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2

Waqf Land in Madura; Its Management and Typical Dispute Resolution

4

Rudy Haryanto

Institut Agama Islam Negeri Madura, Indonesia
email: rudy@iainmadura.ac.id

Lailatul Maufiroh

Institut Agama Islam Negeri Madura, Indonesia
email: lailatulmaufiroh23@gmail.com

Sulaiman Hasan Sulaiman

Al-Rafaq National University, Libya
email: s.elwarfali@out.edu.ly

56

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Abstract:

2

The abundant *waqf* practice does not always come with good management which leads to the emergence of conflicts. Conflicts over *waqf* land are easy to find, including those that occurred in Pangereman Village, Ketapang District, Sampang Regency, East Java Province. This research aims to explore the *waqf* land practice and management, the conflict or dispute, and its resolution according to Islamic and Indonesian positive law. The method used is descriptive qualitative by connecting the theories and problems of Islamic and Indonesian positive law. Data was obtained through observation and in-depth interviews with *nāẓir*, *wāqif*, *warīṣah wāqif*, village heads, and religious figures. Researchers also observed the situation of the village and the current condition of the conflict. The results of this research are: 1) the *waqf* land practices had occurred in a cultural way and the village government is the one who manages it; 2) the conflict was due to the absence of *waqf* transaction official note while the *waqf* land was not used anymore. This situation led to the heir of *wāqif* wanted to take

14

Author correspondence email: lailatulmaufiroh23@gmail.com

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2
the *waqf* land back; 3) Conflict resolution through traditional ways (deliberation and mediation) was proved to be effective. The role of *kiai* as a trustworthy one did matter. Although the litigation way was not used, it showed the same spirit as what Indonesian positive law conveys about conflict resolution.

Keywords:

Waqf Management; *Waqf* Land Dispute; Conflict Management; Islamic Law; Positive Law

Introduction

Waqf is both a worship and a welfare instrument for Muslims. It can support the country's economy, show evidence of Muslim economic independence, and serve as a means to improve the quality of Muslim education.¹ This success makes *waqf* become an interesting study to discuss. Therefore, various research² on *waqf* has been carried out. The research result by Sudirman,² Havita dan Hakim,³ Eva Mir'atun Niswah,⁴ Sukamto,⁵ and Achmad Nor Maulidi,⁶ show that

1 Heru Susanto, "Inqāṣid Asy-Syarī'ah on Waqf System," *HUNAFANA: Jurnal Studia Islamika* 14, no. 2 (2017): 327-45, <https://doi.org/10.24239/jsi.v14i2.486.327-345>; Nasrul Fahmi Zaki Fuadi, "Wakaf Sebagai Instrumen Ekonomi Pembangunan Islam," *Economica: Jurnal Ekonomi Islam* 9, no. 1 (2018): 151-77, <https://doi.org/10.21580/economica.2018.9.1.2711>; Sudirman and Ramadhita Ramadhita, "Kesadaran Hukum Masyarakat dalam Akselerasi Sertifikasi Tanah Wakaf di Kota Malang," *De Jure: Jurnal Hukum dan Syariah* 12, no. 1 (2020): 35-50, <http://doi.org/10.18860/j-fsh.v12i1.9087>.

2 Sudirman, "Studi Perbandingan Obyek Wakaf Menurut Fikih dan Undang-Undang Wakaf," *De Jure: Jurnal Hukum dan Syariah* 1, no. 2 (2010): 141, <https://doi.org/10.18860/jfsh.v1i2.333>.

3 Gusva Havita and Gestivia Hakim, "Wakaf Saham Ditinjau dari Hukum Islam dan Peraturan Perundang-undangan Setelah Berlakunya Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf," *Jurnal Syarikah: Jurnal Ekonomi Islam* 3, no. 1 (2017): 358-71, <https://doi.org/10.30997/jsei.v3i1.720>.

4 Eva Mir'atun Niswah, "Problematika Yuridis Wakaf Hak Kekayaan Intelektual di Indonesia," *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi* 1, no. 2 (2018): 123-38, <https://doi.org/10.24090/volkgeist.v1i2.1907>.

5 Sukamto, "Menuju Era Baru Wakaf Tunai (Sebagai Inovasi Finansial Islam dalam Mensejahterakan Umat)," *Malia* 9, no. 2 (2018): 193-212, <https://jurnal.yudharta.ac.id/v2/index.php/malia/article/view/1090>.

6 Achmad Noer Maulidi, "Wakaf Tunai, Implementasinya dalam Sistem Perbankan Syariah di Indonesia," *Iqtishadia: Jurnal Ekonomi & Perbankan Syariah* 4, no. 2 (2017): 235-54, <https://doi.org/10.19105/iqtishadia.v4i2.1225>.

the *waqf* objects have developed a lot in recent years.⁶ Recently, the objects of *waqf* are not only land or buildings but also money, precious metals, securities, vehicles, and intellectual property rights. Regarding *waqf* facilities, *waqf* studies have included the issue of *waqf* banks, as studied by Fahmi Medias.⁷

