

Principles of Civil And Sharia Civil Law In The Implementation of Wakaf

Achmad Rafi Resaf Pratama^{1*}, Rusdianto Sesung¹¹Faculty of Law, Narotama University Surabaya, Indonesia

*Corresponding Author E-mail: raffiresaf22@gmail.com

Article History: Received: July 15, 2023; Accepted: November 15, 2023

ABSTRACT

Waqf is the legal act of a wakif to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. In reality, not all waqf givers understand the concept of waqf in general, this can be seen in a legal case that was decided in Civil Case Lawsuit No. 230/Pdt.G/2018/PTA.Smg. That this research aims to analyze more deeply about waqf and analyze waqf legal cases as in Civil Case Lawsuit No. 230/Pdt.G/2018/PTA.Smg. The research method in this legal research uses normative juridical methods using several approaches to make analysis easier. The formulation of the problem used in this research is the principles of civil law and civil sharia in the implementation of waqf and the application of the principles of civil law and civil sharia in the civil case lawsuit No. 230/Pdt.G/2018/Pta.Smg. The conclusion from this research is that Waqf is the legal act of a wakif to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. Inimplementation waqf, it is obligatory to follow Islamic sharia and laws and regulations regarding waqf, so that the waqf is valid in accordance with the sharia and applicable laws. That property that has been donated cannot be canceled unilaterally by the wakif, therefore it is obligatory in implementing the waqf to carry out the terms and conditions as stated in the waqf terms and laws. It is best that before implementing the waqf pledge, Nadzir should assess the economic capabilities of the wakif so that there will be no incidents like in the civil case and avoid lawsuits for canceling the waqf pledge deed.

Keywords: Waqf, Cancellation Of Waqf, Justice

1. INTRODUCTION

Waqf is the legal act of a wakif to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia (Febriansyah, 2017). That in implementing waqf, each party is obliged to pay attention to the main principles of agreements in civil law and other principles of Islamic civil law so that problems do not occur in the future. That not all waqf givers understand the concept of waqf in general, this can be seen in a legal case that was decided in Civil Case Lawsuit No. 230/Pdt.G/2018/PTA.Smg. That the Plaintiff is an elderly woman who has no husband and no children, living alone in her house located on Jl. Untung Suropati Number 68 Surakarta, that Defendants I, II and III, who claim to be the administrators of the Al Khoir Foundation, have persuaded the Plaintiff to donate the house he lives in to them on the pretext that it is for the benefit of the foundation, and because the Plaintiff is an elderly woman who is stupid and ignorant. law, then as a result of the persuasion of Defendants I, II and III, the Plaintiff finally

donated 1/3 of his house to Defendants I, II and III without realizing and knowing what waqf actually was and what the legal consequences were. That the Defendant became a wakif on Wednesday 15 Shawwal 1432 H or 14 September 2011 AD based on the Deed of Waqf Pledge No. Kk.11.31.4/W.2/09/2011 has donated to Defendant I as Nadzir a plot of land and buildings as stated in SHM 1111 with an area of \pm 294 M2 located at Pasar Kliwon, Kel. Kliwon Market, Pasar Kliwon District, Surakarta City.

Whereas based on the Waqf Pledge Deed, Waqf Land Certificate Number 11 has been issued in the names of Defendant I, Defendant II and Defendant III. That the Plaintiff feels that something is wrong because Defendants I, II and III have not contacted the Plaintiff again to hand over 2/3 of the Plaintiff's rights. on the waqf object. That the Plaintiff finally received information from the management of the Al Khoir Foundation that Defendants I, II and III were not administrators of the Al Khoir Foundation as admitted by Defendants I, II and III to the Plaintiff. That after receiving a copy of the waqf pledge from the KUA Pasar Kliwon, the Plaintiff was surprised because the Plaintiff was so naive and trusted Defendants I, II and III at that time, the Plaintiff was completely unaware that the deed of waqf pledge which he had signed earlier was that Defendants I, II and III had finally submit SHM Waqf Land Certificate No. 11 to the Plaintiff, where in the Waqf Land Certificate No. 11, the object belonging to the Plaintiff, namely SHM 1111, has been renamed in the names of 3 people, namely Defendant I, Defendant II and Defendant III, without mentioning the existence of the Al Khoir foundation at all. It turns out that Defendants I, II and III are not administrators of the Al Khoir Foundation as admitted to the Plaintiff. This act is a series of lying words which are an element of fraud. That from the persuasion (a series of lying words) carried out by Defendants I, II and III to the Plaintiff, where initially the Plaintiff only agreed to donate 1/3 (one third) of the SHM 1111 object, but in reality the waqf pledge that was issued was to show waqf for all SHM 1111 objects so that the Plaintiff has suffered losses due to actions (fraud) committed by Defendants I, II. That the inequality of Waqf Recipients (Nadzir) contained in the Waqf Pledge Deed No. Kk.11.31.4/W.2/09/2011 with the Waqf Recipient (Nadzir) contained in the Waqf Land Certificate No. 11 caused defects in the waqf process for object SHM 1111. That the Plaintiff filed a lawsuit to cancel the waqf pledge at the Surakarta Religious Court was caused by the actions of Defendants I, II and III who had committed fraud against the Plaintiff, causing the Plaintiff to suffer losses. that from this case, it is necessary to analyze further regarding the application of civil law principles in the implementation of waqf.

