ijafb.com).

that is not directly used to achieve its purpose, but is first developed to produce something (productive) and the results are distributed in accordance with the purpose of waqf.<sup>5</sup> Such as land waqf to be used for farming, water springs to sell water and others.

In line with its purpose, waqf is divided into two types, namely Ahli waqf (waqf for family) and Khairi waqf (waqf for public). What is meant by expert waqf is waqf that is intended specifically for certain people, whether for children and grandchildren, relatives, the poor or others. Meanwhile, Khairi waqf is waqf intended for public purposes such as the construction of mosques, madrassas, libraries, cemeteries and others where the waqf is used by others in general.

The implementation of waqf can occur in two ways, namely by deed and by speech, the implementation of waqf by way of action is a person's action that shows signs that his property will be waqfed, such as if someone builds a mosque and then gives permission to others to pray in it. Then it can be said that the person has endowed his property in the form of action. Waqf can be done through words or orally, where the waqif actually and clearly mentions that he will endow an item. Whether the words are clear (sharih), such as "I bequeath", "I stop its utilisation", or "I perpetuate". And the words are vague (kinayah), such as "I give it in charity" but the person has the intention to endow it.

In the case of waqf occurring in the first way, namely by action alone without speech, there is a difference of opinion among the scholars. One of the scholars who supports this opinion is Imam Hanbali, who states that "waqf can occur legally by action accompanied by qarinah (signs) that indicate waqf".<sup>6</sup> Even according to Imam Ahmad bin Hanbal, it is not permissible to take back a building that has been used as a mosque or prayer room and has allowed others to pray in it. Meanwhile, according to the opinion of Imam Syafi'i, that an action cannot be directly

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<sup>5</sup> M. F. Puteri Nur Farah Naadia and A. R. Khairuddin, "Shariah Compliance Risk Management in the Provision of Wakaf-Zakat Housings," *International Journal of Islamic Thought* 19, no. 1 (2021): 102–9, <https://doi.org/10.24035/IJIT.19.2021.200>.

<sup>6</sup> Mohd Hafiz b. Hj. Fauzi et al., "The Impact of Trust in Cash Waqf Contribution: A Case Study of Wakaf Selangor Muamalat (Wsm) Service of Bank Muamalat Malaysia Berhad (Bmmb)," *International Journal of Business, Economics and Law* 18, no. 2 (2019): 1–10.

said to be a waqf if there is no speech from the person who wants to endow it.<sup>7</sup>

In Indonesia and Brunei, those who wish to endow must make a clear and unequivocal declaration of their will to the nadzir in the presence of an official who then outlines it in the form of a waqf pledge, witnessed by at least two witnesses. The wākif, who is very prominent, is the worship side of the waqf practice. Thus, the wākif does not feel the need to be recorded or registered with the administration.<sup>8</sup> Thus, the waqf is carried out on the basis of sincerity and willingness alone and according to local customary procedures without the support of authentic data and certificates, so that the administrative juridical status of many waqfs is unclear.

In conditions where the value and use of land is increasing and widespread as it is today, the legally unclear waqf land has invited many problems and deviations from the law and the purpose of waqf, such as the existence of waqf land that is no longer known, the existence of waqf land that seems to have become the property of the heirs of the wākif or nadzir, disputes and lawsuits against waqf lands and various other waqf land cases.

Waqf land disputes are based on the condition of the waqif, after the death of the wākif, the children of the wākif suddenly sue and demand the ownership of the land that was endowed by the wākif during their lifetime.<sup>9</sup> This is because when the wākif was alive, they endowed a piece of land to the local community named Bashor only verbally without any written requirements in the form of a deed or pledge that had been recorded. Therefore, after the wākif died, the children of the wākif claimed ownership of the land that had been endowed on the grounds that the wākif's heirs had a Certificate of Ownership (SHM) of the land.

Such problems are common, even in some countries such as Indonesia in particular, Brunei Darussalam and Malaysia. The main root

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<sup>7</sup> Duski Ibrahim, Ahmad Zainuri, and Miftachul Huda, "Empowering Wakaf (Islamic Endowment) for Economic Development: An Insightful Value of Nazir Waqf in Indonesia," *UMRAN - International Journal of Islamic and Civilizational Studies* 7, no. 1 (2020): 103–14, <https://doi.org/10.11113/umran2020.7n1.405>.

<sup>8</sup> Noor Azura Zainuddin et al., "ISSUES AND CHALLENGES OF DANA WAKAF ILMU UTM PERLIS (DWIPs)," *International Journal of Law, Government and Communication* 7, no. 28 (2022): 153–65, <https://doi.org/10.35631/ijlgc.728012>.

<sup>9</sup> Rijalul Khaer, Atep Firmansyah, and Pupun Saepul Rohman, "Meta-Analysis Of Wakaf Based Sharia Microfinance Institutions," *Perisai : Islamic Banking and Finance Journal* 7, no. 2 (2023): 237–54, <https://doi.org/10.21070/perisai.v7i2.1661>.

of the problem is caused by three things: first, ineffective regulations that provide opportunities for "others" to recognise waqf land; second, the principle of kinship that is strongly held by the majority of the community without caring about the future impact; third, the social tradition that considers administration as a worldly affair, while waqf is a *ukhrawiyah* matter.<sup>10</sup> Therefore, these problems can be solved by strengthening regulations. Regulation takes the form of a reconstructive preventive effort towards the aspect of expert waqf.