As the *waqf* is expected to be able to solve the problem of poverty in society,⁸ *waqf* assets are currently no longer managed conventionally. Research conducted by Abdurrahman Kasdi,⁹ Naimah,¹⁰ Alaidin Koto and Wali Saputra¹¹ show that *waqf* assets are managed productively. It is hoped that this productive management will be able to maximize the potential of *waqf* for the welfare of Muslims. Productive *waqf* has also been implemented in secular countries, such as Singapore and Thailand. However, productive management of *waqf* assets still encounters several problems, such as bias in asset ownership status, mixing of *waqf* and non-*waqf* assets, and professionalism of the *nāzir* in managing *waqf* assets.¹²

Apart from this, the practice of land *waqf* is still dominant in Indonesia. Siwak Data (*Waqf* Information System) from the Indonesian Ministry of Religious Affairs states that *waqf* land assets amount to 51,261.14 hectares spreading across 382,318 locations. With this number, 61.12% have been certified and used for places of

⁷ Fahmi Medias, "Bank Wakaf: Solusi Pemberdayaan Sosial Ekonomi Indonesia," *Indonesian Journal of Islamic Literature and Muslim Society* 2, no. 1 (2017): 61–84, <https://doi.org/10.22515/islam.v2i1.749>.

⁸ Hari Sutra Disemadi and Kholis Roisah, "Kebijakan Model Bisnis Bank Wakaf Mikro Sebagai Solusi Pemberdayaan Ekonomi Masyarakat," *LAW REFORM* 15, no. 2 (2019): 177–94, <https://doi.org/10.14710/lr.v15i2.26176>.

⁹ Abdurrahman Kasdi, "Reinterpretasi Konsep Wakaf Menuju Pengembangan Wakaf Produktif," *ZISWAF: Jurnal Zakat dan Wakaf* 2, no. 1 (2016): 159–75, <https://doi.org/10.1143/ziswaf.v2i1.1540>.

¹⁰ Naimah Naimah, "Implementasi Yuridis terhadap Kedudukan Wakaf Produktif Berbasis Peningkatan Ekonomi Masyarakat di Indonesia," *At-Taradhi: Jurnal Studi Ekonomi* 9, no. 1 (2018): 10–24, <https://doi.org/10.18592/at-taradhi.v9i1.2093>.

¹¹ Alaidin Koto and Wali Saputra, "Wakaf Produktif di Negara Sekuler: Kasus Singapura dan Thailand," *Sosial Budaya* 13, no. 2 (2017): 116–39, <https://doi.org/10.24014/sb.v13i2.3535>.

¹² Sudirman, "Kesadaran Hukum Masyarakat dalam Akselerasi Sertifikasi Tanah Wakaf di Kota Malang"; Achmad Siddiq, "Wakaf Produktif dan Problematikanya di Dunia Pesantren," *Millah: Jurnal Studi Agama* 11, no. 1 (2011): 85.

worship, public cemeteries, Islamic boarding schools, and educational institutions.¹³ Apart from its type, unregistered or uncertified *waqf* assets have the potential to cause problems, as per the results of research conducted by Fadhilah,¹⁴ Hendrawati and Islamiyati,¹⁵ Syahputra and Khalid,¹⁶ Yose Leonando,¹⁷ and Arifin.¹⁸ Some problems or conflicts that arise are the heirs asking for return of *waqf* assets, assets being sold to any third parties, control of *waqf* assets by the family of *nāzir* (the manager of *waqf*) object,¹⁹ and unmaintained *waqf* assets by the *nāzir*.²⁰

Although *waqf* practice usually involves many parties, including *wāqif*, *nāzir*, *kiai* (religious figures), and witnesses, it still needs legal administration. The administration of *waqf* in Indonesia is further regulated in the Law Number 41 of 2004 about *Waqf*. The implementation of regulations is through Government Regulation of the Republic of Indonesia Number 42 of 2006. It mentioned that the implementation of *waqf* must be carried out with a Pledge. Although *waqf* has already been regulated, disputes about it still occur frequently.²¹ Commonly, the reason for the dispute is due to an

¹³ Kementerian Agama Republik Indonesia, "Jumlah Tanah Wakaf Seluruh Indonesia," SIWAK KEMENAG RI, accessed September 15, 2023, <https://siwak.kemenag.go.id/>.

¹⁴ Nur Fadhilah, "Sengketa Tanah Wakaf dan Strategi Penyelesaiannya," *De Jure: Jurnal Syariah dan Hukum* 3, no. 1 (2011), <https://doi.org/10.18860/j-fsh.v3i1.1321>.

¹⁵ Dewi Hendrawati and Islamiyati, "Penyelesaian Sengketa Tanah Wakaf yang Tidak Tersertifikasi di Wilayah Pesisir Utara Jawa Tengah," *Masalah-Masalah Hukum* 47, no. 1 (2018), <https://doi.org/10.14710/mmh.47.1.2018.71-80>.

¹⁶ Akmaluddin Syahputra and Khalid, "Sengketa Tanah Wakaf di Sumatera Utara (Systematic Literature Review terhadap Pemberitaan Media Online)," *Halu Oleo Law Review* 4, no. 1 (2010): 13-24, <https://doi.org/10.33561/holrev.v4i1.11525>.

¹⁷ Yose Leonando, "Penyelesaian Sengketa Wakaf Tanah di Kecamatan Bayang oleh Pengadilan Agama Kelas II Painan Kabupaten Pesisir Selatan," *Al-Hurriyah: Jurnal Hukum Islam* 4, no. 2 (2019): 178-91, <https://doi.org/10.30983/alhurriyah.v4i2.1632>.

