

Waqf Land as an Alternative for Implementing the Land Reform Program in Indonesia

Herlindah^a, Abd Shomad^b, Dian Septiandani^c, Relys Sandi Ariani^d, Nuril Ammi Nasution^e

ABSTRACT

To overcome the problem of unequal land ownership, the concept of waqf land has recently been initiated as an alternative to implementing land reform. This article examines the arguments for the idea of waqf land from its jurisprudential aspect and proposes the positive legal framework necessary to implement it. This study uses a normative legal research method using two approaches, namely the statutory approach and the conceptual approach. The results of this research conclude that waqf land as an alternative for implementing land reform is very possible considering that the aim of both is to realize the welfare of the people equally. However, the implementation of waqf land as an alternative to land reform must still follow fiqh of waqf procedures and be aligned with land reform objectives.

Keywords: unequal land ownership; fiqh of waqf; legal framework; land reform; waqf land.

INTRODUCTION

In the last few decades, four serious threats still pose land problems throughout the world, namely agrarian differentiation,¹ agrarian fragmentation,² eviction of farmers,³ and conversion of agricultural land to non-agricultural land.⁴ Various ideas and efforts have been made to overcome this at the international, national and local levels. To provide solutions to these four problems, Muhammad Sohibudin through his book "*Wakaf Agraria*" (Agrarian Waqf) proposed six models of agrarian waqf, one of which is by integrating the waqf land scheme into the land reform program run by the government through the National Land Agency/BPN.⁵ In order to integrate agrarian waqf into the land reform program, Hatim suggested reforming the role of the Indonesian Waqf Board (BWI) as a regulator, while the management was left entirely to *nadzir* such as foundations, community organizations and individuals.⁶

The idea of integrating waqf land into the land reform program is quite interesting to study for several reasons. Waqf in Indonesia has great potential to be developed as a way to overcome

^a Universitas Brawijaya, Jalan MT. Haryono No. 169 Malang, 65145, Indonesia. Email: herlindah@ub.ac.id

^b Universitas Airlangga, Surabaya, Jl. Dharmawangsa Dalam Selatan No.17, Surabaya, Jawa Timur 60286, Indonesia.

^c Universitas Semarang, Jl. Soekarno Hatta, RT.7/RW.7, Tlogosari Kulon, Kota Semarang, Jawa Tengah 50196, Indonesia.

^d Universitas Brawijaya, Jalan MT. Haryono No.169 Malang, 65145, Indonesia.

^e Universitas Brawijaya, Jalan MT. Haryono No.169 Malang, 65145, Indonesia.

¹ Tania Murray Li, *Diferensiasi Agraria dan Batasan Pengelolaan Sumber Daya Alam di Dataran Tinggi Asia Tenggara*. *Buletin IDS*, 88-94, 2001.

² Jean-Christophe Diepart, Thol Sem. "Fragmented territories: Incomplete enclosures and agrarian change on the agricultural frontier of Samlaut district, North-West Cambodia." *Journal of Agrarian Change*, 18 (1), 156-177, 2016.

³ Marks, D., Sirithet, A., Rakyuttitham, A., Wulandari, S., Chomchan, S., & Samranjit, P. *Land Grabbing and Impacts to Small Scale Farmers in Southeast Asia Sub-Region*. Local Act Thailand, 2015.

⁴ DO Pribadi, & S. Pauleit. "The dynamics of peri-urban agriculture during rapid urbanization of Jabodetabek Metropolitan Area". *Land Use Policy*. Volume 48, November 2015, pp. 13-24, 2015.

⁵ M Shohibuddin. *Wakaf Agraria Signifikansi Wakaf bagi Agenda Reforma Agraria*. Yogyakarta: Baitul Hikmah, 2019.

⁶ A Hatim. "Reformasi Peran Badan Wakaf Indonesia (BWI) dalam Ekosistem Wakaf Nasional sebagai Jalan Menuju Reforma Agraria." *Jurnal Hukum Lex Generalis*, 9 (2), 818-819, 2021.

economic problems. Syamsuri, et.al.⁷ stated that if Indonesian people are aware of the urgency of waqf and implement it regularly, then the results from waqf can solve economic problems easily in the most populous Muslim-majority country. Although both land reform and waqf can be beneficial for the people, especially in reducing poverty,⁸ waqf and land reform have essential differences. Land reform is a coercive (compulsory) regulatory program, while waqf is a legal action carried out on a voluntary basis. In addition, in land reform, land that is redistributed to subjects receiving rights will become private property. Meanwhile, in the concept of waqf, objects that are donated cannot become personal property.

Therefore, even though the social-economic effect of waqf is immensely significant to achieve land reform's ideals, understanding its legal status in a formal sense is crucial so that its conceptual ground as well as its legal structure, which is fundamental to its realization in a massive scale, could be apprehended. From a legal standpoint, this paper focuses on analyzing the integration of waqf into the land reform program which requires a solid legislative framework. Indonesian Law No. 41 of 2004 on Waqf serves as the primary regulation governing waqf practices. However, aligning it with land reform efforts demands either amendments or additional regulations to address concerns such as land acquisition, redistribution mechanisms, and safeguarding endowed lands. Moreover, the waqf principle of perpetuity presents difficulties within the land reform context, which involves transferring land ownership to individual beneficiaries. This paper offers a hybrid approach may be necessary to reconcile waqf principles with the goals of land reform.

METHOD

This research employs a normative juridical method, incorporating two complementary approaches: a conceptual approach and a statutory approach. These approaches are designed to provide a comprehensive analysis of the integration of waqf into the land reform program, focusing on its legal and regulatory aspects.

The conceptual approach seeks to explore the theoretical underpinnings of waqf, particularly the concept of land waqf from the perspective of Islamic jurisprudence (*fiqh*). This aspect of the study examines the principles, objectives, and operational frameworks of waqf as a socio-religious institution, emphasizing its perpetuity principle and socio-economic significance. The research aims to elucidate the compatibility and challenges of aligning these principles with the objectives of land reform.

