

Contesting Sacred Gifts: The Erosion of Waqf's Rights in a Waqf Dispute in Prabumulih, South Sumatra

Ulya Kencana* Ria Astina,** Erniwati,* Rina Antasari,*
Diniaria Sagita*

* Universitas Islam Negeri Raden Fatah Palembang, Indonesia

** Canal Suez University Ismailiyah, Egypt

Email: *ulyakencana_uin@radenfatah.ac.id*

Abstract. The practice of waqf in South Sumatra society has been going on for a long time and is regulated both in Islamic law and in applicable legislation. However, disputes related to waqf land still occur, such as the case in Prabumulih, South Sumatra, where heirs tried to reclaim property that had been donated as waqf. This article discusses waqf from a legal perspective and analyzes disputes over the withdrawal of waqf assets by heirs within the framework of human rights (HAM). The theory used is the human rights theory, which asserts that the rights of every individual are protected by law, including the rights of the deceased waqf. This study employs a normative-empirical approach: the normative approach is used to examine waqf regulations, while the empirical approach is applied in analyzing the waqf dispute case in Prabumulih. The results of the study show that in Islamic law, differences in the definition of waqf among schools of thought lead to variations in practice in society. Regulations in Indonesia require the registration of waqf land at the Office of Religious Affairs to prevent disputes. From a human rights perspective, the heirs' efforts to withdraw waqf assets are illegal and violate the waqf's human rights, which should remain protected.

Keywords: withdrawal of waqf assets; waqf's heirs; law; human rights

Abstrak. Praktik wakaf di masyarakat Sumatera Selatan telah berlangsung sejak lama dan telah diatur baik dalam hukum Islam maupun dalam peraturan perundang-undangan yang berlaku. Namun, sengketa terkait tanah wakaf masih terjadi, seperti kasus di Prabumulih, Sumatera Selatan, di mana ahli waris mencoba menarik kembali harta yang telah diwakafkan. Artikel ini membahas wakaf dari sudut pandang hukum serta menganalisis sengketa penarikan harta wakaf oleh ahli waris dalam kerangka hak asasi manusia (HAM). Teori yang digunakan adalah teori HAM, yang menegaskan bahwa hak setiap individu dilindungi oleh hukum, termasuk hak waqif yang telah wafat. Penelitian ini menggunakan pendekatan normatif-empiris: pendekatan normatif digunakan untuk mengkaji regulasi wakaf, sementara pendekatan empiris diterapkan dalam menganalisis kasus sengketa wakaf di Prabumulih. Hasil penelitian menunjukkan bahwa dalam

hukum Islam, perbedaan definisi wakaf di antara mazhab menyebabkan variasi dalam praktik di masyarakat. Regulasi di Indonesia mengharuskan pencatatan tanah wakaf di Kantor Urusan Agama guna mencegah terjadinya sengketa. Dari perspektif HAM, upaya ahli waris untuk menarik kembali harta wakaf merupakan tindakan yang melanggar hukum dan mencederai hak asasi waqif yang seharusnya tetap dilindungi.

Kata Kunci: penarikan harta wakaf; ahli waris waqif; hukum; hak asasi manusia

Introduction

The issue of waqf is very complex, even though it has been practiced since long ago. The legal practice of waqf in Islam has grown and developed within society; waqf exists because people engage in it (endowments exist because people do it).¹ However, disputes over waqf assets frequently arise, including cases where heirs of the waqf donor demand the return of waqf land after the donor's death, waqf land being inherited by the descendants of the Nadzir, and the use of waqf assets deviating from the terms of the waqf agreement. There are unresolved endowment disputes based on endowment laws,² and the status of endowment land that does not align with endowment laws.³

In general, waqf is considered by the community as charity that does not require formal procedures, a transfer of ownership from an individual to the property of Allah SWT that cannot be taken back.⁴ This condition occurs because there are differences of opinion among

¹ Ulya Kencana, Miftachul Huda, and Andino Maseleno. "Waqf administration in historical perspective: evidence from Indonesia," *TEST Eng Manag* 81, no. 11-12 (2019).

² Swilia Apriliani, "Problematika Pelaksanaan Sertifikasi Tanah Wakaf Berdasarkan Uu No. 41 Tahun 2004 (Studi Kasus Di Desa Singarajan Kecamatan Pontang Kabupaten Serang)," PhD diss., UIN SMH Banten, 2019.

³ Samingan Samingan, "Persepsi Tokoh Masyarakat Desa Tirtamulya Kecamatan Ogan Komering Ilir Tentang Status Tanah Yang Belum Tercatat Oleh PPAIW," PhD diss., UIN Raden Fatah Palembang, 2017.

