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Dysfunction of Muslim's Public Resource: A Study of Waqf Land Disorganization in Indonesia

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Abstract:

Waqf land (donated land) is a property for people's welfare that has not been remarkably managed in Indonesia. Poor administration and regulation of the waqf system cause dysfunction of this Muslim's most extensive resource. The waqf studies usually focus on issues around the misuse of waqf land, the swapping of waqf land, or the strategy for managing productive waqf land. Research on the disorganization of the waqf land remains unnoticed by researchers. This study complements previous writings' shortcomings by examining the patterns of waqf land disorganization and its consequences for the Muslims, including the waqf's low productivity, the waqf land position as a disputed source, and the waqf land as a lost-risk Muslim property. This study is empirical waqf research with interviews as the primary data and documents from online news website sources as the secondary data. This study indicates that the disorganization of waqf land is not only due to the absence of an administrative system and a lack of institutional commitment to waqf management. It is also rooted in Muslims' cosmological structure, who believe that waqf is the doer's afterlife savings. This belief resulted in the neglect of the waqf administration process, which led to the dysfunction of the community's resources. This study suggests further research on the contemporary waqf with its variants and waqf's practice from the doers' and the managers' perspective to more comprehensively portray the problem of waqf land disorganization.

Keywords: resource dysfunction; disorganization; waqf land; *nazhir*.

Abstrak:

Wakaf merupakan properti sumber kesejahteraan umat yang belum dikelola secara serius. Sistem administrasi dan regulasi wakaf yang buruk menyebabkan disfungsi sumber daya terbesar umat. Sejauh ini kajian wakaf terfokus pada isu sekitar penyalahgunaan tanah wakaf, tukar-guling tanah wakaf, atau strategi pengelolaan tanah wakaf produktif. Kajian seputar disorganisasi tanah wakaf masih luput dari perhatian para peneliti. Studi ini melengkapi kekurangan pelbagai tulisan terdahulu dengan mengkaji secara rinci pola disorganisasi tanah wakaf dan akibatnya bagi umat meliputi produktifitas wakaf yang masih dinilai rendah, posisi tanah wakaf sebagai sumber sengketa, dan tanah wakaf sebagai muslim property yang berisiko hilang. Kajian ini termasuk studi wakaf empiris dengan data primer dalam bentuk wawancara dan data sekunder yang diperoleh melalui dokumen dari sumber website berita online. Hasil studi ini menunjukkan bahwa disorganisasi tanah wakaf bukan hanya tidak tersedianya sistem administrasi dan rendahnya komitmen kelembagaan dalam pengelolaan wakaf, namun ternyata mengakar dalam sistem kosmologi kaum muslim yang meyakini wakaf sebagai tabungan akherat bagi wakif. Hal ini mengakibatkan pengabaian proses administrasi wakaf yang pada akhirnya menyebabkan disfungsi sumberdaya umat. Studi ini menyarankan penelitian lanjutan tentang wakaf kontemporer dengan berbagai variannya dan praktik wakaf perspektif wakif-nazhir untuk memotret problem disorganisasi tanah wakaf secara lebih komprehensif.

Kata Kunci: Disfungsi sumber daya; disorganisasi; wakaf tanah; *nazhir*.

Introduction

Waqf land is a Muslim's productive resource that has not been seriously taken even though it has enormous potential as a welfare source. Waqf data collected by the Indonesian Ministry of Religious Affairs in 2017 showed that waqf land reached 4,359 km², spreading across 435,768 locations, which was equivalent to six times the size of Singapore. Poor handling of waqf triggered various problems related to waqf, which often lead to court lawsuits. Endowment litigation cases in the Religious Courts up to September 2020 reached 17,257 points, some of which even went to the cassation level. The disorganization of the waqf land resulted in the waqf benefits loss. According to Kahf,¹ waqf can only be maintained as people's eternal prosperity source if managed professionally. This idea is in line with Sarker,² which states that waqf has excellent potential to increase people's socio-economic level. The

¹ Monzer Kahf, "Waqf and Its Socio-Political Aspects – Islamic Economics & Finance Pedia," accessed May 31, 2022, <http://www.iefpedia.com/english/?p=3963>.

² Abdul Awwal Sarker, "Role of Cash Waqf Deposit (CWD) as an Instrument for Socio-Economic Development: Bangladesh Perspective," in *Revitalization of Waqf for Socio-Economic Development, Volume I*, ed. Khalifa Mohamed Ali, M. Kabir Hassan, and Abd elrahman Elzahi Saaid Ali (Cham: Springer International Publishing, 2019), 15–30, https://doi.org/10.1007/978-3-030-18445-2_2.

inadequate administration and the waqf system regulation have caused the dysfunction of the economic resources.

Furthermore, the waqf studies can be classified into three main issues. The first issue is the misuse of waqf land in various places.³ These studies focused more on reporting cases related to land, usually triggered by waqf land treatment as an inherited object or illegal administrative processes. The second topic is the study on waqf land changed for various reasons, such as being crossed by toll road projects or natural disasters.⁴ The third focus is the studies on the waqf land management strategy that provided economic value.⁵ However, research on the disorganization of the waqf land remains unnoticed by researchers. The disorganization has led to a general wealth dysfunction for well-being development. This research aims to complement the shortcomings of previous writings by examining the patterns of waqf land disorganization and its consequences on the people's development. This paper shows that the dysfunction of Muslim resources is due to the disorganization of the waqf land. The waqf land's dysfunctions include the waqf's low productivity, the position of donated land as a source of dispute, and the risk of losing Muslim Property. Three consequences of the waqf land's disorganization are clearly described in this paper's findings section.

This paper argues that waqf land's disorganization occurs because of an inadequate level of people's understanding of waqf law and administration. Waqf land has not been seen as a resource for transforming people's lives but as part of a religious spirituality related to values in the doomsday. Many people still view the waqf land as hereafter savings that have no matter for social and economic benefits.

