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## The Issues of Waqf in The Society of Gorontalo

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### Abstract

Waqf refers to *ibadat maliyah* (constituting a worship of God by means of property) with an abundance of benefits and, therefore, reminds human being not to be greedy. This is because the God has given one's properties the right of the others. In addition, waqf can raise people's awareness to share and care for each other, especially for those who are in need of help.

There has been a rise in problems regarding waqf in Indonesia particularly Gorontalo due to unregistered waqf lands which leads to the absence of the waqf certificate. Another issue is the ownership of waqf instruments, i.e., the objection from the heir of the waqf properties and lack of socialisation from stakeholders, such as National Land Affairs Board (*Badan Pertahanan Nasional* or BPN), the Ministry of Religious Affairs, and Indonesia Waqf Board (*Badan Wakaf Indonesia* or BWI) regarding the procedures and registration of waqf lands. In addressing the concerns and minimise the problems, the government and the society must cooperate to improve the management of waqf. This is also to retain the economic value of waqf based on the *sharia* or Islamic law.

**Keywords:** Issues, Waqf



## Introduction

The tenets of land law have been constituted since 51 years ago in the Act Number 5 of 1960 Considering Basic Agrarian Principles (*Peraturan Dasar Pokok Agraria* or *UUPA*). On the other hand, a new paradigm that grounds the constitution of policies regarding land is urged due to the massive changes of globalization on the land tenure and its use.

The issue regarding land law is among the problems concerned by the society recently. Therefore, Islam, as a religion embedded with universal principles that govern the life of human beings, does concern the issue of land law through acknowledging the land tenure in terms of individual or collective ownership. In terms of the *maqasid syariah* (the five foundational goals), it is supposed that a land ownership brings more good than harm (triggering a conflict among people) to the society.

The endowment of Waqf land should not involve any purpose or intention of reclaiming the asset. This leads to a condition in which Waqfis seen as a social and religious activity that embeds transcendental values; such values are the facet in developing a nation. By that, the laws of Waqf have been regulated in the Act Number 5 of 1960, Act 19 Considering Land Registration and the Act Number 41 of 2004 Considering the Waqf Land. The procedures of Waqf, therefore, must be conducted according to these laws to legalize its endowment.

In Gorontalo, the endowment of Waqf land has been implemented based on the laws and regulations. However, it is reported that some of the lands are not registered as the Waqf lands. The data of the Religious Affairs of Gorontalo province reveal that some lands have been certified, yet others remain uncertified to date; these are shown in the following Table 1.

Number	Regency/City	Dimension m <sup>2</sup>	2016		2017	
			Certified	Not certified	Certified	Not certified
1	Gorontalo City	722,271.11	147	97	168	110
2	Gorontalo Regency	1,707,020.60	217	482	358	339

Number	Regency/City	Dimension m <sup>2</sup>	2016		2017	
			Certified	Not certified	Certified	Not certified
3	Bone Bolango Regency	204,031.06	241	1	250	4
4	Boalemo Regency	256,475.12	48	195	49	258
5	Pohuwato Regency	448,762.50	17	246	17	246
6	Gorontalo Utara Regency	253,117.25	59	127	65	124
Total		3,591,677.6	4	729	1148	907
					907	1081

**Source: Ministry of Religious Affairs Gorontalo, 2017**

The issue caused by the unregistered Waqf land resonates to the results seen in Djatnika (1992, p.1). According to Djatnika (1992), such a problem might indicate that the land is not Waqf land and therefore loses its identity as Waqf instruments.

Furthermore, Waqf lands often become the object of disputes between the heirs of the land with individuals or institutions that already own the land as the instrument of Waqf. The disputes occur several months or years after the endowment of the Waqf instruments; this because one of the heirs of the previous owner of the land believes that the land is not the Waqf property. This issue is due to two factors; first, people are lack of understanding regarding the advantages of Waqf. Second, there are barely workshops or seminars to disseminate the insight regarding Waqf to the society. This results in a gap and disharmony among the people.

### Research Methodologies

This research explores and examines the legal issues regarding Waqf in the society of Gorontalo. In investigating the problem, this research employed statute approach, conceptual approach or theories of law, and case approach. The data were collected through methods, e.g., literature review, observation, as well as an interview.