2. RESEARCH METHODS

This research uses a type of normative legal research, namely research that is able to provide a systematic explanation by emphasizing regulations that regulate legal categories in order to analyze the interrelationship or relationship between regulations/rules (Peter Mahmud Marzuki, *Legal Research*: 2011). The approaches used in legal writing are the statutory approach, conceptual approach and case approach. The drafter, using this legal approach, seeks legal ratios in the formation of waqf regulations and civil procedural law regulations. The conceptual approach is related to writing techniques that study the legal ratio and ontological basis of a law so that the drafter is able to grasp the philosophical content behind the law, then the drafter can conclude whether there is a philosophical conflict between the law and the issue at hand. . In this research, the author uses various rules or sources of legal material, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Law No. 41 of 2004 concerning Waqf. Secondary legal materials in this legal research consist of scientific books in the field of law, papers, scientific journals and scientific articles. To make writing and discussion easier, the problem is narrowed down as in the formulation of the problem that will be discussed in this writing, namely:

1. Principles of Civil and Sharia Civil Law in the Implementation of Waqf
2. Application of Sharia Civil and Civil Law Principles in Civil Cases Lawsuit No. 230/Pdt.G/2018/PTA.Smg.

3. RESULTS AND DISCUSSION

Principles of Civil and Sharia Civil Law in the Implementation of Waqf

Waqf comes from Arabic, namely from the words waqafa-yaqifu-waqf, which means "doubt, stop, stop, understand, prevent, hold, say, show, put, pay attention, serve and remain standing" (Munawwir, 1984). Quoted from the book *Ahkam al-Waqf*, Abdul Wahhab Khallaf defines waqf as holding something that is sensory (hissi) and meaningful. The word waqf is used for its object, namely in the sense of something that is held. Then from the book *Subul as-Salam*, Muhammad Ibn Ismail as-San'any said that waqf means holding property that might be useful without spending it or destroying the object that is used for good (Prihatini, 2005). In the early days of the spread of Islam, waqf was closely identified with waqf for immovable objects such as land and buildings used for the establishment of mosques, Islamic boarding schools, madrasas and hospitals. This really helped the preachers/clerics/teachers at that time to preach Islamic teachings. In the early history of waqf, Allah SWT stated that the Kaaba was the first place of worship for



humans. According to the opinion that the Kaaba was built by the Prophet Adam, and its rules were established by the Prophet Abraham and Prophet Ismail, and preserved by the Prophet Muhammad SAW, then the Kaaba is the first waqf known to humans and used for religious purposes. . . . Meanwhile, according to the opinion that it was the Prophet Abraham who built the Kaaba, the Kaaba was the first waqf in Islam, namely the true religion of Prophet Abraham, or the first waqf for the benefit of the Islamic religion.