⁴ Ahmad Mukhlisin, and Nur Hamidah. "Pemanfaatan harta wakaf di luar ikrar wakaf perspektif hukum islam dan uu no. 41 tahun 2004 (analisis pemanfaatan harta wakaf di desa taman fajar kecamatan purbolingo lampung tengah)," *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 2 (2017).

the imams of the madhhab regarding the status of ownership of waqf property and the length of time the property is waqf.⁵ In Indonesia, regarding land waqf, the provisions for the creation of a waqf declaration deed have abolished ownership rights over the land that has been donated as waqf, and waqf land cannot be reclaimed. Therefore, certification is necessary to avoid future disputes.⁶

This article uses human rights theory. The concept of human rights in Indonesia is not only related to basic human rights, but also includes the basic obligations of citizens to obey laws and regulations, unwritten laws, respect the human rights of others, morals, ethics, and so on.⁷ Human rights are necessary for humans to protect their human dignity and as a moral foundation for acting and behaving towards other humans.⁸

There are 30 rights in the 1948 Universal Declaration of Human Rights (United for Human Rights/UHR), including the following: Everyone's human rights are protected by law. Everyone can seek legal assistance when they are treated unfairly; Responsibility. Everyone has a duty towards others and must protect the rights and freedoms of others; No one can deprive anyone of their human rights. No one can deprive anyone of their human rights or violate them.⁹

This theory is related to the human rights of the waqif, which are protected by law. Even though he has passed away, his human rights are still protected by law. His heirs are responsible and obliged to protect the waqif's rights to the property that has been donated. The

⁵ Akhmad Shodikin, and Asep Abdul Azis, "Penarikan Kembali Harta Wakaf Oleh Pemberi Wakaf (Studi Komperatif Imam Syafi'i Dan Imam Abu Hanifah)". *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 2, (2017): 255-268.

⁶ Irfan Christianto, "Perlindungan Hukum Terhadap Tanah Wakaf Melalui Pendaftaran Tanah Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 10, no. 01 (2022): 91-106.

⁷ Muladi, *Hak Asasi Manusia: Hakekat, Konsep dan Implikasinya Dalam Perspektif Hukum dan Masyarakat* 1st ed. (Bandung: Refika Aditama, 2005), p. 6.

⁸ Nurliah Nurdin, and Astika Ummy Athahira, *Ham, Gender dan Demokrasi (sebuah Tinjauan Teoritis dan Praktis)* 1st ed, (nd: CV. Sketsa Media, 2022), p. 2.

⁹ Nurliah Nurdin, and Astika Ummy Athahira, *Ham, Gender dan Demokrasi*. p. 14-16

desire of his heirs to withdraw the waqf property is a violation of human rights protected by law. The fundamental rights of waqf donors cannot be taken away or violated. This is to protect waqf assets from interference by others, especially by the donors' own heirs. Thus, all rights are bound by law and there is evidence that the law is binding. As citizens, it is important to be aware of the relationship between human rights and the laws that govern them in order to avoid human rights violations.¹⁰

Several studies on waqf have shown diverse findings, ranging from management models, community participation, legal frameworks, to its contribution to socio-economic development. Miftahul Huda¹¹ identified three models of waqf-based mosque independence, namely the development of productive assets, strengthening the capacity of nadhir, and utilizing waqf proceeds for the community. Meanwhile, Ali Murtadho Emzaed¹² found that the tradition of saprah amal in South Kalimantan is a unique form of indigenous philanthropy, with charity auctions as a negotiation mechanism. In Sri Lanka, Muhammed Buhary Muhammed Thabith¹³ noted positive developments in waqf management, although there is still a need to raise awareness among stakeholders. From a legal perspective, Ulya Kencana¹⁴ highlights the influence of legal politics on the development of waqf in Indonesia,

¹⁰ Rizkyana Tri Nandini, Anita Trisiana, and Dina Yeti Utami. "Relevansi Ham Dalam Perspektif Hukum Di Indonesia," *Bhineka Tunggal Ika: Kajian Teori Dan Praktik Pendidikan PKN* 8, no. 1 (2021): 40-48.

¹¹ Miftahul Huda, "Kemandirian Berbasis Wakaf di Masjid Besar Imam Ulomo Sampung Ponorogo," *Al-Ikham: Jurnal Hukum and Pranata Sosial* 12, no. 2 (2017): 362-384.

¹² Ali Murtadho Emzaed, Kamsi Kamsi, and Ahmad Bahicj, "Saprah Amal, Democratization and Constitutional Rights The Habitus of Philanthropy Practices for the Banjar Muslim Society in South Kalimantan," *Asy-Syir'ab: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 2 (2021): 393-414.

¹³ Muhammed Buhary Muhammed Thabith, and Nor Asiah Mohamad, "Waqf and Its Legal Framework in Sri Lanka: A Preliminary Study," *Intellectual Discourse* 29, No. 2 (2021): 359-378.

¹⁴ Ulya Kencana, "Politik Hukum Perwakafan di Indonesia" at Ulya Kencana (ed) *Bunga Rampai: Kajian Politik Hukum Tata Negara di Indonesia* (Palembang: Noer Fikri, 2020). p. 41.

including the impact of globalization. Azwar Iskandar¹⁵ emphasizes the role of Islamic philanthropy (zakat and waqf) in reducing poverty and recommends its integration into sustainable development policies. Finally, Aam Slamet Rusydiana¹⁶ proposed a waqf model based on maqasid al-sharia and SDGs for women's empowerment through education and entrepreneurship. These findings show that waqf has multidimensional potential, both as a religious, social, economic, and political instrument, but requires innovative and collaborative management among stakeholders.