The statutory approach entails a comprehensive examination of Indonesia's legal framework governing waqf and land reform. Central to this analysis are three key legal instruments. The Basic

⁷ Syamsuri, et.al. "Potensi Wakaf di Indonesia (Kontribusi Wakaf dalam Mengurangi Kemiskinan)". *Malia: Jurnal Ekonomi Islam*, 12 (1), 81, 2020.

⁸ Hanifuddin, I. "Res Nullius Waqf: Dinamika Relasi Penguasaan Wilayah oleh Negara dan Kepemilikan Aset Tanah Wakaf oleh Umat serta Ide Perspektif Penguatan Fungsi dan Daya Guna Wakaf." *Kodifikasia*, 12(1), 77-92; Jha, R., Nagarajan, HK, S Prasanna. (2005). *Fragmentasi Lahan dan Implikasinya terhadap Produktivitas: Bukti dari India Selatan*. *Kertas Kerja*. Canberra: Pusat Penelitian Asia Selatan Australia; (AV Manjunatha, Asif Reza Anik, S. Speelman, EA Nuppenau. (2013). "Dampak fragmentasi lahan, ukuran lahan pertanian, kepemilikan lahan dan keanekaragaman tanaman terhadap keuntungan dan efisiensi pertanian beririgasi di India." *Kebijakan Penggunaan Lahan*, 397-405, 2018.

Agrarian Law (UUPA) serves as the foundation of Indonesia's agrarian legal system, providing a broad framework for land ownership, use, and reform. Complementing this is Presidential Regulation Number 86 of 2018 on Agrarian Reform, which delineates the mechanisms and objectives for land redistribution as part of the broader agrarian reform agenda. Additionally, Law Number 41 of 2004 concerning Waqf establishes the legal basis for waqf practices, focusing on the management, protection, and perpetuity of endowed properties.

Primary and secondary legal materials were collected through library studies. Primary materials consist of statutory provisions, regulations, and judicial interpretations related to waqf and land reform. Secondary materials include academic articles, books, and other scholarly works that provide critical perspectives on the intersection of waqf and land reform. The collected legal materials were processed and analyzed descriptively to identify gaps, challenges, and opportunities within the current legal framework. This analysis informs the development of a proposed hybrid model for integrating waqf into land reform, ensuring alignment with both Islamic jurisprudence and statutory objectives.

DISCUSSION

The Legal Framework of Land Reform

Land Reform is basically a historical mandate of the independent Republic of Indonesia. After the colonial period, land reform was made a priority policy for former colonial countries in the world to improve the welfare of farmers, including Indonesia.⁹ However, the land reform policy was only successfully legalized more adequately in the 1960s through several statutory regulations such as the Basic Agrarian Law (UUPA) and the Agrarian Court Law. Through *land reform*, changes to the ownership and control structure of land so that small farmers and homeless farmers can own land. However, this program only ran for a few years. Since the New Order was in power for 32 years, this program was stopped. As the legal basis for implementing land reform, the UUPA was not abolished, but it was also not implemented.

After the New Order, land reform was proclaimed as one of the reform agendas which was then outlined in the Decree of the People's Consultative Assembly Number IX of 2001 concerning Agrarian Reform and Natural Resource Management. However, until now, land reform policies have never been implemented optimally by the government.¹⁰ In fact, in the era of Joko Widodo's government (2014-2024), agrarian reform was only used as a term, but the program was actually more directed at the legalization of assets aspect, specifically granting certificates to people who own land that has not been certified rather than redistributing land whose ownership area exceeds the limit.¹¹ In order to accelerate previous government programs, the government's economic policies in

⁹ Selo Soemardjan. "Land Reform in Indonesia." *Asian Survey*, 23-30, 1962.

¹⁰ Achmad Sodiki. *Menyejahterakan Rakyat Lewat Landreform*. 1, 27-28, 2014.

¹¹ Herlindah, Siti Rohmah, I Mushoffa, and A Kodir. "The Deconstruction of Nahdlatul Ulama Activists Against the Concept of Agrarian Reform Based on Fiqh of Priorities." *Jurisdictie* 14 (2): 106-26, 2023.

this period were actually more directed at boosting investment in order to increase economic growth. As a result, policies that are claimed to be agrarian reform do not at all lead to an overhaul of the unequal structure of land control and ownership and are completely insignificant in reducing agrarian conflict, which is also one of the goals of land reform.

Viewed from a legal aspect, the UUPA, which was originally intended as a basic regulation for all legislative regulations in the field of agrarian and land reform, was not put in place as it should be. The agrarian-related laws and regulations made by the New Order government were actually sectoral so they often overlapped and collided with the UUPA. As a result, the land reform agenda contained in the UUPA was not implemented effectively. It is natural that the phenomenon of land tenure in Indonesia has become increasingly unequal to date. The economic conditions of small farmers and farmers who do not own land are also becoming increasingly pressing. Many data have shown that although the population is increasing, the number of farmers continues to decline significantly from year to year.

Several studies and reports have shown that the government's lack of political will in implementing the land reform program is more due to the dominance of oligarchic power in Indonesia.¹² As a phenomenon of power exercised by a few people, oligarchy is an alliance of political and business power that is used to support the political defense of wealth.¹³ Land is one of the main factors in the power of oligarchs because more business power is generated by extractive industries.¹⁴

In such a situation, it is natural that agrarian reform is simply claimed in the government's agrarian policy.¹⁵ One of the agrarian studies experts, Gunawan Wiradi, once said that agrarian reform has a number of important prerequisites to be realized. The four most important prerequisites are: (a) The political will (in its true meaning) from the ruling elite must be there; (b) The government/bureaucratic elite must be separated from the business elite (this is difficult to create); and (c) There must be active participation from all social groups. People's/farmers' organizations that are pro-reform must exist. d. Complete and thorough basic data on agrarian problems must exist.¹⁶

Currently, most of these four prerequisites have not been fulfilled, which is the reason why agrarian reform has not been implemented. In the midst of this situation, the concept of waqf land was initiated as an alternative for implementing land reform. The hope is that, based on the volunteerism of land owners, agrarian reform can still be implemented even if it is not programmed by the government, namely through the waqf scheme.