Apart from the differences above, according to Mundzir Qahaf, waqf in the Islamic era began at the same time as the beginning of Muhammad's prophetic period in Medina, which was marked by the construction of the Quba' Mosque, namely a mosque built on the basis of piety from the very beginning, so that it became the first waqf in Islam for religious interests. This incident occurred after the Prophet moved to Medina and before moving to the house of his uncle who came from Bani Najjar. This was followed by the construction of the Nabawi Mosque which was built on the land of orphans from the Bani Najjar after being bought by the Prophet for eight hundred dirhams. Thus, the Messenger of Allah donated land for the construction of a mosque. Meaning: From Ibn Umar r.a. that Umar actually obtained land in Khaibar, then Umar said: O Messenger of Allah, I have obtained land in Khaibar, and I have never obtained property more valuable than that land, so what do you order me to do? Then the Messenger of Allah said: If you want to hold on to its origins and give alms (benefits), then Umar gave it alms, for this reason the land was not sold, not given away and not inherited. The alms are intended for poor people, close family members, freed slaves, for entertaining guests and for people who run out of supplies on a journey. There is nothing wrong with the person who controls it (nadzirnya) eat some of it well and feed it (to his family) provided that it is not used as property. HR. Pilgrims. The word (قَفَان) al-waqf) is the word mashdar from the root word قَف which means (أنتى) al-habsi). In the al-Wasiṭ dictionary it is stated that (انموع) al-man"u) meaning to prevent or forbid. In the Maliki Maḏhab Fiqh books, the word "habs" is mostly used, which means the same as waqf (waqf), the word habs, the plural is hubus or ahbas, that is where the vocabulary habous in French comes from (Abd.Shomad: 2010). The meaning of stopping, if it is related to the science of reading the Koran (the science of recitation) is the procedure for pronouncing the letters, where to start and where to stop.

Waqf in the sense of tajwid science contains the meaning of a stop sign (Manan & Sh, 2017). The meaning of waqf can also mean staying in a place if it is linked to the waqf that is in the performance of Hajj. Wukuf (resting) in Arafah on the 9th of Ḍulhijjah. However, what is meant here is stopping, withholding or waqf in relation to property in the eyes of Islamic law, often called waqf worship or habs. Although there are differences in interpretation according to the term, it is



agreed that the meaning of waqf is to retain its substance and take advantage of the results or to retain its substance and donate its benefits. In Surah QS. Al-Jin: 18, Allah SWT said that "Indeed the mosques belong to Allah Ta'ala". Further, in some hadiths that are quoted about waqf, among them are:

1) HR. Al-Bukhari

Anas bin Malik r.a. narrates that: "After the Messenger of Allah, peace be upon him. arrived in Medina, he ordered to build a mosque. The Messenger of God, may God bless him and grant him peace, said: Hey Bani An-Najjar: Will you sell this garden (land) of yours by determining the price? Bani Najjar replied: No, for the sake of Allah, we do not sell it except (we only expect) reward from Allah (by donating it). Then the Messenger of Allah, peace and blessings be upon him, ordered to dig the graves of the polytheists and former buildings on the land, to level the land. They put date trees as a sign of the direction of the mosque's Qibla."

2) HR. Al-Bukhari

Anas bin Malik r.a. narrates that: "After the Messenger of Allah, peace be upon him. arrived in Medina, he ordered to build a mosque. The Messenger of God, may God bless him and grant him peace, said: Hey Bani An-Najjar: Will you sell this garden (land) of yours by determining the price? Bani Najjar replied: No, for the sake of Allah, we do not sell it except (we only expect) reward from Allah (by donating it). Then the Messenger of Allah, peace and blessings be upon him, ordered to dig the graves of the polytheists and former buildings on the land, to level the land. They put date trees as a sign of the direction of the mosque's Qibla."

In the pre-independence period of the Republic of Indonesia, waqf institutions were often carried out by Muslim communities. This is a logical consequence of the many Islamic kingdoms in Indonesia, such as the Demak kingdom, the Pasai kingdom and so on. Even though the implementation of waqf originates from Islamic teachings, waqf seems to be the agreement of legal and cultural experts that waqf is a problem in Indonesian customary law. Because the acceptance of this waqf institution comes from a habit in the social life of Indonesian society. that there are several Dutch colonial government regulations governing waqf, namely a circular issued by the Dutch government which regulates waqf, respectively, as follows:

a. First Government Secretary Circular dated 31 January 1905 Number 435

as stated in Bijblad of 1905 Number 6196 concerning Toezicht op den bouw van Mohammedaansche Bed Huizen, the contents of which are to order the regent to make a list of Islamic houses of worship built on waqf land, so that they do not conflict with public interests such as building roads and markets.

