

## Strengthening the National Waqf Ecosystem through Legal Reform: An Analysis of Waqf Issues in the Provinces of Lampung and South Sumatra

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### Abstract

The study aims to identify waqf issues in Lampung and South Sumatra Provinces and explore potential solutions to develop a national waqf ecosystem that is more responsive to the development of time. This research employed empirical juridical research. The primary data was gathered through observations, interviews, and documentation with *waqif* (donors), *nadzir* (the administrators of Waqf), public figures, academics, and BWI (Indonesian Waqf Institution) of Lampung and South Sumatra. The secondary data were gathered from books, laws and regulations, judicial decisions, scientific journals, and websites. This study discovered that the challenges of Waqf in Lampung and South Sumatra Provinces comprised aspects of management and supervision, a lack of socialization and literacy, waqf fraud, and insufficient *nadzir* (donors) resources for creating profitable Waqf and waqf digitization. The solution is to enhance the national waqf ecosystem by reforming waqf laws to strengthen *waqif*, *nadzir*, and BWI. With the renewal of waqf law, a positive ecosystem will emerge, reducing waqf disputes and improving people's well-being.

**Keywords:** *Waqf*; ecosystem; legal reform

## Introduction

Waqf serves as one of the foundations of people's economic prosperity.<sup>1</sup> However, due to the lack of a strong waqf ecosystem, the practice of Waqf suffers from several problems. These problems render Indonesian waqf management inadequate and incapable of improving people's economic welfare. The problems are demonstrated by the community's ongoing challenges with waqf administration, such as waqf assets that are not properly managed and models that have not been entirely shifted from traditional to more productive. Furthermore, the problem with Waqf in Indonesia is related to the management of waqf assets by *nadzir* (donors) who are less competent and lack understanding of waqf management, resulting in Waqf failing to increase the welfare of the people.<sup>2</sup>

The issue with Waqf is also due to suboptimal guidance and monitoring, which has resulted in Waqf failing to increase the people's economy.<sup>3</sup> Waqf in Indonesia is growing in a positive direction year after year, even in terms of number, which is quite substantial and continually increases, evidenced by the Ministry of Religious Affairs' waqf information system statistics for 2022, which shows 440.5 thousand areas of waqf land. Furthermore, cash waqf in Indonesia has enormous potential; BWI (Indonesian Waqf Institution) has documented cash waqf acquisitions of up to IDR 1.4 trillion.

This cost has increased dramatically as compared to the acquisition in 2018-2021, which reached IDR 855 billion.<sup>4</sup> Modern and professional waqf governance and good governance practices can undoubtedly enhance this success.<sup>5</sup> In Islam, Waqf is considered sacrificial worship.<sup>6</sup> Waqf is an intriguing subject because it is both a religious practice and a means of providing for the people.<sup>7</sup>

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<sup>1</sup> Sudirman, "Dysfunction of Muslim's Public Resource: A Study of Waqf Land Disorganization in Indonesia," *De Jure: Jurnal Hukum Dan Syaria* 14, no. 1 (2022).

<sup>2</sup> Thobieb.D.A., *Menuju Era Wakaf Produktif* (Depok: Mumtaz Publishing, 2017).

<sup>3</sup> Suryani Suryani and Yunal Isra, 'Wakaf Produktif (Cash Waqf) Dalam Perspektif Hukum Islam Dan Maqāshid Al-Sharī'ah', *Walisono: Jurnal Penelitian Sosial Keagamaan*, 24.1 (2016), 17 <<https://doi.org/10.21580/ws.24.1.680>>.

<sup>4</sup> 'See National Waqf Index of 2022 in Indeks Wakaf Nasional 2022 | Badan Wakaf Indonesia | BWI.Go.Id, Diakses 10 Oktober 2023'.

<sup>5</sup> Rudi Santoso, Fathul Mu'in, dan Arif Fikri, "Optimalisasi Tugas dan Fungsi DPRD dalam Mewujudkan Pemerintahan Bersih," *As-Siyasi: Journal of Constitutional Law*, Volume 1 Nomor 1 (Mei 2021): 100–117, <https://doi.org/10.24042/as-siyasi.v1i1.8960>.

<sup>6</sup> Ibrahim Siregar, *Pembaruan Hukum Perwakafan Di Indonesia, Tsaqafah* (Jakarta: Darul Ulum Press, 2012), VIII, p. 2 <<https://doi.org/10.21111/tsaqafah.v8i2.25>>.

<sup>7</sup> Lukman Santoso Miftahul Huda, Lia Noviana, "Pengembangan Tata Kelola Wakaf Berbasis Korporasi Di Asia Tenggara/Development The Governance of Corporate-Based Waqf In South East Asia," *De Jure: Jurnal Hukum Dan Syaria* 12, no. 2 (2020).