Land reform is regulated in several statutory regulations, including through the 1960 UUPA and Law Number 56 Prp of 1960 concerning Agricultural Land Area. The specific definition of land reform does not exist in the UUPA or other regulations. However, land reform is often interpreted as an

¹² Herlindah, MA Kholish, and AM Galib "Suing the Oligarchy of Ownership and Control of Agricultural Land in Indonesia: A Maqashid Sharia Review of the Land of Agrarian Reform Objects (TORA) Exceeding the Maximum Boundary." *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, 24(2). 2022.

¹³ J Winters. *Oligarki*. Gramedia: Jakarta, 2011

¹⁴ A Syahbanu dan S Maimunah., et.all. *Oligarki Ekstraktif dan Penurunan Kualitas Hidup Rakyat*. Jakarta: Jaringan Advokasi Tambang, 2021.

¹⁵ R Murtadho, "Kritik Ekonomi-Politik RAPS." *Prisma*, 38 (3): 117–131, 2022.

¹⁶ G Wiradi. (*Reforma Agraria: Perjalanan yang Belum Berakhir*. Yogyakarta: Insist Press & KPA, 2009.

effort to reorganize the structure of ownership and control of land rights. Article 14 Paragraph (1) UUPA mentions that the Government in the framework of Indonesian socialism makes a general plan regarding the preparation, allocation and use of earth, water, and space, as well as the natural wealth contained therein: a. for the needs of the State; b. for the needs of worship and other sacred needs, in accordance with the principles of the Almighty God; c. for the needs of community life centers, social, cultural and other well-being; d. for the need to develop agricultural, animal husbandry and fishery production and in line with that; e. for the needs of developing industry, transmigration and mining.

Wide inequality in land ownership is contrary to the principles of Indonesian socialism. This principle requires equal distribution of the livelihood sources of farming communities in the form of land, so that the produce of the land can be enjoyed fairly and equally. Imbalances in land ownership and control can result in injustice and inequality in general. For this reason, in the context of community development in accordance with the principles of Indonesian socialism, the UUPA considers it necessary to have a maximum limit on agricultural land that can be controlled by one family, whether with property rights or with other rights. Likewise with Presidential Regulation Number 86 of 2018 concerning Agrarian Reform, Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management, and Law Number 17 of 2005 concerning the National Long Term Development Plan 2005-2025. All of these laws and regulations are intended to regulate the implementation of Agrarian Reform in the context of increasing social justice and people's welfare.

The recipients of land reform objects must be parties who really need and depend on the land for their livelihoods. This is confirmed in Article 8 of Government Regulation Number 224 of 1961. Presidential Regulation No. 86 of 2018 concerning Agrarian Reform has determined that the subjects of Agrarian Reform can consist of individuals, community groups with joint ownership rights, or legal entities. Individuals who are subjects of Agrarian Reform must meet several criteria, namely: Indonesian citizens; at least 18 (eighteen) years of age or married; and resides in the land redistribution object area or is willing to reside in the land redistribution object area.

Article 12 Section (3) Presidential Regulation No. 86 of 2018 concerning Agrarian Reform has expanded the scope of beneficiaries of individual land reform which are referred to as subjects of agrarian reform, namely:

- a. smallholder farmers who have a land area of 0.25 (zero point two five) hectares or smaller and/or farmers who rent land with an area of no more than 2 (two) hectares to cultivate in agriculture as a source of income. livelihood;
- b. sharecroppers who farm or cultivate land they do not own;
- c. agricultural workers who cultivate or cultivate other people's land for wages;
- d. small fishermen who fish to meet their daily living needs, whether not using a fishing vessel or using a fishing vessel with a maximum size of 10 (ten) Gross Tonnage (GT);

- e. traditional fishermen who fish in waters which constitute 'traditional fishing rights' which have been used for generations in accordance with local culture and wisdom;
- f. fishing workers who provide their labor and participate in the fishing business;
- g. small fish farmers who cultivate fish to meet their daily needs;
- h. cultivators of cultivated land who channel their energy into fish cultivation;
- i. small salt farmers who carry out salting business on their own land with a land area of no more than 5 (five) hectares, and boil salt;
- j. salt pond cultivators who provide their labor in the salt business;
- k. honorary teachers who do not yet have Civil Servant status, and are paid voluntarily or per lesson hour, or even below the officially determined minimum salary, who do not own land;
- l. casual daily workers who carry out certain work whose time, volume and wages are based on attendance, do not own land;
- m. workers who work for wages or other forms of compensation, who do not own land;
- n. informal traders who carry out business activities trading goods or services, with limited capital capabilities, tend to move around and reside in public places, do not have formal legality and do not own land;
- o. informal sector workers who work in informal sector employment relationships and receive wages and/or compensation and do not own land;
- p. non-permanent employees appointed for a certain period of time to carry out government and development tasks of a technical, professional and administrative nature in accordance with the needs and capabilities of landless organizations;
- q. private employees who have income below non-taxable income and do not own land;
- r. civil servants at the highest rank III who do not own land;
- s. members of the Indonesian National Army/Indonesian National Police with the highest rank of Second Lieutenant/Second Police Inspector or equivalent and do not own land; or
- t. other work determined by the Minister.