- b. Government Secretary Circular dated 4 June 1931 Number 1361/A as stated in Bijblad of 1931 Number 12573 concerning Toezicht van de regering op Muhammad Anche Bedehuizen, Vrijdag Diensten en wakafs. This circular letter contains provisions so that Bijblad of 1905 Number 1696 is carefully paid attention to, in order to obtain a register that is useful for obtaining legal certainty for this waqf. To donate fixed assets, permission from the regent is required who will assess the application only in terms of the location of the fixed assets and the purpose of the establishment. The Regent gave orders that the waqf he permitted be included in the list maintained by the head of the Religious Court. Each registration is notified to the Wedana Assistant for material for making a report to the Landrente Office (Agrarian Office).
- c. Circular letter of the Government secretary dated 24 December 1934 Number 3088/A as contained in Bijblad 1934 of 1934 Number 13390 concerning Toezicht van de regeering op Mohammedaansche bedehuizen vrijdag diensten en wakafs. This circular letter only confirms what was stated in the previous circular letter, the contents of which give authority to the Regent to resolve cases, if there is a dispute or dispute regarding the waqf lands.
- d. Circular Letter of the Government Secretary dated 27 May 1935 Number 1273/A as in Bijblad Year 1935 Number 13480. This circular letter also has the character of confirmation of previous circular letters, namely regarding procedures for implementing waqf as a realization of the provisions of Bijblad Number 6169/1905 which requires registration of waqf land in the colonies, especially in Java and Madura.

The legal conditions of Waqf are according to Sharia when the pillars and conditions have been met. The pillars of waqf according to majority Fiqh are of four types, namely Wakif (the person who makes the waqf, Mauquf'alaih (the party entrusted with the waqf), Mauquf (property that is waqf) and Sighat or Ikrar (a statement or pledge of waqf as a will to make a waqf). As for the conditions -conditions of waqf, i.e. For people who have waqf (wakif), people who receive waqf benefits (Mauquf'alaih), Conditions of things that are waqf (mauquf), Conditions of waqf sigat.

Waqf in national legal regulations is regulated in Law no. 41 of 2004 concerning Waqf, the definition of waqf in the WAKAF Law is the legal action of a wakif to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. The legal subject of the waqf giver, called the Wakif, is the party who donates his or her property. Types of Wakif

include individuals, organizations, legal entities. Individual waqifs can only make waqf if they meet the following requirements:

- a. mature;
- b. common sense;
- c. not prevented from doing legal acts; and
- d. legal owner of waqf property.

The Waqf Pledge is a verbal and/or written statement of the wakif's will to Nazhir to donate his property. The waqf pledge is carried out by the Wakif to Nadzir in the presence of PPAIW witnessed by 2 (two) witnesses, stated orally and/or in writing and stated in the waqf pledge deed by PPAIW. Nazhir is the party who receives waqf property from the Wakif to be managed and developed according to its intended purpose. Nazhir includes individuals, organizations or legal entities. The object of waqf is Waqf property is property that has long durability and/or long-term benefits and has economic value according to sharia which is donated by the Wakif. Waqf assets consist of immovable and movable objects. Immovable objects include rights to land in accordance with the provisions of applicable laws and regulations, whether registered or unregistered, buildings or parts of buildings standing on land, plants and other objects related to land, ownership rights to apartment units in accordance with with the provisions of applicable laws and regulations, other immovable objects in accordance with sharia provisions and applicable laws and regulations. Waqf Pledge Deed Making Official, hereinafter abbreviated as PPAIW, is an authorized official appointed by the Minister to make waqf pledge deeds. To guarantee the validity of the waqf deed, it is necessary that the Witness in the waqf pledge must meet the requirements of being an adult, of the Islamic faith, of sound mind, and not to be prevented from carrying out legal acts. The waqf pledge is stated in the waqf pledge deed which at least contains the name and identity of the Wakif, the name and identity of the Nazhir. data and information on waqf assets, allocation of waqf assets, and term of waqf. The Indonesian Waqf Board is an independent institution to develop waqf in Indonesia. The validity of waqf as in the Waqf Law in Article 2 Waqf is valid if it is implemented according to sharia, with regard to the binding force of the waqf act as in Article 3 of the Waqf Law that Waqf that has been pledged cannot be cancelled.

Waqf is implemented by fulfilling waqf elements such as Wakif, Nazhir, Waqf Assets, Waqf Pledge, allocation of waqf assets, and waqf period. In order to achieve the goals and functions of waqf, waqf assets can only be used for religious facilities and activities, educational and health facilities and activities, assistance to the poor, abandoned children, orphans,



scholarships, progress and improvement of the community's economy, advancement of other general welfare. which does not conflict with sharia and statutory regulations. The prohibition on waqf is that it is prohibited from being used as collateral, confiscated, gifted, sold, inherited, exchanged or transferred in other forms of transfer of rights. Nazir is obliged to manage and develop waqf assets in accordance with their objectives, functions and designation. That waqf objects that have been donated may become the object of dispute if there are problems in the procedures or substance of the waqf which violate the sharia and regulations. That not all waqf givers understand the concept of waqf in general, this can be seen in a legal case that was decided in Civil Case Lawsuit No. 230/Pdt.G/2018/PTA.Smg.