This article attempts to continue and fill the gap left by previous researchers. This article focuses on disputes over the withdrawal of waqf assets by the heirs of the waqf in the context of law and human rights. Therefore, the author is interested in researching and analyzing how the withdrawal of waqf assets by the heirs of the waqf is carried out, with two main issues: first, how are waqf assets viewed from a legal perspective? and second, how are disputes over the withdrawal of waqf assets by the heirs of the waqf viewed from a human rights perspective?

This research is interesting and important to conduct, as the assets that have been donated as waqf by the waqf need to be protected. The status of wakaf assets is strong under Islamic law and Indonesian legislation. Therefore, the heirs of the waqif should not take over their parents' assets that have been donated as wakaf. This not only violates established law but also infringes upon the human rights of the waqif, which are protected by the state.

The scientific contribution of this article is that waqf that has been donated by the waqif, and is in accordance with Islamic law and waqf regulations in Indonesia, cannot be taken over by the heirs, as in the case that occurred in Prabumulih, South Sumatra. This case serves as an example that the seizure of waqf assets by the waqf donor's heirs

¹⁵ Azwar Iskandar, Bayu Taufiq Possumah, Khaerul Aqbar, and Akhmad Hanafi Dain Yunta, "Islamic philanthropy and poverty reduction in Indonesia: The role of integrated Islamic social and commercial finance institutions," *AL-IHKAM: Jurnal Hukum dan Pranata Sosial* 16, no. 2 (2021): 274-301.

¹⁶ Aam Slamet Rusydiana, Raditya Sukmana, Nisful Laila, and Sherrindra Avedta, "Waqf, Maqasid al-Sharia, and SDG-5: A Model for Women's Empowerment," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 325-355.

is a reprehensible act from the perspective of Islamic teachings, violates legal regulations, and infringes upon the waqf donor's rights.

This study is empirical legal research. This study examines and analyzes disputes over the withdrawal of waqf assets by the heirs of the waqf in Prabumulih, South Sumatra, in 2023 based on law and human rights. This location was chosen because there was a dispute over waqf land that the heirs of the waqf wanted to reclaim. There are similar cases in other areas, but they are not related to law and human rights.¹⁷

An Overview of Opinions on Waqf, and Withdrawal of Waqf Assets in the Perspective of Islamic Law

The term wakaf etymologically comes from Arabic, al-habs, which means to hold, prevent, remain stationary, or stand still. Its plural form is al-hubus or al-ahbas. In this case, the Maliki school of thought uses the word al-habs more often. The French word habous comes from the word al-habs.¹⁸ The terminological meaning of waqf is to hold an item and provide its benefits (at-tahbisu al-‘ashl wa at-tashilu). At-tahbisu al-ashl means to hold an item. The word al-‘ashl refers to types of items such as houses, trees, land, cars, and similar items. Therefore, waqf can be in the form of movable or immovable items.¹⁹

Since ancient times, Islamic law has been well-received in Indonesia. In its development, it has gained legitimacy from the state. Similarly, the law of wakaf has been accepted and practiced in society. Waqf, as one of the instruments of Islamic philanthropy, has several elements and requirements that must be met in order to be legally

¹⁷ Vivi Sandra Dewi, "Penyelesaian Sengketa Tanah Wakaf Di Rt 014 Talang Bengkurat Kelurahan Pagar Agung Kecamatan Lahat Kabupaten Lahat Ditinjau Dari Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf." PhD diss., UIN Raden Fatah Palembang, 2018.

¹⁸ Abd Shomad, *Hukum Islam Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Jakarta: Prenada Media Group, 2012), p. 355.

¹⁹ Ulya Kencana "Peralihan Status Harta Benda Wakaf Dalam Perspektif Hukum Pada Masyarakat Sumatera Selatan," *Jurnal Al-Anqaf* 11 (2018).

valid.²⁰ First, the person making the waqf (al-waqif) must meet the criteria as a legal subject,²¹ namely: possessing full ownership of the property, being free to determine the recipients of the waqf, being of sound mind, of legal age, and legally competent (ar-rasyid).²² Second, the object of the waqf (al-mauquf) must meet certain conditions, including: (a) its ownership cannot be transferred, (b) its quantity and value must be clear, (c) it must be the full property of the waqif (not jointly owned property without permission), and (d) it must be independent (al-mufarrazan), not dependent on other property.²³ Third, the beneficiary (al-mauquf'alaih) must be clearly specified at the time the waqf declaration is made, whether an individual or an institution, with the condition that the purpose of the waqf must be for the benefit of worship.²⁴ Fourth, the declaration of waqf (as-shighat) can be made verbally, in writing, or by gesture by a person of sound mind, provided that: (a) it is done directly and immediately, (b) it is not accompanied by invalid conditions or time restrictions, and (c) it does not contain the intention to revoke the waqf that has been given. By fulfilling all these conditions, the waqf can be considered valid and provide sustainable benefits in accordance with Islamic law.²⁵

The imams of the madhhabs stipulate that the purpose of waqf must be for worship. Therefore, most waqf in Indonesia is in the form of land for worship, so mosques, Islamic boarding schools, madrasas, and cemeteries are established. There are differing opinions regarding the term “waqf.” The definition of waqf varies according to each

²⁰ Abdullah bin Muhammad Ath-Thayyar, Abdullah bin Muhammad Al-Muthlaq, and Muhammad bin Ibrahim, *Ensiklopedi Fiqih Muamalah* (Yogyakarta: Maktabah Al-Hanif, 2014), p. 443.