Currently, the object of land reform is not limited to privately owned land that exceeds the limit, "absentee" land, and "self-help" land as regulated in Article 1 Section (2) of Law 56 Prp of 1960, but also includes former HGU land that has been expiration date, abandoned land and others as regulated in Article 7 of Presidential Regulation 86 of 2018 concerning Agrarian Reform. Land reform is not regulated in the Quran or hadith. Contemporary jurists often refer to Umar bin Khattab's leadership practices to examine land reform from an Islamic perspective.¹⁷ In the implementation of land reform, privately owned land was taken over by the state on the basis of overcoming and preventing problems of inequality in land control and ownership. However, sharia prohibits taking other people's rights arbitrarily without good reason.¹⁸ The takeover must be carried out after it is

¹⁷ Ridwan. *Hukum Pertanahan Islam*. Purwokerto: Penerbit STAIN Press, 56-57, 2021.

¹⁸ SA Karim. "Contemporary shari'a compliance structuring for the development and management of waqf assets in Singapore." *Kyoto Bulletin of Islamic Area Studies*, 143-164, 2010.

concluded that ownership has harmed another party, for example loss of access rights or exploitation of one party against another party¹⁹ and so on.

In the agrarian reform law, the parties restricted from owning excessive land are individuals. Organizations and legal entities are not yet subject to restricted rights. The implementation of land reform itself theoretically has two forms as stated by Gunawan Wiradi, namely "land reform by grace" which comes from the government's initiative and "land reform by leverage" which comes from the initiative of sharecroppers or farmers who do not own land.

Waqf Land: From Concept to Regulatory Structure

In muamalah fiqh, the rule applies that everything is permissible (permissible) as long as nothing prohibits it.²⁰ However, muamalah fiqh is dynamic in accordance with the various needs of the people and developments of the times. Basically, the purpose of waqf is to provide benefits. Waqf is part of the implementation of worship for Muslims. As a form of worship, there are provisions regarding an action that has the value of worship, namely the correct intention and method according to the Shari'a.²¹ Large land ownership in the hands of a few people in agriculture opens up opportunities for extortion of small and landless farmers. In Islam, inequality in land control is a form of harm. Based on priority fiqh, refusing harm must take priority over taking advantage.²²

Over time, the use of waqf land has expanded beyond religious contexts to encompass broader societal needs, necessitating a more structured and formal regulatory approach. This condition means that inequality in land tenure needs to be ended through various methods, one of which is by considering the idea of waqf as an alternative to implementing land reform. In this regard, it must be recognized and administered through regulatory structure. The waqf administration procedure consists of the nature and elements of waqf land, some of which are regulated in the Waqf Law. Waqf in Indonesia is regulated in Law Number 41 of 2004 concerning Waqf (Waqf Law). Article 1 number 1 of the Waqf Law states that:

"Waqf is the legal act of a waqif to separate and/or hand over part of his assets to be used indefinitely or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia."

Waqf institutions have potential economic benefits that need to be managed effectively and efficiently for the purposes of worship and advancing community welfare. This is why waqf must comply with sharia. This is confirmed in Article 2 of the Waqf Law. Therefore, the implementation of waqf as an alternative to land reform must pay attention to the elements of waqf, which according to Article 6 of the Waqf Law, consists of: a. Waqif; b. Nazir; c. Waqf Assets; d. Waqf Pledge; e.

¹⁹ Herlindah, Abd Shomad, Agus Sekarmadji, *Kepemilikan Tanah dalam Perspektif Islam*. Malang: Literasi Nusantara, 2021.

²⁰ SS Madjid, Prinsip-prinsip (asas) Mua'malah. *Jurnal Hukum Ekonomi Syari'ah*, 2(1), 17, 2018.

²¹ YP Ningsih. *Fiqih Ibadah*. Bandung: Media Sains Indonesia, Bandung, 2021.

²² Y Al-Qaradawi, *Fiqh Prioritas, Sebuah Kajian Baru Berdasarkan Al-Qur'an dan As-Sunnah*. Jakarta: Robbani Press. 2007.

allocation of waqf assets; and f. waqf period. The following is the elaboration of the regulatory structure.

A. Waqif

The first element in waqf is the waqif, namely the party who donates his property. In the provisions of Article 7 of the Waqf Law, waqif can be individuals, organizations or legal entities. An individual waqif must fulfill several requirements, namely being an adult, of sound mind, not prevented from carrying out legal actions; and the legal owner of the waqf property, in this case land.

The position of the waqif is very important in waqf. The scholars agree that the essence of waqf is a *tabarru* contract, namely a contract that is only carried out by one party, namely the waqif himself. Therefore, a waqif must fulfill the requirements as stated above. In the case of waqf land, the waqif must be the legal owner of the land being donated. Regarding the conditions for the validity of waqf, all scholars agree that waqf carried out by people forced by law is invalid.²³

B. Nadzir

Nadzir is the party who receives waqf assets from the waqif to be managed and developed according to their intended use.²⁴ In the Waqf Law, parties who can become nadzir can be individuals, organizations and legal entities. For individual nadzir, the Waqf Law regulates that those who can become nadzir are people who fulfill the following requirements, namely:

- a. Indonesian citizens;
- b. A Muslim;
- c. Mature;
- d. Can be trusted;
- e. Physically and spiritually capable; and
- f. Freedom to take legal action.

Organizations that become nadzir are required to be Indonesian legal entities formed in accordance with applicable laws and regulations. Apart from that, the management of the organization must meet the requirements to become an individual nadzir. Organizations that become nadzir are also required to operate in the social, educational, community and/or Islamic religious fields.

Apart from that, nazhir has 3 conditions, namely moral requirements, management requirements, and business requirements. The moral requirement is to understand the laws of waqf and zakat, infaq, and sedekah (ZIS), both in terms of sharia and statutory regulations. They must also be honest, trustworthy and fair, resistant to temptation, especially in terms of business development and choices, and serious and like challenges so that they can be trusted

²³ Nurodin Usman. ("Subjek-subjek Wakaf: Kajian Fiqih mengenai Waqif dan Nadzir", *Cakrawala* Vol.XI No.2 Desember 2016, p. 149.

