

## Reconstruction of Holistic Benefits in Resolution of Wakf Land Disputes in Palembang

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### Abstract:

*Waqf constitutes a significant instrument in enhancing social, cultural, economic, and educational well-being, as it represents the voluntary dedication of assets by a waqif for religious and public benefit purposes. However, the complexity of waqf administration, assets, and legal aspects often give rise to disputes that require in-depth handling and study. This study aims to identify the causes of waqf land disputes in Palembang and formulate a comprehensive conflict resolution framework. The study employs a qualitative research design grounded in a sociological perspective to examine the dynamics of waqf implementation and emerging disputes in Kemuning District, Palembang City. Data were collected through observation, interviews, and documentation, then analyzed thematically using sociological theory as well as the framework of Islamic law and waqf law. The results show that immovable waqf assets significantly influence social dynamics and are often the main source of disputes, most of which end up in religious courts. Disputes are generally triggered by the sale of waqf assets, changes in their intended use, adoption issues, and ownership claims by the waqf family. The causes of disputes can be classified into internal and external factors. Internal factors include the low understanding and capacity of nazhir, the involvement of heirs, administrative costs, and negligence in waqf management. External factors include minimal public awareness of waqf, the dominance of private interests, weak government attention, and a suboptimal administrative system. These findings highlight the urgency of adopting a comprehensive dispute resolution framework that integrates deliberation, judicial and non-judicial mechanisms in line with national law, alongside mediation with relevant institutions, to safeguard and sustain waqf assets.*

## Introduction

Islam is a comprehensive religion that regulates various dimensions of human life, encompassing both the spiritual relationship with God (*ḥablun min Allāh*) and social relationships among human beings (*ḥablun min al-nās*) (Rahman, 1984). One of the teachings of Islam that reflects the synergy between the spiritual and social aspects is *waqf* (endowment). Since the time of Prophet Muhammad (PBUH), *waqf* has played an important role in supporting the well-being of the Muslim community, such as in the construction of mosques and the provision of public facilities. Umar ibn al-Khattab is recorded as the first companion to dedicate land in Khaibar as *waqf*, while Uthman ibn Affan bought and endowed a well from a Jewish man for the benefit of the ummah (Hamzani, 2015).

According to scholars such as Yusuf al-Qarḍāwī and M. Natsir Zubaidi, *waqf* represents a fundamental component of the Islamic economic system, positioned alongside zakat, infāq, and ṣadaqah. It functions not only as an act of worship but also as a tool for community empowerment, poverty alleviation, and equitable distribution of welfare (Hasan, 2011). Countries such as Egypt, Saudi Arabia, and Turkey have long developed productive *waqf* systems to finance sectors like education, healthcare, and public services. The benefits of *waqf* can be felt by all segments of society, regardless of religion, ethnicity, or social class (Barkah et al., 2020). Even zakat, infaq, sadaqah and waqf fundraising has developed through online media (Rasiam et al., 2023).

From an Islamic perspective, *waqf* arises from spiritual piety and social sensitivity. As emphasized in Surah Al-Baqarah verse 261, sincere charitable giving is illustrated as a seed that flourishes into seven ears, each containing a hundred grains, symbolizing the profound spiritual reward and far-reaching social benefits associated with *waqf* (Anggareni et al., 2024; Yafiz et al., 2025). The Prophet Muhammad (PBUH) also emphasized that among the deeds that continue to benefit a person after death are ongoing charity (*ṣadaqah jāriyah*, including *waqf*), beneficial knowledge, and a righteous child who prays for their parents (Firdaus & Nurhasanah, 2021).

In practice, the Prophet himself demonstrated the use of *waqf* in managing the community's finances. He used *waqf* proceeds to meet his family's needs and distributed the rest for the benefit of the Muslim ummah, such as purchasing horses and weapons (Abror, 2019; Qardhawi, 1980). In Indonesia, *waqf* is regulated by Law Number 41 of 2004, which provides a legal framework for transferring a portion of wealth by a *wakif* for public benefit, either permanently or temporarily (Jubaedah, 2017). When managed professionally and accountably, *waqf* holds great potential in building a community-based welfare system (Saprida et al., 2022). However, its implementation faces various challenges, including ownership conflicts, functional shifts, and administrative disputes. Many *waqf* conflicts are triggered by the absence of formal documents such as the *Akta Ikrar Wakaf* (AIW) and valid *waqf* certificates (Choiri & Ardyansyah, 2024; Marza et al., 2022). This situation is further complicated by the persistent dominance of classical jurisprudential views, particularly the Shafi'i school's prohibition of *waqf* land substitution (*ibdāl al-waqf*), which restricts the flexibility of *waqf* management in responding to contemporary needs (Mutakin, 2021).

Land distribution inequality in Indonesia, particularly among indigenous communities and farmers, further increases the potential for conflict. Many individuals lack formal legal documentation to verify ownership of land they have occupied or managed for decades. When such lands are taken over by investors or claimed as *waqf* property, structural injustice often occurs, leading to horizontal conflicts (Faisal, 2021; Mulyadi & Satino, 2019).