The reconstruction of regulations on the aspect of expert waqf is little studied in the preliminary study. Hassan, waqf disputes are caused by the failure of an uncomprehensive state system. In terms of waqf, the state follows the pattern of traditional norms prevailing in society. In Indonesia, the rules of expert waqf are socio-religious, the existence of regulatory rules is unable to run effectively.<sup>11</sup> Meanwhile, in the event of a dispute, state regulations are unable to provide sanctions.<sup>12</sup> Many waqf disputes that occur in the community can be resolved through alternative arbitration.<sup>13</sup> Previous research only emphasised customary dispute resolution, not the role of the state through legislation. This research reveals normative research as a new direction or repositioning of expert waqf.

This research is conducted qualitatively, where data is collected through documentation studies supplemented by the results of field research.<sup>14</sup> Primary data are the background of land waqf without a waqf pledge certificate, the practice of land waqf without a waqf pledge certificate, and the position of legislation on expert waqf. The data

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<sup>10</sup> Mohd Haziqi Hilmi and dan Muhammad Hakimi Mohd Shafiai, "Peranan Wakaf Tunai Sebagai Penyelesaian Isu Kos Sara Hidup Mahasiswa Universiti (the Role of Cash Wakaf As a Solution To the Cost of Living Issues of University Students)," *International Journal of Social Science Research* 4, no. 4 (2022): 63, <http://myjms.mohe.gov.my/index.php/ijssr>Journalwebsite:<http://myjms.mohe.gov.my/index.php/ijssr>

<sup>11</sup> Surita Hartini Mat Hassan et al., "The Influence of Promotion and Waqf Knowledge toward Cash Waqf Awareness in Pahang Region," *International Journal of Academic Research in Business and Social Sciences* 11, no. 4 (2021), <https://doi.org/10.6007/ijarbss/v11-i4/9816>.

<sup>12</sup> Surita Hartini Mat Hassan et al., "The Implementation of Ijarah in Producing the Wakaf Property: Studies in Penang, Malaysia," *International Journal of Academic Research in Business and Social Sciences* 11, no. 1 (2021), <https://doi.org/10.6007/ijarbss/v11-i1/9007>.

<sup>13</sup> Enda Noviyanti Simorangkir Alexander Will, "International Journal of Social Science Research and Review," *International Journal of Social Science Research and Review* 5, no. 1 (2023): 159–65.

<sup>14</sup> Zuchri Abdussamad, *Metode Penelitian Kualitatif* (Bandung: Syakir Media Press, 2021).

processing techniques used to make it easier to analyse the data in this research are editing (checking the completeness of the data), organising (compiling and systematising data about the initial to final process of the occurrence of waqf practices without a waqf pledge certificate), analysing (the analysis stage).<sup>15</sup> Furthermore, the final stage is concluded according to research needs.

## Result and Discussion

### Productive Waqf Concept

Etymologically, waqf is *al-habs*, which means "to hold back". The word *al-habs* is a masdar form of the phrase *wagfu al-syai'* which means to hold something. Thus waqf according to the language is handing over a land to the poor to be held. According to Malikiyah, waqf is doing something that provides benefits (renting) which will be distributed to people in accordance with the designation conveyed by the waqif when carrying out the waqf pledge and has been recorded in the Waqf Pledge Deed.<sup>16</sup>

Meanwhile, according to Imam Syafi'iyah defines waqf as holding assets that can distribute benefits permanently by terminating the management rights owned by the waqif to be handed over to the nadzir and managed in accordance with sharia. Thus, waqf is an asset that is retained in its principal value and utilised by the assets in it for the benefit of the community or in accordance with the purpose of the waqif and its utilisation in accordance with predetermined sharia principles.<sup>17</sup>

According to the Big Indonesian Dictionary Productive waqf is movable or immovable objects provided for the public interest (Islam) as a sincere gift. According to Veitzal Rivai Zainal productive waqf is an asset that is used for a business either through agriculture, industry, trade, or services where the benefits of the results of the business can be given to those who are entitled and in accordance with the purpose of waqf.<sup>18</sup>

<sup>15</sup> Hayat, *Metode Penelitian Kualitatif* (Malang: UNISMA Press, 2020).

<sup>16</sup> An'im Fattach and Maskun Maskun, "Konsepsi Strategis Pengembangan Wakaf Produktif Melalui Investasi Berbasis Syariah," *Management of Zakat and Waqf Journal (MAZAWA)* 3, no. 2 (2022): 51–65, <https://doi.org/10.15642/mzw.2022.3.2.51-65>.