²⁴ Article 1 number 4 of the Waqf Law.

in the waqf management process. A nadzir must have emotional and spiritual intelligence. Nadzir organizations must also have management who have good leadership capacity and capabilities, are visionary, have good intellectual, social and empowerment intelligence, and are professional in asset management and have a clear work program. They must also have experience and be astute in seeing business opportunities like an entrepreneur.

From the various requirements above, it can be seen how nadzir has a central position in the development of waqf objects, including waqf land. Nadzir is obliged to maintain, develop and maintain the benefits of waqf assets for those entitled to receive them. Apart from that, nadzir is also burdened with various administrative tasks such as cultivating, managing and developing waqf assets in accordance with their objectives, functions and designation; supervise and protect waqf assets; and report the implementation of duties to the Indonesian waqf board.

In carrying out his duties, the nadzir has the right to receive compensation or wages of a maximum of 10% of the profits from processing waqf objects. Nadzir also has the right to receive guidance from the minister who handles waqf and the Indonesian waqf board so that he can carry out his duties properly and correctly.

Regarding the condition of nadzir, although in the Waqf Law nadzir is one of the important elements in waqf, but from the point of view of waqf jurisprudence there are several views. Hanafi and majority of scholars do not make nadzir as one of the pillars of waqf. For Hanafi scholars, the foundation of waqf is enough with speech or words that show the meaning of waqf. According to the scholars, waqf occurs when there is enough "consent" from one of the parties as a will that is only done by one of the parties without having to wait for a response or "acceptance" from the other party. Wahbah Zuhaily said that although nadzir is not a pillar of waqf, there is agreement among scholars about who is legitimate as nadzir, namely:²⁵ (1) A waqif who is also a nazhir (nazhir for his own waqf); (2) *mauquf alaih*; and (3) the third party. This means that anyone can become a nadzir as long as they are able to manage the waqf assets so that they can provide benefits to the mauquf alaih intended by the waqif.

If seen from fiqh of waqf, the requirements for a nazhir really depend on the beneficiary (*mauquf alaih*). If the beneficiary is Muslim, then the nadzir must be Muslim. However, if the beneficiary is a non-Muslim, then the nadzir may be a non-Muslim. If the waqif is non-Muslim, he may appoint a non-Muslim nazhir as long as the recipient is also non-Muslim. This opinion is supported by the majority of ulama.²⁶

In the relationship between waqif, nadzir, and mauquf alaih (beneficiary), there are several possible forms of relationship:

- 1) The first form is waqif, nadzir, and mauquf alaih (beneficiary) are different legal subjects;

²⁵ W Az-Zuhaily, *Fiqh Islam Wa Adillatuhu*. Jakarta: Darul Fikir. 2011.

²⁶ Fahrurroji. *Wakaf Kontemporer*. Badan Wakaf Indonesia, 2019.

- 2) The second form is waqif acting as nazhir; and
- 3) The third form is nazhir acting at the same time as mauquf alaih.

Basically, one of the missions of land reform is "land for cultivators" or "land for farmers". The goal is that the land is not enjoyed by people who do not work the land. Therefore, the ideal form of implementing waqf as an alternative to land reform is waqf in the third form, where the nazhir (manager) acts as well as the mauquf alaih (beneficiary). However, there is the possibility of implementing the first and second forms considering that the subject of land reform has now been expanded not only to farmers who need land as regulated in Article 12 of Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.

In principle, the Waqf Law does not regulate the conditions of mauquf alaih. Scholars agree that waqf is a unilateral act that completely depends on the will of the waqif as the owner of the waqf object. The waqf pledge does not even require "acceptance" from the beneficiary. However, in practice, mauquf alaih often does not receive its benefits due to nazhir who is not trustworthy or not good at managing waqf objects. This is the background to the conditions and provisions regarding nazhir regulated in the Waqf Law. Referring to the jurisprudence of waqf, as stated by Wahbah Az-Zuhaily, nazhir who is in the position of mauquf alaih is actually allowed. However, nazhir who is also in the position of mauquf alaih must meet the conditions as specified in the Waqf Law.

This third form is very much in line with the provisions of land reform. However, what must be noted is that this waqf land does not necessarily become the property of the beneficiary. This is different from land reform in general where the beneficiaries will become the owners of the land. Article 40 of the Waqf Law regulates that waqf assets are prohibited from being mortgaged, confiscated, donated, sold, inherited, exchanged; or transferred in other forms of transfer of rights. This prohibition applies to all parties, both waqif, nazhir and other parties including the state. Waqf objects can only be exchanged on the grounds that they are used for public purposes in accordance with the general spatial plan.²⁷

Waqf land does not belong to anyone. Waqf jurisprudence states that waqf land is land handed over to Allah SWT for the purpose of worship. Therefore, the state in this case is only the party that protects it from things that are not in accordance with the sacred purposes of the waqf. All scholars agree that waqf land cannot be owned. Apart from individuals, waqf land can also be aimed at community groups. However, the waqf land cannot be considered jointly owned land, but can only be managed jointly by the community in its status as nazhir and mauquf alaih. In this case, nazhir can be a legal entity, either in the form of a cooperative, limited liability company, or foundation formed by Agrarian Reform Subjects, individuals, or community groups; as well as village-owned enterprises.

C. Waqf Assets

²⁷ Article 41 of the Waqf Law.