In Palembang, according to data from the Regional Office of the Ministry of Religious Affairs of South Sumatra in 2018, there are approximately 890 *waqf* land locations with a total area of 26,700 m<sup>2</sup>. Of these, only around 585 plots have certified *waqf* documentation (Penaissumsel, 2019). Most of this land is used for religious and social purposes such as mosques, schools, Islamic boarding schools, and cemeteries. The primary challenges

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commonly encountered involve non-compliance with waqf administrative procedures, limited managerial capacity among nazhir, and low public awareness of existing regulatory frameworks (Rochmiyatun, 2018).

Many previous researchers have conducted research on waqf disputes, such as the study by Zaenurrosyid et al. (2025), which revealed that conflict prevention is crucial for waqf asset governance based on collective awareness, regulations, and resolution. *Waqf* disputes may be addressed through two principal mechanisms: mediation and judicial litigation. Unfortunately, mediation has not been fully accepted by the community because it is considered to lack legal force, while court proceedings are often time-consuming and expensive (Islamiyati, 2019). However, in certain areas, resolving waqf disputes through mediation by a kiai is more effective (Haryanto et al., 2023).

To address these challenges, strategic steps are needed, including increasing *waqf* literacy among the public and *nazhirs*, strengthening the role of the Indonesian Waqf Board (BWI) in supervision and assistance, and digitizing *waqf* administration to prevent data overlap. Local governments also need to involve customary institutions, religious leaders, and civil society organizations in developing dispute resolution mechanisms based on local wisdom. *Waqf* is not merely an individual act of worship but a powerful social instrument for achieving economic justice and public welfare. When managed properly, *waqf* can become a critical pillar of sustainable development in Indonesia, particularly in major cities like Palembang, which has a significant *waqf* legacy.

The purpose of this study is to examine the dynamics of waqf land disputes in Palembang, identify the root causes underlying these conflicts, and develop protection models for waqf assets that align with national waqf objectives. Additionally, this research seeks to examine the impact of applying a holistic approach to reconstructing *waqf* land dispute resolution processes that are oriented toward public benefit (*maṣlahah*).

### **Method**

This study adopts a qualitative research approach grounded in a sociological perspective to examine the dynamics of waqf in Palembang City, with particular focus on the Kemuning District. This approach allows for the observation and interpretation of social realities through direct interaction with the community and relevant institutions, with the goal of exploring the meaning, processes, and issues surrounding waqf practices, rather than simply measuring quantities.

Data were collected through observation, in-depth interviews, and document analysis. Observations took place at waqf activity locations such as the Office of Religious Affairs, the Indonesian Waqf Board, and the Religious Courts. Structured and unstructured interviews were conducted with waqifs, nazhirs, witnesses, and representatives of relevant institutions to obtain information on disputes, asset protection, and waqf contributions. Documentation included waqf deed of gift, land certificates, copies of court decisions, property photographs, and institutional records as legal,

administrative, and historical evidence. Informants were selected using purposive sampling to ensure relevant and comprehensive data.

Data were analyzed thematically, with findings categorized according to waqf history, social dynamics, dispute cases, legal frameworks, institutional roles, and policy evaluations. The interpretation is strengthened by sociological theories such as Berger's social reconstruction and Durkheim's theory of social facts, as well as principles of Islamic law and waqf law. Through this method, the research provides a comprehensive understanding of the evolution, disputes, and social implications of waqf, while also offering insights for improving waqf governance in Indonesia.

## **Results and Discussion**

### **Dynamics of Land Waqf Disputes in Palembang City**

Waqf is an economic asset of the Muslim community with immense potential that remains underutilized in enhancing societal output. With substantial land holdings, this potential can be maximized. According to statistics from the Indonesian Ministry of Religious Affairs, as of 2007, waqf land in Indonesia covered 2,686,536,656.68 m<sup>2</sup> across 366,595 locations, equivalent to approximately 268,653.67 hectares. This makes Indonesia home to the largest waqf land assets in the world. Based on these figures, the potential of zakat in Indonesia reaches up to IDR 15 trillion annually, as cited by *Republika*. Nevertheless, during the period of 2024–2025, the Regional Zakat Management Agency (BAZDA) was able to secure zakat funds amounting to merely IDR 900 billion (Baznas, 2024). Research conducted by the Center for Language and Culture (PBB) at UIN Syarif Hidayatullah Jakarta revealed that a majority of waqf assets (77%) are inactive and only 23% are productive. This study involved 500 nazhir (waqf administrators) across 11 provinces.

The study also shows that approximately 79% of waqf assets are in the form of mosques, with 59% located in rural regions and 41% in urban settings. At the same time, nazhir often neglect asset management responsibilities: 84% of them serve on a part-time, unpaid basis, while only 16% work full-time with a focused commitment. Additionally, professional organizations (16%) and legal entities (18%) are not the primary waqf managers in Indonesia; instead, traditional individuals or community groups are responsible for 66% of the management. Thus, at least two major problems need to be addressed: the ineffectiveness of waqf assets and the incompetence of waqf administrators (nazhir). Mismanagement or conflict can arise when waqf assets are extensive yet not professionally or insightfully managed. Given that the Religious Courts are entrusted with handling first-level disputes among Muslims, including issues of marriage, inheritance, wills, grants, waqf, zakat, infaq, almsgiving, and Islamic economic transactions, they are legally empowered to resolve waqf-related conflicts.