In Indonesia, Waqf is contained in the KHI (Compilation of Islamic Law) and marriage and inheritance law.<sup>8</sup> Waqf refers to the release of property to fulfill the general population's and humanity's needs and interests.<sup>9</sup> Waqf has three characteristics: it is eternal and cannot be canceled or revoked.<sup>10</sup> Waqf is not the same as inheritance,<sup>11</sup> yet it can be used to preserve family assets through waqf *dzurri*.<sup>12</sup> Waqf is not dependent on descent or genealogy,<sup>13</sup> and is different from zakat.<sup>14</sup>

Waqf provides huge advantages and has a big impact on people's welfare.<sup>15</sup> Waqf management demands cooperation and increasing professionalism.<sup>16</sup> Waqf's stance is also very honorable because it is a form of devotion that promotes economic empowerment.<sup>17</sup> Law No. 41 of 2004 on Waqf was enacted by the Indonesian government and the House of Representatives to regulate waqf governance.<sup>18</sup> This regulation was passed to address waqf issues and make them legally accountable.<sup>19</sup>

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<sup>8</sup> Mu'in, Fathul, Faisal Faisal, Arif Fikri, Habib Shulton Asnawi, and M. Anwar Nawawi. "The Practice of Substitute Heirs in Indonesian Religious Court: Restricted Interpretation." *Al-Abwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 30, 2023): 141–57. <https://doi.org/10.14421/ahwal.2023.16107>.

<sup>9</sup> M Abduh, 'NoThe Role of Islamic Social Finance in Achieving SDG Number 2: End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture' (Al-Shajarah, 2019), p. 185-206.

<sup>10</sup> N R M Zain, N F Mahadi, and A M Noor, 'The Potential in Reviving Waqf through Crowdfunding Technology: The Case Study of Thailand', 2019, p. 89-106.

<sup>11</sup> Fathul Mu'in et al. 'The Practice Of Substitute Heirs In Indonesian Religious Court: Restricted Interpretation', *Al-Abwal: Jurnal Hukum Keluarga Islam*, 16.1 (2023), 141 <<https://doi.org/10.14421/ahwal.2023.16107>>.

<sup>12</sup> Ahmad Wira et al., "Legal Study of Dzurri Waqf and Its Implementation towards Strengthening High Heritage Assets in Minangkabau, West Sumatra, Indonesia" 22, no. 2 (2023): 329–41.

<sup>13</sup> Fathul Mu'in, Meli Yanti, 'Pengaruh Pemahaman Masyarakat Terhadap Pergantian Nasab Anak Oleh Ayah Angkat Perspektif Hukum Islam', *Syakhshiyah Jurnal Hukum Keluarga Islam*, Jilid 3.terbitan 2, h. 176-192 <<https://doi.org/10.32332/syakhshiyah.v3i2.7926>>.

<sup>14</sup> Nurasari Nurasari dkk, 'Implementasi Dan Implikasi Undang Undang Nomor 23 Tahun 2011 Tentang Pengelolaan Zakat Terhadap Kesejahteraan Masyarakat (Badan Amil Zakat Kota Bandar Lampung)', *Jurnal ASAS*, Vol 13.No 1 (2021).

<sup>15</sup> Ahmad Muhammad Al-Assal, *Sistem, Prinsip Dan Tujuan Ekonomi Islam* (Bandung: Pustaka Setia, 1999). 126

<sup>16</sup> Efa Rodiah Nur, Fathul Mu'in, and Hamsidar Hamsidar, 'The Reconstruction of The Livelihood Concept from A Mubādalāh Perspective in Lampung Province', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7.3 (2023), 1897 <<https://doi.org/10.22373/sjhk.v7i3.17613>>.

<sup>17</sup> Syaikh Muhammad bin Shalih al- 'Utsaimin, *Panduan Wakaf, Hibab Dan Wasiat* (Jakarta: Pustaka Imam Asy-syafi'i, 2008), pp. 6–7.

<sup>18</sup> Undang- Undang Nomor 41 Tahun 2004 tentang Wakaf

<sup>19</sup> Junaidi, 'Revitalisasi Pengelolaan Wakaf Di Kota Langsa Perspektif Undang-Undang Wakaf', *Al-Istinbath Jurnal Hukum Islam*, Vol. 6.No. 2 (2021), 223–46.

Furthermore, for Waqf in the country to grow rapidly, it must be handled properly, professionally, and modernly while adhering to Islamic norms and overseen by the waqf institution or BWI.<sup>20</sup> However, existing waqf management practices are not functional or orderly,<sup>21</sup> and they might lead to conflict.<sup>22</sup> These issues are generated by the socialization of existing waqf regulations and waqf laws that are excessively classical, making them insensitive to current changes and advancements. Furthermore, waqf officers may not all share the same perspective on developing and empowering Waqf. Some *Nadzirs* are still unprofessional, resulting in the Waqf failing to achieve its goals. In reality, Nadzir plays a critical role in empowering Waqf. Transparency in waqf management is also a key aspect of establishing trust.<sup>23</sup>

Due to a lack of a healthy ecosystem, waqf management issues arise in practically every region of Indonesia, including Lampung and South Sumatra. Starting with *waqif* (donors), *nazhir* (administrators), and regulations. In Lampung Province, there was a waqf dispute at Labuhan Ratu, Bandar Lampung City, between the community and one of the universities over the transfer of mosque status, which had to be resolved by the Regional Legislative Council (DPRD).<sup>24</sup> The waqf controversy in Central Lampung began when an individual donated land to build a mosque. However, in this situation, the *waqif's* offspring requested that the waqf land be converted into a school, resulting in a conflict. In addition, a waqf disagreement between a community and a large organization ended up in court.<sup>25</sup>

The dispute over the Sriwijaya Mosque in Palembang is one of the waqf issues in South Sumatra Province, and the court ruled on the matter with ruling Number 13/PID.SUS-TPK/2021/PT PLG.<sup>26</sup> The increasing number of these waqf disputes reflects a community problem and Nadzir's limited understanding of Waqf. Furthermore, the waqf law is no longer applicable to today's circumstances. These challenges occur because there is no good waqf environment.

