

Polarization of Judge Considerations in Waqf Disputes at Aceh's Syar'iyah Court

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Abstract

The Waqf Law and the Compilation of Islamic Law emphasize the importance of peace in resolving waqf disputes. However, many disputes in Aceh are resolved through Sharia Court judges, often leading to a win-lose solution. This study aims to answer three questions: 1) the forms of wakafan dispute cases involving nazirs in Aceh, 2) the factors behind parties resolving disputes at the Sharia Court, and 3) the considerations of Sharia Court judges in resolving waqf disputes. The study found three models of wakafan disputes in the Sharia Court: 1) party position, 2) waqf assets, and 3) productive and unproductive nature. Special authority for judges in resolving waqf disputes can help maintain integrity and improve management of waqf assets.

Keywords: *Judge's Consideration; Alternative Dispute Resolution; Waqf.*

Abstrak

Undang-Undang Wakaf dan Kompilasi Hukum Islam menekankan pentingnya perdamaian dalam penyelesaian sengketa wakaf. Namun, banyak perselisihan di Aceh yang diselesaikan melalui hakim Pengadilan Syariah, sehingga sering kali menghasilkan solusi menang-kalah. Penelitian ini bertujuan untuk menjawab tiga pertanyaan: 1) bentuk-bentuk kasus sengketa wakaf yang melibatkan nazir di Aceh, 2) faktor-faktor yang melatarbelakangi para pihak menyelesaikan sengketa di Pengadilan Syariah, dan 3) pertimbangan hakim Pengadilan Syariah dalam menyelesaikan sengketa wakaf. Kajian ini menemukan tiga model sengketa wakaf di Pengadilan Syariah: 1) kedudukan pihak, 2) harta wakaf, dan 3) bersifat produktif dan tidak produktif. Kewenangan khusus hakim dalam menyelesaikan sengketa wakaf dapat membantu menjaga integritas dan meningkatkan pengelolaan harta wakaf.

Kata kunci: Pertimbangan hakim; alternatif penyelesaian sengketa; wakaf



INTRODUCTION

This article explores the endeavors of judges from the Sharia Court in Aceh to enforce endowment regulations (waqf regulations) while resolving waqf disputes involving trustees (*nazir*) effectively. The reason behind this study stems from the stipulation set forth in Law No. 41 of 2004, concerning Endowment and the Compilation of Islamic Law. According to this legislation, the resolution of waqf disputes must prioritize the principle of peace, with the ultimate aim of attaining a win-win solution. (A. Hamid, 2018). However, in the implementation process, numerous conflicts regarding endowments (waqf) in Aceh continue to be settled by Sharia Court judges, leading to win-lose solutions (Ali and Heryani, 2014; Mahrus, 2016).

From various decisions of the Shariah court judges, a noteworthy concern arises subsequently when there are differing decisions between the first level Shariah court decision and the decision of the Shariah court in Aceh. In these cases, it is observed that the factual events, legal aspects, disputed matters, and parties involved generally remain the same (A, J and H, 2019). One instance highlighting this issue is the decision of Aceh Sharia Court, which overturned the ruling of Bireuen Sharia Court in Decision Number 0190/Pdt.G/206/Ms.Bir on November 24, 2016. The case, which was initially won on the side of the Defendant by the first level (Bireuen Sharia Court), ultimately shifted to the side of the Plaintiff/Appellant at the appellate level (Fatahillah, 2019). The considerations of the panel of judges of Bireuen Sharia Court have been strongly refuted by Aceh Sharia Court, stating that the formal evidence taken into account by Bireuen Sharia Court regarding the plaintiff who lacks legal standing in the lawsuit could not be granted. Differences in judicial decisions have also surfaced within the rulings of Aceh Sharia Court, where a decision made by Banda Aceh Sharia Court (No. 194/Pdt.G/2016/MS.Bna) concerning material evidence was nullified. Banda Aceh Sharia Court had concluded that the objected item constituted waqf land. In a recent development, Aceh Sharia Court has overturned a previous decision, asserting that the disputed object cannot be classified as waqf land. The court's ruling was based on the absence of substantial formal evidence to support such a classification (Rahmawati and Surianto, 2020).