³ Rendy Marsetya Maulana, "Tanggung Gugat Penjualan Tanah Wakaf Ditinjau Dari Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *CALYPTRA* 4, no. 2 (2016): 1–14; Fisca Ariyanti, "Penerapan Asas Pertanggungjawaban Wakaf Terhadap Tindakan Nadzir Dalam Menentukan Lembaga Pengelola Wakaf Yang Tidak Sesuai Dengan Keinginan Wakif (Studi Kasus Sengketa Tanah Wakaf Di Nitikan, Umbulharjo, Yogyakarta)," October 16, 2018, <https://dspace.uui.ac.id/handle/123456789/11864>; Arif Munawar, "Penyelesaian Sengketa Tanah Wakaf Melalui Lembaga Adat (Studi di Kecamatan Johan Pahlawan Kota Meulaboh)," 2017, <https://repository.usu.ac.id/handle/123456789/17396>.

⁴ Mumtaz Chairunissa Iris Putranti, "Analisis ruilslag tanah wakaf menurut peraturan perundang-undangan studi pada: Perumahan Kota Kembang (Grand Depok City)," August 10, 2018, <https://repository.uinjkt.ac.id/dspace/handle/123456789/44053>; Ibnu Rahmat, *Analisis Penggunaan Dana Hasil Penjualan Tanah Wakaf Masjid Jami' Lueng Bata Dalam Perspektif Hukum Islam* (Prodi Hukum Ekonomi Syariah Fakultas Syariah dan Hukum UIN Ar-Raniry, 2017), <https://core.ac.uk/download/pdf/293463572.pdf>; Izzati Rizqi Annisa, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Wakaf (Studi Kasus Tanah Wakaf Masjid Baitul Qudus Di Jalan Gebanganom Kelurahan Genuk Sari Kecamatan Genuk) SKRIPSI," 2018, 103.

⁵ Miftahul Huda, Lia Noviana, and Lukman Santoso, "Pengembangan Tata Kelola Wakaf Berbasis Korporasi Di Asia Tenggara/Development The Governance of Corporate-Based Waqf In South East Asia," *Journal de Jure* 12, no. 2 (December 31, 2020): 120–39, <https://doi.org/10.18860/j-fsh.v12i2.3908>; Abdurrahman Kasdi, "Model Pemberdayaan Wakaf Produktif Di Indonesia," *ZISWAF: JURNAL ZAKAT DAN WAKAF* 1, no. 1 (August 19, 2016): 1–15, <https://doi.org/10.21043/ziswaf.v1i1.1528>; Ahmad Furqon, "Pengelolaan Wakaf Tanah Produktif: Studi Kasus Nazhir Badan Kesejahteraan Masjid (BKM) Kota Semarang dan Yayasan Muslimin Kota Pekalongan," *Al-Ahkam* 26, no. 1 (April 14, 2016): 93–116, <https://doi.org/10.21580/ahkam.2016.26.1.495>; Akhmad Sirojudin Munir, "Optimalisasi Pemberdayaan Wakaf Secara Produktif," *Ummul Qura* 6, no. 2 (September 1, 2015): 94–109; Siswanto, "Exploring the Motivation for Pesantren-Based Microfinance Institution Development: Schutz's Phenomenological Approach," *Journal of Southwest Jiaotong University* 55, no. 5 (2020), <http://www.jsju.org/index.php/journal/article/view/739>.

In other words, waqf land has not been seen as public goods requiring government policy as part of the general welfare commitment. This trend becomes the basis why the waqf land has not provided maximum benefits for social prosperity.

Waqf research is generally divided into normative and empirical research.⁶ Waqf normative research focuses on history, literature, or written legal rules. On the other hand, waqf empirical research focuses on the study of waqf, which is carried out in real life of the community. This research is an empirical study of waqf because it examines the phenomenon of land waqf management disorganization, which is the main problem of resource dysfunction in Muslims. This research identifies three essential consequences of waqf management's disorganization, which then offers several practical solutions. The waqf issue becomes a strategic issue in religious studies. The types of data used in assessing the disorganization of the waqf land are primary and secondary data. Primary data in the form of interviews were obtained from some key informants to provide information on waqf practices in the community. They were from the Indonesian Waqf Board, socio-religious organizations, and government agencies. Secondary data were collected through document media from trusted sources on the websites of state institutions, waqf institutions, and online news portals.

This research relies on the use of documents and interviews. There are two types of documents used: news documents and statistical documents. News documents were obtained from online newspaper portals, such as Kompas, Republika, and Tribunnews, which provided accurate information about waqf development. The statistical records were taken from the trusted information center from waqf institutions, particularly the Portal of the Supreme Court and the Ministry of Religion. Interviews were conducted using prepared questions to obtain data on the disorganization of waqf land. The collected data were analyzed descriptively and critically. The descriptive analysis began with a statement on the data, followed by a description and interpretation. Both document and interview data were selected thematically during the process of interpreting the data. Descriptive analysis was used to provide detailed information on waqf disorganization with the support of statistical data. The critical analysis evaluated the data in depth by grouping the data into several factor clusters. Besides, the critical analysis examined the consequences of long-term disorganization. The critical analysis was a way out for solving the problem of waqf disorganization to overcome the dysfunction of Muslim resources.

Results and Discussion

Waqf in Islam

The term "waqf" is taken from the Arabic "waqafa," which means "to hold" or "to stay in a place".⁷ In Abu Hanifah's school of thought, waqf is defined as holding an object for goodness, which means that waqf aims to change its status as property and turn the item into current and future social policies. In Maliki's school, waqf is intended to release ownership of an object by giving the thing to a waqf recipient. In

⁶ Faisar Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam* (Jakarta: Prenada Media Grup, 2018).

⁷ Adelia Desrin Nasution and Fahmi Medias, "Waqf Financing Model Through Crowdfunding Platform: An Indonesian Perspective" (1st Borobudur International Symposium on Humanities, Economics and Social Sciences (BIS-HESS 2019), Atlantis Press, 2020), 661–65, <https://doi.org/10.2991/assehr.k.200529.138>.

line with Maliki's school definition, waqf in the Syafli's school view means a form of releasing or distributing assets using donation procedures.⁸

Furthermore, a waqf is a form of material worship with high values.⁹ Waqf is a form of continuous donation which humans will take benefit after they die. According to Nasution and Medias¹⁰ and Solihah et al.¹¹, waqf can be seen as a philanthropic form. Philanthropy becomes a vital essence in understanding religious teaching. According to Suryani and Isra,¹² the generosity embodied by waqf has been institutionalized and structured into Muslims' historical experience. It is related to three actions: the tendency to emphasize and appreciate the individual towards God, prophetic-ideological typology with an understanding of the socio-religious mission, and humanist-functional typology through the appreciation of the humanity values.