<sup>17</sup> Safaah Restuning Hayati and Syah Amelia Manggala Putri, "The Efficiency of Zakat Management Organizations in Indonesia: Data Envelopment Analysis Approach," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 10, no. 2 (2020): 95–106, <https://doi.org/10.18326/muqtasid.v10i2.95-106>.

<sup>18</sup> A Asrida, S Iska, and V T Putriana, "Implementasi Indonesia Magnifcence of Zakat Dalam Pengelolaan Zakat, Infak Dan Sedekah Di Indonesia," *IJMURHICA: International Journal of Multidisciplinary Research of Higher Education* 2, no. 2 (2019): 129.

With the definition of productive waqf from several experts, it can be concluded that productive waqf is the effort of a nadzir to manage waqf assets, both movable and immovable, with the aim of benefiting from waqf assets for people who are entitled to benefit from waqf and in accordance with the pledge that has been conveyed by the waqif. In utilising waqf property, it can be done by fully utilising the opportunities and potential that exist in a waqf property object so that the benefits obtained from waqf property can be felt by the community or people who are entitled to it.

According to Azizah in her research, productive waqf is waqf property used for production, whether in agriculture, industry, trade, services whose benefits are not directly on the waqf object, but through the net profit from the development of waqf which is given to the rightful person in accordance with the purpose of the waqf itself. In waqf, a waqf can be said to be productive if the results of waqf management produce goods, profits that can help the community, besides that when waqf assets can be managed and the benefits of this management can benefit or be felt by the community, the waqf has been said to be productive waqf.<sup>19</sup>

Management can be called management, which means organising. Management is carried out to regulate related to the emergence of problems, processes, who is regulated and regulated, and related reasons to be regulated, as well as the objectives of regulating a particular problem. So with the existence of management can be used to analyse, set goals / objectives, tasks, and obligations that must be regulated effectively and efficiently. So that management is needed in various aspects to solve a problem that is happening to find a solution to every problem that occurs.

Meanwhile, the definition of management according to KBBI is a process or way to carry out certain activities by mobilising the resources owned to help formulate goals and policies in an organisation and conducting a supervision of the human resources involved in each policy implementation by directing to certain goals in accordance with what has been formulated.<sup>20</sup> So that management and management are one thing

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<sup>19</sup> Mudita Sri Karuni, "Pengaruh Dana Zakat Terhadap Pembangunan Manusia," *I-Finance: A Research Journal on Islamic Finance* 6, no. 2 (2020): 125–35, <https://doi.org/10.19109/ifinance.v6i2.6469>.

<sup>20</sup> Suhaimi Ishak et al., "Corporate Governance Practice, Risk Management and Internal Control at Kedah State Zakat Board (LZKN)," *International Journal of Innovation, Creativity and Change* 6, no. 2 (2019): 389–404.

that has the same meaning and meaning to carry out a management activity by achieving a certain goal.

The definition of management according to marulang is an achievement of organisational goals that have been determined both specifically and generally to carry out interaction, integration, coordination, and division of tasks professionally to manage the resources that have been provided both human resources, material, capital, even related to how to use in management. By determining a good goal, the system to be improved will be easier and more directed in its implementation.<sup>21</sup>

According to George Terry who said that management is a process of differentiating planning, organising, mobilising, and supervising by utilising both science and art in order to adjust the previously set goals.<sup>22</sup> So that management is an implementation of activities that include management, both planning, implementation, and supervision to achieve goals effectively and efficiently.

### **Reconstructing the Social Norms of Expert Waqf**

In some cases, waqf land that has been endowed has experienced problems in terms of ownership, after the death of the wākif, the heirs, namely one of his children, sued and demanded the ownership rights of the land because one of the heirs had a Certificate of Ownership (SHM) for the land. Therefore, the heirs dared to sue and claim the ownership rights of the land that had been used as waqf land. And the official ownership of waqf land is now the heir who has a valid Certificate of Ownership (SHM) of the land.<sup>23</sup>

The withdrawal of this waqf land was only carried out by one of the wākifs, whose other family did not have the desire to withdraw, but the heirs wanted to sell it and then the waqf land was withdrawn, as a result of the heirs, there was a withdrawal from the heirs. Since the

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<sup>21</sup> Rofiul Wahyudi and Agus Susetyohadi, "The Efficiency of Amil Zakat Institutions (LAZ) in Indonesian Islamic Banks: Data Envelopment Analysis Approach," *Madania: Jurnal Kajian Keislaman* 25, no. 2 (2021): 169–80, <https://ejournal.iainbengkulu.ac.id/index.php/madania/article/view/4978>.

<sup>22</sup> Danica Dwi Prahesti and Priyanka Permata Putri, "Pemberdayaan Usaha Kecil Dan Mikro Melalui Dana Zakat Produktif," *Ilmu Dakwah: Academic Journal for Homiletic Studies* 12, no. 1 (2018): 141–60, <https://doi.org/10.15575/idajhs.v12i1.1905>.