Of the total 217,084 cases received by Religious Courts nationwide in 2007, marriage cases ranked the highest with 213,933 cases (98.5%). Other types included inheritance (1,373), wills (25), grants (46), waqf (19), and almsgiving/zakat/infaq (25). Beyond establishing a modern waqf management

model, Law No. 41 of 2004 on Waqf of the Republic of Indonesia is expected to serve as a legal framework for resolving waqf-related disputes. While the earlier Government Regulation No. 28 of 1977 narrowly defined waqf as land only, the new Waqf Law expands the definition to include both immovable and movable property. Therefore, the Waqf Law is expected to serve as a social engineering tool to shape modern Muslims' perspectives, attitudes, and actions regarding waqf. This research explores waqf-related conflicts and their settlement mechanisms by reviewing the changing duties of principal actors in the waqf framework, including the waqif, nazhir, the Indonesian Waqf Board (BWI), and Sharia Financial Institutions, within the legal framework of Law No. 41 of 2004.

### 1. Dynamics of Land Waqf Disputes

Land waqf in Indonesia is recognized as a legitimate Islamic charity, endorsed by religious authorities like the Indonesian Ulema Council (MUI) and the Ministry of Religious Affairs. According to Ministry data, there are over 435,000 waqf land sites in Indonesia, though only a portion have official land certificates. Even though sectors such as mosques, prayer halls, educational institutions, and social organizations benefit from these waqf lands, significant management challenges remain. Although Law No. 41 of 2004 provides a legal framework for waqf, its implementation remains inconsistent (Iskandar et al., 2020). Many waqf practices still resemble traditional zakat systems managed by community and educational institutions, lacking comprehensive integration with national policy.

The knowledge and competence of community organizations and educational institutions play a vital role in waqf management. The relationship between society and the state in waqf matters is dynamic and sometimes confrontational, thus requiring a collaborative and integrative working model (Astuty, 2008). Waqf has societal impacts beyond the individual, including alleviating poverty and reducing inequality (Aini & Nasution, 2024; Radzi et al., 2024). The rise of Islamic charitable organizations and their various social initiatives reflects positive growth in waqf management (Latief et al., 2015). The waqf movement has made progress both locally and globally (Mahamood, 2006).

Currently, the use of waqf land remains largely social in nature, serving facilities like mosques, burial grounds, and *pesantren* (Triyanta & Zakie, 2014). Expanding its contribution requires transforming waqf into more productive ventures, including agricultural development and Sharia-based investments (istitsmary), to avoid developmental stagnation. Institutions like BWI and Islamic financial institutions bear significant responsibility in assisting nazhir to ensure more professional waqf money management (Aziz, 2017). Nevertheless, waqf management often remains context-dependent and uneven, adjusting to surrounding socio-economic realities, as seen in the post-tsunami Aceh context and research on middle-class Muslim philanthropic behavior (Fithriady & Ibrahim, 2017).

A case of waqf land misuse in Ilir Timur I, Palembang, illustrates weak legal protections for waqf assets. In this case, a 400 m<sup>2</sup> waqf land intended for public benefit was sold, with the court ultimately ordering its return to the

wakif's heirs. Waqf can take the form of immovable property, movable property other than money, or even money (Widyawati, 2011). Types of waqf include *khairi* (public/social), *dzurri* (family), and *musytarak* (hybrid) (Sabiq, 2008). In Islam, waqf is a long-term contribution that supports sustainable development in education, welfare, and religious institutions in Indonesia.

## 2. Waqf Regulation

The management of waqf in Indonesia has seen significant development, marked by various regulations aimed at promoting professionalism and institutional accountability. Law No. 41 of 2004 on Waqf serves as a milestone in national waqf governance, supported by government regulations, ministerial decrees, and decisions from the President and the Indonesian Ulema Council (MUI). One key innovation is the recognition of *waqf money* as a new instrument, broadening opportunities for public contribution. The Indonesian Waqf Board (BWI) and Sharia Financial Institutions Receiving Waqf Money (LKS-PWU) play central roles in supervising, developing, and registering waqf assets legally and systematically.

BWI is tasked with formulating policies, exercising supervisory functions, issuing recommendations, and authorizing the transfer of waqf assets, including the appointment and dismissal of nazhir. Meanwhile, LKS-PWU is tasked with receiving, registering, and reporting cash waqf. Despite regulatory progress, challenges remain, such as asset misuse, a lack of formal certification, and disputes stemming from unclear legal status. In this context, professional, transparent, and accountable management is critical to maximizing the social and religious benefits of waqf, in line with the principles of *maqashid asy-syariah* (Harnides & Hadana, 2021; Makhrus, 2019).