In terms of waqf types, Usman¹³ divides waqf through its development: productive waqf and consumptive waqf. Usman emphasizes that the two types of waqf are forms of social institutions that have influenced Muslims' historical development. It covers spiritual-religious aspects and other points, such as the economy, politics, education, and society.¹⁴ Then, waqf becomes the main tool that places Islam to higher self-respect, dignity, and supremacy. The waqf discussion is further explained in Islamic economics, which sees waqf as an activity that aims to build people's welfare.¹⁵ Waqf has had many impacts, both socially and economically, especially for the poor. In Indonesia, waqf has developed. According to Ardi et al., Muslim scholars who came to preach across the archipelago in the past taught waqf. One form of waqf that existed at that time was a mosque. The community had a very high need to build places of worship such as mosques. Therefore, people gave their land as a form of waqf to construct mosques. Through this context, the waqf assets in Indonesia are mostly in the form of traditional land.¹⁶

⁸ Hamli Syaifullah Syaifullah and Ali Idrus, "Manajemen Pengembangan Wakaf Produktif Era Digital Di Lembaga Wakaf Bani Umar," *Al-Khidmat* 2, no. 2 (September 30, 2019): 5–14, <https://doi.org/10.15575/jak.v2i2.5838>; Nasution and Medias, "Waqf Financing Model Through Crowdfunding Platform."

⁹ Hardianti Yusuf, "Management and Utilization of Productive Waqf in Empowering Community's Economy," *Al-Bayyinah* 4, no. 1 (June 30, 2020): 36–51, <https://doi.org/10.35673/al-bayyinah.v4i1.646>.

¹⁰ Nasution and Medias, "Waqf Financing Model Through Crowdfunding Platform."

¹¹ Cucu Solihah, Hilman Nur, and Dedi Mulyadi, "Three Power Pillars Synergy In Waqaf Empowerment" (International Conference on Ethics in Governance (ICONEG 2016), Atlantis Press, 2016), 200–201, <https://doi.org/10.2991/iconeg-16.2017.46>.

¹² Suryani Suryani and Yunal Isra, "Wakaf Produktif (Cash Waqf) Dalam Perspektif Hukum Islam Dan Maqāṣid Al-Sharī'Ah," *Walisono: Jurnal Penelitian Sosial Keagamaan* 24, no. 1 (June 15, 2016): 17–36, <https://doi.org/10.21580/ws.24.1.680>.

¹³ Nurodin Usman, "Implementasi prinsip akuntabilitas dalam manajemen wakaf produktif: studi kasus rumah sakit Islam kota Magelang," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 16, no. 2 (December 1, 2016): 179–96, <https://doi.org/10.18326/ijtihad.v16i2.179-196>.

¹⁴ Mohammad Noviani Ardi, Dina Yustisi Yurista, and Suci Ramadhan, "Waqf Fundraising Strategy for Islamic Boarding's Independence," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 1 (June 10, 2020): 1–22, <https://doi.org/10.18326/ijtihad.v20i1.1-22>.

¹⁵ Ardi, Yurista, and Ramadhan; Usman, "Implementasi prinsip akuntabilitas dalam manajemen wakaf produktif."

¹⁶ Ardi, Yurista, and Ramadhan, "Waqf Fundraising Strategy for Islamic Boarding's Independence."

Waqf and Prosperity

Prosperity is defined by Erizal¹⁷ as security and safety of life. The definition of this term also includes welfare, which means a concept that shows the condition of a community or individual who can quickly fulfill their daily needs. In the view of economists, scarcity is the cause of economic imbalance. Islamic economics has attempted to provide solutions by relying on the principles of oneness of God (tawhid), brotherhood, and equitable distribution. In line with this, Syaifullah and Idrus¹⁸ said that Islam had become a guideline covering all aspects of human life, including public welfare in the form of waqf. Solihah and Mulyadi¹⁹ said that in Islamic economics, one of the crucial points is the nation's awareness, market, and society to achieve sustainable prosperity. The synergy between the three may affect the empowerment of waqf. The three roles may form a triangle of waqf. The first role is the state, which seeks to provide direction for the welfare of society. The next function is the market, which is the paradigm for cultural tools in waqf. The last one is a society that tries to realize the existence of waqf.

The waqf basis in the Qur'an and hadith is summarized in an Indonesian regulation, Act Number 41 of 2004 on Waqf. The potential economic benefits of waqf property are aimed at advancing public welfare. The waqf has four functions. The first is economic function as a wealth transfer system. The second is a social function that makes it easier for humans to solve shortcomings and problems. The third is the function of worship, which becomes a form of individual worship towards the Almighty God. Finally, the last is a moral function that encourages humans to have good morality.²⁰ Furthermore, some scholars have different point of views towards waqf functions. Erizal²¹ describes that waqf is used as a means of worship, education and health facilities, assistance to the poor, neglected children, orphans and scholarships and the economic progress of the people as well as general welfare. According to Sulistiani et al.,²² a waqf is a form of goodness in Islam. Waqf has a central role in economic and social development.²³ In Islam's history, waqf has encouraged to build mosques, schools, hospitals, and social services.²⁴ The study of

¹⁷ Erizal Erizal, "Wakaf: Perannya Dalam Peningkatan Ekonomi Umat," *TERAJU: Jurnal Syariah Dan Hukum* 2, no. 02 (September 24, 2020): 99–115, <https://doi.org/10.35961/teraju.v2i02.95>.

¹⁸ Syaifullah and Idrus, "Manajemen Pengembangan Wakaf Produktif Era Digital Di Lembaga Wakaf Bani Umar."

¹⁹ Solihah, Nur, and Mulyadi, "Three Power Pillars Synergy In Waqf Empowerment."