In the waqf concept, waqf assets are called *mauquf bih*. Waqf assets can be movable and immovable objects. Article 16 Paragraph (2) of the Waqf Law determines that immovable waqf objects include:

- a. Land rights in accordance with the provisions of applicable laws and regulations, whether registered or unregistered;
- b. Buildings or parts of buildings standing on the land as intended in letter a;
- c. Plants and other things related to land;
- d. Ownership rights to apartment units are in accordance with the provisions of applicable laws and regulations;
- e. Other immovable objects in accordance with sharia provisions and applicable laws and regulations.

D. Waqf Pledge

Pledge or "*sighat*" waqf is a waqif's statement about the property to be donated. The pledge of waqf by the waqif is marked by the handing over of the object or goods that are waqf. In the Waqf Law, the waqf pledge is made by the Waqif to the Nadzir in front of the Waqf Pledge Deed Maker's Office (PPAIW) witnessed by 2 (two) witnesses who are stated orally and/or in writing and set out in the waqf mortgage deed by the PPAIW. In the event that the waqif cannot express the waqf pledge verbally or cannot attend the implementation of the waqf pledge due to reasons allowed by law, the waqif can show his authority with a power of attorney supported by 2 (two) witnesses.

To be able to carry out the waqf pledge, the waqif or his proxy submits letters and/or proof of ownership of waqf assets to PPAIW. Witnesses in the waqf pledge must fulfill the requirements:²⁸

- a. mature;
- b. a Muslim;
- c. reasonable;
- d. free to take legal action.

The waqf pledge is stated in the waqf deed which at least contains:²⁹

- a. name and identity of the waqif ;
- b. name and identity of nazhir;
- c. data and description of waqf assets;
- d. appointment of waqf assets;
- e. waqf period.

E. Designation of Waqf Assets

To achieve the aims and functions of waqf, waqf assets can only be allocated to:

²⁸ Article 20 of the Waqf Law.

²⁹ Article 21 of the Waqf Law.

- a. religious facilities and activities;
- b. educational and health facilities and activities;
- c. assistance to the poor, abandoned children, orphans, scholarships;
- d. progress and improvement of the people's economy; and/or
- e. advancement of other general welfare that does not conflict with sharia and statutory regulations.

The determination of the allocation of waqf assets is carried out by the waqif at the time of implementing the waqf pledge. However, if the waqif does not determine the allocation of waqf assets, Nazhir can determine the allocation of waqf assets in accordance with the objectives and functions of the waqf.

F. Waqf Period

Referring to the provisions of Article 18 Paragraph (1) of Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, it is stated that land as an immovable waqf object can only be donated for a permanent period unless the person being donated is land rights in the form of building use rights or use rights.

From the explanation above, it can be understood that waqf land and land reform both aim to improve community welfare. The implementation of land reform is coercive. Once a land object is designated as a Land Reform Object (TORA), the party controlling the land must hand it over for redistribution. However, the success of the land reform agenda is highly dependent on the government's political will. When the competent government has set certain area limits to implement the land reform agenda, exceeding the land limit is a criminal offence.

The nature of land reform is very different from waqf. In waqf, the willingness to carry out waqf must come from the waqif, in this case the land owner, not intervention or coercion from other parties. This voluntary element is very important and determines whether or not the waqf is valid (Kahf, 2016). This assessment is of course an intrinsic element (originating from within). However, externally, this can be seen from the presence or absence of a waqf pledge as regulated in Article 17 part seven to Article 21 of the Waqf Law. The waqf pledge is made by the waqif to the nadzir either verbally or in writing. The waqf pledge does not have to be made in the presence of the waqif and nadzir. However, the document must be witnessed by 2 witnesses. The waqf pledge is then expressed in the form of a Waqf Pledge Deed by the Waqf Pledge Deed Official (PPAIW). The contents of the Waqf Deed at least contain the name and identity of the waqf giver, the name and identity of the nadzir, data and description of the waqf assets, the allocation of the waqf assets, and the term of the waqf. Waqf land as an alternative for implementing land reform is very possible. Moreover, the term of waqf land is eternal. In this case, waqf land can be implemented as an alternative to land reform to improve the welfare of the people.

The legal framework includes constitutions, laws, policies, regulations, and contracts that define the rights and obligations of governments, companies, and citizens, with laws typically holding more authority than contracts.³⁰ While broader documents are harder to amend, countries with detailed laws tend to have more stable systems. The legal framework regarding waqf land as an alternative for implementing land reform can be in the form of a regulation that can accommodate the implementation of waqf land with objectives that are in line with land reform. Waqf has been specifically regulated in Law number 41 of 2006 concerning Waqf in conjunction with PP Number 42 of 2006 concerning Implementing Regulations of the Waqf Law, while the implementation of land reform has also been regulated separately in Law Number 56 Prp of 1960 juncto Government Regulation No. 224 of 1960 concerning Land Distribution and Compensation in conjunction with Presidential Decree Number 86 of 2018 concerning Agrarian Reform.

Waqf, the Islamic endowment of land for charitable purposes, can serve as a tool for social welfare and economic development, while land reform aims to address issues of land distribution and equity. This hybrid approach suggests blending traditional legal structures with innovative strategies to allow waqf land to be used in land reform programs effectively. Under such a framework, waqf land could be designated for productive use, such as agricultural development or housing for marginalized communities, without undermining its charitable nature. It requires balancing the preservation of waqf's religious and social intent with the need for legal flexibility to allow such land to contribute to broader economic goals.

The hybrid approach would involve rethinking the relationship between waqf properties and land laws, possibly through new regulations that ensure waqf land is efficiently managed, while still serving its charitable purpose. This model may also involve cooperation between governmental, religious, and community institutions to facilitate waqf land's role in land reform while upholding its foundational principles. Such an approach could lead to a more inclusive and sustainable model of land distribution, where both religious endowments and public policy work in tandem to achieve broader social justice goals.