That the Plaintiff is an elderly woman who has no husband and no children, living alone in her house located on Jl. Untung Suropati Number 68 Surakarta, that Defendants I, II and III, who claim to be the administrators of the Al Khoir Foundation, have persuaded the Plaintiff to donate the house he lives in to them on the pretext that it is for the benefit of the foundation, and because the Plaintiff is an elderly woman who is stupid and ignorant. law, then as a result of the persuasion of Defendants I, II and III, the Plaintiff finally donated 1/3 of his house to Defendants I, II and III without realizing and knowing what waqf actually was and what the legal consequences were. That the Defendant became a wakif on Wednesday 15 Shawwal 1432 H or 14 September 2011 AD based on the Deed of Waqf Pledge No. Kk.11.31.4/W.2/09/2011 has donated to Defendant I as Nadzir a plot of land and buildings as stated in SHM 1111 with an area of ± 294 M2 located at Pasar Kliwon, Kel. Kliwon Market, Pasar Kliwon District, Surakarta City. Whereas based on the Waqf Pledge Deed, Waqf Land Certificate Number 11 has been issued in the names of Defendant I, Defendant II and Defendant III. That the Plaintiff feels that something is wrong because Defendants I, II and III have not contacted the Plaintiff again to hand over 2/3 of the Plaintiff's rights. on the waqf object. That the Plaintiff finally received information from the management of the Al Khoir Foundation that Defendants I, II and III were not administrators of the Al Khoir Foundation as admitted by Defendants I, II and III to the Plaintiff. That after receiving a copy of the waqf pledge from the KUA Pasar Kliwon, the Plaintiff was surprised because the Plaintiff was so naive and trusted Defendants I, II and III at that time, the Plaintiff was completely unaware that the deed of waqf pledge which he had signed earlier was that Defendants I, II and III had finally submit SHM Waqf Land Certificate No. 11 to the Plaintiff, where in the Waqf Land Certificate No. 11, the object belonging to the Plaintiff, namely SHM 1111, has been renamed in the names of 3 people, namely Defendant I, Defendant II and Defendant III, without mentioning the existence of the Al Khoir foundation at all.



It turns out that Defendants I, II and III are not administrators of the Al Khoir Foundation as admitted to the Plaintiff. This act is a series of lying words which are an element of fraud. That from the persuasion (a series of lying words) carried out by Defendants I, II and III to the Plaintiff, where initially the Plaintiff only agreed to donate 1/3 (one third) of the SHM 1111 object, but in reality the waqf pledge that was issued was to show waqf for all SHM 1111 objects so that the Plaintiff has suffered losses due to actions (fraud) committed by Defendants I, II. That the inequality of Waqf Recipients (Nadzir) contained in the Waqf Pledge Deed No. Kk.11.31.4/W.2/09/2011 with the Waqf Recipient (Nadzir) contained in the Waqf Land Certificate No. 11 caused defects in the waqf process for object SHM 1111. That the Plaintiff filed a lawsuit to cancel the waqf pledge at the Surakarta Religious Court was caused by the actions of Defendants I, II and III who had committed fraud against the Plaintiff, causing the Plaintiff to suffer losses.

Application of Principles of Civil And Sharia Civil Law In Civil Lawsuit Case No. 230/PDT.G/2018/PTA.SMG.

Whereas a land dispute originating from waqf according to Article 62 (1) of the Waqf Law states that resolution of waqf disputes is achieved through deliberation to reach consensus. If dispute resolution is unsuccessful, the dispute can be resolved through mediation, arbitration or court. That this research is focused on the analysis of the Civil Case Lawsuit No. 230/Pdt.G/2018/PTA.Smg. The case position of the civil lawsuit is that the Plaintiff is an elderly woman who has no husband and no children, living alone in her house located on Jl. Untung Suropati Number 68 Surakarta, that Defendants I, II and III, who claim to be the administrators of the Al Khoir Foundation, have persuaded the Plaintiff to donate the house he lives in to them on the pretext that it is for the benefit of the foundation, and because the Plaintiff is an elderly woman who is stupid and ignorant. law, then as a result of the persuasion of Defendants I, II and III, the Plaintiff finally donated 1/3 of his house to Defendants I, II and III without realizing and knowing what waqf actually was and what the legal consequences were.