## Results and Discussion

### *Regulatory Substance of Waqf*

The laws relating to Waqf have been regulated in Quran, Hadith, as well as the Compilation of Islamic Laws and the Positive Laws in Indonesia. Several verses in Quran explain this concern, such as:

- a. Quran Surah Al-Baqarah 284: All that is in the heavens and the earth belongs to Allah. Whether you disclose whatever is in your hearts or conceal it, Allah will call you to account for it, and will then forgive whomsoever He wills, and will chastise whomsoever He wills. Allah has power over everything. (2: 284).
- b. Quran Surah Al-Hajj 77: “Believers, bow down and prostrate yourselves before Your Lord and serve Your Lord and do good that you may prosper” (22: 77).
- c. Quran Surah Ali Imran 92: “You shall not attain righteousness until you spend out of what you love (in the way of Allah). Allah knows whatever you spend”. (3: 92).
- d. Quran Surah An-Nahl 97: “Whosoever acts righteously - whether a man or a woman - and embraces belief, We will surely grant him a good life; and will surely grant such persons their reward according to the best of their deeds”.
- e. Hadith Rasulullah SAW narrated by Muslim from Abu Huraira reported: “When the human being dies, his deeds come to an end except for three: ongoing charity, beneficial knowledge, or a righteous child who prays for him” (Sahih Muslim 1631).

The positive laws in Indonesia are as follows:

- a. Constitution of State of Republic of Indonesia of 1945, Article 33 Paragraph (3) and Article 149 Paragraph (1).
- b. Act Number 5 of 1960 Considering Basic Agrarian Principles.
- c. Act Number 41 of 2004 Considering Waqf.
- d. Government Regulation Number 42 of 2006 Considering the Implementation of the Regulation Number 41 of 2004 Considering Waqf.
- e. Regulation of Minister of Religion No. 4 of 2009 on Registration Administration of Waqf of Money.
- f. Decree of Director General for Guidance of Islamic Community Number G.J.II/420 of 2009 Considering the Model, Form, and the Specification of Cash Waqf.

A Waqf property, including Waqf land, cannot be sold, inherited, and donated to anybody except in certain circumstances, i.e., the people cannot benefit from the property due to its condition. In such a case, it does not matter for a person to sell or to replace the Waqf property. This is intended to maintain the benefit from the instrument of Waqf.

According to *madhhab* (school of thought) Hambali, a Waqf property must be sold and replaced (the money obtained from selling the property is used to purchase the substitute) once it does not bring any good. For example, one may sell a mosque and relocate it to another place because there are no inhabitants who could benefit from the mosque (the people migrate to other places due to the rapid pace of the development). Imam Ahmad reflects on the case of Villar bin Khattab in which he turned the sold mosque to a market as a grounding for his thought.

### ***The Implementation of Waqf in a Society***

The practice of Waqf has not been implemented efficiently which leads to several issues whereas the property of Waqfis not maintained and even the ownership status is moved to a third party due to the violation of the law. This does not only blame the inability of *nadzir* in managing the Waqf property but also the ignorance of the society towards the status, the purpose, and the function of the Waqf property.

According to the sharia of Islam, Waqf comprises of two dimensions, such as the religious and socio-economical dimension (Dirjen Bimas dan Penyelenggraan Haji, 2004, p.29). The religious dimension is embedded in the act of Waqf because Islam proposes the implementation of Waqf for the life of Moslem and therefore must be obeyed. On the other hand, the socio-economical dimension of Waqf refers to the social and economic value embedded in the sharia of Waqf; a Waqf is a social activity in which a person donates his or her assets for the others to raise their mutual respect and tolerance. By that, laws regulating Waqf are urged to be constituted. The example of such a law is Government Regulation Number 42 of 2006 Considering the Implementation the Regulation Number 41 of 2004.

One of the social and economic institutions which also embed the value of *tawhid* or attributing oneness to only Allah SWT is the Waqf board. This institution is the manifestation of the value of social justice in Islam. Furthermore, it is believed that wealth is not justified only to one group (Quran Surah Al Baqarah, 2: 188). Such an act results in exploitation of the minority group by those who hold more power; in other words, this leads to a social turmoil and contributes to several social issues on the society further. However, Islam does not prohibit people to be wealthy but rather warn them regarding the social function of the properties that they own.

The act of donating assets as Waqf is based on God's commandment on Al Quran surah Ali Imran verse 92:

“Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love. And whatever you spend - indeed, Allah is Knowing of it”.