<sup>23</sup> Nur Kholis and Mugiyati, "Distribution of Productive Zakat for Reducing Urban Poverty in Indonesia," *International Journal of Innovation, Creativity and Change* 15, no. 3 (2021): 1–12, <https://doi.org/10.53333/ijicc2013/15303>.



withdrawal, there has been no legal action from the nadzir to resolve this case to the court. Nadzir only took a family approach (deliberation) which was carried out by visiting the wākif's house, but all the ways taken by the nadzir did not get, encouraging. then the wākif still remained in his stance, namely withdrawing the waqf land. And in the end the community had the initiative to buy the waqf land, by way of joint venture and assisted by the local RT and RW, finally the land became the right of the community of the hemispheric village again.

The waqf land process uses a system that must obtain an official letter from the local government or have a legal entity that strengthens the waqf land. This system is different from the previous system, which used an oral contract (handover) without an official letter from the local government or having a legal entity that corroborates the waqf land and the system used now, namely. Therefore, most of the land that was previously intended for waqf land is now waqf land that has been converted into private land and strengthened by an official letter from the local government. Because the owner of the waqf land that was inherited by the first owner did not want the land to be waqf land.

There are many cases that occur in the community regarding waqf land disputes where the descendants ask for the rights of the waqf land which does not have a waqf deed or authentic evidence of ownership or processing of the waqf land.<sup>24</sup> Not surprisingly, there are still many waqf land disputes without a waqf pledge deed. This is understandable, because the object of land waqf is land whose price is increasing and the narrowing of vacant land. Such is the case in Sidoarjo, where the wākif's son asked for the land that had been endowed by his parents after the wākif passed away, even though all residents considered that the land had been legally endowed.

In Islam itself, waqf can be withdrawn as long as the wākif himself but with several requirements, including: first, that the waqf land is not used properly, there is a grace period agreement for the waqfed goods. For waqf that has a grace period, there are exceptions, namely when

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<sup>24</sup> A A Muttaqin and A Safitri, "Analisis Pengaruh Zakat Dan Infak Terhadap Tingkat Kedalaman Kemiskinan, Keparahan Kemiskinan Dan Gini Rasio Di Indonesia Tahun 2007-2018," *Al-Tijary Jurnal Ekonomi Dan Bisnis Islam* 6, no. 1 (2020): 51 – 61, <https://journal.iain-samarinda.ac.id/index.php/altijary/article/view/2416>.

endowing a mosque or endowing land to build a mosque.<sup>25</sup> From this, it can be concluded that the one who has the right to withdraw waqf is the wāḳif himself, so that if the land is withdrawn by the descendants of the wāḳif himself, it certainly cannot be justified, especially since Islam itself also regulates the conditions for withdrawal, so that the withdrawal of waqf land cannot be withdrawn arbitrarily.<sup>26</sup>

The withdrawal of waqf land by the descendants can indeed occur because the wāḳif and nadzir at the time of handing over the waqf goods only made an oral waqf pledge, not poured into an authentic sheet, so that the pledge was only recognised by the surrounding community. The impact of the absence of authentic evidence is the gap for the descendants of the wāḳif to withdraw waqf objects or objects, especially land objects.

According to Islamic law, the withdrawal of waqf property is not allowed because when viewed from the definition of waqf itself is the separation of property from the wāḳif, so that the property since the wāḳif said the pledge then the property is no longer under his control, and the waqf property belongs to Allah SWT which will be managed by Nadzir.<sup>27</sup> The wāḳif must give up his waqf land to be used for anything, as long as it is still in the realm of Islamic struggle such as building a mosque. What is done by the descendant of the wāḳif in this case is not allowed because his parents have endowed the land which is used for the construction of a mosque, it can be justified if the land is not used for the struggle of Islam such as building a private house or selling it again.

From the description of the case and Islamic views above, reconstruction needs to be carried out in the community. The forms of reconstruction are:

First, the principle of mutual trust and kinship in the implementation of expert waqf is witnessed by two other family members, as witnesses if one day there is a problem or dispute. In fiqh literature, waqf has a witness model that is recognised as a special witness, namely

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<sup>25</sup> M. Aulia Rachman and Annisa Nur Salam, "The Reinforcement of Zakat Management through Financial Technology Systems," *International Journal of Zakat* 3, no. 1 (2018): 57–69, <https://doi.org/10.37706/ijaz.v3i1.68>.

<sup>26</sup> Hijrah Saputra, "Zakat Sebagai Sarana Bantuan Bagi Masyarakat Berdampak Covid-19," *Al-Ijtima'i: International Journal of Government and Social Science* 5, no. 2 (2020): 161–75, <https://doi.org/10.22373/jai.v5i2.549>.

<sup>27</sup> Mudrifah Mudrifah and Aviani Wisyastuti, "Penguatan Karakteristik SDM Dalam Implementasi Manajemen Berbasis Risiko Di Lazis Muhammadiyah (LazisMu) Kabupaten Malang," *Jurnal Pengabdian Nasional (JPN) Indonesia* 2, no. 1 (2021): 19–27, <https://doi.org/10.35870/jpni.v2i1.26>.

the istifadhah witness, a witness who does not hear directly from the main source, but whose testimony is legally recognised. Even if it is not recorded in the AIW, the existence of such a witness is sufficient to resolve disputes.