In practice, both waqf and land reform each have their own institutions, namely the Indonesian Waqf Board (BWI) under the Ministry of Religion for waqf and the Agrarian Reform Task Force Implementation Committee and the Land Bank Agency under the coordination of the Coordinating Minister for Economic Affairs and the Minister Agrarian and Spatial Planning/National Land Agency. These institutions were formed by and to implement the Law. However, waqf land as an alternative to land reform has not yet been regulated in statutory regulations. Therefore, the appropriate legal framework to regulate waqf land as an alternative to land reform is in the form of a Presidential Regulation. Presidential regulations are a type of regulation to carry out orders from laws,

³⁰ Natural Resource Governance Institute. "Legal Framework." 2015, Retrieved from: https://www.resourcegovernance.org/sites/default/files/nrgi_Legal-Framework.pdf

government regulations and government administration. This is different from Government Regulations which are issued only to implement and enforce the Law.³¹

Based on the general provisions of Article 1 number 6 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, Presidential Regulations are Legislative Regulations stipulated by the President to carry out orders higher statutory regulations or in exercising government power. So, Presidential Regulations are not always made to implement Laws or Government Regulations. The implementation of waqf and land reform are both statutory orders. However, waqf land as an alternative to implementing land reform does not have specific instructions in the law. Therefore, it would be more appropriate if the statutory regulations were in the form of presidential regulations. This means that the president issued this regulation in the context of exercising government power.

Formally, the process of forming presidential regulations refers to the provisions regarding the formation of statutory regulations, namely Law Number 12 of 2011 concerning the Formation of Legislative Regulations jo. Presidential Regulation Number 87 of 2014 concerning Implementation of Law Number 12 of 2011 concerning the Formation of Legislative Regulations was amended by Presidential Regulation Number 76 of 2021 concerning Amendments to Presidential Regulation Number 87 of 2014.

This Presidential Regulation will need to materially regulate the elements and requirements for waqf land as an alternative to implementing land reform, namely:

1. waqif and its conditions;
2. nadzir and its conditions;
3. land as an object of waqf;
4. waqf pledge;
5. allocation of waqf land including who will be mauquf alaih;

In the implementation of waqf as an alternative to land reform, the waqif is the owner of land that exceeds the maximum limit; "absentee" landowners; or the owner of inherited land whose distribution results in the land area being divided into less than 2 ha. Waqif in waqf land as an alternative to land reform cannot simultaneously hold the position of nazhir. Because, this will prevent beneficiaries who need it more. However, a mauquf alaih can serve as nadzir at the same time. In this regard, the waqf pledge follows the procedures regulated in the waqf provisions which are adapted to the objectives of implementing land reform. Endowed land must also be managed in accordance with land reform provisions. The Waqif can also choose mauquf alaih (beneficiaries) in accordance with the criteria for land recipients regulated in the land reform provisions.

This presidential regulation Number 86 of 2018 concerning Agrarian Reform must also strictly regulate that nadzir and/or mauquf alaih (beneficiaries) will not be the owners of the land. Like land reform regulations in general, this regulation also does not need to regulate compensation for donated land considering that waqf must be carried out on the basis of the waqif's volunteerism.

³¹ MF Hadinatha "Penataan Materi Muatan Peraturan Pemerintah dan Peraturan Presiden dalam Sistem Hukum Indonesia." *Jurnal Legislasi Indonesia*, Vol 19 No. 2 - Juni: 133-147, 2022.

CLOSING

Waqf land as an alternative for implementing land reform is very possible considering that its second aim is for good, namely improving the welfare of the people. However, at the level of terms and conditions, there are several things that need to be synchronized in organizing procedures for implementing waqf land as an alternative to land reform. waqf land as an alternative to land reform must still follow fiqh of waqf procedures, including: waqf land is not coercive and the land donated is not transferred to private ownership. In order for its implementation to support the implementation of land reform, the designation and recipient subjects must be adjusted to the objectives of land reform, namely intended for those who really need land. The legal framework for regulating waqf land as an alternative to implementing land reform takes the form of a Presidential Regulation, namely in the context of implementing government power.

Waqf land in the context of implementing land reform is only an alternative (choice) and not an obligation, let alone coercion. A legal framework in the form of a Presidential Decree needs to be created to legitimize waqf land as an alternative to land reform while providing legal certainty and protection for the community and all interested parties. In order for it to run optimally, coordination between institutions is needed, namely the Indonesian Waqf Board, the Land Reform Implementation Committee, the Agrarian Reform Task Force from the Central, Provincial to Regency/City levels, the National Land Agency from the Regional Office to the Land Office at the Regency/City level.

Acknowledgments

Thank you to the Faculty of Law, University of Brawijaya for funding this research through a research grant program with an individual research scheme. Thanks to APPHEISI as the organizer of the Colloquium activity in Semarang, Thanks also to the Islamic Law Compartment of the Faculty of Law of Brawijaya for holding training on writing journal articles so that the material in this article gets additional enrichment

REFERENCES

Book

- Al-Qaradawi. Y. *Fiqh Prioritas, Sebuah Kajian Baru Berdasarkan Al-Qur'an dan As-Sunnah*. Jakarta: Robbani Press, 2007.
- Az-Zuhaily. W. *(Fiqh Islam Wa Adillatuhu*. Jakarta: Darul Fikir, 2011.
- Herlindah. Abd Somad. Agus Sekarmadji. *Kepemilikan Tanah dalam Perspektif Islam*. Malang: Literasi Nusantara, 2021.
- Y. P. Ningsih, *Fiqh Ibadah*. Bandung: Media Sains Indonesia. Bandung, 2021.
- Ridwan. *Hukum Pertanahan Islam*. Penerbit STAIN Press: Purwokerto, 2021.