Based on the above verse, it is evident that Waqf is essential because this act of endowment represents people's obedience to Allah for the blessing they have got.

There are two types of Waqf based on its purpose, namely Waqf Ahli and Waqf Khairi. In Waqf Ahli, the initiator designates a person or a group of individuals, whether they are the family of the initiator or not, as the beneficiaries of the endowment. On the other hand, the beneficiaries of Waqf Khairi involve specific groups, and it addresses the needs of the society, e.g., endowment to the mosque, madrasah, or Islamic boarding schools.

Based on the above explanation, it can be inferred that Waqf is the charitable endowment for Muslim religious or charitable purposes under the Islamic law because of Allah SWT.

In Indonesia, the implementation of Waqf in the society is not in accordance with the regulation despite the purposes embedded in Waqf as the act of worship. The elements of Waqf are as follows:

1. The individual or group act of endowment under the Islamic law
2. The object of Waqf refers to one's properties
3. The act of charitable endowment
4. It is aimed for the social and religious purposes
5. Continuous/Everlasting act.

### ***Dispute Resolution Procedures of a Waqf Land***

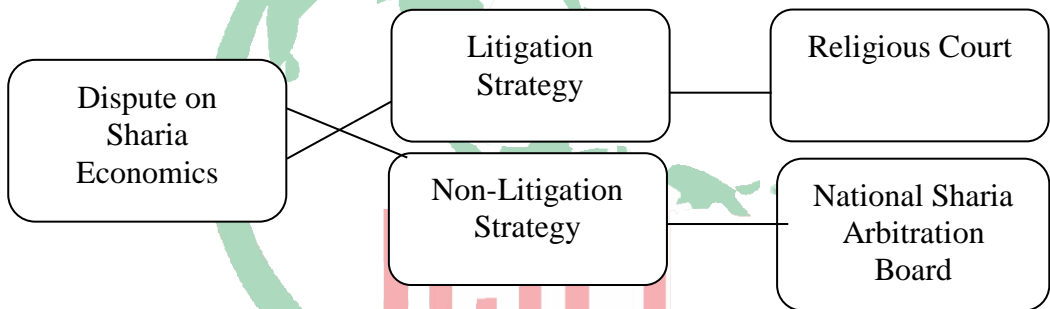
According to the Act Number 4 of 2004, there are two strategies regarding the dispute resolution of Waqf properties, namely the litigation and non-litigation strategy. The procedures in the litigation approach involve the religious court while National Sharia Arbitration Board deals with the non-litigation approach. The Act Number 41 of 2004, Article 62 states that the dispute resolution of Waqf properties is through deliberation to reach consensus. If the resolution referred in Paragraph 1

is unsuccessful, the dispute can be settled through mediation, arbitration, or in a court. (Sulistiani, 2007, p.150).

Conflict resolutions through negotiations without going to a trial is more effective in maintaining the sustainability of the relationship between the conflicted parties rather than conducting a dispute resolution through litigation strategy. This is because the court ruling is rather put one of the parties at an advantage (the winner) and the remaining party at a disadvantage (the loser). In other words, such a decision does not represent *problem-solving* approaches. This also does not resolve the problem because there will be likely a feeling of anger and hatred in the loser team.

Procedures for conflict resolution of Waqf land in Gorontalo are in accordance with the regulation which also similar with those in other areas. Another conflict resolution strategy applied is the non-litigation approach.

### ***The Procedures for Dispute Resolution of Waqf Properties***



### **Description: Dispute Resolutions of Waqf Properties**

In dealing with the issues regarding the sharia economic dispute, the religious court should be able to explore the values and norms of the Islamic laws, from Al Quran, Sunnah, Islamic jurisprudence (fiqh) literature, or fatwa (legal pronouncement) of the National Sharia Council (*Dewan Syariah Nasional*).

The foundation of positive laws that underpin the sharia arbitration constitute several acts regarding the standing point of the arbitration. These acts include Act Number 30 of 1999 Considering Arbitration and Alternatives of Dispute Resolution, Act Number 41 of 2004 Article 60 Considering Waqf, Act Number 21 of 2008

Article 55 Paragraph 2 Considering sharia banking system, Act Number 48 of 2009  
Article 3 Considering Judicial Power.