¹⁸ Mohammad Syamsul Arifin, "Peranan Badan Wakaf Indonesia dalam Penyelesaian Sengketa Tanah Wakaf," *Jurnal Hukum dan Kenotariatan* 4, no. 1 (2020): 27-40, <https://doi.org/10.33474/hukeno.v4i1.6446>.

¹⁹ *Nadzir* is the party that receives *waqf* assets from the *waqif* to be managed and developed according to their intended use.

²⁰ Hendrawati, "Penyelesaian Sengketa Tanah Wakaf Yang Tidak Tersertifikasi di Wilayah Pesisir Utara Jawa Tengah."

²¹ Hasbi Asy-Syidiqi, *Hukum Fikih Islam* (Jakarta: Bulan Bintang, 1998), 164.

unregistered *Waqf* Pledge deed to the *Waqf* Pledge Deed Making Officer; *Pembuat Akta Ikrar Wakaf* (PPAIW) to obtain *Waqf* Pledge Deed; *Akta Ikrar Wakaf* (AIW) as legal evidence for the land.²² This is what exactly happened in Pangereman Village, Ketapang District, Sampang Regency, East Java. Pangereman Village lies in the north coastal area of Sampang Regency, Madura. As a coastal area, its people tend to work in relevant sectors, such as salt or shrimp ponds, due to available natural resources, let alone its soil structure. Most of them work as fishermen or entrepreneurs in fishery commodities. The natural conditions and location of the village influence how villagers talk to each other, in which they used to speak loudly so that their voices can be heard in the midst of the sound of waves. This also forges their strong character because they believe that maintaining their self-esteem by all means necessary is essential.

Apart from this, Pangereman villagers still preserve the old habits of their ancestors such as *rokat tasek* (a traditional ceremony held by fishermen before going fishing) and *rokat tanean pamengkang* (the Madurese tradition at the beginning of Hijriah years). This is clear from their regular cultural events which, in the midst of modification and adaptation, continue to be routinely held until recently. Like Madurese in general, villagers also keep and maintain their religiosity quite well by, for instance, attending prayer congregation at the public mosque and celebrating the big day(s) of Islam occasionally. The combination of this background contributes to shaping their personal characteristic, social interactions, and daily phenomena,²³ including the *waqf* conflict ended in a cultural conflict resolution that becomes the main issue of this article. Giving *waqf*, on the other hand, in fact, shows their religiosity and after-worldly orientation considering that in a worldly matter, it almost gives them nothing except self-satisfaction.

²² Haruddin Umar, *Fikih Wakaf* (Jakarta: Kementerian Agama RI, 2006), 61.

²³ A. Latief Wiyata, "Carok: Konflik Kekerasan dan Harga Diri Orang Madura," *Antropologi Indonesia*, no. 67 (2002); Mahrus Ali, "Akomodasi Nilai-Nilai Budaya Masyarakat Madura Mengenai Penyelesaian Carok dalam Hukum Pidana," *Jurnal Hukum IUS QUIA IUSTUM* no. 17 (2010): 85-102, <https://doi.org/10.20885/iustum.vol17.iss1.art4>; Syaiful Bahri, "Peran Kiai dalam Mediasi untuk Penyelesaian Konflik Pasca Pernikahan Dini di Madura," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 1 (2020): 18-30, <http://dx.doi.org/10.19105/al-manhaj.v2i1.3419>.

The majority of *waqf* practices carried out in Pangereman Village are given to those closest to *wāqif* or to people they already know quite well. Typically, they like to donate their land to be used as a place of worship, grave, and so on in their own area or a known area. This is a form of mutual trust among the people of Pangereman Village. Meanwhile, the pledge of *waqf* takes place in front of *nāzir*, *wāqif*, head of the village, and *kiai* without involving any legal institution as the *waqf* manager, like the local Office of Religious Affairs. The villagers believe that for this particular purpose, involving the people mentioned above is sufficient. They never thought about the long-term urgency of registering the *waqf* with the legal institution in order to avoid any conflict. When any small dispute occurs, they usually consult with the *Kiai* to do a mediation process, peace-building, to conflict resolution.

The dispute over *waqf* land in Pangereman began from a piece of land that was donated as a *waqf* to build an official residence for civil servants who lived in the village. The uninhabited official residence, measuring 5×10 m² was claimed to be the property of the *wāqif*'s heirs. A son of *wāqif* came to the family of *nāzir* to claim the land as his (or his family's) own so that he would take it back. As there was no written agreement as supporting evidence regarding the ownership of the *waqf* land. Therefore, the dispute was inevitable.

Numerous studies have been conducted on dispute resolution of *waqf* land, including Islamiyati et al.²⁴ who researched religious practices of land endowment (*waqf*). It examined reform and dispute resolution alternatives of land *waqf* in Indonesia and Malaysia. It aims to provide the Indonesian government with ideas regarding land *waqf* dispute resolution laws. Furthermore, Amiruddin et al.²⁵ researched *waqf* conflict resolution through mediation (Islamic and Bugis norm perspective). The research identified the causes of disputes and described the dispute resolution process through non-litigation mediation in Islamic and local norm perspectives. Recent studies

²⁴ Dewi Hendrawati, et al, "Religious Practices of Land Endowment: Examining Reform and Dispute Resolution Alternatives of Land Waqf in Indonesia and Malaysia," *International Journal of Public Policy and Administration Research* 9, no. 3 (2022): 71-78.