²¹ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* Edisi Revisi, 3rd ed. (Jakarta: PT. Raja Grafindo Persada, 2017), p. 498.

²² Abd Shomad, *Hukum Islam Penormaan*, p. 359.

²³ A. Mas'adi Ghufroon, *Fiqh Muamalah Kontekstual* (Jakarta: PT. Raja Grafindo Persada, 2002), p. 20.

²⁴ Sulaiman Rasyid, *Fiqh Islam* (Bandung: Sinar Baru, 1990), p. 343.

²⁵ Faishal Haq, and A. Saiful Anam, *Hukum Wakaf dan Perwakafan Di Indonesia* (Pasuruan: Garoeda Buana Indah, 1993), p. 17-29.

school of Islamic jurisprudence.²⁶ This leads to differences in determining the ownership status of waqf assets and the duration of the waqf.

There are differences of opinion among scholars of various schools of thought regarding the ownership status of waqf property after it has been declared. According to the Hanafi School,²⁷ waqf property remains the property of the waqif (waqf donor), where only the benefits are donated for the good of the present and the future. The waqif has the right to withdraw the waqf property, sell it, or bequeath it to his heirs if he dies. The Maliki school of thought also holds that ownership of the property remains with the waqif, but unlike the Hanafi school, the waqif is not permitted to reclaim or use the property for personal gain. In the Maliki school, waqf is temporary,²⁸ not permanent, so its benefits must be donated for a specified period of time.²⁹ Meanwhile, the Shafi'i and Hambali schools³⁰ of thought hold that waqf transfers ownership of the property from the waqif to Allah SWT after the declaration process is completed. Thus, the waqif no longer has any rights over the property, cannot withdraw it, and heirs cannot inherit it. The benefits of the waqf must be distributed to the recipients (*mauquf 'alaih*), and if the waqif obstructs this, the court has the right to enforce its distribution. This difference reflects variations in understanding the validity and strength of the wakaf declaration, where the Hanafi and Maliki schools are more flexible regarding ownership, while the Shafi'i and Hambali schools emphasize the finality and permanence of wakaf as a binding form of charity.

The Hambali school of thought holds that waqf occurs due to customary practices (*al-ʿurf*), such as building a mosque and allowing people to pray inside it. Property is spontaneously endowed according to custom, even if not explicitly stated, because endowment has become a customary practice; and explicitly and clearly uttering the

²⁶ Achmad Djunaidi, and Thobieb Al-Asyar, *Menuju Era Wakaf Produktif* (Jakarta: Mumtaz Publishing, 2007), p. 54.

²⁷ Az-Zuhaili, Wahbah, dkk. *Fiqh Islam Wa Adillatuhu* (Jakarta: Gema Insani, 2011), p. 151.

²⁸ Wahbah Az-Zuhaili, *Fiqh Islam*, p. 152.

²⁹ Wahbah Az-Zuhaili, *Fiqh Islam*, p. 152.

³⁰ Wahbah Az-Zuhaili, *Fiqh Islam*, p. 153.

words “habastu,” “waqoftu,” and “tasadaqtu” accompanied by the intention to endow. Imam Hambali states that endowed property must be saleable, even if the property itself cannot be sold, and its substance must remain intact because it is intended for perpetuity.³¹

The Shafi'i and Hambali schools of thought stipulate that endowed property must include property owned by an individual or a group of people, be of a permanent nature or not subject to depletion, be free from ownership so that it cannot be gifted, inherited, bought, or sold, and its benefits must be for the public good.³²

Imam Abu Hanifah and Imam Maliki are of the opinion that waqf property remains the property of the waqf donor, but it is obligatory to give away the benefits of the waqf property. Abu Hanifah permits the withdrawal of the endowed property and its sale, and even the heirs may inherit it. Imam Maliki states that the withdrawal of endowed property is not permitted, even though ownership remains with the endower; it must not be used for personal purposes, and the benefits of the endowed property must be distributed as charity.

The emergence of disputes over endowed land and the withdrawal of endowed property by heirs has sparked debate. Jurists argue that, regardless of the reason, withdrawing endowed property is not permissible. However, if the heirs possess a land certificate, withdrawal may be permissible. This is because the presence of a land certificate as evidence implies that the endowment has not yet been legally established.

The opinions of the four schools of Islamic law differ. According to Imam Hanafi and Maliki, waqf property may be reclaimed because it is not permanent or eternal. According to Imam Syafi'i and Hambali, once property has been donated as waqf, it becomes the property of Allah SWT, and the waqif cannot reclaim it. In Indonesia, the fiqh understanding adopted follows the Shafi'i school of thought, which is the same as the Hanbali school, and differs from the opinions of the Hanafi and Maliki schools.