The second is to make a waqf handover in front of the village or tribal government. The figure of the social leader, in the eyes of the law, is indeed considered equal, but for social status, it has a strong influence. This strong influence becomes an alternative dispute resolution as part of a form of customary deliberation. Legally, the figure of the village leader is equated with other social statuses, therefore resolving waqf disputes before the court is an inappropriate step. Therefore, this reconstruction is directed at the aspect of preventive efforts to resolve non-litigation disputes.

Third, the land endowed to the nadzir has the consent of the successor heirs. The successor heirs consist of ustadz, relatives, or other trusted relations in the general public. The involvement of successor heirs acts as a power of attorney needed by the AIW maker if a dispute arises in the future. Surrogate heirs are administrative in nature, in reality, the existence of their inheritance is veiled by the expert heirs. However, for the trial of waqf issues, successor heirs have significant recognition.

### **Juridical Acronym Reconstruction of Expert Waqf**

Legislation is of course made to regulate society so that it is orderly and obedient, one of which is to regulate and protect waqf land or goods, so the state makes laws and regulations, namely Law No. 41 of 2004 concerning Waqf, where this Law was made to accommodate Law No. 5 of 1960 concerning Agrarian Affairs where one of the articles in the UUPA is in article 49 which contains 3 paragraphs which reads:

1. Land ownership rights of religious and social objects, insofar as they are used for businesses in the religious and social fields, are recognised and protected.
2. Such bodies shall also be guaranteed to obtain sufficient land for their buildings and businesses in the religious and social fields. For purposes of worship and other sacred purposes, as referred to in Article 14, land directly controlled by the state may be granted with a right of use.

3. Perwakafan of owned land is protected and regulated by Government Regulation.<sup>28</sup>

So that if you look at Article 49 of the UUPA above, the formal juridical existence of waqf land is aligned with land ownership in general and recognised by the State such as Property Rights, Business Use Rights, Building Rights and Use Rights. So that before the issuance of Law No. 41 of 2004 concerning waqf, the State had issued a regulation, namely Government Regulation No. 28 of 1977 concerning Perwakafan Tanah Milik.<sup>29</sup>

One of the problems arising from waqf is the withdrawal of waqf goods by the descendants of the wāḳif, if according to Law No. 41 of 2004 that every waqf transaction must be orally or poured into an authentic deed, namely a pledge deed which is then reversed the name of the land as waqf land to the National Land Agency. When referring to Article 5 paragraph (5) of Government Regulation No. 28 of 1977 concerning Perwakafan Tanah Milik where in this regulation "In carrying out the pledge as referred to in paragraph (1), the party who endows the land is required to bring along and submit to the official the following letters:

1. Certificate of title or other proof of land ownership,
2. A certificate from the village head reinforced by the head of the local sub-district explaining the correctness of land ownership and not being involved in a case,
3. Land registration certificate,
4. Permission from the regent/mayor/municipal head of the region c.q. Head of the local Subdirector of Agraria"<sup>30</sup>

Referring to the above regulation, the wāḳif should have submitted the land documents after making an oral waqf pledge, so it is necessary to

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<sup>28</sup> Dwi Poetra Sedjati, Yuzwar Z. Basri, and Uswatun Hasanah, "Analysis of Factors Affecting the Payment of Zakat in Special Capital Region (DKI) of Jakarta," *International Journal of Islamic Business & Management* 2, no. 1 (2018): 24–34, <https://doi.org/10.46281/ijibm.v2i1.50>.

<sup>29</sup> Novendi Arkham Muḩtadi, Rohmad Abidin, and Qurrota A'yun, "EFEKTIVITAS PENYALURAN ZAKAT DI INDONESIA: PENDEKATAN RASIO KEUANGAN DAN SHARIA ENTERPRISE THEORY Volume 1 Number 2 2021," *JIEF-Journal of Islamic Economics and Finance* 1, no. 2 (2021): 2021, <http://e-journal.iainpekalongan.ac.id/index.php/jief/issue/current>.

<sup>30</sup> Achmad Kholiq, "Amil Zakat Governance Risk Mitigation: An ERM – COSO Analysis," *International Journal of Zakat* 6, no. 1 (2021): 1–12, [https://repo.iainbatungkar.ac.id/xmlui/bitstream/handle/123456789/19806/1613376886314\\_2021.pdf?sequence=1&isAllowed=y](https://repo.iainbatungkar.ac.id/xmlui/bitstream/handle/123456789/19806/1613376886314_2021.pdf?sequence=1&isAllowed=y).

trace the descendants of the wāḳif who claim to own the land certificate of the waqf land.