²⁵ Muhammad Madji Amiruddin and Yunus Shamad, "Waqf Conflict Resolution through Mediation (Islamic and Bugis Norm Perspective)," *Li-Falah Jurnal Studi Ekonomi dan Bisnis Islam* 4, no. 1 (2019): 79-95.

related to the *waqf* land dispute were also conducted by Mahrus²⁶ and Hikmah et al.²⁷

The previous researches imply that conflict is something inseparable in society that can lead to serious problems when no resolution takes place. This situation will always result in a loss of peace in society.²⁸ This current study, in short, strengthens previous argument research about the resolution of *waqf* disputes. However, on the other hand, it is different from previous research in terms of focus, theory, and research locus, not only about management and typical dispute resolution. This paper aims to explore the *waqf* land practices and management; its disputes and resolution; as well as investigate the resolution according to Islamic and Indonesian positive law.

Method

This field research uses a qualitative descriptive approach. The primary research data source is explanations or statements from related parties; *nāzir*, *wāqif*, *wariśah wāqif*, village heads, and *kiai*. Secondary data sources for this research were taken from literature related to the topic in question, such as books about endowments, as well as other literature that supports this research. Data collection includes in-depth interviews with disputing parties; *nāzir*, *wāqif*, *wariśah wāqif*, village heads, and religious figures ranging from talk about *waqf* land practices, and its management, to conflict resolution.

Data were analyzed using the Creswell approach²⁹ with the following stages: *first*, data reduction. The data was reduced by summarizing and selecting the main information. *Second*, data presentation. The data presentation is equipped with short descriptions processed from regional languages which have been translated and then made into narrative text that is easy to understand. *Third*, conclusion and verification. The third stage is to

²⁶ Moh. Mahrus, "Settlement of Waqf Disputes and Its Asset Protection in East Java, Indonesia," *Mazahib* 20, no. 2 (2021): 57-91.

²⁷ Nur Yaumul Hikmah, et al, "The Uniqueness of Waqf Land Disputes Resolution Denied by Some Heirs (Case Study of Waqf in Pondok Pesantren X Jombang Jawa Timur)," *Jurnal Hukum Islam* 19, no. 2 (2021): 277-94.

²⁸ Ibrahim Siregar, "Penyelesaian Sengketa Wakaf di Indonesia," *Miqot: Jurnal Ilmu Keislaman* 36, no. 1 (2012): 123.

²⁹ John W. Creswell, *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (Boston: Pearson Longman, 2012).

4
verify the data and formulate conclusions after discussing and analyzing the findings.

Result and Discussion

The Waqf Land Practices and Management

Waqf practices in Indonesia are regulated in Waqf Law Number 41 of 2004. The implementing regulations are Government Regulation of the Republic of Indonesia Number 42 of 2006 about the implementation of Law Number 41 of 2004 concerning waqf. Based on a positive legal perspective, the implementation of waqf must be carried out with a Pledge in the presence of the Official Who Makes the Waqf Pledge Deed. This is stated in Article 17 of Law Number 41 of 2004 concerning Waqf.³⁰ For Indonesian society with its Moslem majority, waqf becomes a form of worship full of social dimension³¹ like what is found in Pangereman Village in which land waqf still becomes the most popular one.

In the village, the practice of waqf land occurs typically in the following characteristics:

First, the village government plans and seeks to optimize existing waqf assets for the benefit of village communities in the form of education or worship places. Typically, the waqf comes from fellow village inhabitants who donate their land willingly. They usually come and make a report to the head village about the intention to donate the land.

Second, the practice of waqf has been carried out in known areas accessible to known people. It starts from a sense of mutual trust between one another or due to familial and collegial relationships. This is mainly valid for waqf land used for places of worship, burial, education, or other public purposes. The ties are firmly bound by a sense of brotherhood and interconnected network connectivity. However, the strength of this network is not exclusive which means the waqf objects can also be reached by any group, including those from outside the village. This is as mentioned by Mr. Martijo below:

“Usually, land waqf is conducted in this area or aimed for surrounding whom the wāqif knows them quite well.

³⁰ Hendrawati, “Penyelesaian Sengketa Tanah Wakaf yang tidak Tersertifikasi di Wilayah Pesisir Utara Jawa Tengah.” 14

³¹ Asy-Syidiqī, *Hukum Fikih Islam*, 164.

Because, of course, we have to trust whom this land is handed over to." (Interview excerpt, 29 May 2022-translated)³²

Third, when all is set, the *waqf* handover transaction is conducted through pledging in front of the *nāzir*, *wāqif*, *kiai*, and several witnesses. If the giver is someone from outside the village, the recipients will be the head village or *kiai* as religious leaders who are considered trustworthy by the community. This step, unfortunately, is typically conducted without any legal administration because the community believes that the head village and or *kiai* are trustworthy and enough to play a role as *nāzir* responsible for the *waqf* land. Moh. Syifaudin mentioned that the *waqf* assets in Madura were typically given directly to the *waqf* recipients by cultural agreement or contract.³³ The agreement and contract here mean the one without formal administration.