³¹ Wahbah Az-Zuhaili, *Fiqh Islam*, p. 160.

³² Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2007), p. 10.

The Shafi'i understanding of waqf in Indonesia states that waqf cannot be sold, transferred, or inherited by the waqf donor's heirs. Waqf property belongs entirely to Allah SWT. Therefore, the heirs have no right or authority to transfer ownership or take possession of the property as their personal property.³³

In general, waqf assets in Indonesia have several key characteristics that distinguish them from other forms of ownership. First, waqf property must be assets legally owned by individuals or groups, such as land, buildings, money, or other productive assets. Second, the property must be permanent (not depleted when used), such as land or buildings, although in recent developments, monetary waqf is also recognized as long as it is managed productively. Third, once endowed, ownership of the property is completely relinquished by the waqif (endower) and can no longer be gifted, inherited, or sold, as its status has become the property of Allah SWT for the benefit of the community. Fourth, the benefits of waqf assets must be used for the public good, such as the construction of mosques, schools, hospitals, or other sustainable social programs.³⁴

The dispute over the withdrawal of waqf assets by the heirs of the waqf donor on the land of SDN 6 Prabumulih, based on the opinions of Imam Syafi'i and Hambali. The assets that have been donated as waqf are wholly owned by Allah SWT and cannot be withdrawn by the heirs. This case has been decided in the First and Third Instance Courts, with the government prevailing. The legal basis for the endowment land is already legally documented as endowment property. The evidence supporting the decision includes a P-1 document, which is a photocopy of the Land Certificate dated July 20, 1952, not a proof of ownership of the land as required by law. The claim of forgery of the endowment deed, as alleged by the plaintiff, is not supported by a Criminal Court ruling.³⁵

³³ Suhrawardi K. Lubis, and Komis Simanjuntak, *Hukum Waris Islam* (Jakarta: Sinar Grafika, 2013), p. 55.

³⁴ Ahmad Rofiq, *Hukum Islam*, p. 10.

³⁵ Decision Number 2645/Pdt.G/2018, p. 8.

Waqf Regulations in Indonesia and Their Implications for Waqf Property Ownership

Based on various laws and regulations in Indonesia, waqf has a clear definition and legal consequences related to the ownership status of waqf assets. First, Law No. 41 of 2004 in conjunction with Government Regulation No. 42 of 2006 defines waqf as a legal act of separating part of one's property to be used forever or for a certain period of time for the purposes of worship and public welfare. This regulation stipulates that the heirs are not allowed to withdraw waqf assets if the waqf is permanent, but they are allowed to withdraw if the waqf is temporary.³⁶ Second, Government Regulation No. 28 of 1977 specifically regulates the waqf of land ownership, stating that waqf of land is a permanent separation of property, so that ownership of the land is completely transferred from the private owner to Allah SWT and cannot be revoked by the heirs.³⁷ Third, Article 215 of the Compilation of Islamic Law reinforces this provision by emphasizing the permanent nature of waqf and the transfer of ownership from individuals to Allah SWT. These three regulations consistently affirm the main principle of waqf in Indonesia, namely that permanently endowed property cannot be reclaimed by the waqf donor or their heirs, unlike the concept of temporary waqf regulated in Law No. 41/2004. This distinction reflects the evolution of legal thinking on wakaf in Indonesia, which accommodates both permanent and temporary wakaf concepts while upholding the fundamental principle of wakaf as a form of continuous worship.³⁸

Indonesian waqf legislation stipulates that waqf must be used for worship, religious and social purposes, as well as for the Islamic economic system, making waqf an important political instrument for

³⁶ Law of the Republic of Indonesia Number 41 of 2004.

³⁷ Accessed February 8, 2023 at 11:00 WIB, <https://peraturan.bpk.go.id/Details/67370/pp-no-28-tahun-1977#:~:text=PP%20,%20No.%2028%20%20Tahun%201977,Tanah%20Milik%20%5%20DIH%20BPK%20RT%5D>

³⁸ Kompilasi Hukum Islam article 215.

community economic empowerment.³⁹

According to the Waqf Law and its regulations, waqf assets cannot be withdrawn by the waqf founder's heirs if they have been donated in perpetuity. If it is for a specific period, it may be withdrawn. Government Regulation No. 28 of 1977 and the Compilation of Islamic Law state that the withdrawal of waqf assets by the heirs of the waqf founder is not permitted.

In the development of waqf law, waqf assets may be endowed if they are legally owned and controlled by the waqf founder, and waqf assets are classified into movable and immovable (fixed) assets.⁴⁰ Previous regulations were limited to land waqf. Article 16 of the Waqf Law states that waqf assets consist of immovable and movable property. With the enactment of this waqf law, the scope of waqf, which was previously limited to land ownership, now extends to immovable and movable property.⁴¹

From an Indonesian legal perspective, waqf legislation does not clearly regulate the issue of withdrawing assets that have been donated as waqf.