Indeed, the weakness of this case in terms of juridical law is that the Nadzir does not have any evidence or proof of the waqf pledge deed, because the handover of the waqf land was only oral and in the presence of witnesses, and currently the witnesses have died so there are no witnesses who saw firsthand the oral waqf pledge between the wāḳif and the nadzir.<sup>31</sup>

However, this waqf dispute in Law No. 41 of 2004 opens up opportunities to resolve the dispute, in article 62: a) The settlement of waqf dispute problems is pursued through deliberation to reach consensus. B) If the dispute resolution as referred to in paragraph (1) is unsuccessful, the dispute can be resolved through arbitration and court. So that one of the solutions is to deliberate in a family manner with the heirs of the wāḳif to resolve the dispute so that it is hoped that a way out of the dispute will be found.<sup>32</sup> Referring to the above problem, this deliberation is to clarify to the heirs about the ownership of the land certificate owned, and find a solution to the dispute.

If the deliberation efforts are unsuccessful then the party who litigates the case can file a claim with the court, the court that is given absolute authority to handle waqf dispute issues is the Religious Court. The basis of the Religious Court is Article 49 paragraph (1) of Law Number 7 of 1989, as amended by Law Number 3 of 2006 concerning Religious Courts, which states "Religious Courts are tasked with examining, deciding and resolving cases at the first level between people who are Muslim, in the fields of: a. Marriage b. Inheritance c. Wasiat d. Grant e. Waqf f. Zakat g. Infaq h. Shadaqah, and i. Shari'ah economy."<sup>33</sup>

So that if you refer to the above rules, every Waqf dispute is not necessarily directly taken over by the heirs of the wāḳif but must go

<sup>31</sup> Desak Nyoman Wiona Budi Fayola and Annisa Nurbaiti, "Pengaruh Ukuran Perusahaan, Konsentrasi Kepemilikan, Reputasi Auditor Dan Risk Management Committee Terhadap Pengungkapan Enterprise Risk Management," *Jurnal Ilmiah Akuntansi* 5, no. 1 (2020): 01, <https://doi.org/10.23887/jia.v5i1.23090>.

<sup>32</sup> Syah Amelia Manggala Putri, Rizki, and Safaah Restuning Hayati, "Analysis of Risk Management at Baznas in DIY with Enterprise Risk Management (ERM) Approach" 518, no. ICOSIHESS 2020 (2021): 48–56, <https://doi.org/10.2991/assehr.k.210120.104>.

<sup>33</sup> A A Rifan, R Wahyudi, and O P Nurani, "Analisis Efektivitas Distribusi Zakat Pada Baitulmal Bank Syariah Indonesia," *Al-Tijary* 6, no. 1 (2020): 31–40, <https://journal.iain-samarinda.ac.id/index.php/altijary/article/view/2542>.

through legal procedures, but in the case of inheritance disputes that fall into the realm of civil law, the highest justice is the agreement of the parties, so that deliberation and mediation are prioritised.

## Conclusion

From the discussion above, we can conclude two things; first, the social reconstruction of expert waqf is carried out in three forms; 1) the principle of mutual trust and kinship in the implementation of expert waqf is witnessed by two family members; 2) handing over waqf in front of the village government or customary tribe. 3) the land endowed to the nadzir has the consent of the successor heirs. Second, the reconstruction of the legislative acronym is formed on three things; 1) the waqf pledge deed gets a recommendation from the head of the local government as a strong document of the AIW; 2) individual or corporate nadzirs are determined by social figures who understand the procedures for waqf management and administration; 3) mauquf alaih witnesses that a waqf has taken place between the waqif and the nadzir; 4) expert waqf is intended for public welfare witnessed by the nasab guardian; 5) expert waqf that has passed away is automatically transferred to waqf khairi.

## Bibliography

- Abdussamad, Zuchri. *Metode Peneitian Kualitatif*. Bandung: Syakir Media Press, 2021.
- Alexander Will, Enda Noviyanti Simorangkir. "International Journal of Social Science Research and Review." *International Journal of Social Science Research and Review* 5, no. 1 (2023): 159–65.
- Arkham Muhtadi, Novendi, Rohmad Abidin, and Qurrota A'yun. "EFEKTIVITAS PENYALURAN ZAKAT DI INDONESIA: PENDEKATAN RASIO KEUANGAN DAN SHARIA ENTERPRISE THEORY Volume 1 Number 2 2021." *JIEF-Journal of Islamic Economics and Finance* 1, no. 2 (2021): 2021. <http://e-journal.iainpekalongan.ac.id/index.php/jief/issue/current>.
- Asrida, A, S Iska, and V T Putriana. "Implementasi Indonesia Magnifence of Zakat Dalam Pengelolaan Zakat, Infak Dan Sedekah Di Indonesia." *IJMURHICA: International Journal of Multidisciplinary Research of Higher Education* 2, no. 2 (2019): 129.
- Bakar, N A A, M N M Hussain, and A B Hamed. "Scrutinizing the Effects of Restructuring in Perbadanan Wakaf Selangor." *International Journal of Accounting* 2, no. 4 (2017): 13–21. [www.ijafb.com](http://www.ijafb.com).
- Fattach, An'im, and Maskun Maskun. "Konsepsi Strategis Pengembangan Wakaf Produktif Melalui Investasi Berbasis Syariah." *Management of Zakat and*

