


Waqf Disputes and Procedural Justice: Proving Waqf Pledge Declarations and Nazhir Standing in Religious Courts

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Abstract

This study examines the resolution of waqf disputes in Religious Courts, with particular emphasis on the evidentiary proof of waqf pledge declarations, the legal standing of nazhir, and the implementation of procedural justice. Waqf disputes frequently arise due to poor waqf administration, weak evidentiary support for the waqf pledge, uncertainty regarding the legal status of the waqf object, or conflicting interests among heirs, nazhir, and the community. This study employs a normative juridical method using statutory, conceptual, and case approaches. The findings indicate that proving the waqf pledge plays a crucial role in determining the legal status of the waqf object. The Deed of Waqf Pledge, waqf land certificates, witness testimony, and factual evidence concerning the use of the waqf object within the community may serve as grounds for judicial consideration. Furthermore, nazhir holds an important position as the party responsible for safeguarding and preserving waqf assets; however, their legal standing must still be examined in accordance with the law. Procedural justice is essential to ensure that all parties are afforded equal opportunities to present their arguments and evidence. This study affirms that procedural law in waqf disputes must be capable of ensuring legal certainty, justice, and utility in the protection of waqf assets.

Keywords

waqf dispute, waqf pledge, nazhir, procedural justice, Religious Court.

Introduction

Waqf occupies an important position in the socio-religious life of Indonesian society. In practice, waqf is understood not merely as an individual act of worship performed by a waqif before Allah SWT, but also as a social instrument whose benefits are experienced by the wider community.¹ Waqf assets, particularly waqf land, are widely used for religious, educational, social, health-related, and economic empowerment purposes for the Muslim community. Therefore, waqf embodies religious, social, and public benefit values whose continuity must be safeguarded.²

As a legal act, waqf gives rise to legal consequences that are not simple. When a waqif declares his or her property as waqf, such property no longer remains solely within the sphere of private ownership, but is transformed into property dedicated to religious purposes or public welfare in accordance with the objectives of waqf.³ This change in legal status requires legal certainty concerning the waqf object, the intention of the waqif, the party responsible for its management, and the benefits intended to be realized from the waqf property.⁴

¹ Bashlul hazami, “Peran Dan aPlikasi Wakaf Dalam meWujudkan Kesejahteraan Umat Di Indonesia,” *Analisis: Jurnal Studi Keislaman* 16, no. 1 (2017): 173–204, <https://doi.org/10.24042/ajsk.v16i1.742>.

² Nadya Rahmalina dkk., “Wakaf Sebagai Sarana Moderasi Beragama dalam Mewujudkan Kesejahteraan Sosial: Perspektif Maqashid Syariah,” *EKOMA: Jurnal Ekonomi, Manajemen, Akuntansi* 3, no. 1 (2023): 476–86, <https://doi.org/10.56799/ekoma.v3i1.2522>.

³ Yenni Samri Juliati dan Maftah Rizki Addin Hrp, “Wakaf Dan Dasar Hukum Wakaf | JURNAL MANAJEMEN DAN BISNIS EKONOMI,” 5 Januari 2024, <https://jurnal.itbsemarang.ac.id/index.php/JMBE/article/view/1431>.

⁴ Mustafa dkk., “Kedudukan Akta Ikrar Wakaf Saham sebagai Upaya untuk Menjamin Kepastian Hukum dalam Peralihan Saham Melalui Wakaf,” *Jurnal Hukum Lex Generalis* 6, no. 2 (2025), <https://doi.org/10.56370/jhlg.v6i2.762>.