Historically, waqf conflicts date back to the Prophet Muhammad's time and continued through the caliphate eras. Disputes involving waqf from Mukhairik, Abu Talhah's orchard, and administrative issues during the rule of Abu Bakr and Umar highlight the importance of clear declarations and documentation in determining waqf status and management (Dahlia, 2009). Conflicts may arise from differing interpretations of waqf status, especially in the absence of explicit statements from asset owners (Agustini, 2017; Dahlia, 2009). Urbanization and shifting economic values further affect these dynamics, as seen in the case of Hasan bin Tsabit, who sold waqf land for economic gain.

Disputes over waqf assets are part of the evolving social and economic fabric of Muslim communities. With the escalating economic worth of land, especially in urban contexts, the potential for disputes becomes significantly higher. Therefore, waqf management systems must address legal, social, and economic dimensions holistically. Strengthening legal frameworks and oversight, increasing waqf literacy, and fostering inter-institutional collaboration are essential to preserving the integrity and purpose of waqf so that it continues to contribute to the long-term welfare of the Muslim community.

### **Factors Causing Waqf Land Disputes in Palembang City**

Waqf land in Indonesia has a potential area of around 1.5 billion square meters spread across hundreds of thousands of locations. However, as of September 2022, only around 75% have valid certificates (Sawati & Amrizal, 2023). This percentage has contributed to the emergence of various conflicts, such as the case of the Bondo waqf land of the Great Mosque of Semarang which was fought over for 19 years until it was finally returned to the BKM Semarang. Exchanging waqf land with the private sector, or *ruilslag*, has become a source of polemic, because it is considered prone to misappropriation and ignores religious values. Comparable cases have also occurred in Medan, Jakarta, and Palembang, arising from the conversion of waqf land without valid legal documentation or community consent.

The main problem in waqf land conflicts is the absence of certification or legal documents such as a waqf pledge deed (AIW), land deed, or statement letter from the heirs. For example, in Kemuning District, Palembang, the land used to build the Daarul Jannah Mosque has not received recognition of waqf status from the BPN due to the lack of legal documents. Local residents and the KUA took the initiative to complete documents such as waqf mortgage deeds, statements of physical control of the land, and letters of recognition of land rights. However, the lack of coordination and support from heirs has slowed down the certification process and is prone to conflict.

Conflicts are often triggered by incompatibility between the interests of heirs and nazirs, or by the desire of private parties to change the function of the land. Sometimes, heirs sell waqf land due to economic needs, rising land prices, or because they feel neglected by the waqf donor. Ambiguity regarding the status of heirs adds another layer of complexity to waqf land management. Another factor is the difference in understanding between religious legal values that allow oral waqf and positive law that requires administrative procedures such as certification and official data collection (Najmudin et al., 2021).

In the perspective of Ralf Dahrendorf's conflict theory, waqf conflicts can be analyzed through tensions over resources (land), conflicting interests, and incompatible values. Land as a non-renewable resource becomes an object of contention because of its high economic and spiritual value. The interests of the community to maintain the social function of waqf land conflict with the interests of developers or heirs who want to gain economic benefits. The government is also faced with the dilemma of spatial planning and public interest versus preserving waqf assets.

According to several scholars and juristic opinions, including those of Ibn Qudamah and Ibn Taymiyah, alterations to the status of waqf property are permissible when they serve a greater public benefit or when the waqf assets can no longer function in accordance with their original purpose. This is also regulated in Law No. 41 of 2004 and PP No. 28 of 1977 (Sulistiani et al., 2018). However, this change must still follow legal procedures and obtain approval from the Minister of Religion. Otherwise, the community will suspect the action as a deviation that is detrimental to waqf and the community.

Lack of public understanding of the importance of waqf legality is the main cause of conflict. Many consider waqf as an act of worship that does not

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require legal registration. The belief that waqf is sufficient to be done verbally and strengthened by social trust makes waqf assets vulnerable to disputes. The incompatibility between religious culture and the state legal system is an obstacle in waqf management. In Palembang itself, of the 558 waqf locations, only around 57% are certified. The absence of legal documentation for the remaining waqf assets exacerbates potential conflicts between nazir, beneficiaries, and government stakeholders. The factors driving waqf disputes in Palembang City are summarized below:

*First*, Internal Factors. Land issues in Indonesia are increasingly complex because they touch on various aspects such as law, politics, social, culture, and human rights. Land conflicts can no longer be resolved solely through administrative law (Isnur, 2012), because they involve many parties and interests. Land disputes are often triggered by overlapping ownership, falsification of documents, errors in determining boundaries, and conflicting claims. In addition, non-legal factors such as the high economic value of land, increasing public awareness, limited land, population growth, and poverty also complicate this problem. The National Land Agency (BPN) has recorded an increase in thousands of land dispute reports in the last two years, reflecting the urgency of more systematic handling (Nasir, 2024).