The people of Pangereman are widely aware that *waqf* land can be used to both meet certain basic public needs and increase their economic welfare. They benefited from the *waqf*'s existence since it provided places of worship, cemeteries, and educational facilities where the local population could profit monetarily by selling supplies to students. The Head of Pangereman Village makes this claim below:

"The existence of land *waqf* really helps the community. The community can use *waqf* land for various common purposes. From an economic perspective, the existence of *waqf* land can reduce community expenses such as education costs because there is no need to pay fees while people around can sell goods for students" (Interview excerpt, December 2022-translated).³⁴

Therefore, it makes very much sense to find out that although *waqf* objects in Pangereman are not formally administrated, the village staff have made a note of it. The number of *waqf* land in Pangereman Village from the whole hamlets can be seen in Table 1.

³² Martijo, *Direct Interview*, Pangereman Villager (May 2022).

³³ Pangereman Head Village.

³⁴ Bakri, *Direct Interview*, Pangereman Head Village (Desember 2022).

Table 1. The Sum of *Waqf* Land in Pangereman Village

| Hamlet Name | The sum of <i>Waqf</i> Land | Kind of <i>waqf</i> |
|---------------|-----------------------------|---|
| Kendung Timur | 7 | 2 official residences, 1 mosque, 3 public burial places, 1 school |
| Kendung Barat | 3 | 3 public burial places. |
| Pangereman | 6 | 1 mosque, 3 public burial places, 2 schools |
| Lon Lajar | 2 | 2 public burial places |
| Berguh | 3 | 3 public burial places |
| Panubun Timur | 4 | 3 public burial places, 1 school |
| Panubun Barat | 2 | 2 public burial places |
| Padangdang | 3 | 1 mosque, 2 public burial places |
| Jurgeng | 2 | 2 public burial places |
| Total | 32 | |

Source: Village Government of Pangereman

From Table 1, it can be seen that there are 32 *waqf* lands spreading in the nine hamlets. Most of them are used for public burial places, while the rest are for schools, mosques, and official residences. This implies that in addition to strengthening social ties among one another, the existence of *waqf* building in Pangereman can actually be cost-saving because to bury the dead and send children to schools, for instance, villagers tend not to spend as much money as they do in private schools or private burial places.

As for management, the village government of Pangereman is one who plays the role of establishing village regulations, fostering land issues, fostering peace and order, carrying out efforts to protect the community, dealing with population administration, and structuring or managing areas. However, they do not have any special body or program to deal with *waqf* note-taking or management. Furthermore, note-taking only happens when people report any *waqf* assets; otherwise, the village authority usually is unaware of them. The practice of *waqf* takes place as simply as that while the information about *wāqif* or *nāzir* identity is rarely known by the beneficiary. In the *waqf* land asset, there is no available information, like in the form of a signpost, the identity of the land as a *waqf* asset, the date of transaction, the identity of *wāqif*, *nāzir*, and other physical information about the asset. The village government also does not

initiate or facilitate the registration of *waqf* assets to either the local Office of Religious Affairs or the National Land Agency (BPN).

This is mainly because in the context of *waqf* assets, what matters is a cultural relationship rather than a formal one. Therefore, although the head village or village government is often involved in a *waqf* handover transaction, it can still happen without his/her presence as long as the *wāqif* and *nāzir* know each other. Differently, the presence and role of *kiai* are considered more important in the momentum of cultural legitimation of the transaction. *Kiai* is a representation of the *guru* as one of those who deserve respect and obedience among Madurese people in addition to father, mother, and government (*buppa'*, *babbu*, *guru*, *ban rato*).³⁵ Another factor is the ignorance of villagers about the procedure they need to go through in dealing with a *waqf* asset. They generally have no idea that no matter if it seems private, a *waqf* transaction needs to be formally registered in the legal institution so that it can be protected by legal authority.

Apart from that, the village head of Pangereman still plays a central role as explained by Pandi below:

⁴⁹
"All affairs in this village are centered on the village head. The village head is the father of our entire village community. The village head is assisted by community figures, such as religious leaders and people considered wise by the community." (Interview excerpt, 29 May 2022-translated)³⁶

In addition to the village head, the *kiai* (religious figure) is considered an elder and important person. Furthermore, the Madurese community still strongly believes that *Kiai* is the most feasible person, including the right one⁶ to receive *waqf*. Akhmad Farid Mawardi Sufyan mentioned that a *kiai* is someone who is considered to have an emotional relationship with the community and consequently, people prefer to give *waqf* to them.³⁷ The same

³²
³⁵ Ali, "Akomodasi Nilai-Nilai Budaya Masyarakat Madura Mengenai Penyelesaian Carok dalam Hukum Pidana."

³⁶ Bakri, *Direct Interview*²⁹

³⁷ Ahmad Mukri Aji, et al, "Position of *Kiai* in Traditions and Ideologies of Traditional *Waqf* in Maduranese Communities" *Thesis Universitas Islam Negeri Syariaf*

6 statement was also expressed by Bhismoadi Tri that the majority of the *waqf* property in Madura 6 was given directly and represented to *Kiai* as a community leader.³⁸ This means that people tend to hand the *waqf* property to *Kiai* based on an assumption about his closeness to Allah.