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<sup>20</sup> Departemen Agama RI, *Paradigma Baru Wakaf Di Indonesia* (Jakarta: Direktorat Pemberdayaan Wakaf, 2014), p. 97.

<sup>21</sup> Ghazali Abdul Rahman, *Fiqh Muamalat* (Jakarta: Kencana Prenada media group, 2010), p. 176.

<sup>22</sup> Maufiroh Haryanto, Rudy; Maufiroh, Lailatul; Sulaiman Hasan, "View of Waqf Land in Madura; Its Management and Typical Dispute Resolution.Pdf," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 18, no. 2 (2023): 496–518, <https://doi.org/http://doi.org/10.19105/al-ihkam.v18i2.7570>.

<sup>23</sup> Rashedul Hasan, Siti Alawiah Siraj, and Muslim Har Sani Mohamad, 'Antecedents and Outcome of *Waqif's* Trust in Waqf Institution', *Journal of Economic Cooperation and Development*, 38.4 (2017), 155–79.

<sup>24</sup> Juharsah Iskandar, "Sengketa Masjid Muhammadiyah Berlanjut," LampungTV, 2021.

<sup>25</sup> Zen Sunarto, "Tanah Wakaf LDII Lampung Tengah Digugat," LampungTV, 2020.

<sup>26</sup> Mahkamah Agung, "Putusan Nomor 13/PID.SUS-TPK/2021/PT PLG" (2021).

This discussion is similar to several other studies. For example, consider Ibrahim Siregar's paper "The Renewal of Waqf Law in Indonesia ."This study indicates that the waqf paradigm has shifted and become more progressive, with its pinnacle being the enactment of Law No. 41 of 2004 regulating Waqf.<sup>27</sup> The renewal of waqf regulations is limited to Fiqh and the legislation. This research, however, is an update to the existing waqf law. Then Khairuddin wrote an article titled "Paradigm Shift in Waqf Arrangement in the Perspective of Progressive Law."<sup>28</sup> According to this research, the Indonesian waqf model is not based on progressive law. However, the article did not address the progressive nature of waqf law. Meanwhile, our study suggests that legal reform can help to strengthen the national waqf ecosystem.

Mohammad Tahir Sabit Mohammad wrote another paper titled "A Proposal for a New Comprehensive Waqf Law in Malaysia."The article suggests revisions to Malaysia's waqf law.<sup>29</sup> However, this study did not go into detail on the amendment process. Wawan Hermawan also wrote an article titled "The Politics of Waqf Law in Indonesia."According to this research, the present waqf statute demonstrates the government's commitment to developing Waqf.<sup>30</sup> However, the article did not address the politics of law in the waqf law reformation.

Mohd Izzat Amsyar Mohd Arif et al. conducted a study titled "Reforming Waqf Law in The Federal Territories: A Study on Legal Issues and Challenges ."This study describes how the Islamic Religious Administration Act (Federal Territories) 1993 regulates waqf issues, which have produced several complications.<sup>31</sup> However, this article did not completely model the type of waqf law appropriate for use in federal territory. The preceding research did not detail how waqf law reform can help boost the national waqf ecosystem. As a result, the author must undertake further in-depth study and emphasize the need for waqf law reform based on empirical findings from waqf issues in two Sumatran provinces to contribute to resolving national waqf issues.

This study employed the qualitative method with an empirical juridical research approach, specifically legal research on the direct application of normative legislation to social phenomena. The primary data was gathered

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<sup>27</sup> Ibrahim Siregar, 'Pembauran Hukum Perwakafan Di Indonesia', *Islamic Jurisprudence*, Vol. 8.No. 2 (2012), 273.

<sup>28</sup> Khairuddin, 'Pergeseran Paradigma Pengaturan Wakaf Dalam Perspektif Hukum Progresif' (Jurnal Al-Adalah Fakultas Syariah U.I.N.Raden Intan Lampung, 2014), p. 135 <<http://ejournal.radenintan.ac.id/index.php/adalah/article/view/180/420>>.

<sup>29</sup> Mohammad Tahir Sabit Mohammad, 'A Proposal For A New Comprehensive Waqf Law In Malaysia .'waqfacademy.org

<sup>30</sup> Wawan Hermawan, 'Politik Hukum Wakaf Di Indonesia', *Jurnal Pendidikan Agama Islam-Ta'lim*.

<sup>31</sup> Mohd Izzat Amsyar Mohd Arif Dkk, 'Al-Qanadir,' *International Journal of Islamic Studies*, Vol. 30. No. 2 (2023), h. 349.

through observations, interviews, and documentation with *waqif* (donors), *naẓhir* (administrators of Waqf), figures, academics, and BWI (Indonesian Waqf Institution) of Lampung and South Sumatra. The secondary data was gathered from books, laws, regulations, court rulings, scientific journals, and websites.