That the Defendant became a wakif on Wednesday 15 Shawwal 1432 H or 14 September 2011 AD based on the Deed of Waqf Pledge No. Kk.11.31.4/W.2/09/2011 has donated to Defendant I as Nadzir a plot of land and buildings as stated in SHM 1111 with an area of ± 294 M2 located at Pasar Kliwon, Kel. Kliwon Market, Pasar Kliwon District, Surakarta City. Whereas based on the Waqf Pledge Deed, Waqf Land Certificate Number 11 has been issued in the names of Defendant I, Defendant II and Defendant III. That the Plaintiff feels that something is wrong because Defendants I, II and III have not contacted the Plaintiff again to hand over 2/3 of the Plaintiff's rights. on the waqf object. That the Plaintiff finally received information from the



management of the Al Khoir Foundation that Defendants I, II and III were not administrators of the Al Khoir Foundation as admitted by Defendants I, II and III to the Plaintiff. That after receiving a copy of the waqf pledge from the KUA Pasar Kliwon, the Plaintiff was surprised because the Plaintiff was so naive and trusted Defendants I, II and III at that time, the Plaintiff was completely unaware that the deed of waqf pledge which he had signed earlier was that Defendants I, II and III had finally submit SHM Waqf Land Certificate No. 11 to the Plaintiff, where in the Waqf Land Certificate No. 11, the object belonging to the Plaintiff, namely SHM 1111, has been renamed in the names of 3 people, namely Defendant I, Defendant II and Defendant III, without mentioning the existence of the Al Khoir foundation at all.

It turns out that Defendants I, II and III are not administrators of the Al Khoir Foundation as admitted to the Plaintiff. This act is a series of lying words which are an element of fraud. That from the persuasion (a series of lying words) carried out by Defendants I, II and III to the Plaintiff, where initially the Plaintiff only agreed to donate 1/3 (one third) of the SHM 1111 object, but in reality the waqf pledge that was issued was to show waqf for all SHM 1111 objects so that the Plaintiff has suffered losses due to actions (fraud) committed by Defendants I, II. That the inequality of Waqf Recipients (Nadzir) contained in the Waqf Pledge Deed No. Kk.11.31.4/W.2/09/2011 with the Waqf Recipient (Nadzir) contained in the Waqf Land Certificate No. 11 caused defects in the waqf process for object SHM 1111. That the Plaintiff filed a lawsuit to cancel the waqf pledge at the Surakarta Religious Court was caused by the actions of Defendants I, II and III who had committed fraud against the Plaintiff, causing the Plaintiff to suffer losses. That the panel of judges at the Semarang high court stated in their legal considerations that:

Considering, that because Defendants I, II and III have denied the arguments of the Plaintiff's lawsuit which accuses the Defendants of committing acts containing elements of deceit in the SHM 1111 waqf process, then in accordance with the provisions of Article 163 HIR the Plaintiff is burdened with the obligation of Considering Evidence, that it turns out that during the trial the Plaintiff was unable to submit evidence to confirm the arguments of his claim which were denied by the Defendants, therefore the Plaintiff's claim as stated in petitem point 2 must be declared not proven and must therefore be rejected. Considering, that because the Plaintiff's petitem claim point 2 is rejected, the Plaintiff's claim in the petitem points 3, 4, 5, 6 and 7 must also be rejected Considering, that regarding the letter of evidence P.6 in the form of a photocopy of the Waqf Land Disposal Statement made by the Daily Management Al Khoir Mosque, the Panel of Judges at the Appellate Level is of the opinion that the letter of evidence cannot cancel the waqf process which has given birth to waqf land certificate Number 11. Considering, that based on the



Subsidiary's petition, the Court should make another decision that is as fair as possible in the correct court (*ex aequo et bono*) The Panel of Judges at the Appellate Level is of the opinion that it is necessary to consider the fate of the Plaintiff as an elderly woman who lives alone without a husband and children who has donated her only assets in the form of land and buildings as stated in SHM 1111. With the waqf of all her assets then The Plaintiff no longer has a residence/residence because all of his assets in the form of land and buildings have changed status as waqf assets with Waqf Land Certificate Number 11. Considering that the facts show that the Plaintiff is still occupying the land and buildings which have changed status as waqf objects, this situation will continue without any solution to overcome it, on the one hand Defendants I, II and III as Nadzir have not/did not dare to act to manage/utilize the waqf objects for the Al Khoir mosque facilities on the grounds that the Plaintiff as wakif still occupies the objects the waqf has been donated, on the other hand, the Al Khoir Mosque Management as Mauquf 'alaihi has not been able to receive the benefits of the waqf objects for the needs/facilities of the Al Khoir mosque.