Although it is different from what happened in Pangereman in which the *nāzir* was not *kiai* 6 *kiai* are generally considered the most trustful ones to receive *waqf*. This is also triggered by the principle of the Madurese community about prudence and the high level of trust in *kiai* as those who are deemed religious. Thus, the form of *ta'zīm* (respect) towards *kiai* among the Madurese community was strongly maintained through, among others, *waqf*.³⁹

The *Waqf* Land Dispute and Typical Conflict Resolution of the Village

A dispute over *waqf* land occurred in Pangereman village in 2021 on an uninhabited official residence. The residence was built specifically to be occupied by civil servants who were on duty in the village consisting of tenured teachers and then midwives. The building measures 5×10 m² and is located beside the Pangereman village hall. The official residence was built by the villagers on land belonging to fa lMr. Sumanto (Pangereman villager; pseudonym) which was donated to the village through the *waqf* scheme. Unfortunately, Mr. Sumanto (*wāqif*) was reported to have passed away in 2016. Then, in 2020, the village head (*nāzir*) who ruled at the time of the land handover was suffering from a stroke that he could not move and speak.⁴⁰

The dispute was between the son of Mr. Sumanto, the *wāqif*, and *nāzir*'s wife as the son wanted to take the land back.⁴¹ He thought that he had the right to the land because there was no written agreement as supporting evidence regarding the ownership of the

51 Hidayatullah Jakarta (2020), <https://repository.uinjkt.ac.id/dspace/handle/123456789/54961>.

³⁸ Aji, "Position of *Kiai* in Traditions and Ideologies of Traditional *Waqf* in Maduranese Communities".

³⁹ Aji, "Position of *Kiai* in Traditions and Ideologies of Traditional *Waqf* in Maduranese Communities".

⁴⁰ Direct Interview, Pangereman villager, 2022.

⁴¹ Pandi, Direct Interview, Pangereman Head Village (May 2022) 18

waqf land. Moreover, there was no one who inhabited the building and it was left useless. He once asked for a written agreement regarding the ownership of the *waqf* land but he did not get it. The wife of *nāzir* apologized to him for it because the handover of *Waqf* land was still in very simple procedure. It was only pledged in front of the *nāzir*, *wāqif*, *kiai*, and several witnesses without a legal administration. Unfortunately, all the witnesses passed away at the time when the dispute was about to begin.

As shown in the case, the existence of *waqf* land that does not fulfill the administrative requirements as emphasized in laws and regulations causes unsteadiness and instability in terms of legal uncertainty when compared to *waqf* with a certificate. The absence of authentic evidence and written documents related to *waqf* land, in this case, the *waqf* certificate, causes the position of *waqf* land not legally strong because there is no evidence as a guarantee for legal certainty in the event of claims and lawsuits from disputing parties. The existence of a certificate on the *waqf* asset is particularly urgent so that the land can not be made as collateral to get some loan from a banking institution or other providers. Legal force embedded within the certificate also implies that the assets have higher legal protection than *waqf* pledge or deed.

Waqf assets in principle belong to people, thus the benefits must also be felt by the people at an ideal level. *Waqf* assets are a collective responsibility for them to maintain. Therefore, the existence of an institution that manages *waqf* assets is absolutely necessary as has been done by some Islamic countries. Indonesia still seems slow in dealing with *waqf* even though the majority of the population is Muslim. The implication is that there are many *waqf* assets that are not taken care of and some are even still not being utilized.⁴²

So far, the dispute mentioned above is the one and only *waqf* conflict in Pangereman Village. There are several types of conflict that local people like to resolve using two ways, namely cultural and legal ways. They typically resolve conflicts through cultural way before taking them to legal way. The way to resolve the problem through

31

⁴² Rosdalina Bukido and Misbahul Munir Makka, "Urgensi Akta Ikrar Wakaf Sebagai Alternatif Penyelesaian Sengketa Tanah," *Nukhbatul 'Ulum: Jurnal Bidang Kajian Islam* 6, no. 1 (2020), <https://doi.org/10.36701/nukhbatulUlum.v6i2.161>; Upi Komariah, "Penyelesaian Sengketa Wakaf di Pengadilan Agama," *Jurnal Hukum dan Peradilan* 3, no. 2 (2014), <http://dx.doi.org/10.25216/jhp.3.2.2014.117-126>.

culture is in the form of deliberation, mediation, or even *carok*. The legal way becomes the second alternative to resolve the conflict when the conflict cannot be resolved through the former option. Both ways are applied in certain situations for solving conflict in Madura as per research conducted by Anam.⁴³

Bakri, the ruling head village, confirmed that most conflicts in the village were resolved through deliberation, mediation, or *carok* in cultural ways like what can be seen in Table 2 as follows⁴⁴

Table 2. The Type of Conflict Resolutions in Pangereman Village

| Conflicts | The number of conflicts | Kind of Conflict Resolution |
|--------------------------|-------------------------|--|
| Inheritance | 3 | Deliberation and mediation |
| Waqf land dispute | 1 | Deliberation and mediation |
| Affair | 3 | <i>Carok</i> , Deliberation, and mediation |
| Theft | 5 | <i>Carok</i> , Deliberation, and mediation |
| Others | 7 | Deliberation and mediation |

Source: The Data from Pemerintah Desa Pangereman

Based on Table 2, it is clear that various conflict resolutions have been implemented in Pangereman Village. Compared to the legal way, cultural ways (deliberation, mediation, or *carok*) are preferable even though *carok* is not valid for every conflict.⁴⁵ Practically, the cultural way is far simpler and cost-saving than the legal one. In addition, to the fact that they have been accustomed to that cultural ways as what they see from how their parents or older resolve any conflict. From that point, they have had a sort of technical steps of what to do sequentially, whom they will invite to do deliberation or mediation, whom they will ask to be the mediator, where the deliberation and or mediation will take place, and others. By choosing it, they do not need to involve too many parties and the solution can be easily made in comparison to the legal way which

⁴³ Uswatun Hasanah, et al, "Keku³⁵ Mengikat Mediasi Penyelesaian Sengketa Waris Masyarakat Madura," *Arena Hukum* 13, no. 2 (2020), <https://doi.org/10.21776/ub.arenahukum.2020.01302.6>.