One of the flagship programs run by the Ministry of Religion is the certification of waqf land. Even so, the process of registering and certifying waqf land still faces many administrative and legal obstacles (Putra et al., 2023). Every year, the KUA issues thousands of Waqf Pledge Deeds, but many of them have not been certified by the BPN. This indicates bureaucratic and legal obstacles in the field, such as a lack of supporting documents and disharmony between the agencies involved. Cases in Jaya Regency and other places show that obstacles such as differences in understanding between parties, involvement of heirs, and lack of coordination between institutions also hamper the legalization of waqf land.

A real example of this problem can be seen in the dispute over the ratification of the waqf status of the Daarul Jannah Mosque in Kemuning District, Palembang City. The land on which the mosque is located originated from a grant by the late Oey Tjoen Liong prior to 1970 and has been utilized as the Jaya Langgar since 1980. Although the waqf oath process had been carried out before authorized officials and approved by witnesses and community leaders, the certification process by the BPN was hampered by the absence of a statement letter from the sub-district and the unclear status of the heirs. The mosque management has submitted an application to the Kemuning Sub-district Head, but was hampered by internal policies that require recommendations from prominent religious figures. This case reflects how waqf land disputes are not only about documents, but also related to relations between institutions and broader socio-cultural aspects.

Based on the data above, here are some things that triggered the polemic of the Daarul Jannah Mosque land endowment: The polemic related to the Daarul Jannah Mosque land endowment was triggered by several main factors, one of which was the understanding of nazhir (Munawar, 2021). Many nazhir were appointed randomly without considering the capability in managing waqf land. In fact, nazhir should have knowledge of positive law and



fiqh, and be able to manage waqf professionally and responsibly. The existence of nazhir is very important because it is tasked with maintaining and managing waqf assets for the benefit of the community, but its role is often not adequately understood by the community. In addition, the presence of the wakif heirs is an important requirement in the certification process if the wakif has died and the land has not been certified (Santoso, 2020). The process becomes particularly problematic due to the difficulty of securing testimony from every heir, notably when they are widely dispersed across remote areas. An alternative solution is through the granting of a power of attorney from the heirs to the representative, so that their physical presence is not absolutely necessary. However, until now there has been no regulation that explicitly regulates the resolution of this problem, which slows down the certification process.

Another factor is the high administrative costs and the length of the waqf land certification process (Taryanto & Munifah, 2022). Although legally there is no fee (zero Rupiah) for certification and replacement of nazhir, in practice funds are still needed for land measurement and other administration purposes. This process can even take up to four years. Many individuals are hesitant to proceed with the process due to its perceived complexity and financial burden, even though the government through the BPN and the Ministry of Religion has provided a free waqf land certification program based on PP No. 128 of 2015.

Finally, there is a mistaken assumption from the community and some nazhir that without a certificate, waqf land is still legally safe (Tanjung, 2023). In fact, without certification, waqf land does not have legal force and is vulnerable to claims from other parties. In fact, Article 11 of Law No. 41 of 2004 concerning Waqf emphasizes that nazhir is obliged to register and protect waqf assets. In fact, Article 40 of the same Law explicitly prohibits the management of waqf land in the form of sale and purchase, inheritance, or other deviant forms. Therefore, legal awareness and the active role of nazhir are crucial to ensure the sustainability and security of waqf land.

*Second, External Factors.* As adherents of the Shafi'iyyah school of thought, the majority of Indonesian Muslims rely on oral traditions in waqf practices, especially before the presence of formal regulations such as Law No. 5 of 1960 and PP No. 28 of 1977. In this school of thought, clear oral statements (sharīh) such as "waqaftu," "habastu," or "sabbaltu" are considered valid for waqf of property, as long as they are accompanied by clear intentions and purposes of the waqf. Waqf can be stated verbally, in writing, or with gestures, and written statements before an official party can be strong evidence. Waqf is only valid if the object being waqf is useful, not haram or worthless goods, and must be clearly determined during the contract. Waqf assets may consist of immovable property, such as land or buildings, as well as movable assets, including cash or shares. However, the Indonesian public generally remains skeptical toward non-physical forms of waqf (Sabiq, 2008).

Once the waqf contract is established, the legal ownership of the object is transferred to Allah or becomes public property, and the wakif no longer has the right to withdraw or change the status of the object. In the context of the Shafi'iyyah school of thought, the main principle of waqf is the eternal benefit

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for the community or designated institution. Therefore, the wakif can no longer manage or transfer ownership rights to the waqf property. The implementation of waqf in Indonesia reflects these values, where waqf is seen as a form of permanent contribution to religious and social welfare, although administrative challenges and legal understanding are still obstacles to its optimal implementation. Waqf is property that cannot be inherited, sold, mortgaged, or donated. In practice, waqf in Indonesia has two main forms, namely waqf ahli and waqf khairi. Waqf ahli is intended for a specific family or individual such as a child or grandchild, and is considered valid if stated in the waqf pledge. However, this form raises problems, especially when there is a dispute over the heirs or when the beneficiary dies. On the other hand, khairi waqf is intended for religious and social interests, such as building mosques, schools, or hospitals. This form of waqf is regarded as superior because its benefits are universal and not confined to specific recipients. The Shafi'i school of thought strictly prohibits the sale and purchase of waqf property, including damaged mosques, while Imam Ahmad bin Hanbal allows sales if they are reused for the same purpose (Zahrah, 1996).