Although waqf has been regulated within the national legal system, waqf practices in society are not always conducted in an orderly and well-documented manner. Some waqf practices are still carried out informally, based on trust, oral tradition, or familial relationships.⁵ In several cases, the waqf pledge is not fully recorded in written documents, the Deed of Waqf Pledge cannot be found, the waqf land certificate has not been issued, or the administration of nazhir does not function properly. These circumstances may give rise to legal problems when, at a later stage, certain parties question the status of the waqf property, the validity of the waqf pledge, or the authority of the nazhir in managing the waqf property.⁶

Waqf disputes often arise due to differing understandings among the heirs of the waqif, the nazhir, the community, or third parties regarding the status and use of the waqf object. It is not uncommon for the heirs of the waqif to consider property that has been used for waqf purposes as still forming part of family property.⁷ Conversely, the community or the nazhir may believe that the property has long been endowed as waqf and used for public benefit. This divergence of views indicates that waqf disputes are not only related to ownership or control over an object, but also to the proof of the waqif's intention and the clarity of the party authorized to preserve the waqf mandate.⁸

5 Abdullah A. Afifi, *The Legacy of Waqf: Foundation and Its Continuities*, 1-13, 1, no. 1 (2025), <https://doi.org/https://doi.org/10.58764/j.wbr.2025.1.1>.

6 Umar Fadlullah Khasanudin, "Pengelolaan Wakaf Pada Lembaga Yang Belum Terdaftar Menurut Hukum Positif Dan Hukum Islam (Studi Kasus Pada Lembaga Yayasan Tarbiyatul Mukmin Pabelan Magelang)" (Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/51765>.

7 Khoirun Nisa dan Rofi'ah, "Penyelesaian Sengketa Wakaf: Studi Kasus di Desa Sungai Ruan Kabupaten Batang Hari," *Al-Mizan : Jurnal Hukum dan Ekonomi Islam* 7, no. 1 (2023): 64–87.

8 Muhammad Taufan Djafri dkk., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa

In this context, waqf disputes cannot be understood merely as matters of substantive law. They also constitute matters of procedural law, since their resolution greatly depends on how the waqf pledge is proven, who has legal standing to litigate, what evidence may be used, and how judges assess the facts revealed during trial. Accordingly, procedural law plays an important role in ensuring that the settlement of waqf disputes not only produces a judgment, but also provides a fair process for all parties.⁹

One of the central aspects of waqf disputes is the evidentiary proof of the waqf pledge. The waqf pledge constitutes the legal basis for the creation of waqf as a legal act. Through this pledge, the waqif expresses the intention to separate or transfer part of his or her property so that it may be utilized in accordance with the objectives of waqf.¹⁰ However, in judicial practice, issues frequently arise concerning how to prove that the waqf pledge was actually made, who made the pledge, when it occurred, who was appointed as nazhir, and for what purpose the property was endowed. Where written evidence is incomplete, the evidentiary process becomes more complex, as judges must consider other forms of evidence, such as witness testimony, supporting

Wakaf Tanah Wahdah Islamiyah): Issues and Resolution of Waqf Disputes According to Law No. 41 of 2004 and Islamic Law (Study of Waqf Land Disputes of Wahdah Islamiyah),” *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 2, no. 3 (2021): 396–412, <https://doi.org/10.36701/bustanul.v2i3.402>.

- 9 Ahmad Mustanir, “Reformulasi Hukum Penyelesaian Sengketa Wakaf (Studi Kasus Pemikiran Tuan Guru Di Lombok)” (Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uin.ac.id/handle/123456789/51808>.
- 10 M. Makhrus dkk., “Regulasi Dan Praktik Penyelesaian Sengketa Wakaf Di Indonesia,” *Litera Inti Aksara Library*, 12 September 2025, <https://lib.literaaksara.com/lib/article/view/43>.

documents, the history of the object's use, and social facts existing within the community.¹¹

In addition to the proof of the waqf pledge, the position of the nazhir is also an important aspect in resolving waqf disputes. The nazhir is the party entrusted with managing, safeguarding, and developing waqf property. In waqf disputes, the nazhir may act as the party defending the waqf object, the party held accountable, or the party explaining the history and management of the waqf property. Therefore, clarity regarding the legal position of the nazhir is essential to determine whether the nazhir has the authority to act as plaintiff, defendant, or interested party in waqf cases before the Religious Courts.¹²