²⁰ Septi Purwaningsih and Dewi Susilowati, "Peran Wakaf Dalam Meningkatkan Pemberdayaan Ekonomi Umat," *Jurnal Ekonomi, Bisnis, Dan Akuntansi* 22, no. 2 (June 30, 2020): 191–203, <https://doi.org/10.32424/jeba.v22i2.1595>; Asri Asri, Khaerul Aqbar, and Azwar Iskandar, "Hukum Dan Urgensi Wakaf Tunai Dalam Tinjauan Fikih," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 1, no. 1 (April 24, 2020): 79–92, <https://doi.org/10.36701/bustanul.v1i1.132>.

²¹ Erizal, "Wakaf."

²² Siska Lis Sulistiani, "Analisis Hukum Islam Terhadap Pengembangan Wakaf Berbasis Sukuk Untuk Pemberdayaan Tanah Yang Tidak Produktif Di Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 18, no. 2 (December 1, 2018): 175–92, <https://doi.org/10.18326/ijtihad.v18i2.175-192>.

²³ Nasrul Fahmi Zaki Fuadi, "Wakaf sebagai Instrumen Ekonomi Pembangunan Islam," *Economica: Jurnal Ekonomi Islam* 9, no. 1 (July 31, 2018): 151–77, <https://doi.org/10.21580/economica.2018.9.1.2711>; Ana Indah Lestari, "Revitalisasi Wakaf Untuk Kemaslahatan Umat," *ZISWAF: JURNAL ZAKAT DAN WAKAF* 4, no. 1 (February 15, 2018): 55–72, <https://doi.org/10.21043/ziswaf.v4i1.3031>; Kartiko Adi Wibowo, "Waqf for Empowerment, Management Model of Social Waqf and Productive Waqf in Indonesia," 2015.

²⁴ Nasution and Medias, "Waqf Financing Model Through Crowdfunding Platform."

waqf has been carried out by scientists with a focus on three points. The first is a study of the misuse of waqf land in various places.²⁵ The second is a study of waqf land exchanged for multiple reasons.²⁶ Finally, the third is a focused study on waqf land management strategy that provides economic value.²⁷

Waqf Management

Management is taken from the word "manage," which means planning, organizing, and controlling.²⁸ Actions taken in management using various methods aim to achieve the organization's vision or mission efficiently and effectively.²⁹ According to Huda and Fauzi,³⁰ management in economics and Islam's view is not much different. Management in Islam is seen as the knowledge that is collected and accepted through universal truth based on the Qur'an and Hadith. It includes morality, such as how individuals act and behave. Waqf management involves a process of planning, organizing, and monitoring. According to Fauzi and Huda,³¹ the principles in waqf management must channel the benefits. One way to make waqf more productive is by growing the assets and values. This idea is in line with Sulistiani et al..³² Waqf management must empower people's economic assets by managing them productively, opening new jobs, public services, and providing facilities to develop small and medium-sized financial businesses. Sulistiani et al.,³³ then, added waqf management forms, one of which is land that focuses on financing as an important factor in empowering waqf land. Another type of waqf is a movable

²⁵ Maulana, "Tanggung Gugat Penjualan Tanah Wakaf Ditinjau Dari Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf"; Fisca Ariyanti, "Penerapan Asas Pertanggungjawaban Wakaf Terhadap Tindakan Nadzir Dalam Menentukan Lembaga Pengelola Wakaf Yang Tidak Sesuai Dengan Keinginan Wakif (Studi Kasus Sengketa Tanah Wakaf Di Nitikan, Umbulharjo, Yogyakarta)"; Munawar, "Penyelesaian Sengketa Tanah Wakaf Melalui Lembaga Adat (Studi di Kecamatan Johan Pahlawan Kota Meulaboh)"; Sudirman Sudirman and Ramadhita Ramadhita, "Kesadaran Hukum Masyarakat dalam Akselerasi Sertifikasi Tanah Wakaf di Kota Malang," *Journal de Jure* 12, no. 1 (June 15, 2020): 35–50, <https://doi.org/10.18860/j-fsh.v12i1.9087>.

²⁶ Mumtaz Chairunissa Iris Putranti, "Analisis ruilslag tanah wakaf menurut peraturan perundang - undangan studi pada"; Ibnu Rahmat, *Analisis Penggunaan Dana Hasil Penjualan Tanah Wakaf Masjid Jami' Lueng Bata Dalam Perspektif Hukum Islam*; Izzati Rizqi Annisa, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Wakaf (Studi Kasus Tanah Wakaf Masjid Baitul Qudus Di Jalan Gebanganom Kelurahan Genuk Sari Kecamatan Genuk) SKRIPSI."

²⁷ Kasdi, "Model Pemberdayaan Wakaf Produktif Di Indonesia"; Furqon, "PENGLOLAAN WAKAF TANAH PRODUKTIF"; Munir, "Optimalisasi Pemberdayaan Wakaf Secara Produktif."

²⁸ Siti Nur Azizah, "Manajemen Wakaf Produktif (Studi Kasus Di BMT Masjid Wakaf AL-Istiqomah Kauman Lama Kelurahan Purwokerto Lor Kabupaten Banyumas)" (skripsi, IAIN Purwokerto, 2019), <http://repository.iainpurwokerto.ac.id>; Miftahul Huda and Ahmad Fauzi, "Sistem Pengelolaan Wakaf Masjid Produktif Perspektif Hukum Islam (Studi Kasus Di Masjid Ismailiyyah Nalumsari Jepara)," *Jurnal At-Tamwil: Kajian Ekonomi Syariah* 1, no. 2 (September 21, 2019): 27–46, <https://doi.org/10.33367/at.v1i2.1058>.

²⁹ Nur Azizah, "Manajemen Wakaf Produktif (Studi Kasus Di BMT Masjid Wakaf AL-Istiqomah Kauman Lama Kelurahan Purwokerto Lor Kabupaten Banyumas)."

³⁰ Huda and Fauzi, "Sistem Pengelolaan Wakaf Masjid Produktif Perspektif Hukum Islam (Studi Kasus Di Masjid Ismailiyyah Nalumsari Jepara)."

³¹ Huda and Fauzi.

³² Sulistiani, "Analisis Hukum Islam Terhadap Pengembangan Wakaf Berbasis Sukuk Untuk Pemberdayaan Tanah Yang Tidak Produktif Di Indonesia."