The author assumes that the differences in decisions considered by judges in attempting to resolve the waqf dispute stem from the freedom of judges in resolving a case. This autonomy is primarily derived from the understanding and interpretation of judges towards legislation and the factual events being handled. The understanding and interpretation of judges, as exemplified in the aforementioned case, have formed a legal framework that reflects the paradigm of legal thinking by judges when adjudicating a case, particularly in land waqf disputes (Mukarromah, 2017). The paradigm of the judge's thinking is realized after observing a truth solely through formal evidence. There is no denying that in general civil disputes, it is imperative to ensure that the efforts made must be aligned with formal truth (Makhrus, 2019). As a consequence, judges take a passive approach to considering their opinions. Even though the judge is aware of the parties'

attempts to conceal facts, the scope of the judge's investigation is limited to the information provided by the parties themselves (Obaidullah *et al.*, 2012).

In light of the aforementioned issue, when confronted with the conflict between the provisions of Law No. 41 of 2004 and the Islamic Law Compilation (KHI), as well as its realization through the jurisprudence of the Sharia Court (both at the first and appellate levels), it becomes apparent that the jurisprudence of the Sharia Court does not primarily focus on the aspect of peace in resolving disputes (Fadhilah, 2011). Even judges in some Sharia Courts in Aceh tend to be passive in finding evidence related to the settlement of waqf assets disputes. These judges seem more inclined to prioritize formal evidence while neglecting the evaluation of the underlying substance of the issue at hand. Furthermore, it seems that certain decisions made by Sharia Courts in relation to disputes over waqf land have not been adequately founded on careful deliberations that prioritize the protection of waqf assets, the validity of evidence, and fairness in dispute resolution (Aini, 2019).

In light of the aforementioned issue, this study aims to examine the Polarization of Judges' Consideration in Resolving Waqf Disputes in the Syariah Court in Aceh. The primary concern is subsequently broken down into several research questions, which are: 1) What are the various forms of waqf dispute cases involving *nazir* in Aceh? 2) What are the underlying factors that drive the parties to resolve waqf disputes in the Sharia Court in Aceh? 3) How do Shariah court judges consider this in their attempts to resolve waqf disputes in Aceh? This study is normative legal research. Therefore, to address the issues raised, a qualitative method and a case approach are employed in this article (Supriyati, 2015). Data sources were obtained through field research and library research methods, resulting in a combination of primary sources, secondary sources (both primary and secondary materials), and tertiary sources (Dimiyati, 2016). This study employs the technique of inductive analysis; each data analysis result is subsequently interpreted in a descriptive form with references to relevant theories that support this study (Wijoyo *et al.*, 2016). The referred data pertains to the practices of resolving waqf issues and decisions involving *nazir* within the Sharia Courts in Aceh and the interconnection between the Religious Court Law, Waqf Law, and the Law that grants special authority to the Sharia Courts in Aceh (Hendrik Mezak, 2006).

DISCUSSION

Alternative Waqf Dispute Resolution in Indonesia

Before delving further into the discussion of alternative dispute resolution in waqf issues, it is essential to understand the fundamental terminology of waqf, both in terms of the principles of Islamic jurisprudence (*fiqh*) and the regulations governing waqf in Indonesia. The term "*wakaf*" (waqf) comes from the Arabic language "*waqafa*," "*yaqifu*," and "*waqifan*," which means to stop or halt (Aminatul, 2018). Meanwhile, in terms of terminology, waqf is defined as 'the act of withholding wealth that can be utilized