The status of waqf land cannot be changed unless the land can no longer be used for its original purpose. However, there are many cases where nadzir abuses trust by changing the status or name of waqf land without a clear legal basis. Therefore, regulations such as PP No. 28 of 1977 are important to ensure legal certainty and avoid disputes. Before this regulation, waqf was often carried out verbally without formal documentation, which has the potential to trigger conflict in the future. The main purpose of this regulation is to protect waqf property so that it can truly be used for the welfare of the community fairly and sustainably.

In Indonesian culture, it is common for someone to hand over waqf land to a community figure such as a kyai or ulama as a nadzir. However, not all nadzirs have the ability to manage waqf assets, which results in many waqf assets being neglected. The deeply entrenched perception that a nadzir must be a religious figure often poses a barrier to the development of professional waqf management. Therefore, the legal validity of waqf requires the fulfillment of administrative requirements, including a waqf land certificate as regulated in PP No. 28 of 1977. Waqf land can be developed as long as it is in accordance with its designation, and clarity of legal status is essential to avoid conflicts of use. Unfortunately, until now many waqf lands in Indonesia do not have adequate legal documents. To overcome this, the government issued regulations such as PMA No. 1/1978 which stipulates that nadzirs must register with the local KUA. If the nadzir dies, the obligation to notify falls to the wakif, heirs, or parties who know the history of the land. The village head as the party who knows the origin of the land is also obliged to report it if no one continues. The registration process is carried out by the Waqf Pledge Deed Making Officer (PPAIW) with supporting documents such as a statement from the village head and testimony of at least two istifadhah witnesses. This procedure aims to guarantee legal protection and the sustainability of the function of waqf land.

Waqf property cannot be inherited, sold, mortgaged, or transferred as a gift. In practice, waqf generally manifests in two primary forms: expert waqf,

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which is intended for a specific family or individual, and khairi waqf, which is intended for the public interest. Expert waqf allows the wakif to gain rewards while maintaining family relationships, but causes problems if the beneficiary dies or there is a conflict in the distribution of assets, especially if there is no official documentation. Meanwhile, khairi waqf, such as the construction of mosques, schools, hospitals, or other public facilities, is more beneficial because its benefits are not limited to a specific individual. Although the majority of scholars, such as Imam Syafi'i, prohibit the sale of waqf property under any circumstances, other scholars such as Imam Ahmad bin Hanbal allow it on condition that the proceeds are reused for similar purposes.

The management of waqf faces major challenges, especially because not all nadzirs (waqf managers) have adequate competence. The common practice in society of entrusting waqf to religious figures often causes waqf assets to be neglected because the managers are unable to maintain them. In addition, there are often deviations by the nadzir who changes the status or designation of waqf without a valid legal basis. To overcome this, the government has issued PP No. 28 of 1977, which regulates the legal status, use, and administration of waqf land. This regulation is important to prevent conflict and ensure that the social function of waqf is maintained according to sharia. Unfortunately, many waqf lands do not yet have legal documents, which causes disputes and unclear use. For this reason, PMA No. 1/1978 was issued as a complement to PP No. 28/1977, which requires the nadzir to register waqf with the local Religious Affairs Office (KUA) using a specific form. If the nadzir dies, the obligation to notify is transferred to the wakif, heirs, or parties who know the history of the land. The village head also has the responsibility to report if other parties do not carry it out. The registration process must be accompanied by a land certificate or a letter of statement from the village head and witnessed by at least two witnesses. This effort aims to strengthen legality and ensure that waqf land is used properly.

The legal framework of waqf in Indonesia continues to encounter numerous challenges, particularly in relation to regulatory provisions and institutional capacity. Unlike zakat which has been regulated professionally through Law No. 38 of 1999 and Decree of the Minister of Religious Affairs No. 581 of 1999, waqf management is still in its early stages and is bound by inadequate regulations. These formal obstacles include the absence of comprehensive technical regulations in waqf management, which hinders the growth of waqf institutions as a potential for strengthening the people's economy. Muslim countries such as Egypt have been more advanced by implementing regulations such as Qanun No. 46 of 1946 which are flexible and still based on Islamic law.

In addition, the lack of legal clarity raises doubts among the community and legal institutions regarding the protection of parties involved in waqf, such as wakif, nadzir, and beneficiaries. The absence of strict sanctions and weak public control over deviations have led to low accountability in waqf management. Existing laws, such as the Basic Agrarian Law No. 5 of 1960, only cover waqf of land ownership rights, without reaching modern assets such as money and securities. This condition causes the potential of waqf not to be utilized optimally. Therefore, the ratification of a comprehensive waqf law is

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very necessary to reduce these obstacles and encourage maximum waqf empowerment.