## Discussion

### **Waqf in Islamic and Positive Law**

Waqf is defined as "to stop or hold."<sup>32</sup> At the same time, the term waqf refers to the restriction of the transfer of property rights to prevent the transfer of valuable and long-lasting assets that can be used for the public good and in line with Sharia.<sup>33</sup> According to Abi Yahya Zakaria Al-Anshari, Waqf is an asset that can be used for halal or acceptable purposes.<sup>34</sup> Waqf is also a perennial requirement to benefit from it for beneficial purposes that do not violate Islamic norms.<sup>35</sup> According to Abu Hanifah, Waqf is the practice of reserving property or objects for the benefit of others.<sup>36</sup>

Imam Maliki pointed out that Waqf does not release property but prevents the donor from transferring property ownership to others. Furthermore, Maliki states that the *waqif* must spend the benefits of the property.<sup>37</sup> According to the Shafi'i and Hambali schools, Waqf relinquishes waqf property after all Sharia-compliant procedures are accomplished. The person who donated the property, known as the *waqif*, cannot use it.<sup>38</sup>

According to Indonesian Fiqh, Waqf is defined in Law No. 41 of 2004. The law claims Waqf as a legal action to transfer property for worship or public welfare while remaining guided by Islamic beliefs.<sup>39</sup> Furthermore, BWI has the jurisdiction to manage the Waqf and is authorized to advise, monitor, and develop waqf assets, among other things. The existence of BWI is significant because Waqf exists and increases in the community, necessitating the establishment of a distinct organization to accomplish its function.

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<sup>32</sup> Usman Suparaman, *Hukum Perwakafan Di Indonesia* (Jakarta: Darul Ulum Press, 1993), p. 23.

<sup>33</sup> Dewan Redaksi Ensiklopedia Islam, *Ensiklopedia Islam, Jilid 5* (Jakarta: Ichtiar Baru Van Hoeve, 1997), p. 168.

<sup>34</sup> Abi Yahya Zakariya Al-Anshari, *Fathu Al Wahab, Juz I* (Indonesia: Daru Ihya'i Al Kuu Al Arabiyah, 1989), p. 256.

<sup>35</sup> Abdurrahman, *Masalah Perwakafan Tanah Milik Dan Kedudukan Tanah Wakaf Di Negara Kita* (Bandung: Alumni, 1984), p. 3.

<sup>36</sup> M Attoillah, *Hukum Wakaf, Cetakan Pertama* (Bandung: Yrama Widya, 2014), p. 7.

<sup>37</sup> Departemen Agama RI, *Paradigma Baru Wakaf Di Indonesia* (Jakarta: Direktorat Pemberdaya Wakaf, 2014), p. 7.

<sup>38</sup> Departemen Agama RI, *Fiqih Wakaf* (Jakarta: Direktorat Pemberdayaan Wakaf, 2007), p. 3.

<sup>39</sup> Anggota IKAPI, *Undang-Undang Pengelolaan Zakat Dan Wakaf* (Bandung: Fokusmedia, 2012), p. 29.

## **Waqf Issues in Lampung and South Sumatra Provinces**

BWI Lampung provides evidence of the growth and development of Waqf in Lampung province. This institution is permitted to promote Waqf in Lampung.<sup>40</sup> Currently, BWI Lampung oversees at least IDR 275 million in cash waqf.<sup>41</sup> Meanwhile, land waqf is discovered in 14,165 places, covering an area of 5,877.92 hectares. However, not all of them function smoothly and orderly. Some confront various challenges and issues in society, some resolved through the courts and others through non-litigation means.

The concerns with Waqf in Lampung Province involve various things: First, consider the management element. The management aspect has not been emphasized because the *nadzir's* understanding is incomplete.<sup>42</sup> This can be observed in case number 2201/PDT.G/2020/PA.GSG. The *waqif* believed that the *nadzir* had broken his commitment, so he petitioned the religious court for the annulment of the Waqf. According to the *waqif*, the grounds for asking to cancel the waqf deed was that the *nadzir* failed to uphold his commitment.<sup>43</sup>

MZ endowed 1,054 meters of land on Negara Yukum Jaya Street of Terbanggi Besar, Central Lampung, based on the Waqf Pledge Letter and Waqf Pledge Deed No. W.2/8/010/XII/2018 dated 19 Rabi'ul Tsani 1440 H, or December 27, 2018 AD, before Drs. Haryanto, Head of KUA (Religious Office) as the Waqf Pledge Deed Making Officer, Terbanggi Besar District, Central Lampung Regency, as Waqf Assets to construct an Islamic boarding school.

Meanwhile, according to the *Nadzir*, or the party that sued in the case, MZ donated the land to establish a mosque or an Islamic boarding school. He stated that the *waqif* sought support for his DPRD (Regional Representatives Council) candidacy. However, his party, the *Nadzir*, never guaranteed to ensure or give vote support for the *waqif's* election as a legislative member.

Dra. Hj. Sartini, S.H., MH presided over the case, while Kusnoto, S.H.I., MH, and Rifqi Muhammad Khairuman, S.Sy., served as member judges. The court reasoned that the *waqif* reasonably granted the property by committing an authorized official. Waqf is a form of noble worship. Allah affirms in Surah Ali Imron verse 92 that human morality cannot be perfected until the cherished property (Waqf) is given up. This statement is supported by the Hadith of the Prophet Muhammad, which states that his acts are lost when someone dies, except for *sadaqah jariyah*, beneficial knowledge, and righteous offspring who pray for him.