The issues of proving the waqf pledge and determining the position of the nazhir are closely related to the concept of procedural justice. Justice in the resolution of waqf disputes cannot be assessed solely from the final outcome of a judgment, but must also be viewed from the process through which the judgment is reached. The parties must be given equal opportunities to present their arguments, submit evidence, refute the opposing party's claims, and obtain objective legal reasoning from the judge. In waqf cases, procedural justice is particularly important because the disputed object does not only possess economic value, but also contains religious, social, and public benefit values.¹³

11 Yoananda Nurul Aryati dkk., "Penyelesaian Sengketa Tanah Wakaf Masjid Assegaf di Kotamadya Surakarta (Studi Putusan PA Surakarta Nomor 0260/PDT.G/2012/PA.SKA)" (s2, Universitas Muhammadiyah Surakarta, 2018), <https://eprints.ums.ac.id/58741/>.

12 Nuridin Nuridin dan Yusup Hidayat, Analysis of the Implementation of Waqf Law Number 41 of 2004 on the Role of Nazirs in Waqf Management: Case Study of Case Decision Number 20/Pdt.G/2023/PN Msb | UNES Law Review, 26 Agustus 2024, <https://review-unes.com/law/article/view/1669>.

13 Noor Izzati Amelia dkk., Tinjauan Yuridis Terhadap Sengketa Wakaf Dalam Praktik Peradilan Agama | Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan

Thus far, studies on waqf in Indonesia have largely focused on substantive legal aspects, waqf administration, waqf land certification, productive waqf management, and the optimization of the role of nazhir in developing waqf assets. These studies are certainly important, yet they have not fully addressed how waqf disputes are resolved through fair procedural mechanisms in the Religious Courts. In judicial practice, the status of property as a waqf object is significantly determined by the evidentiary process, the clarity of the parties' legal standing, and the capacity of judicial procedures to protect the waqf mandate.¹⁴

Accordingly, there remains a research gap that needs to be further developed, namely a study that does not merely question the substantive validity of waqf, but also examines how legal processes prove the waqf pledge and position the nazhir as a subject with a procedural role in waqf disputes. This gap constitutes the important basis of the present study. Waqf disputes should not be viewed merely as conflicts over property objects, but as procedural issues that require clarity of proof, legal standing, and protection of the socio-religious interests attached to waqf property.¹⁵

Based on this gap, this article offers novelty by situating waqf disputes within the perspective of procedural justice. The novelty of this article lies in its attempt to connect three important aspects: the

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- Humaniora, 12, Maret 2026,
<https://journal.lpkd.or.id/index.php/Humif/article/view/1514>.
- 14 Assril dkk., "Dinamika Hukum Wakaf Di Indonesia Tantangan Dan Solusi Dalam Pengelolaan Aset Wakaf Produktif," *Al Barakat: Jurnal Kajian Hukum Ekonomi Syariah* 5, no. 01 (2025): 11–23, <https://doi.org/10.59270/jab.v5i01.274>.
- 15 Agung Setiawan, "Praktik Model Wakaf Diri di Pondok Pesantren Roudlatul Qur'an Kota Metro: Perspektif Fenomenologi Alfred Schutz dan Hukum Islam" (masters, IAIN Metro, 2025), <https://repository.metrouniv.ac.id/id/eprint/10730/>.

evidentiary proof of the waqf pledge, the legal standing of the nazhir, and the role of the Religious Courts in realizing a fair dispute resolution process. The waqf pledge is not only understood as a requirement or essential element in waqf law, but also as a legal fact that must be validly proven in court proceedings. Likewise, the nazhir is not merely positioned as the manager of waqf property, but also as a party with an important role in safeguarding waqf interests before the law.