- 1) Article 40 of the Waqf Law only states that "property that has been donated as waqf may not be used as collateral, seized, gifted, sold, inherited, exchanged, or transferred in any other form of rights transfer."⁴²
- 2) Article 3 of the Waqf Law states that "waqf that has been declared cannot be revoked."
- 3) Article 15 of the Waqf Law states that "property can only be donated as waqf if it is legally owned and controlled by the waqf

³⁹ Ulya Kencana, "Pengembangan Wakaf Uang di Indonesia Studi Kritis Peraturan Perundang-undangan Wakaf Dalam Rangka Kemaslahatan Masyarakat yang Berkelanjutan," *Al-Anqaf: Jurnal Wakaf Dan Ekonomi Islam* 9, no. 2 (2016): 93-112.

⁴⁰ Ulya Kencana, "Peralihan Status Harta Benda Wakaf," p.1-22; Ahmad Mujahidin, *Hukum Wakaf di Indonesia dan Proses Penanganan Sengketaanya* (nd: Prenada Media, 2021), p. 167.

⁴¹ Miftahul Huda, *Mengalirkan Manfaat Wakaf Pada Perkembangan Aturan Wakaf dan Tata Kelola Wakaf Pada Indonesia* (Bekasi: Gramata Publishing, 2015), p 16.

⁴² Ahmad Fahrudi, "Wakaf Menurut Undang-Undang No. 41 Tahun 2004 Dalam Perspektif Islam." *Stain Metro* (2007).

donor.”

- 4) Article 16(1) classifies the types of property that can be endowed as movable and immovable property.⁴³
- 5) The KHI does not address the issue of revoking endowed property, except for gifts. Gifts cannot be revoked, except for gifts from parents to their children (Article 212 of the KHI).⁴⁴

Disputes over the Withdrawal of Waqf Assets by the Heirs of the Waqf Donor from a Human Rights Perspective

The strict procedures for the repair and/or transfer of waqf property in waqf legislation aim to minimize misuse of waqf funds and preserve the integrity of the property so that no actions are taken that could harm the existence of the waqf. There is a constitutionally oriented Indonesian tendency to formulate Islamic law into legislation.⁴⁵ Thus, waqf remains an alternative for improving the welfare of the community.⁴⁶

In Indonesia, waqf has become one of the most common practices, especially among those who possess significant wealth. They hold the belief that waqf is one form of worship to Allah SWT. Land waqf is often carried out by establishing mosques, which are among the institutions frequently built using waqf assets.⁴⁷

From a legal perspective, waqf is a legal act by the waqif to separate or transfer part of their property to be used forever, or for a certain period of time in accordance with the interests of worship or public welfare.⁴⁸ However, as waqf progresses, various problems arise, especially regarding waqf land. The causes of disputes over waqf land are as follows: Many waqf lands are not followed up with a waqf

⁴³ Law Number 41 of 2004 concerning Waqf.

⁴⁴ Miftahul Huda, *Mengalirkan Manfaat Wakaf*, p. 61.

⁴⁵ Kamsi Kamsi, "Politics of Islamic Law in Indonesia: Indonesianization of Islamic Law," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 52, no. 1 (2018): 1-29.

⁴⁶ Farid Wadjdy, and Mursyid, *Wakaf Dan Kesejahteraan Umat* (Yogyakarta: Pustaka Pelajar, 2007), p. 151.

⁴⁷ Miftahul Huda, "Kemandirian Masjid Sampung di Ponorogo", p.363.

⁴⁸ Ahmad Mukhlisin, and Nur Hamidah, *Pemanfaatan Harta Wakaf*, p. 220.

declaration; Waqf is carried out on a religious basis based on mutual trust, so it has no legal basis or proof of ownership, no authentic evidence or written documents, conflicts between religious values and economic and positive legal motivations, and the reorganization of areas by local governments; Claimed back by heirs who deviate from the endowment agreement; Limited public awareness of endowments; Use for consumptive and non-productive purposes; Heirs renege on the endowment pledge by refusing to inform the PPAIW, and heirs are not informed by their parents, leading to the sale of the property despite the existence of an Endowment Pledge Deed.⁴⁹

Waqf land provides benefits to the community and the state, but it can trigger land disputes if the land does not have permanent legal force, such as proof of ownership or a valid certificate. Land certificates are essential for administrative order and legal certainty.⁵⁰

There has been a case of waqf land dispute since the establishment of SDN 6 in 1995. At that time, Prabumulih City was still part of Muara Enim Regency. The waqf grant letter was located in Muara Enim. The case began to escalate in 2010. The documents, including the endowment deed, land ownership certificate, and endowment declaration, were submitted as evidence in court but were classified as confidential documents.

The dispute over the withdrawal of waqf land filed by the heirs of the waqf founder Djenalam demonstrates the complex legal dynamics surrounding waqf cases in Indonesia. The case began in 1989 when Djenalam donated his land through a deed of gift dated July 20, 1952. His heir, Sarlan, then undertook a series of legal efforts beginning in 2007 to reclaim the waqf land from the school as the beneficiary.