⁴⁴ I³² Interview, Pangereman Head Village (May 2022).

⁴⁵ Ali, "Akomodasi Nilai-Nilai Bu¹⁰ra Masyarakat Madura Mengenai Penyelesaian Carok dalam Hukum Pidana"; Wiyata, "Carok: Konflik Kekerasan dan Harga Diri Orang Madura."

requires the involvement of police, lawyers, or the court. The table also conveys that *waqf* land dispute constitutes the smallest percentage of conflicts. This means that *waqf* land disputes rarely occur.

This is in line with what was mentioned in an interview below:

“For every problem or conflict in Pangereman Village, efforts are always made to reach a common consensus. The solution can be amicable first and we as village head is ready to serve and protect the community” (Interview excerpt, 22 May 2022-translated).⁴⁶

Theoretically, Islam clearly regulates *waqf*.⁴⁷ The occurrence of a dispute must be preceded by a conflict first. According to Dean G. Pruitt and Jeffery Z. Rubin, conflicts are different perceptions of interests or belief that the aspirations of conflicting parties are not reached. In other words, the conflicting parties could not solve problems together.⁴⁸ They could not reach an agreement through any deliberation or discussion. In the implementation of *waqf*, the object of the dispute is the *waqf* property, while the disputing parties could occur between the community and *nāzir*, *wāqif* with *nāzir*, and *nāzir* with *warisah wāqif*.⁴⁹ *Waqf* land disputes, therefore, can be defined as the process of interaction between two or more people or groups who are fighting interests or the same object.⁵⁰ As every conflict needs a resolution, disputing *waqf* land at Pangereman also experiences a series of conflict resolutions as follows:

After becoming a cold conflict for a long time, on 15th June 2021, the conflict ran at the head village's home initiative to resolve the hanging up situation. The ruling head village, a *kiai*, Sumanto's son, and the wife of the *nāzir* discussed how to resolve the problem. The head village became the leader to led the deliberation. It resulted

⁴⁶ Direct Interview, Pangereman Head Village (2021).

⁴⁷ Kementerian Agama Republik Indonesia Direktorat Jenderal Bimbingan Masyarakat Islam, *Pedoman Pengelolaan dan Perkembangan Wakaf* (Jakarta: Departemen Agama R 50/013), 27.

⁴⁸ Dean G. Pruitt and Jeffrey Z. Rubin, *Teori Konflik Sosial* (Yogyakarta: Pustaka Pelajar, 2014).

⁴⁹ Hendrawati, “Penyelesaian Sengketa Tanah Wakaf yang Tidak Tersertifikasi di Wilayah Pesisir Utara Jawa Tengah.”

⁵⁰ Hendrawati, 71–80.

that Sumanto's son still wanted to take the land back while the wife of the *nāzir* was not willing to give it back. There is no problem-solving in this case and the meeting ended with deadlock. The cold conflict created a bad situation in the neighborhood.

Based on the failure on the first try, the head village initiated a mediation not long after that, on 27th June 2021. At that time, the *Kiai* was not only involved but also appointed to lead the mediation. It turned out that after a long and tiring mediation, the wife of *nāzir* was willing to give the land back because there was no evidence or witnesses on the land being donated. After getting the land back, the son knocked the building down and now it comes in the form of vacant land.

In the end, the *waqf* dispute made the village government aware of the importance of land certificates within their area, both *waqf* assets and private property of the villagers. Since the beginning of 2023, they have taken aggressive steps to certify all of the village's land, including the *waqf* assets, in order to prevent future conflicts of this nature. The conflict which had been a disguise has turned into a blessing because villagers also cooperatively follow the steps in making certificates for their lands. In a simpler scheme, the land certification process finishes when a land certificate is issued by BPN Sampang on behalf of *nāzir*.

Resolution of *Waqf* Land Disputes through the Islamic and Indonesian Positive Law

It might be highlighted further that traditional conflict resolution in Pangereman (*carok*, deliberation, and mediation) fall under the '*urf* (habit) category. Although '*urf* is a contentious source, on the one hand, there are three arguments about its reliability. *First*, Islamic law codifies numerous pre-Islamic Arab '*urf*, such as familial responsibilities to pay *diyyat* (fines) for those who were wrongfully killed as well as the *salām* (one type of buying and selling transaction) and purchase contract. *Second*, the practice of '*urf* is in line with Allah's words in Islamic law that there is a solution to the problem because it is difficult for humans to break habits, especially in the form of customs and culture. *Third*, the majority of *fiqh* scholars use '*urf* as an argument in determining Islamic law.