- Shohibuddin M. *Wakaf Agraria Signifikansi Wakaf bagi Agenda Reforma Agraria*. Yogyakarta: Baitul Hikmah. 2019.
- Syahbanu A dan Maimunah. S. et.all. *Oligarki Ekstraktif dan Penurunan Kualitas Hidup Rakyat*. Jakarta: Jaringan Advokasi Tambang, 2021.
- Winters. J. *Oligarki*. Jakarta: Gramedia, 2011.
- Wiradi G. *Reforma Agraria: Perjalanan yang Belum Berakhir*. Yogyakarta: Insist Press & KPA, 2009.

Journal

- AV Manjunatha, Asif Reza Anik, S. Speelman, EA Nuppenau. (Dampak fragmentasi lahan, ukuran lahan pertanian, kepemilikan lahan dan keanekaragaman tanaman terhadap keuntungan dan efisiensi pertanian beririgasi di India. *Kebijakan Penggunaan Lahan*, 397-405, 2013.
- Baqutayan, S. M. Waqf between the past and present. *Mediterranean Journal of Social Sciences*, 9 (4), 149, 2018.
- Fahrurroji. *Wakaf Kontemporer*. Badan Wakaf Indonesia, 2019.
- Hadinatha, M.F. Penataan Materi Muatan Peraturan Pemerintah dan Peraturan Presiden dalam Sistem Hukum Indonesia. *Jurnal Legislasi Indonesia*, Vol 19 No. 2 - Juni: 133-147, 2022.
- Hanifuddin, I. Res Nullius Waqf: Dinamika Relasi Penguasaan Wilayah oleh Negara dan Kepemilikan Aset Tanah Wakaf oleh Umat serta Ide Perspektif Penguatan Fungsi dan Daya Guna Wakaf. *Kodifikasia*, 12 (1), 77-92, 2018.
- Hatim, A. Reformasi Peran Badan Wakaf Indonesia (BWI) dalam Ekosistem Wakaf Nasional sebagai Jalan Menuju Reforma Agraria. *Jurnal Hukum Lex Generalis*, 9 (2), 818-819, 2021.
- Herlindah, H., Kholish, M.A. and Galib, A.M. Suing the Oligarchy of Ownership and Control of Agricultural Land in Indonesia: A Maqashid Sharia Review of the Land of Agrarian Reform Objects (TORA) Exceeding the Maximum Boundary. *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, 24(2). 2022.
- Herlindah, Rohmah S, Mushoffa I, and Kodir A. "The Deconstruction of Nahdlatul Ulama Activists Against The Concept of Agrarian Reform Based on Fiqh of Priorities." *Jurisdictie* 14 (2): 106–26. (023).
- Jean-Christophe Diepart, Thol Sem. Wilayah yang Terfragmentasi: Penutupan yang Tidak Lengkap dan Perubahan Agraria di Perbatasan Pertanian Distrik Samlaut, Kamboja Barat Laut. *Jurnal Perubahan Agraria* , 156–177, (016).
- Jha, R., Nagarajan, HK, Prasanna, S. Fragmentasi lahan dan implikasinya terhadap produktivitas: bukti dari India Selatan. *Kertas Kerja* . Canberra: Pusat Penelitian Asia Selatan Australia, 2005.
- Kahf, M. Waqf: a quick overview. http://monzer.kahf.com/papers/english/WAQF_A_QUICK_OVERVIEWdf, 2016.
- Karim, S. A. (Contemporary shari'a compliance structuring for the development and management of waqf assets in Singapore. *Kyoto Bulletin of Islamic Area Studies*, 143-164, 2010.

- Khalid Mahmood Arif; Iftikhar Alam; Muhammad Mumtaz Ul Hasan; Iskandar Muda; Maria Mann; Talib Ali Awan. Administration And Reforms In The Period Of Hazrat Umar: Analytical View. *Webology*, 878-885, 2021.
- Li, TM (Diferensiasi Agraria dan Batasan Pengelolaan Sumber Daya Alam di Dataran Tinggi Asia Tenggara. *Buletin IDS* , 88-94, 2001.
- Madjid, S. S. Prinsip-prinsip (asas) Mua'malah. *Jurnal Hukum Ekonomi Syari'ah*, 2(1), 17, 2018.
- Marks, D., Sirithet, A., Rakyuttitham, A., Wulandari, S., Chomchan, S., & Samranjit, P. Perampasan lahan dan dampaknya terhadap petani skala kecil di sub-wilayah Asia Tenggara. . *Bangkok: Undang-Undang Lokal Thailand* , 2015.
- Murtadho, R. "Kritik Ekonomi-Politik RAPS." *Prisma*, 38 (3): 117–131, 2018.
- Natural Resource Governance Institute. "Legal Framework." Retrieved from: https://www.resourcegovernance.org/sites/default/files/nrgi_Legal-Framework.pdf, 2015.
- Pribadi, DO, & Pauleit, S. Dinamika pertanian pinggiran kota selama pesatnya urbanisasi di Wilayah Metropolitan Jabodetabek. *Kebijakan penggunaan lahan* , 13-24, 2015.
- Sodiki, A. Menyejahterakan Rakyat Lewat Landreform. *1*, 27-28, 2014.
- Soemardjan, S. Land Reform in Indonesia. *Asian Survey*, 23-30, (962).
- Syamsuri, et.al. Potensi Wakaf di Indonesia (Kontribusi Wakaf dalam Mengurangi Kemiskinan). *Malia: Jurnal Ekonomi Islam*, 12(1), 81, 2020.
- Usman, N. Nurodin Usman, Subjek-subjek Wakaf: Kajian Fiqih mengenai Waqif dan Nadzir, *Cakrawala* Vol.XI No.2 Desember 2016, hlm. 149. *Cakrawala*, 149, 2016.

Legislations

- Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management.
- Law Number 17 of 2005 concerning the National Long Term Development Plan 2005-2025.
- Law Number 12 of 2011 concerning the Formation of Legislative Regulations.
- Law Number 41 of 2004 concerning Waqf.
- Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.
- .