### ***Inhibiting Factors of the Implementation of Waqf in Gorontalo***

The issues of Waqf in Indonesia, especially the administration, development, and its use are still present despite the role of Waqf to the Muslim society throughout the history of the development of Islam. Therefore, analysis and application of the problem-solving approaches on the management strategy are necessary for promoting the sustainability of the Waqf charity, especially in donating Waqf land.

In Indonesia, people who initiate to donate their property especially their land are limited. By that, it is necessary to manage the Waqf property to maximise its benefits. This attempt also, however, must be continuously developed to support the sustainability of the management of the property further. Such efforts are urged to be implemented since most of the Waqf lands are not properly managed. Ultimately, people are unable to benefit from the properties, and therefore, the purposes of the Waqf initiator are not met.

In Indonesia, there are a number of situations whereas a Waqf land is managed in consumptive and traditional approaches, which are explained as follows:

1. The lack of people's understanding regarding the Waqf property; most of them consider that the property of Waqf, e.g., mosque, madrasah, cemetery, and an orphanage, is only for worship or religious purpose. In addition, a misconception regarding the fact that every act or thing belongs to Allah results in the people's ignorance to manage the Waqf property.
2. People mostly donate their property to those who are considered as the role model of the society, e.g., *ulama* (scholars), *Ustad* (teachers), *kyai* (experts in Islam), and traditional leaders. However, some of these figures misuse the Waqf property, such as selling the Waqf land to others. It is also likely that the person who manages the Waqf property, well-known as *nadzir*, is incapable of maximising the use of Waqf property for the social and religious purposes. Consequently, not all the people can benefit from the Waqf endowment.
3. The lack of people's awareness regarding the registration of Waqf land which leads to the issue of misuse the Waqf property or even forceful ownership acquisition (Haq, 2017, p.93 - 95).



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Waqf is the solution to the management of the economy of society. This is undoubtedly a breath of fresh air to the Waqf affairs in Indonesia. Waqf is also among the Islamic socio-economy institutions whose potential is not explored and developed. Therefore, the synergy and cooperation of stakeholders are required to enhance the management of Waqf.

An interview with Fikri Tuli S. Ag (member of Indonesian Waqf Board of Gorontalo Province) reveals that the implementation Waqf endowment in Gorontalo has met the target and expectation although some issues are still present. These are particularly about the management of Waqf as a manifestation of the economy of society. Some of the issues are as follows:

1. The lack of people's awareness to implement Waqf

People mostly consider that the implementation of Waqf is for the purpose of worship. This is significantly different with the recent concept of Waqf which expects a productive purpose of the endowment. For instance, one may build a market or shopping center on the Waqf land. Furthermore, the income from the sales can be allocated to provide a scholarship for needy children or to conduct a free health service assistance.

2. Nadzir's incompetence regarding Waqf management

A competent *nadzir* contributes to a better management of Waqf. Ineffective Waqf management results in a condition in which a property is being abandoned and even causes a loss of Waqf property. Therefore, a *nadzir* candidate must be equipped with Waqf management skills to prevent such a case and maximise the Waqf endowment in Indonesia.

3. Inadequate Efforts to Raise People's Awareness

Inadequate efforts to improve people's understanding regarding Waqf is among the inhibiting factors of the implementation of Waqf. Thereby, disseminating the knowledge regarding Waqf is essential to maintain the sustainability of Waqf endowment particularly in Gorontalo.

## Conclusion

In conclusion, the problems of Waqf, especially in Gorontalo, can trigger conflict in a family or even a group or organization. This results in the lack of people's understanding regarding Waqf; they consider that this charitable endowment is only for the purpose of worship. In fact, the values of Waqf can be explored and developed into a Waqf productive. Moreover, inadequate efforts in raising people's awareness regarding Waqf and improving management skills of the nadzir are among the factors inhibiting the sustainability of Waqf. A better Waqf management can guarantee the conceptualization of the development of Waqf for the economic condition of society.





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## **Laws and Regulations**

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- The Government Regulation Number 42 of 2006 Considering the Details of the Government Regulation Number 41 of 2004 Considering Waqf
- Regulation of Minister of Religion No. 4 of 2009 on Registration Administration of Waqf of Money.
- Indonesian Waqf Board Regulation Number 3 of 2008 Considering the Registration and the Replacement of Nadzir and Waqf Land.
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