The dispute process went through a lengthy process spanning nearly a decade (2007–2018). In the initial stages (2007 and 2010), Sarlan's non-litigious efforts failed to yield results. When the case was brought to the Prabumulih District Court in 2017 (Judgment No. 7/Pdt.G/2017/PN.Pbm), the government, as the defendant, won the

⁴⁹ Indri Ayu Utami, *Tinjauan Yuridis Penarikan Tanah Wakaf Oleh Waqif (Studi Kasus Di Medan Polonia)*, (Universitas Muhammadiyah Sumatera Utara, Fakultas Hukum, 2021), p. 32.

⁵⁰ Fuadi, *Sertifikasi Tanah Wakaf* (Jakarta: Tata Nusa, 2022), p. 35.

case. However, in the appeal at the Palembang High Court (Judgment No. 127/Pdt.G/2017/PT.Plg), Sarlan successfully won the lawsuit.

The final decision in 2018 (No. 2645/Pdt.G/2018) by the Supreme Court reinstated the government's victory, reaffirming the legal principle of waqf that land that has been validly donated as waqf cannot be reclaimed by the heirs of the waqf donor.

In a dispute in Prabumulih, the beneficiary donated his land for the construction of a school. However, after his death, his heirs demanded the revocation of the waqf assets and filed a lawsuit. The chronology of the revocation of the waqf land by the beneficiary's heirs is illustrated in the table below.

Dispute Case over Waqf Land on Which School Buildings Stand

No	Name	Case Information
1	Sarlan bin Djenalam bin Djair. ⁵¹	The claim of land ownership at SDN 6, classification No. 100/076/1/2010 is incorrect, at that time the Grant Certificate in Muara Enim was made by my late father, Djenalam bin Djair, which did not exist. The government should immediately move the building of SDN 6 Prabumulih to government land, or pay for the material and immaterial losses we have suffered. The letter was made by N. Principal of SDN 6 Prabumulih and friends.
2	Nurpuan. ⁵²	Since the school was founded and he was appointed Principal in 2003, there have been no problems, and he was unaware that the land was a waqf from Djenalam bin Djair. In early 2007, a dispute arose. Sarlan claimed to be the heir and informed SDN 6 Prabumulih that he was occupying the waqf land.
3	Ujang Sukarman. ⁵³	The transfer of assets from Muara Enim, including the elementary school building, was not

⁵¹ Sarlan, Waqif's Heirs, (Interview, at Prabumulih, January 15, 2023, 10:00 WIB).

⁵² Nurpuan, Principal of SDN 6 Prabumulih (Interview, at Prabumulih, January 20, 2023, 10:00 WIB).

⁵³ Ujang, Head of UPTD, (Interview, at Prabumulih, January 18, 2023, 10:20 WIB).

		accompanied by a waqf certificate. The heirs' lawsuit claimed that the waqif/late father did not receive any reward, as Djenalam was still alive when the elementary school was built. However, the lawsuit was filed several years after his death (March 2004) in 2007. ⁵⁴
4	Rusmaladewi. ⁵⁵	<p>The elementary school building has been around for a long time, and repossessing the waqf land is inappropriate. I never expected this issue to escalate and make television news in 2010, leading to the sealing of SDN 6.</p> <p>Ethically and logically, the government is not seizing the people's rights, and the land has been donated and donated since 1952, and the lawsuit was filed in 2007. If the parents never donated the land, why didn't they sue when SDN 6 Prabumulih was built?</p>
5	Ardi. ⁵⁶	Withdrawing assets that have been donated in waqf is not a good act, whatever the reason, once you have given alms, it should not be withdrawn
6	Antoni. ⁵⁷	<p>The grant pledge letter is with the government and is official. The document cannot be released because it was submitted during the court process.</p> <p>The school was sealed by the police shortly afterward, as the grant pledge letter was already in the government's possession and officially belongs to it.</p>
7	Rasyid Hambali. ⁵⁸	It is not right to withdraw waqf assets for any reason. Waqf is like charity; once it has been given for the purpose of worship, it is not appropriate

⁵⁴ Rosita, neighbor of the late Djenalam, (Interview, at Prabumulih, May 15, 2023, 17.00 WIB).

⁵⁵ Rusmaladewi, Teacher at SDN 6 Prabumulih, (Interview, at Prabumulih, January 23, 2023, 09.15 WIB).

⁵⁶ Ardi, Head of Neighborhood Association (RW) 5, East Prabumulih (Interview, at Prabumulih, January 24, 2023, 10:10 a.m. WIB).

⁵⁷ Antoni, KUA East Prabumulih Staff, (Interview, at Prabumulih, January 19, 2023, 10:20 WIB).

⁵⁸ Rasyid Hambali, Religious Figure in Prabumulih City, (Interview, Prabumulih, January 28, 2023, 4:00 PM WIB).

		to withdraw it. Moreover, the recipient of the waqf is not the waqif, but rather the waqif's heirs.
8	Betty Handayani. ⁵⁹	A riot broke out because the heirs sealed off the school entrance. At the time, I, as an ordinary teacher, was very sad and worried. Since then, the government has taken action, and the problem has been resolved.
9	Beni. ⁶⁰	Withdrawing assets that have been donated is not correct, because the assets have been given in charity, and is a betrayal of the person who donated the waqf.