- Waqf Journal (MAZAWA)* 3, no. 2 (2022): 51–65.  
<https://doi.org/10.15642/mzw.2022.3.2.51-65>.
- Fayola, Desak Nyoman Wiona Budi, and Annisa Nurbaiti. “Pengaruh Ukuran Perusahaan, Konsentrasi Kepemilikan, Reputasi Auditor Dan Risk Management Committee Terhadap Pengungkapan Enterprise Risk Management.” *Jurnal Ilmiah Akuntansi* 5, no. 1 (2020): 01.  
<https://doi.org/10.23887/jia.v5i1.23090>.
- Hassan, Surita Hartini Mat, Sakinatul Raadiyah Abdullah, Farahdina Fazial, Che Khadijah Hamid, and Salimah Yahaya. “The Implementation of Ijarah in Producing the Wakaf Property: Studies in Penang, Malaysia.” *International Journal of Academic Research in Business and Social Sciences* 11, no. 1 (2021). <https://doi.org/10.6007/ijarbss/v11-i1/9007>.
- Hassan, Surita Hartini Mat, Ramlan Mustapha, Maziah Mahmud, Siti Norma Aisyah Malkan, and Nurul Hidayah Che Hassan. “The Influence of Promotion and Waqf Knowledge toward Cash Waqf Awareness in Pahang Region.” *International Journal of Academic Research in Business and Social Sciences* 11, no. 4 (2021). <https://doi.org/10.6007/ijarbss/v11-i4/9816>.
- Hayat. *Metode Penelitian Kualitatif*. Malang: UNISMA Press, 2020.
- Hayati, Safaah Restuning, and Syah Amelia Manggala Putri. “The Efficiency of Zakat Management Organizations in Indonesia: Data Envelopment Analysis Approach.” *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 10, no. 2 (2020): 95–106. <https://doi.org/10.18326/muqtasid.v10i2.95-106>.
- Haziqi Hilmi, Mohd, and dan Muhammad Hakimi Mohd Shafiai. “Peranan Wakaf Tunai Sebagai Penyelesaian Isu Kos Sara Hidup Mahasiswa Universiti (the Role of Cash Wakaf As a Solution To the Cost of Living Issues of University Students).” *International Journal of Social Science Research* 4, no. 4 (2022): 63.  
<http://myjms.mohe.gov.my/index.php/ijssr>  
<http://myjms.mohe.gov.my/index.php/ijssr>.
- Hiyanti, Hida, Indria Fitri Afyana, and Siti Fazriah. “Potensi Dan Realisasi Wakaf Uang Di Indonesia Tahun 2014-2018.” *Jurnal Ilmiah MEA (Manajemen, Ekonomi, Dan Akuntansi)* Vol.4 No.1, no. 1 (2020): 77–84.
- Ibrahim, Duski, Ahmad Zainuri, and Miftachul Huda. “Empowering Wakaf (Islamic Endowment) for Economic Development: An Insightful Value of Nazir Waqf in Indonesia.” *UMRAN - International Journal of Islamic and Civilizational Studies* 7, no. 1 (2020): 103–14.  
<https://doi.org/10.11113/umran2020.7n1.405>.
- Ishak, Suhaimi, Mohamad Naimi Mohamad Nor, Mohd Sollehudin Shuib, Amirul Faiz Osman, and Ram Al Jaffri Saad. “Corporate Governance Practice, Risk Management and Internal Control at Kedah State Zakat Board (LZNK).” *International Journal of Innovation, Creativity and Change* 6, no. 2 (2019): 389–404.
- Karuni, Mudita Sri. “Pengaruh Dana Zakat Terhadap Pembangunan Manusia.” *I-Finance: A Research Journal on Islamic Finance* 6, no. 2 (2020): 125–35.