³³ Sulistiani.

object like money.³⁴ Subhan³⁵ assessed that money could be an easy tool to use and encourage optimal business development.

Waqf managements are classified into two types: semi-professional and professional managements.³⁶ In semi-professional management, waqf is managed productively but not maximally. Lands are not dynamically empowered. Meanwhile, in professional management, waqf has been handled more dynamically. This professionalism includes managerial, human resources, business partnership patterns, and various waqf forms such as stocks and other notes. Syarifuddin³⁷ indicated this pattern was inspired by the socialization of economic figures from Bangladesh who developed cash waqf. This inspiration began to bring about various investments and management of waqf professionally, such as investment waqf. However, not all waqf can be adequately managed. Waqf must be controlled by managers who can organize waqf optimally. With good management, waqf will finance itself.³⁸ This idea is in line with Sulistiani et al.,³⁹ who saw that the right managers should focus on waqf management.

Waqf institutions are less profit-oriented, which results in the institution's tendency to focus only on the issue of worship, which is a precondition for the inadequate re-actualization of waqf. One of these managers is individual and institutional nazhir.⁴⁰ The manager (nazhir) is in charge of directing organizational resources, raising funds, distributing waqf, and establishing good relationships between managers, doers (waqif), and the community.⁴¹ Managers, both individuals and institutions, must understand the law of waqf, have honesty and a sense of fairness, are sincere at work, and are emotionally and spiritually intelligent.⁴² The waqf management disorganization has resulted in a dysfunction of Muslim resources. Waqf land, which is potential to provide welfare through professional asset management, in fact burdens the community. This situation results in several points:

³⁴ Sudirman Sudirman and Nanda Lailatul Arofah, "Manajemen Wakaf Uang di Masjid at-Taqwa Kota Batu dan Masjid Sabilillah Kota Malang dalam Perspektif Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf," *Journal de Jure* 8, no. 1 (June 25, 2016): 24–37, <https://doi.org/10.18860/j-fsh.v8i1.3727>.

³⁵ Moh Ah Subhan Za, "Pemberdayaan Wakaf Uang Sebagai Upaya Peningkatan Kesejahteraan Masyarakat," *JES (Jurnal Ekonomi Syariah)* 2, no. 2 (September 1, 2017), <https://doi.org/10.30736/jesa.v2i2.25>.

³⁶ Syarifuddin Syarifuddin, "Reaktualisasi Peran Wakaf Dalam Membangkitkan Ekonomi Rakyat," *Jurnal Ilmiah Al-Syir'ah* 6, no. 1 (September 6, 2016), <https://doi.org/10.30984/as.v6i1.245>.

³⁷ Syarifuddin.

³⁸ Yusuf, "Management and Utilization of Productive Waqf in Empowering Community's Economy"; A. Zamakhsyari Baharuddin and Rifqi Qowiyul Iman, "Nazir Wakaf Profesional, Standarisasi dan Problematikanya," *Li Falah: Jurnal Studi Ekonomi dan Bisnis Islam* 3, no. 2 (December 31, 2018): 62–74, <https://doi.org/10.31332/lifalah.v3i2.1197>; Syarifuddin, "Reaktualisasi Peran Wakaf Dalam Membangkitkan Ekonomi Rakyat."

³⁹ Sulistiani, "Analisis Hukum Islam Terhadap Pengembangan Wakaf Berbasis Sukuk Untuk Pemberdayaan Tanah Yang Tidak Produktif Di Indonesia."

⁴⁰ Khalifah Muhamad Ali(1) et al., "Aspek-Aspek Prioritas Manajemen Wakaf Di Indonesia | Ali | AL-FALAH: Journal of Islamic Economics," July 17, 2018, <http://journal.iaincurup.ac.id/index.php/alfalah/article/view/345>.

⁴¹ Huda and Fauzi, "Sistem Pengelolaan Wakaf Masjid Produktif Perspektif Hukum Islam (Studi Kasus Di Masjid Ismailiyah Nalumsari Jepara)"; Nur Azizah, "Manajemen Wakaf Produktif (Studi Kasus Di BMT Masjid Wakaf AL-Istiqomah Kauman Lama Kelurahan Purwokerto Lor Kabupaten Banyumas)."

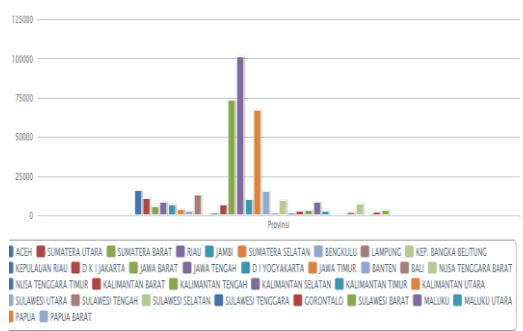
⁴² Baharuddin and Iman, "Nazir Wakaf Profesional, Standarisasi dan Problematikanya."

unproductive waqf land, waqf land as a source of dispute, and waqf land lost as Muslim property.

Unproductive waqf land

Until 2021, the waqf productivity is still questionable. Waqf has not become a source of strength for Muslims. Several essential arguments that support this statement are the waqf existence and its distribution in Indonesia, the utility of waqf land, and the misuse of waqf land. First, Indonesia has an extensive area of waqf land spreading throughout the nation. According to the manual waqf data collected by the Ministry of Religion in 2017, the waqf land stretching from Sabang to Merauke reached 4,359,443,170 m² (4,359 km²) located in 435,768 places.⁴³ This number was six times the size of Singapore, which covered only 722.5 km². Unfortunately, this figure was far different from the online waqf data collected via the Waqf Information System portal, which provided another number: 51,974.18 ha or only 519.74 km² in 388,197 locations.⁴⁴