Waqf disputes in Palembang City emerge from multiple factors, one of which is the community's limited understanding of the legal framework and conceptual principles of waqf. The community still considers waqf to be limited to religious purposes, even though waqf can also be used for social interests such as education and health. The 2016 waqf land dispute case involving Asrul Indrawan and several related parties showed errors in waqf administration management and inappropriate understanding. The disputed land was claimed as a waqf, even though some of it had been inherited, so it did not meet the requirements for a valid waqf according to Islamic law. This misunderstanding causes conflict and potential violations of the law, such as document forgery and violation of property rights. In addition, a lifestyle that prioritizes personal gain over religious values also exacerbates the problem. Many people focus more on worldly interests and tend to ignore the potential of waqf as a means to achieve the welfare of the community. Waqf, if managed properly and professionally, can be part of an Islamic lifestyle that is not only spiritually beneficial, but also has a positive impact on the economy and mental health of the community (Anshori, 2005). However, the individualistic attitude and unpreparedness of the community in making waqf a part of socio-economic life are the main obstacles in optimizing the potential of waqf.

Lack of attention from the government, ulama, and the Waqf Pledge Deed Making Officer (PPAIW) is also an important factor. Although communication between these parties has been established, more serious efforts are still needed to provide education and assistance to the community regarding the procedures and benefits of waqf. Government involvement in the waqf certification process must be more transparent and systematically structured to prevent confusion and inconsistencies in the future. Without strong support from official institutions, the community will continue to have difficulty understanding the strategic role of waqf in community development.

Finally, the waqf management administration system in Indonesia is still far from ideal. Many waqf assets are not documented or managed professionally, so they are at risk of being lost or misused. The unpreparedness of the wakif and nadzir, as well as the lack of supervision, causes waqf assets to not develop and instead become a source of conflict. Cases such as the waqf of the Pondok Duta Mosque and the Nurul Huda Foundation highlight the distrust between the managers and heirs due to differences in interests and the absence of a clear system in recording and managing waqf. To prevent potential disputes, strengthened governance mechanisms and comprehensive education are required for all stakeholders involved in the waqf process.

## **Reconstruction of the Prosperity of the Settlement of Waqf Disputes in Palembang for the Prosperity of the City of Palembang Through a Holistic Approach**

A holistic approach to waqf dispute resolution seeks to harmonize legal considerations with social dynamics and community welfare. This approach integrates various complementary principles and mechanisms to achieve broad benefits, from the public interest to the protection of waqf assets. The

discussion then focuses on three main aspects: the principle of *maslahah*, which emphasizes the common good and interests; the principles of litigation and non-litigation as a framework for legal resolution; and the principles of mediation, which emphasize dialogue, deliberation, and the involvement of all relevant parties.

*First, Principle of Maslahah.* Social dispute resolution in Indonesia can be achieved through two main channels, namely the judicial system (litigation) and alternative dispute resolution (ADR) (Musaffa, 2025). In the context of Indonesian law, ADR is known as the Alternative Dispute Resolution Mechanism (MAPS) which includes consultation, mediation, conciliation, and expert assessment, as regulated in Law No. 30 of 1999 (Hendrawati & Islamiyati, 2018). Dispute resolution can also be carried out through customary institutions or formal justice, including peace in court (*dading*) based on Article 130 HIR and Article 1851 of the Civil Code. Land disputes, including waqf land, can be resolved through litigation or non-litigation. However, the UUPA does not explicitly provide mechanisms for resolving land disputes, prompting various parties to propose the establishment of a specialized agrarian court to address the needs of justice seekers. Mediation is one of the most common and effective forms of non-litigation dispute resolution (Anshoruddin, 2016; Mansur et al., 2025; Syamsuar et al., 2023).

In mediation, a neutral third party (mediator) helps the disputing parties reach a mutual agreement without the authority to decide the case. Mediation emphasizes the principles of empowerment and recognition, where the parties are given space to listen to each other and make decisions voluntarily (Hadi & Suhartono, 2023; Herliana, 2023; Syufaat, 2018). The effectiveness of mediation is largely contingent upon the mediator's competence, encompassing professional expertise, integrity, and overall professionalism (Rachman & Makkarateng, 2021). Mediators can come from social networks, authoritative figures, or professionals chosen for their competence (Sinaga et al., 2024). In resolving waqf disputes, if deliberation is unsuccessful, the parties can take the path of mediation, sharia arbitration, or religious courts, in accordance with Article 62 of Law No. 41 of 2004 concerning Waqf.

In addition to conventional dispute resolution, there is an approach through changing waqf institutions into foundations, especially for managing waqf assets in a more legal and structured manner. A foundation is a legal entity that can receive funds from various sources including waqf, as regulated in Law No. 16 of 2001. The provisions for the use of foundation assets are regulated so that they are not misused, and foundation managers can receive compensation if they meet certain requirements. Waqf institutions in the form of foundations can still act as *nazhir*, as long as they meet the administrative and substantive requirements regulated in Articles 9 and 10 of Law No. 41 of 2004. Thus, the transformation of waqf institutions into foundations can be a solution to dispute resolution and management of waqf assets that is more effective and accountable.