Through this approach, this study is expected to contribute to the development of procedural law within the Religious Courts, particularly in the resolution of waqf disputes. This study is also expected to strengthen the understanding that protection of waqf property cannot be achieved solely through substantive legal regulation, but must also be guaranteed through judicial processes that are fair, balanced, and accountable. Therefore, research on waqf disputes and procedural justice through the proof of waqf pledges and the legal standing of nazhir in the Religious Courts is important as an effort to preserve the waqf mandate while realizing legal certainty and justice for society.

Method

This study employs a normative legal research method using statutory, conceptual, and case approaches. Normative legal research is utilized because this study focuses on legal norms, legal principles, doctrines, and judicial decisions relating to the resolution of waqf disputes in the Religious Courts.¹⁶ The statutory approach is employed to examine regulations concerning waqf, the jurisdiction of the Religious Courts, civil procedural law, and judicial dispute resolution

16 Wahyudin Darmalaksana, "Metode penelitian kualitatif studi pustaka dan studi lapangan," Pre-Print Digital Library UIN Sunan Gunung Djati Bandung, 2020, <https://etheses.uinsgd.ac.id/id/eprint/32855>.

mechanisms. The conceptual approach is used to analyze the concepts of procedural justice, the evidentiary proof of waqf pledges, and the legal standing of nazhir. Meanwhile, the case approach is used to examine judicial reasoning in waqf dispute decisions, particularly those related to the proof of waqf pledges and the legal standing of nazhir.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations concerning waqf, religious courts, civil procedural law, and relevant judicial decisions. Secondary legal materials include books, journal articles, research findings, and scholarly opinions discussing waqf law, civil procedural law, religious courts, evidentiary law, and procedural justice. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources that assist in explaining legal terminology.

The collection of legal materials was conducted through library research and the examination of judicial decisions. The collected legal materials were then analyzed using a qualitative-prescriptive method by interpreting legal norms and judicial reasoning to assess whether the process of resolving waqf disputes reflects procedural justice. This analysis is directed toward formulating arguments concerning the importance of proving waqf pledges and affirming the legal standing of nazhir in the settlement of waqf disputes before the Religious Courts.

Result And Discussion

1. Evidentiary Proof of the Waqf Pledge as the Basis for Determining the Status of the Disputed Object

The evidentiary proof of the waqf pledge constitutes the principal aspect of waqf disputes before the Religious Courts. The waqf pledge forms the basis for the creation of the legal act of

waqf. Through the pledge, the waqif expresses the intention to separate or transfer part of his or her property for use in religious purposes or public welfare in accordance with Sharia principles. Therefore, if the waqf pledge can be validly proven, the disputed object has a legal basis to be treated as waqf property.

Normatively, the principal legal basis governing waqf in Indonesia is Law Number 41 of 2004 concerning Waqf, which remains in force in the JDIH BPK database. Within the legal construction of waqf, the pledge occupies an important position because it represents the declaration of intention by the waqif that gives rise to legal consequences concerning the status of waqf property. The Waqf Law stipulates that the waqf pledge shall be declared by the waqif before the nazhir in the presence of the Official for the Preparation of the Deed of Waqf Pledge and witnessed by two witnesses, and such pledge shall be recorded in the Deed of Waqf Pledge.

From the perspective of procedural law, the principal issue in waqf disputes is not merely whether a waqf has ever been established, but how such legal event may be proven in court proceedings. The Deed of Waqf Pledge occupies an important position as documentary evidence because it contains the intention of the waqif, the identity of the nazhir, the waqf object, and the purpose of the waqf. However, in societal practice, not all waqf transactions are conducted in an orderly administrative manner. Some waqf practices are carried out orally, based on trust, or in accordance with social traditions.

Such conditions create legal problems when the heirs of the waqif, third parties, or other parties challenge the status of the waqf object. In cases where the Deed of Waqf Pledge is

unavailable, judges cannot rely solely upon a formalistic approach. Judges must assess other forms of evidence, including witness testimony, ownership documents, the history of the object's use, evidence of management by the nazhir, and the fact that the object has long been utilized for mosques, prayer rooms, madrasahs, cemeteries, or other social purposes.