Graph 1
Waqf land in Indonesia



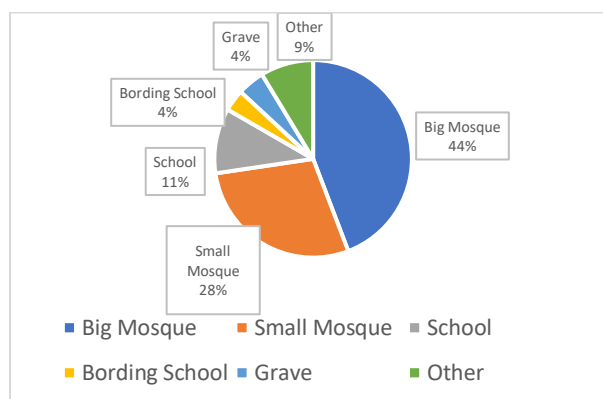
Source: Ministry of Religious Affairs, 2022

Graph 1 showed that the province with the largest number of waqf land is Aceh Province, followed by North Sumatra. The regions with the smallest number of waqf land were West Papua and Papua. In terms of the waqf location, the provinces of Central Java and West Java occupied the highest number of waqf areas. In contrast, the regions with the lowest number of locations were Papua and West Papua. Thus, the Indonesian waqf land is very broad and has excellent potential to be developed more productively for the people's welfare. Second, the pattern of waqf land utility tends to be consumptive trend. Waqf land is rarely managed for business. Data in the Ministry of Religion's (Siwak) Waqf Information System shows that the distribution of the waqf land utility is as follows.

⁴³ Tribunnews, "Jumlah Tanah Wakaf di Indonesia Mencapai 4.359.443.170 Meter Persegi," Wartakotalive.com, accessed May 31, 2022, <https://wartakota.tribunnews.com/2018/11/01/jumlah-tanah-wakaf-di-indonesia-mencapai-4359443170-meter-persegi>.

⁴⁴ KEMENAG, ".: ".: Sistem Informasi Wakaf:.", accessed December 1, 2020, <http://siwak.kemenag.go.id/>.

Graph 2
The utility of Waqf Land



Source: Ministry of Religious Affairs, 2022

Graph 2 illustrated the use of waqf land with a composition of 44.21% for prominent mosques, 28.45% for small mosques, 10.68% for schools, 4.44% for graves, 3.56% for Islamic boarding schools, and the remaining 8.67% for other social facilities. This data shows that places of worship occupy the majority position, 72.66% (almost $\frac{3}{4}$ waqf), followed by education areas, 14.24%. This data is in line with the Malang City Waqf Board management's statement that the community is more proud to hand over land for worship facilities because it is considered to have greater rewards than waqf for the public interest (R1). Thus, waqf, which is used for productive purposes, has not yet become society's choice.

Third, the extent of waqf land in Indonesia is in line with the complexity of the problems it raises. Many unproductive waqf lands and a weak managerial system have resulted in waqf land becoming land for abuse of authority and abuse of rights over the land. For instance, waqf land becomes a debt collateral, controlled by third parties, and even traded item. Waqf land as collateral for the debt has occurred in Klaten, Yogyakarta, in 2014. Waqf land in the name of members of the Indonesian Hajj Brotherhood Association (IPHI) planned for the hospital has been pledged as collateral for a bank loan of Rp. 5 billion. Next, a case of waqf land controlled by a third party occurred in Tebing Tinggi, North Sumatra. The wakif's heirs filed a lawsuit with the Religious Court and asked that land over six thousand square meters were designated as land for family members' graves. The Religious Court granted the wakif heirs' lawsuit. However, in decision No. 337K / AG / 2019, the cassation judges' panel rejected the plaintiff's appeal.⁴⁵

The sale and purchase of waqf land took place in Pakis Subdistrict, Malang Regency in 2020. The former village secretary has sold the Sunan Kalijaga mosque land in Pakisjajar village, East Java, for 1 billion. According to the Sunan Kalijaga Mosque Management (R2), the village secretary deceived the developer as the land

⁴⁵ Putusan MAHKAMAH AGUNG Nomor 337 K/Ag/2019, "Direktori Putusan," accessed June 2, 2022, <https://putusan3.mahkamahagung.go.id/direktori/putusan/ee0a4c5d43edc8e4d6b137e3f5ba2541.html>.

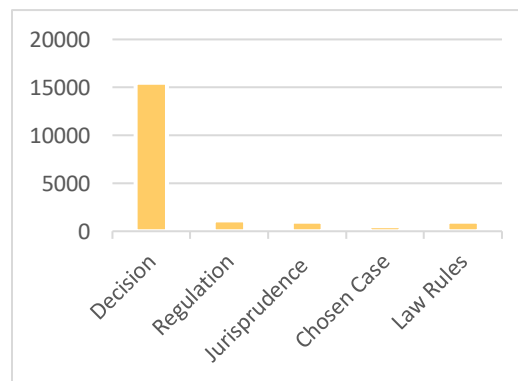
buyer. After all, the land belonged to him with a fake certificate. From the description of the misuse of the waqf land above, the waqf land needs to get strong legal protection to avoid misuse by irresponsible parties. From the above description, it is clear that the waqf system's irregularity results in the low utilization of waqf assets. Waqf land, which is very large and less productive, often causes the problem of waqf misuse. This situation, of course, raises concerns that require a crucial solution by involving various related parties.

Waqf Land Becoming a Source of Dispute

Waqf disputes can be resolved by litigation and non-litigation. Litigation settlement requires people to deal with the court, while non-litigation resolution gives a person the freedom to solve their case outside the court, such as mediation and arbitration. Waqf litigation cases submitted to the Religious Courts recorded in the Supreme Court's directory reached 15,477 cases, as shown in the following graph 3.

Graph 3

Waqf Case in Religious Court



Source: Data from the Supreme Court, 2022

In the Supreme Court website's data, there are 15 cases of waqf disputes. The conflict source is the nazhir's professionalism weakness, the waqf conflict as a legacy, and waqf use changes.

First, nazhir (waqf manager) has a central position in the waqf management. As the owner of assets before being donated, wakif has no more rights in managing the waqf land after implementing the waqf pledge. Unfortunately, nazhir is often unable to carry out his duties due to a weak understanding of waqf and low proficiency in waqf management. Not to mention, many of the waqf nazhirs are individual, died, or are already old. This situation has led to the neglect of the waqf land that should have been productive. An interesting case example is the Supreme Court decision no. 460K / AG / 2019. In this decision, the judge decided to replace Nazhir, who could not manage the waqf land he had controlled for 28 years. Nazhir is considered incompetent in managing waqf assets.⁴⁶

⁴⁶ Putusan MAHKAMAH AGUNG Nomor 460 K/Ag/2019, "Direktori Putusan," accessed June 2, 2022, <https://putusan3.mahkamahagung.go.id/direktori/putusan/dca5e9bec4b6c59596d4a1a90e6c8a29.html>.