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<sup>40</sup> Hery Suliyanto, *Interview*.

<sup>41</sup> Hery Suliyanto.

<sup>42</sup> Hery Suliyanto.

<sup>43</sup> MZ, "Interview," n.d.

Islamic scholars interpret Waqf as *sadaqah jariyah* because it provides the essence of the excellent value of eternal blessings to people who use it, and the worth of its eternal rewards continues to flow. The judge's sociological perspective is that the *waqif* gave up his property to the *nadzir* out of concern for the development of human resources. The request to rescind the Waqf Pledge Deed No. W.2/8/010/XII/2018 was denied. The judge also examined Islamic teachings that believers must be accountable for promises (*aqad*).<sup>44</sup>

Based on the description, in modern waqf management, the *nadzir* must have adequate comprehension to clarify the *waqf* before donating his land. Similarly, *waqifs* should understand that they cannot be taken back once they have bestowed their riches. Furthermore, for the development of Waqf, *Nadzir* must be creative and capable of managing productive Waqf so that it has a greater impact on people's welfare<sup>45</sup> given that *nadzir* plays an important part in waqf empowerment.<sup>46</sup>

*Nadzir* is also responsible for proper administration, supervising and protecting waqf assets. Thus, it is apparent that the function and failure of a waqf rely heavily on the skill of the *nadzir*.<sup>47</sup> Some *nadzir* continue to maintain Waqf for traditional purposes rather than productive activity. There is a need for a new, more modern approach to managing Waqf that will impact people's well-being and regional progress.<sup>48</sup> Good waqf management, as seen in Saudi Arabia, can reduce poverty and increase employment.<sup>49</sup>

Second, waqf supervision is still ineffective. As a result of the lack of control, waqf assets are abandoned or modified,<sup>50</sup> causing problems.<sup>51</sup> An example is the waqf disagreement between some Labuhan Ratu Bandar Lampung members and the Muhammadiyah Association of Lampung. According to the party representative who donated the land (*waqif*), based on the waqf letter dated July 23, 1971, the land was given to the community rather than the university.<sup>52</sup> Raden Syahril's will specified that the Al Insan Mosque waqf

<sup>44</sup> "Putusan Nomor 2201/Pdt.G/2020/PA.Gsg" (n.d.).

<sup>45</sup> Muhammad bin Ali bin Muhammad al-Shawkān, *Nayl Al-Awtar, Jilid, IV*, p. 112.

<sup>46</sup> Mundzir Qahaf, 'Manajemen Wakaf Produktif', in *Terj.H. Muhyiddin Mas Rida* (Jakarta: Khalifa, 2005), p. 89.

<sup>47</sup> "Ahmad Ikhwan, (A Lecturer of Syariah Faculty of UIN Raden Intan Lampung), Interview, Bandar Lampung, August 12, 2023," n.d.

<sup>48</sup> Firman Muntaqo, 'Problematika Dan Prospek Wakaf Produktif Di Indonesia"', *Jurnal Al Abkam Edisi No, 1*, Vol. 25 (2015).

<sup>49</sup> Muhammad Irfan Helmy and Ali Ma, "Waqf and Sustainable Development Law : Models of Waqf Institutions in the Kingdom of Saudi Arabia and Indonesia" 23, no. 1 (2023): 93–114, <https://doi.org/10.18326/ijtihad.v23i1.93-114>.

<sup>50</sup> Tuti A. Najib dan Ridwan al-Makassary, *Wakaf, Tuhan Dan Agenda Kemanusiaan; Studi Tentang Wakaf Dalam Perspektif Keadilan Sosial Di Indonesia* (Jakarta: CSRC-UIN Syarif Hidayatullah, 2006), pp. 34–35.

<sup>51</sup> Iskandar, "Sengketa Masjid Muhammadiyah Berlanjut."

<sup>52</sup> MR, "Interview," n.d.



land be donated to the Labuhan Ratu community rather than the Muhammadiyah Association. Thus, the *waqif* family's goal was not grandiose; rather, it was for the return of the Al Insan mosque to the community.

Meanwhile, AB, a spokesman of the Lampung Muhammadiyah Association, stated that the issue was simply a misunderstanding because his party had never violated the Waqf.<sup>53</sup> The waqf land provided by Raden Sahril has been properly utilized; first, a mosque was built, but due to the expansion of the Muhammadiyah complex, it was enlarged and is now known as the Al Insan mosque.

According to H. Benny Mansyur, a community leader, the Muhammadiyah association indeed owns the document, but history shows that the waqf donor's family should not be abandoned.<sup>54</sup> Therefore, he expects the mosque and the building to be handled jointly because the local community greatly requires the mosque. In this waqf issue, the *waqif* and nazhir elected to resolve the issue through non-litigation means, specific mediation by the Bandar Lampung City Government and the Bandar Lampung City representative councils or DPRD.

Based on the description, the waqf disputes between the community and the association stem from a lack of monitoring. At the very least, two types of supervision are required: local community and competent government supervision. A lack of control typically causes waqf form alterations. Waqf supervision is controlled by Article 63, paragraphs (1) and (3); the minister provides guidance and supervision while taking into account advice and input from MUI (Indonesian Ulema Councils), and a public accountant is required.