Under the theory of evidence in civil procedural law, evidence functions to convince the judge regarding the truth or falsity of a legal event. Therefore, proving the waqf pledge must be understood as a process of establishing the relationship between the intention of the waqif, the endowed object, the party entrusted with its management, and the designated purpose of the waqf property. If such a chain of facts can be proven, the status of the object as waqf property gains a stronger legal foundation.

The legal analysis demonstrates that the proof of the waqf pledge must not be understood merely as an administrative formality. The evidentiary proof of the pledge constitutes a procedural legal instrument aimed at ensuring legal certainty and safeguarding the waqf mandate. If proof is based solely on documentary completeness, waqf arrangements that have long existed socially may lose legal protection. Conversely, if proof relies only on oral acknowledgment without proper examination, the status of waqf may easily be misused. Therefore, judges must assess both documentary and non-documentary evidence proportionally.

Through the theory of procedural justice, the proof of the waqf pledge must be conducted by providing equal opportunities to all parties. The party asserting the existence of waqf must be given the opportunity to prove its claims, while the opposing

party must likewise be given the opportunity to present counter-evidence. In this manner, the resulting judgment not only possesses a legal basis but also emerges from a fair judicial process.

2. The Legal Standing of Nazhir in Waqf Disputes

The legal standing of nazhir constitutes an important issue in waqf disputes because the nazhir is the party entrusted with managing and safeguarding waqf property. Within the legal relationship of waqf, the nazhir does not merely function as an administrative manager, but also as the party responsible for ensuring the continuity of the benefits derived from waqf property.

Legally, Law Number 41 of 2004 concerning Waqf serves as the basis for regulating the elements of waqf, including the waqif, nazhir, waqf property, waqf pledge, purpose of waqf, and duration of waqf. Within this structure, the nazhir has a direct relationship with the waqf object because he or she is entrusted with managing and safeguarding the waqf property so that it continues to be utilized in accordance with the objectives of the waqif. Under the theory of legal standing, an individual or legal entity may act in legal proceedings if it possesses a legal relationship or legal interest concerning the disputed object. In waqf disputes, the nazhir possesses a legal interest because he or she is entrusted with the responsibility to protect and manage waqf property. Accordingly, the nazhir may have standing as a plaintiff when waqf property is controlled by another party, or as a defendant when accused of mismanaging waqf property.

Nevertheless, the legal standing of the nazhir must still be examined during court proceedings. Judges must assess whether

the nazhir was properly appointed in the waqf documents, listed in the Deed of Waqf Pledge, possesses administrative evidence of nazhir status, or has in fact exercised managerial functions over the waqf object. Such examination is important to prevent parties from claiming to represent waqf interests without a valid legal basis.

The legal analysis indicates that the nazhir functions as the representative of waqf property interests within judicial proceedings. Waqf property, as an object, cannot independently speak or act before the law. Therefore, the nazhir appears as the party carrying the legal interests of the waqf property, whether to defend the object against claims by other parties or to explain the history of waqf management.

However, strengthening the position of the nazhir must not disregard the principle of prudence in procedural law. The nazhir must be given the opportunity to protect waqf property, yet his or her standing must still be substantiated. If the nazhir cannot demonstrate the basis of authority, the legal standing may be challenged. Conversely, if the nazhir can establish a legal relationship with the waqf object, then he or she should be regarded as a party possessing a direct legal interest in the dispute. From the perspective of procedural justice, examining the standing of the nazhir reflects a balance between the protection of waqf property and the protection of the rights of other parties. The nazhir should not be disregarded because he or she safeguards the waqf mandate. However, the nazhir should also not be granted authority without a clear legal basis. This balance constitutes an essential element in creating a fair judicial process.

3. Procedural Justice in the Resolution of Waqf Disputes before the Religious Courts

The Religious Courts occupy an important position in the resolution of waqf disputes. Law Number 3 of 2006, which amended Law Number 7 of 1989 concerning the Religious Courts and remains in force, provides the legal basis for such jurisdiction. Within this framework of authority, waqf disputes require not only resolution based on substantive law, but also the application of fair procedural law.