Second, waqf disputes due to an inheritance distribution. Waqf land has the potential to become an advantageous inheritance object. When the status of the waqf land is unclear, the land is often contested as an inheritance. Although historical witnesses can still be traced, the waqf land can be turned into a property distributed to the heirs because there is no authentic evidence of the waqf pledge document. Case in No. 174K / AG / 2017 showed that the heir and wakif have seven children from the first wife and seven children from the second wife. The heir's descendants disputed over an area of 2000 square meters donated to the Islamic Education Foundation. The disputed land in the name of the first child from the first wife. The plaintiffs asked for the cancellation of the waqf pledge deed and the appointment of Nazhir because the land ownership status was unclear. The plaintiff stated that waqf assets could only be waqf if they are legally owned and controlled by wakif.⁴⁷ If the waqf pledge is canceled, the land returns to become an inheritance.

Third, waqf disputes often arise because waqf land has changed its function. For example, the waqf land, which was initially pledged for a mosque, later became a school. Likewise, the land that should be used for the pesantren becomes business land. This situation is certainly not in line with the waqf principle that the waqf allocation must follow the waqf's intention. One example of this case occurred in Simpang Tiga Subdistrict, Pidie District, Aceh, concerning the change in the mosque land's designation to Iboah Islamic School, which was then processed into a state school in 2015.⁴⁸ Another interesting case is when the donated land is affected by a toll road construction project such as a toll road project in Semarang Regency. The Semarang-Solo toll road project crossing the Baitur Rokhim Mosque, which covers 160 m², has not been realized by PT Trans Martha Jateng⁴⁹. From the description above, it can be concluded that many waqf disputes are pursued through litigation. If waqf management is carried out professionally by Nazir, waqf problems such as waqf disputes can be avoided.

Waqf Land Lost as Muslim Property

The waqf assets sustainability is often not maintained. Many people still consider that waqf is a human affair with their God. Therefore, waqf is often neglected and even lost its trace. The loss of waqf is usually related to three reasons: the absence of a certificate, the loss of the waqf heirs, and natural disasters. First, the certificate is an authentic proof of waqf. If the waqf certificate does not exist, the waqf land still has the status of owned land. In Indonesia, according to Siwak Data, only 61% of the certified land is donated. That means the other 39% are not certified.

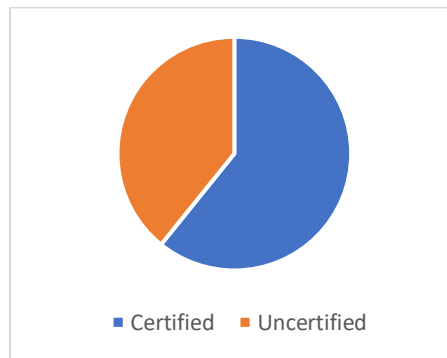
⁴⁷ Putusan MAHKAMAH AGUNG Nomor 174 K/Ag/2017, "Direktori Putusan," accessed June 2, 2022, <https://putusan3.mahkamahagung.go.id/direktori/putusan/0cdb0841d4cbd92a3eb1304500655a17.html>.

⁴⁸ Muhammad Arifin and Abdurrahman Abdurrahman, "Perubahan Peruntukan Tanah Wakaf di Luar Yang Diikrarkan," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 2, no. 2 (May 10, 2018): 308–19.

⁴⁹ Bowo PRIBADI, "Warga desak percepatan relokasi masjid terkena proyek tol," *Republika Online*, October 19, 2017, <https://republika.co.id/share/oy2lr8291>.

Graph 4

Certification of Waqf Land



Source: Ministry of Religious Affairs, 2022

The graph shows that Central java became the province with the highest waqf land certification level, composing 75.36%. Meanwhile, the area with the least waqf land certification level was the Riau Archipelago, comprising 32.08%. Therefore, waqf assets need to be protected with a waqf certificate immediately after the waqf pledge.

Second, many waqf lands were pledged several years or even decades ago. However, the land has not received legal standing because it is still uncertified. When it was going to be taken care of, it turned out that the heir of the Wakif was not there or had died. According to Kompas data in 2015, more than 8,000 waqf land parcels in East Java have not been certified due to the loss of their heirs. Part of the land is still land used as a worship place. Thousands of waqf land plots are currently being processed, but most of them were not certified due to the lack of administration supporting data. Third, natural disasters can cause the waqf's location to be lost. The certificates were carried away by the disaster such as Lapindo case in Sidoarjo, East Java. From the Lapindo mud disaster, 39 public facilities of worship places in the three districts were affected: Porong District, Jabon District, and Tanggulangin District. The compensation for the waqf land is handled by the Lapindo Mud Control Center in Surabaya⁵⁰. This center has not finished providing compensation for the waqf land. According to the Sidoarjo Regency Indonesian Waqf Board (R3), this swap was complicated because supporting documents such as land certificates did not exist. If this waqf land is also not replaced, the waqf land will be lost forever.

From the above description, it can be summarized that waqf management's weakness lies in waqf's disorganization, which triggers various problems. The problem of low productivity of waqf land, waqf conflicts, and the disappearance of waqf land must be a crucial part of which solutions must be found to provide the greatest possible prosperity for the people. This research shows that waqf land cannot provide maximum benefits due to the waqf system disorganization. Waqf land is still viewed as an insignificant resource by many parties resulting in the low waqf productivity such as for worship and schools. This situation is exacerbated by the emergence of misuse of waqf for personal gain. Another consequence is the number

⁵⁰ AGTVNEWS, "Pengganti tanah wakaf korban lumpur lapindo belum terealisasi," *AGTVnews.com* (blog), April 6, 2018, <https://agtvnews.com/2018/04/pengganti-tanah-wakaf-korban-lumpur-lapindo-belum-teralisasi.html>.

of cases of waqf disputes that have made waqf more useless. Nazhir's inadequate professionalism, feuds of wakif heirs who want to get an inheritance, and interest conflicts of waqf utility make waqf become a hostility object. If the land waqf is not appropriately managed, the assets will be lost.