Third, socialization has not been extensive. The general population does not grasp the Waqf these principles is critical so that, in addition to being legal under Sharia and Indonesian law, Waqf can also be consistent with its objective to promote the economic well-being of the community and region. The enormous potential of Waqf may be maximized if the socialization of the population, particularly Muslims, is widespread and comprehensive.<sup>55</sup>

In South Sumatra, BWI South Sumatra manages the majority of the waqfs. This institution plays an important strategic role in controlling and empowering Waqf.<sup>56</sup> Waqf in South Sumatra, like in Lampung, is limited to immovable objects, and immovable Waqf has received little management. Along the road, the management of Waqf in South Sumatra encounters many challenges, resulting in the Waqf's objective not being fully realized.

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<sup>53</sup> AB, "Nazhir Representative."

<sup>54</sup> H. Benny Mansyur, "Community Figure."

<sup>55</sup> Hery Suliyanto.

<sup>56</sup> Deni Priansyah, "The Head of South Sumatra BWI."

These challenges include: First, public literacy is still poor. According to South Sumatra BWI Chairman Deni Priansyah, Waqf in South Sumatra is only associated with three things: mosques, madrasas, and graves.<sup>57</sup> Furthermore, most Waqf is allocated to foundations, resulting in benefits and welfare being delivered only to foundations rather than evenly to all Muslims.<sup>58</sup> In terms of execution, it complies with Islamic law; nevertheless, in terms of waqf empowerment and growth, it is inappropriate because it is not geared toward productive work. The second issue is misappropriation. Waqf disputes in South Sumatra are the result of misappropriation. This may be observed in the Palembang Sriwijaya Mosque waqf issue, which resulted in several people being condemned by the court.

The Attorney General's Office first uncovered this fraud when it discovered suspicions of corruption in the Palembang Sriwijaya Mosque Waqf Fund, including that the Sriwijaya Mosque Waqf Foundation was located in Jakarta rather than Palembang.<sup>59</sup> Furthermore, the South Sumatra Provincial Government first claimed that the land surrounding the Sriwijaya Mosque belonged to the region. Still, it was later discovered that some belonged to the community. The Palembang District Court then resolved the matter which issued ruling No. 3/Pid.Sus-TPK/2022/PN Plg<sup>60</sup>.

The defendants were found guilty of corrupting the Sriwijaya Mosque Development grant.<sup>61</sup> This misappropriation demonstrates the dishonesty of taking Waqf, which should be honorable and valued for worship, and misappropriating it for personal gain. According to BWI South Sumatra, Waqf should be done truly by the *waqif* and assigned to a clear and legal nadzir to avoid court disputes.<sup>62</sup>

Third, Nadzir's resources. Nadzirs in South Sumatra have been unable to profitably develop and empower waqf assets. One of the nadzirs, WH, stated that a professional nadzir must thoroughly understand Fiqh and wide networks. He admits that he does not fully understand Fiqh and that his relationships are

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<sup>57</sup> Priansyah.

<sup>58</sup> "Ikhwan Fikri, (Dosen Fakultas Syariah UIN Raden Fatah Palembang), Wawancara, Palembang, 4 Juli 2023," n.d.

<sup>59</sup> Lisye Sri Rahayu, "Temuan Jaksa: Yayasan Wakaf Masjid Sriwijaya Bukan Di Palembang Tapi Jakarta," detik.com, 2024, <https://news.detik.com/berita/d-5735853/temuan-jaksa-yayasan-wakaf-masjid-sriwijaya-bukan-di-palembang-tapi-jakarta>.

<sup>60</sup> "Putusan Nomor 3/Pid.Sus-TPK/2022/PN Plg" (n.d.).

<sup>61</sup> Prima Syahbana, "Terdakwa Korupsi Dana Hibah Masjid Sriwijaya Divonis 4 Tahun Penjara," detik.com, 2024, [https://www.detik.com/sumut/hukum-dan-kriminal/d-6086029/terdakwa-korupsi-dana-hibah-masjid-sriwijaya-divonis-4-tahun-penjara#:~:text=Keempatnya yakni%2C Akhmad Najib%2C Laonma,tahun 6 bulann kurungan penjara](https://www.detik.com/sumut/hukum-dan-kriminal/d-6086029/terdakwa-korupsi-dana-hibah-masjid-sriwijaya-divonis-4-tahun-penjara#:~:text=Keempatnya yakni%2C Akhmad Najib%2C Laonma,tahun 6 bulann kurungan penjara.).