*Second, Principles of Litigation and Non-Litigation.* The issue of waqf in Indonesia began to receive legislators' attention since the 1970s, due to the requirement for certification of land rights based on Law Number 5 of 1960.

Although the Religious Court has had authority over waqf since Staatsblad 1882/152 (Wahyudi, 2016), there has been no complete regulation regarding waqf land, thus potentially causing legal ambiguity. Government Regulation Number 28 of 1977 and the Compilation of Islamic Law of 1991 became the initial basis for resolving waqf disputes (Ali, 1988), which was later strengthened by Law Number 41 of 2004. In this law, the resolution of waqf disputes is carried out in stages: starting with deliberation, then mediation, arbitration through BASYARNAS, and finally litigation in the waqf disputes are resolved through the Religious Court in accordance with civil procedural law. In practice, settlement efforts typically begin with hierarchical deliberation, as guided by QS. An-Nisa: 35, and may subsequently proceed to mediation facilitated by a neutral third party. If this fails, the parties can take sharia arbitration through BASYARNAS, although it is rarely used because it is more common in commercial conflicts (Jamaludin, 2019). The last path is litigation, the procedure of which is regulated in Perma Number 1 of 2008, starting from mandatory mediation in court, to evidence and decisions. The litigation process is considered complicated and time-consuming, so alternatives outside the courts are more recommended whenever possible (Mujahidin, 2021). The law also emphasizes that waqf assets may not be used as collateral, gifts, sales, or inheritance, except for the public interest and with the approval of the competent authorities.

Positive Indonesian law also recognizes out-of-court dispute resolution as part of the national legal system, as stated in Article 1 paragraph (3) of Law No. 14 of 1970 and Articles 1851, 1855, 1858 of the Civil Code. Peace has the same legal force as a judge's decision and must be made in writing (Mulia et al., 2024). Law No. 30 of 1999 also regulates arbitration and alternative dispute resolution as legitimate legal mechanisms. Thus, waqf disputes may be resolved through both non-litigation and litigation mechanisms, with the principal objective of safeguarding the continuity and societal benefits of waqf assets.

*Third, Principles of Mediation.* Mediation is a dispute resolution method that involves a neutral third party (mediator) to help the disputing parties reach an agreement peacefully without going through litigation. Mediation is different from arbitration, where the arbitrator has the authority to decide the case and his decision is binding (Mahrus, 2016), as regulated in Article 1 number 1 of Law No. 30 of 1999 (Mirwati, 2017). Meanwhile, Law No. 41 of 2004 concerning Waqf, especially Article 62, stipulates that the resolution of waqf disputes is carried out first through deliberation. If deliberation proves unsuccessful, alternative mechanisms such as mediation, arbitration, or litigation may then be pursued. The main purpose of mediation is to reach a consensus with the help of a mediator. Waqf disputes, according to Law No. 3 of 2006 and Law No. 7 of 1989, are the absolute authority of the Religious Court. The courts in Indonesia consist of four types: general, religious, military, and state administrative.

In civil disputes concerning waqf among Muslims, the Religious Courts serve as the primary forum for resolution, although District Courts may also exercise jurisdiction under specific circumstances. If dissatisfied with the first-level decision, the disputing parties can appeal to the cassation level. However,

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in practice, many parties, especially in business cooperation, are reluctant to take the litigation route because of its complex and time-consuming nature. Criminal sanctions for violations in the management of waqf assets are regulated in Article 67 of Law No. 41 of 2004. These sanctions include those imposed on nazhir and officials who make waqf oath deeds who intentionally transfer, sell, or change the designation of waqf without permission. The maximum sanction is a fine of up to IDR 500 million and/or imprisonment of up to five years. This shows that the state places waqf within a firm positive legal framework, with the main aim of preventing misuse of waqf assets and protecting the value and mandate of waqf in the social and religious life of the community.

### **Conclusion**

Waqf land disputes in Palembang City generally involve immovable waqf assets and are resolved through litigation and non-litigation, including deliberation and mediation. These disputes are driven by internal elements, such as the nazhir's understanding and the issue of heirs, alongside external influences, including poor community awareness, weak government support, and inefficient administrative mechanisms.

This research emphasizes the importance of a holistic approach to dispute resolution, with recognition of waqf rights, asset protection, joint development that considers the interests of the community and nazhir (the legal guardian), and oversight of implementation in accordance with the principles of deliberation and maqasid al-Shariah (the principles of sharia). Asset protection can be strengthened through legalization, notarization, reorganization of nazhir (the legal guardian), online databases, and national programs such as the National Movement for Legalization of Waqf Assets (GN-LEGAWA) and Waqf Managers (GN-LEGALAW).

The implications of this research indicate that waqf management requires a transparent, accountable, and robust regulatory system, including the potential for presidential regulations or special laws. Strengthening the nazir institution through capacity-building programs, regulatory harmonization, accessible legal mechanisms, and comprehensive public education is essential to ensuring that waqf management remains compliant with sharia principles and generates broad societal benefits.

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