Procedural justice in waqf disputes means that the adjudication process must provide adequate opportunities for all parties. The parties must be able to present arguments, submit evidence, produce witnesses, challenge opposing evidence, and obtain rational legal reasoning from the court. In waqf cases, this principle is especially important because the disputed object possesses not only economic value, but also religious, social, and public benefit values.

Ideally, waqf disputes should not immediately be treated as adversarial contests resulting merely in winners and losers. Within judicial proceedings, mediation constitutes an important stage. Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts remains in force and serves as the procedural basis for mediation in courts. In waqf disputes, mediation may provide a forum for seeking resolutions that preserve social relations, reduce family or community conflicts, and simultaneously protect the objectives of waqf.

However, if mediation fails, the adjudication process must continue through careful evidentiary examination. At this stage, judges must balance three interests. First, legal certainty

concerning the status of the waqf object. Second, protection of the rights of the litigating parties. Third, the socio-religious utility of waqf property. These three interests must not be separated because waqf disputes possess characteristics distinct from ordinary civil disputes. Under the theory of procedural justice, a fair judgment depends not only upon the content of the ruling, but also upon the quality of the adjudicative process. If judges provide equal opportunities to the parties, examine evidence objectively, properly assess the standing of the nazhir, and consider the social function of waqf property, then the process more accurately reflects procedural justice.

The legal analysis demonstrates that procedural law in waqf disputes must function as an instrument of protection rather than merely as a formal procedure. Procedural law must ensure that the waqf pledge is properly proven, that the nazhir is positioned according to his or her legal standing, and that judicial decisions do not eliminate the socio-religious objectives of waqf property.

Therefore, the resolution of waqf disputes before the Religious Courts should be directed toward a model of settlement oriented toward legal certainty, justice, and utility. Legal certainty is realized through the proof of the waqf pledge. Justice is realized through balanced procedures for all parties. Utility is realized through the protection of the social function of waqf property so that it continues to be used in accordance with the objectives of the waqf.

Conclusion

The resolution of waqf disputes before the Religious Courts cannot merely be assessed based on which party prevails or loses in

litigation, but must also be viewed from how the legal process establishes the existence of waqf, positions the parties, and protects the socio-religious objectives of waqf property. In this context, proving the waqf pledge constitutes the primary basis because the pledge represents the starting point for the creation of the legal act of waqf. If the waqf pledge can be proven through the Deed of Waqf Pledge, waqf land certificates, supporting documents, witness testimony, or factual evidence concerning the use of the waqf object within society, then the status of the waqf property acquires stronger legal certainty.

The legal standing of the nazhir also plays an important role in the dispute resolution process. The nazhir should not merely be understood as the administrative manager of waqf property, but also as the party responsible for safeguarding, defending, and ensuring that waqf property continues to be utilized in accordance with the intention of the waqif. Therefore, in waqf disputes, judges must carefully assess whether the nazhir possesses a clear legal basis to act, whether as plaintiff, defendant, or interested party. Affirming the standing of the nazhir is important to ensure that the interests of waqf property are not represented by parties lacking a legal relationship with the disputed object.

Procedural justice constitutes an essential foundation to ensure that the resolution of waqf disputes proceeds fairly and proportionally. The parties must be given equal opportunities to present arguments, submit evidence, produce witnesses, and challenge the arguments of opposing parties. Judges must also assess evidence objectively while taking into account the special character of waqf property, which possesses not only economic value, but also religious, social, and public benefit values.

Based on the foregoing discussion, procedural law in waqf disputes must function as an instrument for realizing legal certainty, justice, and utility. Legal certainty is achieved through strong proof of the waqf pledge. Justice is achieved through balanced adjudicative procedures for all parties. Utility is achieved through the protection of waqf property so that it continues to be utilized in accordance with the objectives of the waqif and does not lose its social function for society.

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