<sup>62</sup> Hery Suliyanto.

not too vast to allow him to grow Waqf productively; also, nadzir is a side career rather than a principal profession.<sup>63</sup>

One of the *waqifs*, IF, stated that his understanding of Waqf so far was establishing places of worship, including mosques, Islamic boarding schools, and schools or madrasas. He stated that he was unaware that Waqf could be utilized for business purposes such as hospitals, hotels, and other businesses. He further stated that allocating Waqf to places of worship is significantly more beneficial, with rewards flowing till the hereafter, than allocating Waqf to businesses.<sup>64</sup>

To address this issue, BWI of South Sumatra believes there is a need for a paradigm shift in modern Waqf, followed by the formation of *nadzir* societies, the development of *nadzir* schools, and the improvement of *nadzir* welfare. *Nadzir* can be the primary profession, indicating that *nadzir* is dedicated to managing and expanding Waqf to increase productivity. Remember that Waqf's aim can only be achieved if the *nadzir* can develop it effectively. BWI South Sumatra requires government and societal help to collect and empower Waqf. BWI South Sumatra does not currently have a permanent or representative secretariat or an operational budget.<sup>65</sup> The BWI of South Sumatra also runs a waqf program for civil officials. However, it has yet to be implemented because the local administration has not yet issued instructions.

The South Sumatra Provincial Government feels it has helped Waqf in several ways, including introducing the cash waqf movement.<sup>66</sup> Cash waqf is one of the options for building and improving the people's economy.<sup>67</sup> According to South Sumatra Governor H. Herman Deru, cash waqf benefits the people's economy. Although it has not yet created a permanent secretariat for the BWI of South Sumatra, the Regional Government has provided operational vehicles to help collect and empower Waqf in South Sumatra.

### **Strengthening the National Waqf Ecosystem through Legal Reform**

The difficulties of Waqf can be overcome by improving the national waqf ecosystem. One approach to accomplish this is to change Indonesia's waqf law. There are at least a few laws and rules governing Waqf in Indonesia. These include Government Regulation No. 42/2006 on imposing Law No. 41/2004 on Waqf and the Compilation of Islamic Law (KHI). Then Minister of Religious Affairs Regulation No. 4 of 2009 concerning the administration of cash waqf

<sup>63</sup> WH, "Nazhir."

<sup>64</sup> IF, "*Waqf*."

<sup>65</sup> Priansyah, "The Head of South Sumatra BWI."

<sup>66</sup> "Gubernur Sumsel Ajak Masyarakat Ikut Berpartisipasi Dalam Gerakan Wakaf Uang," n.d., <https://www.bwi.go.id/6168/2021/03/17/gubernur-sumsel-ajak-masyarakat-ikut-berpartisipasi-dalam-gerakan-wakaf-uang/>.

<sup>67</sup> Eficandra Eficandra, "The Reconstruction Of High-Inherited Wealth In Minangkabau Through Cash Waqf Movement," *JURIS ; Jurnal Ilmiah Syariah* 21, no. 1 (2022).

registration; BWI Regulation No. 2 of 2009 concerning Guidelines for Receiving Cash Waqf for *Nadzirs* of the Indonesian Waqf Board; and BWI Regulation No. 2 of 2010 concerning Procedures for Registration of Cash Waqf.

Most of these laws and regulations provisions are adequate for optimizing Waqf in Indonesia. However, they have not been properly applied, resulting in Waqf's ineffectiveness non enhancing people's welfare; hence, they must be re-regulated with rules and regulations that are more sensitive to changes.

Admittedly, implementing the waqf law aided the growth of Waqf in Indonesia. However, 20 years after the waqf law was enacted, Indonesia has seen significant changes. These developments are undoubtedly related to waqf regulation; hence, it is required to propose a revision to the waqf statute. There are several significant topics to consider when reforming waqf law. Because existing waqf regulations have not addressed the issues that have arisen, the first step is to revise them to reflect current situations.

Institutional arrangements, including regulating the regulator or authority of the national Waqf asset management organization, are among the necessary reforms. Then there's the *nadzir* regulation, which comprises requirements, certification, operational costs, guidance, and supervision. Arrangements for land waqf include contracts, registration, certification, exchange, and allocation to productive sectors. Contracts, the participation of financial institutions, investment, and profit-sharing allocations are all part of the cash waqf regulatory framework. Non-monetary movable waqfs, such as waqf securities and intellectual property rights, are also regulated. The law must also address the possible digitization of Waqf to make Waqf more accessible.<sup>68</sup> Waqf can be done anywhere and anytime, including through digital means.

Another difficulty is regulating waqf investment, which includes investment committees, types, standards, financing guarantees, and return allocations. Then comes the rule governing the use of waqf management technologies. Waqf technology generates revenue, runs operations, and creates *nadzir* projects. The following update discusses the regulation of tax incentives for Waqf, which encompasses *waqif*, waqf assets, investment, and distribution to *mauquf alaih* (recipients).

The change aims to strengthen waqf law in Indonesia because certain waqf regulations no longer apply to today's circumstances. Collaboration with multiple parties, such as BWI, the Ministry of Religious Affairs, and other waqf management institutions, will be required. This collaboration can help to

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<sup>68</sup> Zuliana Rofiqoh Bustami, Rio Laksamana, "Waqf Fundraising Through Money In The Industrial Revolution 4.0 Era: A Case Study On Baitulmaal Munzalan Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 1 (2020).

improve waqf policies, making Waqf more modern and productive in the long run. In the future, *Nadzir* must be more professional in developing the Waqf.<sup>69</sup>

Coaching and monitoring must be firmly enforced to guarantee prudent waqf management,<sup>70</sup> as the *nadzir* is responsible for one of the Waqf's accomplishments. *Nadzir* must transition from traditional to productive practices. Productive Waqf is founded on Sharia principles and prioritizes economic advantages and empowerment.<sup>71</sup> The goal of productive waqf management is to create long-term impact.<sup>72</sup>