Considering, that to overcome a situation like this, the Panel of Judges at the Appellate Level is of the opinion that there needs to be a solution that is acceptable to all parties and that this solution must not violate Islamic law. Considering, that in order to prevent/avoid the Plaintiff from living in limbo without a permanent place of residence to live out the remainder of his life, the Panel of Judges at the Appellate Level needs to determine and permit the Plaintiff to live/reside in the waqf object which has been donated until the time limit he has his own residence or if he is still unable to obtain his own residence then he may remain in the waqf object until the end of his life.

Considering, that in order for the waqf object/object to be managed by Nazhir for the purposes of the Al Khoir mosque facilities, for the sake of legal certainty it is necessary to determine that the Plaintiff was given permission to occupy the waqf property for a maximum of 1/3 (one third) of the waqf property, while the remaining 2/3 could be managed for the purposes of the Al Khoir mosque facilities; that the solution described above, according to the Panel of Judges at the Appellate Level, does not conflict with sharia law because 1/3 (one third) of the waqf property occupied by the Plaintiff will still have the status of a waqf object if the Plaintiff no longer occupies the waqf object because the Plaintiff has moved or the Plaintiff dies/passes away then 1/3 of the waqf objects can be directly managed by Nazhir for the purposes of the Al Khoir mosque facilities; that based on the considerations outlined above, the Panel of Judges at the Appellate Level in its decision will include a dictum which states that they will grant permission to the Plaintiff to occupy 1/3 (one third) of the waqf property with waqf land certificate number 11 until the time limit for the plaintiff to have their own residence or until the Plaintiff dies, based on the



additional legal considerations outlined above, the decision of the Surakarta Religious Court Number 0815/Pdt.G/2017/PA.Ska dated 14 March 2018 M. coincides with 26 Jumadil Akhir 1439 H. can be strengthened by revising the ruling so that it reads as stated in the ruling on this appeal. The panel of judges at the Semarang high court has decided as in the verdict, namely:

Judge

1. Declare that the Appellant's appeal request is acceptable;
2. Strengthening the Decision of the Surakarta Religious Court Number: 0815/Pdt.G/2018/Ska dated March 14 2018 AD to coincide with Final Jumadil 26 1439 Hijriyah with improvements to the decision so that it reads as follows:

In Exception:

- Rejecting the exceptions of Defendants I, II and III;

In the Main Subject:

- Reject the Plaintiff's claim in its entirety;
- Determine granting permission to the Plaintiff to live/occupy 1/3 (one third) of the waqf property with waqf land certificate Number 11 until the time limit for the Plaintiff to obtain his own residence or until the time limit for the Plaintiff's death;
- Sentenced the Plaintiff to pay the costs of this case in the amount of Rp. 1,021,000,- (one million twenty one thousand rupiah);
- Sentenced the Appellant to pay court costs at the appeal level in the amount of Rp. 150,000,- (one hundred and fifty thousand rupiah);

That the panel of judges really applies justice in civil cases in the decision of the Surakarta Religious Court Number 0815/Pdt.G/2017/PA.Ska which can be seen in the latest verdict formulation, namely that the waqf giver can still occupy 1/3 of the object that has been donated up to the limit. when the plaintiff obtains his own residence or dies. That in the decision of the Surakarta Religious Court, the panel of judges did not provide justice but only legal certainty regarding the non-acceptance of the plaintiff's claim, which means that they only looked at the regulations regarding waqf which state that objects that have been donated cannot be withdrawn/canceled. Whereas the legal construction of waqf in the form of a pledge is not an agreement that can be cancelled, however, the Plaintiff's ignorance of the law cannot be a reason for canceling a waqf, so that the waqf object in the form of freehold land remains valid. When making a decision, a judge must not only look at the law but must also ask his conscience by paying attention to justice and expediency when the decision has been handed down.