- <https://doi.org/10.19109/ifinance.v6i2.6469>.
- Khaer, Rijalul, Atep Firmansyah, and Pupun Saepul Rohman. "Meta-Analysis Of Wakaf Based Sharia Microfinance Institutions." *Perisai : Islamic Banking and Finance Journal* 7, no. 2 (2023): 237–54. <https://doi.org/10.21070/perisai.v7i2.1661>.
- Kholiq, Achmad. "Amil Zakat Governance Risk Mitigation: An ERM – COSO Analysis." *International Journal of Zakat* 6, no. 1 (2021): 1–12. [https://repo.iainbatusangkar.ac.id/xmlui/bitstream/handle/123456789/19806/1613376886314\\_2021.pdf?sequence=1&isAllowed=y](https://repo.iainbatusangkar.ac.id/xmlui/bitstream/handle/123456789/19806/1613376886314_2021.pdf?sequence=1&isAllowed=y).
- Kholis, Nur, and Mugiyati. "Distribution of Productive Zakat for Reducing Urban Poverty in Indonesia." *International Journal of Innovation, Creativity and Change* 15, no. 3 (2021): 1–12. <https://doi.org/10.53333/ijicc2013/15303>.
- Mohd Hafiz b. Hj. Fauzi, Sofri Yahya, Jalal Rajeh Hanaysha, Mohamad Sabri Haron, and Syaيداتun Nazirah Abu Zahrin. "The Impact of Trust in Cash Waqf Contribution: A Case Study of Wakaf Selangor Muamalat (Wsm) Service of Bank Muamalat Malaysia Berhad (Bmmb)." *International Journal of Business, Economics and Law* 18, no. 2 (2019): 1–10.
- MPOC, lia dwi jayanti, and Jennifer Brier. "Konstruksi Pengembangan Wakaf Saham Dalam Rangka Mengoptimalkan Potensi Wakaf Produktif Di Indonesia Lokot." *Malaysian Palm Oil Council (MPOC)* 21, no. 1 (2020): 1–9. <https://doi.org/http://journal.um-surabaya.ac.id/index.php/JKM/article/view/2203%0Ahttp://mpoc.org.my/malaysian-palm-oil-industry/>.
- Mudrifah, Mudrifah, and Aviani Wisyastuti. "Penguatan Karakteristik SDM Dalam Implementasi Manajemen Berbasis Risiko Di Lazis Muhammadiyah (LazisMu) Kabupaten Malang." *Jurnal Pengabdian Nasional (JPN) Indonesia* 2, no. 1 (2021): 19–27. <https://doi.org/10.35870/jpni.v2i1.26>.
- Muttaqin, A A, and A Safitri. "Analisis Pengaruh Zakat Dan Infak Terhadap Tingkat Kedalaman Kemiskinan, Keparahan Kemiskinan Dan Gini Rasio Di Indonesia Tahun 2007-2018." *Al-Tijary Jurnal Ekonomi Dan Bisnis Islam* 6, no. 1 (2020): 51 – 61. <https://journal.iain-samarinda.ac.id/index.php/altijary/article/view/2416>.
- Perkhidmatan, Wakaf, and Menurut Perspektif. "WAKAF SERVICE FROM AN ISLAMIC POINT OF VIEW." *International Journal of Islamic Studies* 31, no. 2 (2023): 142–57. <https://doi.org/http://al-qanatir.com>.
- Prahesti, Danica Dwi, and Priyanka Permata Putri. "Pemberdayaan Usaha Kecil Dan Mikro Melalui Dana Zakat Produktif." *Ilmu Dakwah: Academic Journal for Homiletic Studies* 12, no. 1 (2018): 141–60. <https://doi.org/10.15575/idajhs.v12i1.1905>.
- Puteri Nur Farah Naadia, M. F., and A. R. Khairuddin. "Shariah Compliance Risk Management in the Provision of Wakaf-Zakat Housings." *International Journal of Islamic Thought* 19, no. 1 (2021): 102–9. <https://doi.org/10.24035/IJIT.19.2021.200>.
- Putri, Syah Amelia Manggala, Rizki, and Safaah Restuning Hayati. "Analysis of Risk Management at Baznas in DIY with Enterprise Risk Management



- (ERM) Approach” 518, no. ICoSIHESS 2020 (2021): 48–56. <https://doi.org/10.2991/assehr.k.210120.104>.
- Rachman, M. Aulia, and Annisa Nur Salam. “The Reinforcement of Zakat Management through Financial Technology Systems.” *International Journal of Zakat* 3, no. 1 (2018): 57–69. <https://doi.org/10.37706/ijaz.v3i1.68>.
- Rifan, A A, R Wahyudi, and O P Nurani. “Analisis Efektivitas Distribusi Zakat Pada Baitulmal Bank Syariah Indonesia.” *Al-Tijary* 6, no. 1 (2020): 31–40. <https://journal.iain-samarinda.ac.id/index.php/altijary/article/view/2542>.
- Saputra, Hijrah. “Zakat Sebagai Sarana Bantuan Bagi Masyarakat Berdampak Covid-19.” *Al-Ijtima`i: International Journal of Government and Social Science* 5, no. 2 (2020): 161–75. <https://doi.org/10.22373/jai.v5i2.549>.
- Sedjati, Dwi Poetra, Yuzwar Z. Basri, and Uswatun Hasanah. “Analysis of Factors Affecting the Payment of Zakat in Special Capital Region (DKI) of Jakarta.” *International Journal of Islamic Business & Management* 2, no. 1 (2018): 24–34. <https://doi.org/10.46281/ijibm.v2i1.50>.
- Wahyudi, Rofiul, and Agus Susetyohadi. “The Efficiency of Amil Zakat Institutions (LAZ) in Indonesian Islamic Banks: Data Envelopment Analysis Approach.” *Madania: Jurnal Kajian Keislaman* 25, no. 2 (2021): 169–80. <https://ejournal.iainbengkulu.ac.id/index.php/madania/article/view/4978>.
- Zainuddin, Noor Azura, Hasyeilla Abd Mutalib, Rusnadewi Abdul Rashid, Nor Kartini Mohd Rodzi, and Nadiyah Hashim. “ISSUES AND CHALLENGES OF DANA WAKAF ILMU UITM PERLIS (DWIPs).” *International Journal of Law, Government and Communication* 7, no. 28 (2022): 153–65. <https://doi.org/10.35631/ijlgc.728012>.