Productive Waqf supports more profitable productive enterprises, such as industrial operations, hospitals, hotels, trade, services, agricultural businesses, etc.<sup>73</sup> Productive Waqf is a system for managing Waqf from Muslims to generate excess funds and sustain itself.<sup>74</sup> To proceed towards productive Waqf, BWI must provide *nadzir* with understanding through training and apprenticeship. Because BWI is an independent institution, it promotes Waqf in the country, strengthening the *nadzir*.<sup>75</sup> *Nadzir* should be the primary occupation, not a side employment. BWI also needs to establish official *nadzir* education to produce professional *nadzirs*.<sup>76</sup>

Waqf legal reform is also linked to the importance of community involvement and monitoring. Establishing an impartial supervisory entity to oversee waqf activities in Indonesia is vital. Waqf institutions are also expected to provide regular reports because modern waqf administration values integrity and transparency.<sup>77</sup> Furthermore, the reform of waqf law aims to respond to technological changes. As technology advances, regulations governing the digitalization of Waqf are required. Waqf transactions can take place using internet-connected platforms.

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<sup>69</sup> Thobieb. DA, p. 21.

<sup>70</sup> Suryani and Yunal Isra, "Wakaf Produktif ( Cash Waqf ) Dalam Perspektif Hukum Islam Dan Maqāshid Al-Sharī ' Ah," *Jurnal Penelitian Sosial Keagamaan* 24, no. 1 (2016): 17–36..

<sup>71</sup> Purnomo.A & and Khakim.L, 'Implementasi Wakaf Produktif Dalam Perspektif Ekonomi Syariah', *NUANSA: Jurnal Penelitian Ilmu Sosial Dan Keagamaan Islam*, 16.1 (2019), 103–11.

<sup>72</sup> Rozalinda, *Manajemen Wakaf Produktif* (Jakarta: Rajawali Press, 2015), pp. 21–26.

<sup>73</sup> Qahaf.M, *Manajemen Wakaf Produktif* (Jakarta: Khalifa, 2004), p. 23.

<sup>74</sup> Wahbah Az-Zuhaili, *Al-Fiqh al-Islamiy Wa Adillatuhu* (Dimsiyiq: Dar al-Fikr, t.th) cet. 12, juz 10), p. 7686.

<sup>75</sup> Fadilah.S, 'Going Concern: An Implementation in Waqf Institutions (Religious Charitable Endowment,' 201AD.

<sup>76</sup> Muslim Har Sani Hasan, Rashedul; Siraj, Siti Alawiah; Mohammad, "Antecedents and Outcome of *Waqif's* Trust in Waqf Institution" 4 (2017): 155–79.

<sup>77</sup> Zaidah.Y, 'Wakaf Tunai Sebagai Alternatif Pemberdayaan Ekonomi Ummat Islam Di Indonesia', *ATTARADHI: Jurnal Studi Islam*, 3.2 (2012), 187–96.

The reform of waqf law is required.<sup>78</sup> Reform is done to establish a healthy waqf ecosystem. The purpose of improving this regulation is to achieve regulatory improvements and national waqf management improvements. Articles no longer applicable to our era must be amended with the rapid growth of technology, requiring Waqf to be digitized. Waqf law reform is carried out by reconstructing Indonesia's established legal frameworks, which are considered holy and perpetually resistant to modification and development. Indeed, anything made by people must be closely related to mistakes. As a result, everything humans offer with the potential for inaccuracy can be modified to benefit the people of their respective times.

The revision or reform of waqf law undoubtedly attempts to make Allah's and the Messenger's teachings relevant to modern society. The reform aims to reestablish the contextuality and actuality of Islamic law and positive law and connect the theoretical teachings in the traditional Fiqh books due to the mujtahids' *ijtihad* with the needs of Muslims today. When evaluated through a legal sociology lens, the existing waqf problem has a dialectic, grows, develops, and can impact the community's social life. It is reciprocal between legal and non-legal issues, with interconnected causes and effects. The law in the realities of social life is constantly evolving. Every member of society undergoes ongoing change from one generation to the next. A good law exists within society. Laws are always evolving in response to changing circumstances and scientific advances.

## Conclusion

Waqf issues in Lampung and South Sumatra Province include management, supervision, a lack of socialization and literacy, waqf fraud, and insufficient *nadzir* resources for creating productive waqfs and waqf digitalization. These issues arise because current waqf regulations are outdated and have failed to establish a healthy waqf ecosystem, preventing Waqf's goal from fully realizing its potential to improve people's economic well-being. Waqf issues can be handled by improving the national waqf ecosystem through waqf legal reform, which benefits *waqif*, *nadzir*, and BWI. The renewal of waqf law will establish a good ecosystem, reduce waqf disputes in Indonesia, and gradually realize the benefits to the people through Waqf.

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<sup>78</sup> Ulin Na'mah, Rezki Suci Qamaria, and Hesti Ayu Makrufah, 'The Concept of Mubādalāh (Mutuality) and the Public Role of Wife to Prevent Domestic Violence,' *Al-'Adalah*, 19.2 (2022), 291–314 <<https://doi.org/10.24042/adalah.v19i2.13682>>.

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