Source: Interview (2023)

Based on the table above, information from the heirs, community, religious leaders, school administrators regarding the withdrawal of waqf assets by the waqif heirs related to the dispute over waqf land established by a State Elementary School, the ownership of which will be taken over by the waqif heirs.

Withdrawal of Waqf Land by the Waqf's Heirs

No	Name	Agreement on waqf withdrawal
1	Sarlan	I agree, because the grant certificate held by the government is invalid and forged.
2	Nurpuan	I disagree, because Sarlan's claim that I forged the grant certificate is untrue. Sarlan simply fabricated it and has no right to repossess the land that has been donated.
3	Ujang Sukarman	Disagree, because when the elementary school was built, the waqif was still alive. If they wanted to sue, they would have done so while the waqif was still alive and filed a lawsuit. The heirs filed the lawsuit based on their own considerations.
4	Rusmaladewi	Disagree, because the building has been around for a long time. Repossessing land that has been donated is not good; it is not permissible from a religious perspective.

⁵⁹ Betty Handayani, Principal of SDN 6 Prabumulih for the 2020-2024 period, (Interview, Prabumulih, January 25, 2023, 09.15 WIB).

⁶⁰ Beni, a trader at SDN 6 Prabumulih, (Interview, Prabumulih, January 20, 2023, 10:55 WIB).

5	Ardi	Disagree, because repossessing assets that have been donated/endowed is not a good deed.
6	Antoni	Disagree, because the waqf deed is already with the government.
7	Rasyid Hambali	Disagree, because waqf is the same as charity if it has been given for the purpose of worship, and it is not good to withdraw it.
8	Rohan. ⁶¹	Disagree, because what has been given is not blessed if it is taken back; it is tantamount to "licking one's own spit."
9	Beni	Disagree, because giving property is the same as charity. It would be a betrayal to Allah SWT to try to take it back.

Source: Researcher Processing Based on Interview Results

Based on the table above, eight people disagreed with the waqf property being revoked by the waqif's heirs, and one person, the waqif's heir, agreed with the revocation of their waqf land.

The dispute over the revocation of waqf property by the waqif's heirs constitutes a violation of human rights, specifically the waqif's fundamental rights. The waqif's right to receive continuous rewards from the allocation of his waqf property continues until his death. The waqif's heirs should contribute to the preservation of their parents' waqf property as a manifestation of being a pious child.

Human rights are fundamental rights inherent in human beings from birth. They cannot be taken away or revoked, and they are essential for honor. The waqif's fundamental rights must be respected, maintained, and safeguarded by the state, law, government, and all individuals. The relationship between human rights and the rule of law is very close and inseparable. The function of law is to protect human rights, and all human behavior in a country is based on law. Therefore, all rights are bound by law, and the existence of legal evidence binds them.⁶²

The law protects human rights. Laws without rights are useless, and human rights without laws are futile. The function of law is to protect human interests, provided that humans must also protect the

⁶¹ Principal of SDN 6 Prabumulih in 2023
⁶² Rizkyana Tri Nandini, et al, "Relevansi HAM..." p. 40-48.

interests of others.⁶³ Human rights, as fundamental rights, are inherently inherent in all human beings, are universal, and eternal. Therefore, they must be protected, respected, and defended, and must not be ignored, diminished, or taken away by anyone.⁶⁴

Conclusion

Based on the studies and analyses conducted, the following conclusions can be drawn. First, regarding waqf assets from a legal perspective, the differing definitions of waqf among the various schools of thought lead to differences in their practice. According to the Hanafi jurist, ownership of waqf assets remains with the waqif, who can sell them, and their heirs inherit them. According to the Shafi'i and Hambali jurists, ownership of waqf assets has been transferred to Allah SWT, permanently, and cannot be inherited, sold, or donated. According to Indonesian waqf regulations, particularly land waqf, the ownership of the waqif belongs to Allah SWT forever. Second, regarding disputes over the withdrawal of waqf assets by the waqif's heirs, from a human rights perspective, disputes over waqf land arise from a lack of understanding of waqf law and human rights within the community. The withdrawal of waqf assets by the waqif's heirs violates the fundamental rights of the waqif who donated his assets, thus disrupting the waqif's ongoing charity (*amal jariah*). This study is limited by its limited focus on the withdrawal of waqf assets by the waqif's heirs from a legal and human rights perspective. Public understanding of waqf, human rights, and legal culture remains low. Contextualizing Islamic law requires an understanding of the socio-cultural and political factors underlying the creation of a particular legal product. Therefore, further research is recommended to examine the legal sanctions imposed by the waqif for withdrawing waqf assets among lawmakers (legislatures) based on the legal culture and societal inequalities in understanding Islamic law and legislation regarding waqf practices in society.

⁶³ Apriani Riyanti, Ricky Santoso, *Hukum dan HAM* (Cet 1, Widina 2023), p.iii.

⁶⁴ Apriani Riyanti, dkk, *Hukum dan HAM*, p. 2.

Conflicts of Interest

The authors declare no conflicts of interest with any party in writing this article

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