In the context of Madura, '*urf* or existing habit usually stems from an older habit of the previous or older generation, including the

habit of using *waqf* as a worldly and afterword investment. Compared to the latter, the former seems to get less priority due to the belief that doing good deeds should be kept a secret so that it would not fall to the *riyā'* activity which is deemed to decrease the divine reward. Meanwhile, in the context of conflict resolution, the habit of Madurese people puts cultural way as the first option to consider, even if this is not valid for every case. However, specifically in the *waqf* dispute case, the preference to choose deliberation and mediation closely relates to the intimate relationship between the disputing parties before the conflict occurs. *Wāqif's* trust in *nāzir* is invaluable and it should be well kept by carefully choosing the best and the most proper conflict resolution. Furthermore, carok is less desirable than any formal method of resolving disputes because it frequently leads to new issues and renders the situation unsolvable.

Furthermore, the concept of deliberation is a theme in Islamic law, namely *mu'amalah* relations to resolve conflicts or disputes. Deliberation is an indispensable element in the life of any society. Realized or not, people living together will naturally invite others to talk about a specific issue while asking for opinions, suggestions, or comments; a simple meaning of deliberation. In essence, deliberation in resolving disputes is not a mere positive norm, but rather human rights. Basically, all human beings want all aspects of their life to be comfortable, nothing to disturb, not to be hostile to, and full of peace and tranquility.

In positive law, one of the recommendations for resolving *waqf* disputes is in Article 62 paragraph (1) of Law No. 41 of 2004 concerning "resolution of *waqf* disputes is pursued through deliberation to reach consensus". This alternative is in accordance with the norms of social life which refer to the 4th principle of Pancasila; "A democracy that is led by wisdom in deliberation and representation". Besides, one of the suggestions in resolving *waqf* disputes through mediation is guided by Article 1 number 7 PERMA No.1 of 2008 about "Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator". Furthermore, this is reinforced by procedural procedures. Resolution of *waqf* disputes Article 62 of Law No. 41 of 2004 concerning *waqf* reads "If the dispute resolution referred to in paragraph (1) is unsuccessful, the dispute can be resolved through mediation". This mediation is a dispute resolution through a

15
consensus approach, which means a process of resolving disputes between two or more parties through negotiation or consensus method with the help of a neutral party that has the authority to decide. This neutral party is called the mediator with the task of assisting the procedural and substantial processes.⁵¹ Another regulation mentions that *waqf* dispute resolution based on the Indonesian positive law is carried out by two methods, namely non-litigation and litigation. The former, according to Article 1 point 10 Law no. 30 of 1999, consists of consultation, negotiation, mediation, or reconciliation methods. However, it stressed out that the types of alternative dispute resolution can be chosen by dispute actors as they prefer.⁵²

The resolution of disputing *waqf* land for the official resident in Pangereman through deliberation and mediation is actually in accordance with both Islamic and positive law. The concept of dispute resolution through mediation turns out to be one of the most appropriate ways to resolve conflicts and disputes because mediation for consensus is a solution where both parties can meet to express opinions. Therefore, conclusions can be drawn that each party can accept sincerely. Although the first meeting came to a deadlock situation, the ending implies that conflict resolution in Pangereman runs quite effectively. Moreover, the results of decisions taken through mediation at the second meeting were made along with the village head and a religious figure who mediated in reaching an agreement. It can be said that the decision was from the agreement of the two parties that each of them received it gracefully.⁵³ In other words, dispute resolution, in this case, is a non-litigation outside the court because although it accords with what the positive law suggests, it happened traditionally through non-litigation ways.

20
⁵¹ Junaidi Abdullah and Nur Qodin, "Penyelesaian Sengketa Wakaf dalam Hukum Positif," *ZIZWAF: Jurnal Zakat dan Wakaf* 1, no. 1 (2014): 48; Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Dekatan Mufakat* (Jakarta: PT. Raja Grafindo Persada, 2010), 12; Najmudin, et al, "Penyelesaian Sengketa Wakaf di Desa Kubang Puji dalam Perspektif Hukum Positif di Indonesia," *Mizan: Journal of Islamic Law* 5, no. 1 (2021): 17-6.

⁵² Jamaludin, "Penyelesaian Sengketa Wakaf Melalui Basanas," *Misykat Al-Anwar Jurnal Kajian Islam dan Masyarakat* 30, no. 1 (2019): 1-22; Fadhilah, "Sengketa Tanah Wakaf dan Strategi Penyelesaiannya."

⁵³ Direct Interview, Pangereman Head Village (2022).

Conclusion

This research reveals that the village government of Pangereman has played a strategic role ranging from ⁵⁹ handover of *waqf* land, and its management, to dispute resolution. The use of *waqf* land is also known to support the running program of the government, namely providing ⁶⁰ shelter for public servants. Meanwhile, the dispute was caused by both internal and external factors; the former is about unregistered *waqf* land and inhabited buildings on it, while the latter is about inter-generational responsibility shift in both *wāqif* and *nāzir* because those who made the pledge are now unavailable because of death and disease. Additionally, as with how the handover and management were made, the conflict resolution also took place traditionally without any litigation instruments. This implies that in many cases, cultural ways and traditional manners can facilitate and deal with many things found in society based on mutual trust and other relevant local values. This research was limited to a conflict over one *waqf* land and only involved ¹⁶ respondents from the community. For this reason, future research on the management and resolution of land *waqf* should examine the detailed management of *waqf* with broader respondents such as involving the Ministry of Religion offices at the sub-district level, namely the Religious Affairs Office (KUA) and other relevant parties.

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