The result of a judge's decision that only applies the law without using his conscience will result in a failure to provide justice and benefit, even though the judge's decision (verdict) is actually made to resolve a case or dispute within the framework of upholding law and justice (HM. Soerya Respationo: 2013). Certainty and justice are basic values regarding what we want from the existence of law. Law with values will realize that its presence is to protect and promote the values that society upholds. The existence of these values is the basis for validating the presence and operation of the law. Therefore, the existence of these two basic legal values should ideally complement each other and not exclude each other. Prioritizing one of the basic legal values over another will result in the emergence of tension (spanning) between each of these legal values and will at the same time interfere with the objectives and enforcement of the law itself. Justice is often discussed as relative in nature, including legal justice, but there are figures who try to define and provide measures or indicators of justice itself. Some figures who are no longer foreign are Aristotle, who is known for his theory of justice. Aristotle's theory of justice is still classified into legal justice, commutative justice and distributive justice. In the author's opinion, there is only one Aristotelian theory of justice that can be a benchmark or indicator to use as a tool for analyzing this decision, namely the theory of legal justice. However, it cannot be denied that the human sense of justice is always relative in nature, because the sense of justice cannot be separated from the involvement of the human person as a legal subject, whereas humans find themselves within a framework of values, both the values they have acquired from birth and the values they have acquired. because of the learning process (Budiono Kusumohamidjojo: 1999).

According to Jeremy Bentham, who is known as a figure in this school of thought and known as individual utilitarianism, the law aims to ensure as much happiness as possible for as many people as possible. The flow of utilitarianism was further developed by John Stuart Mill who discussed two basic ideas about utility, first, a normative basis in the principle of utility (usefulness) and second, a psychological basis in human nature. In the normative principle of utility (usefulness) an action is considered good if it is intended to seek happiness and avoid painful and bad things. The basis of psychological principles comes from the belief that all people have a basic desire to unite and live in harmony with fellow humans (Sonny Keraf: 2002). That the panel of judges was correct in making their decision and in this case, their sense of concern and upholding justice for the plaintiff was implemented properly and correctly. It is best that before implementing the waqf pledge, Nadzir should assess the economic capabilities of the wakif so that there will be no incidents like in the civil case and avoid lawsuits for canceling the waqf pledge deed.



4. CONCLUSION

Waqf is the legal act of a wakif to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. In implementing waqf, it is obligatory to follow Islamic sharia and statutory regulations regarding waqf, so that the waqf is valid in accordance with the sharia and applicable laws.

That property that has been donated cannot be canceled unilaterally by the wakif, therefore it is obligatory in implementing the waqf to carry out the terms and conditions as stated in the waqf terms and laws. It is best that before implementing the waqf pledge, Nadzir should assess the economic capabilities of the wakif so that there will be no incidents like in the civil case and avoid lawsuits for canceling the waqf pledge deed.

REFERENCES

- Ambas, Abbas. (2014), Development of Waqf Management in Indonesia: Potential and Challenges, *Islamic Guidance Journal* 7 (4)
- Febriansyah, F. I. (2017). Compilation of Islamic Law as the Foundation for Education in the Context of Religious Life. *EDUKASI: Jurnal Pendidikan Islam (e-Journal)*, 5(2), 80–94.
- Fuadi, Nasrul Fahmi Zaki (2018), Waqf as an Economic Instrument for Islamic Development, Surabaya: *Economica: Journal of Islamic Economics*—Volume 9, Number 1
- Hermawan, Wawan (2014), Legal Politics of Waqf in Indonesia, Bandung: *Journal of Islamic Religious Education- Ta'lim* Vol 12
- Kasdi, Abdurrohman (2021), *Waqf Fiqh From Classical Waqf to Productive Waqf*, Yogyakarta : Idea Press
- Kencana, Ulya (2017), *Indonesian Waqf Law: History, Legal Basis and Comparison between Western, Customary and Islamic Law*, Malang: Setara Press
- Manan, H. A., & Sh, S. (2017). *Aneka masalah hukum perdata Islam di Indonesia*. Prenada Media.
- Megawati, Devi. (2014). Management of Productive Waqf Development in Pekanbaru. *Journal of Islamic Law*.
- Rosalinda (2016), **Productive waqf management, Depok:**Raja Grafindo Persada
- Supani (2023), *Development of Waqf Law in Indonesia: Theory and Practice*, Jakarta: Prenada Media
- Sulistiani, Siska Lis (2022), *Cash waqf: management in Islamic law and positive law in Indonesia*, Bandung:UPI Press.
- Sulistiani, Siska Lis (2017), *Waqf law reform in Indonesia*, Bandung: Refika Aditama.