This study indicates that there are still many land waqf problems faced by Indonesian people. The potential for waqf from a broad perspective is very high. The main problem with this problem is the disorganization of waqf management due to the low literacy level of waqf, nazhir, and society. Wakif, nazhir, and the community should get substantial information about waqf, such as waqf training and courses conducted by religious and government institutions. Wakif should care about the status of the land to be handed over. Likewise, Nazir should maintain the waqf mandate by confirming the status of waqf with proof of a certificate of waqf land. Besides, Nazhir must be able to use waqf assets productively to prosper the community. Finally, as the ruler, the government should make it easier to process the waqf land certification by shortening the procedure, waiving the certification fee, and replacing the waqf land that is affected by natural disasters.

This research confirms that the fundamental thing that triggers waqf's problem in Indonesia is waqf management's disorganization. Some of the factors that trigger the disorganization of land waqf in Indonesia are low waqf literacy, complicated procedures, and the high cost of land waqf certification. Inadequate understanding of waqf often makes someone underestimate the administration of waqf. Waqf is considered pure worship, which is only related between wakif and the almighty God as part of religious spirituality. Waqf land is believed to be afterlife savings that can send rewards even though wakif has died. If a person wants waqf, he can make a pledge of waqf in front of a religious leader without registering it at the religious affairs office. Next, the waqf certification process is quite complicated, especially if the waqf land rights are not clear, such as there is no certificate or certificate. Next is the high cost of waqf certification. The cost of obtaining waqf certification is not much different from managing land certification in general. The process of buying and selling or inheriting requires a transfer of property rights, which depends on the area of land and the tax object's sale value.

This study has a different perspective compared to previous studies. This research makes a unique contribution that focuses on the disorganization of waqf land as the main problem of waqf management weakness in Indonesia. So far, the researchers' attention is still divided into several focuses. The first is the studies on waqf land misuse in various places.⁵¹ The next focus is the studies on waqf land, which overthrows various reasons.⁵² The last priority is the studies on waqf land

⁵¹ Maulana, "Tanggung Gugat Penjualan Tanah Wakaf Ditinjau Dari Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf"; Fisca Ariyanti, "Penerapan Asas Pertanggungjawaban Wakaf Terhadap Tindakan Nadzir Dalam Menentukan Lembaga Pengelola Wakaf Yang Tidak Sesuai Dengan Keinginan Wakif (Studi Kasus Sengketa Tanah Wakaf Di Nitikan, Umbulharjo, Yogyakarta)"; Munawar, "Penyelesaian Sengketa Tanah Wakaf Melalui Lembaga Adat (Studi di Kecamatan Johan Pahlawan Kota Meulaboh)."

⁵² Mumtaz Chairunissa Iris Putranti, "Analisis ruilslag tanah wakaf menurut peraturan perundang - undangan studi pada"; Ibnu Rahmat, *Analisis Penggunaan Dana Hasil Penjualan Tanah Wakaf Masjid Jami' Lueng Bata Dalam Perspektif Hukum Islam*; Izzati Rizqi Annisa, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Wakaf (Studi Kasus Tanah Wakaf Masjid Baitul Qudus Di Jalan Gebanganom Kelurahan Genuk Sari Kecamatan Genuk) SKRIPSI."

management strategy that provides economic value.⁵³ Unlike previous studies, this study focuses on the disorganization of land waqf management, which includes low literacy, complicated procedures, and the tendency to resolve waqf cases through litigation.

From the results of this study, corrective actions can be taken, such as disseminating the law and administration of waqf land, incentives for government bureaucracy, and activation of non-litigation resolution of waqf problems. Dissemination of law and waqf land administration needs to be encouraged to increase waqf literacy in the community, especially wakif and nazhir. Inadequate understanding triggers the increasingly complex waqf problem, such as the abuse of authority that has often occurred so far. Also, government bureaucratic incentives in simplifying waqf procedures and eliminating fees can be done by prioritizing waqf land in the Complete Systematic Land Registration program that is being promoted by President Jokowi since 2018. Waqf land should be given a maximum quota because this involves the assets of the people. So far, the government is still half-hearted in accelerating the certification of waqf land. The government's hope to certify all donated land will not be maximized if community understanding is still inadequate and procedures are complicated. Finally, the waqf problems that often arise in society need to be resolved using a non-litigation model by prioritizing mediation or arbitration. Non-litigation solutions have advantages in terms of time and costs in addition to the solutions offered by prioritizing win-win solutions. Thus, the waqf land will be safe from abuse and become a potential resource for people's advancement.

Conclusion

As shown in this paper, the disorganization of the waqf land is not just because of an administrative system's unavailability and a lack of institutional commitment in managing waqf. Still, it is rooted in the Muslim cosmological system. Waqf land has been conceptualized as an afterlife saving that can provide passive religious income. This belief can result in neglect of the waqf administration process, which in turn causes dysfunction of the community's resources. This study's administrative approach has made it possible to read the phenomenon of waqf from a socio-religious and legal point of view at the same time. The waqf approach has tended to partially use management and sharia perspectives, relying less on the empirical dynamics of waqf, which can lead to conflicts in various forms. The disorganization of waqf contains the notion of irregularity in the management of land waqf, which is a precondition for the dysfunction of the waqf land in general. This study is limited to the analysis of waqf with specific land objects. This study has not touched on contemporary waqf, which has many variants and grows dynamically, such as endowments for shares and endowments for intellectual property rights. This study also does not examine aspects of waqf practice from wakif and nazhir as active actors. For this reason, this study suggests further research on contemporary waqf and the waqf implementation from wakif-nazhir perspectives. In turn, the problem of waqf land disorganization can be more comprehensively resolved.

⁵³ Kasdi, "Model Pemberdayaan Wakaf Produktif Di Indonesia"; Furqon, "PENGELOLAAN WAKAF TANAH PRODUKTIF"; Munir, "Optimalisasi Pemberdayaan Wakaf Secara Produktif."

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