without depleting or damaging the asset and is used for the greater good' (Al-Alabij, 1992). Furthermore, in Law No. 41 of 2004 concerning Endowments, Article 1 paragraph (1) states “*Waqf is a waqif's legal action in which a waqif separates and/or hand over part of their property to be utilised forever or for a certain period of time in accordance with their interests for the purposes of worship and/or public welfare according to sharia law.*” (Alwi, 2018) This definition encompasses six elements, which include 1) Legal acts, indicate that the actions have legal consequences if the conditions and requirements are fulfilled. 2) In compliance with the definition provided by Law No. 41 of 2004, a *waqif* refers to an individual who donates their personal property for the purpose of waqf. 3) Separating and/or handing over, this implies a legal action executed through "handing over" rather than "trading," "loaning," "renting," and so on, instead of "handing over." 4) The ownership of one's belongings, as indicated, signifies that the individual who carries out the "handover" of said belongings is the legitimate owner, unencumbered of any obligations to other parties. 5) Whether for perpetual or limited duration, this implies that the object that has been endowed can be subject to temporal limitations and can also be utilized indefinitely. 6) In accordance with its purpose for the needs of worship and/or public welfare according to Shariah, this implies that the handed-over assets are expected to provide benefits to the community, whether for the worship purpose or otherwise (Somad, 2013).

Regarding the legal basis of waqf, the Qur'an does not explicitly state its ruling (Firdaus, 2002; Abdurrahman, 2003), However, it is understood by experts that numerous verses command humanity to do good for the benefit of the community, and this can be achieved through waqf (Siregar, 2012). One example of such verse is Surah Ali 'Imran, verse 92, which elucidates the importance of donating wealth to charitable causes.

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

Meaning: “*You will never achieve righteousness until you donate some of what you cherish. And whatever you give is certainly well known to Allah.*”

Furthermore, QS. Al-Baqarah (2) verse 267 elucidates the significance of Muslims in expending their wealth for the greater good, as it is this very act that will make them rewarding and prove beneficial in the sight of Allah Ta'ala.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ ۚ وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ ۚ وَاعْلَمُوا أَنَّ اللَّهَ عَنِّي حَمِيدٌ

Meaning: “*O believers! Donate from the best of what you have earned and of what We have produced for you from the earth. Do not pick out worthless things for donation, which you*

yourselves would only accept with closed eyes. And know that Allah is Self-Sufficient, Praiseworthy."

The last, the command to perform acts of kindness is juxtaposed with the acts of bowing, prostrating, and worshipping God is mentioned in Surah Al-Hajj, verse 77, meaning: *O believers! Bow down, prostrate yourselves, worship your Lord, and do 'what is' good so that you may be successful* (Az-Zuhaili, 2013).

Apart from the Quran, the issue of waqf is also mentioned in several hadiths. For instance, a hadith from Abu Hurairah, in which that the Prophet Muhammad said: *"When a human being dies, his deeds end except for three: ongoing charity (sadaqah jāriyah), beneficial knowledge, or a righteous child who prays for him"* (Narrated by Muslim).

The next hadith is from Umar Bin Khattab, who owned a piece of land in Khaibar. He came to the Prophet seeking advice about this property, saying, "O Messenger of Allah, I have acquired a piece of land in Khaibar that I have never obtained before." The Prophet responded, *'If you want to endow the land, donate the proceeds.'* Therefore, Umar donated his land to the destitute, relatives, slaves, and the homeless. There is no sin on those who are in charge of it (*nazir*) to consume some of the wealth in a rightful manner or to provide sustenance, as long as they do not intend to seek wealth. The Salaf scholars unanimously agree that *waqf* is valid, and Umar's waqf in Khaibar was the first waqf in Islam. (Hadith narrated by Bukhari, Book of Conditions, Chapter on Conditions in Waqf, No. 2532). Based on this hadith, scholars base their opinions on the recommendation of waqf in Islam (Sabiq, 1998; Abdurrahman Al-Juzairi, 2015).

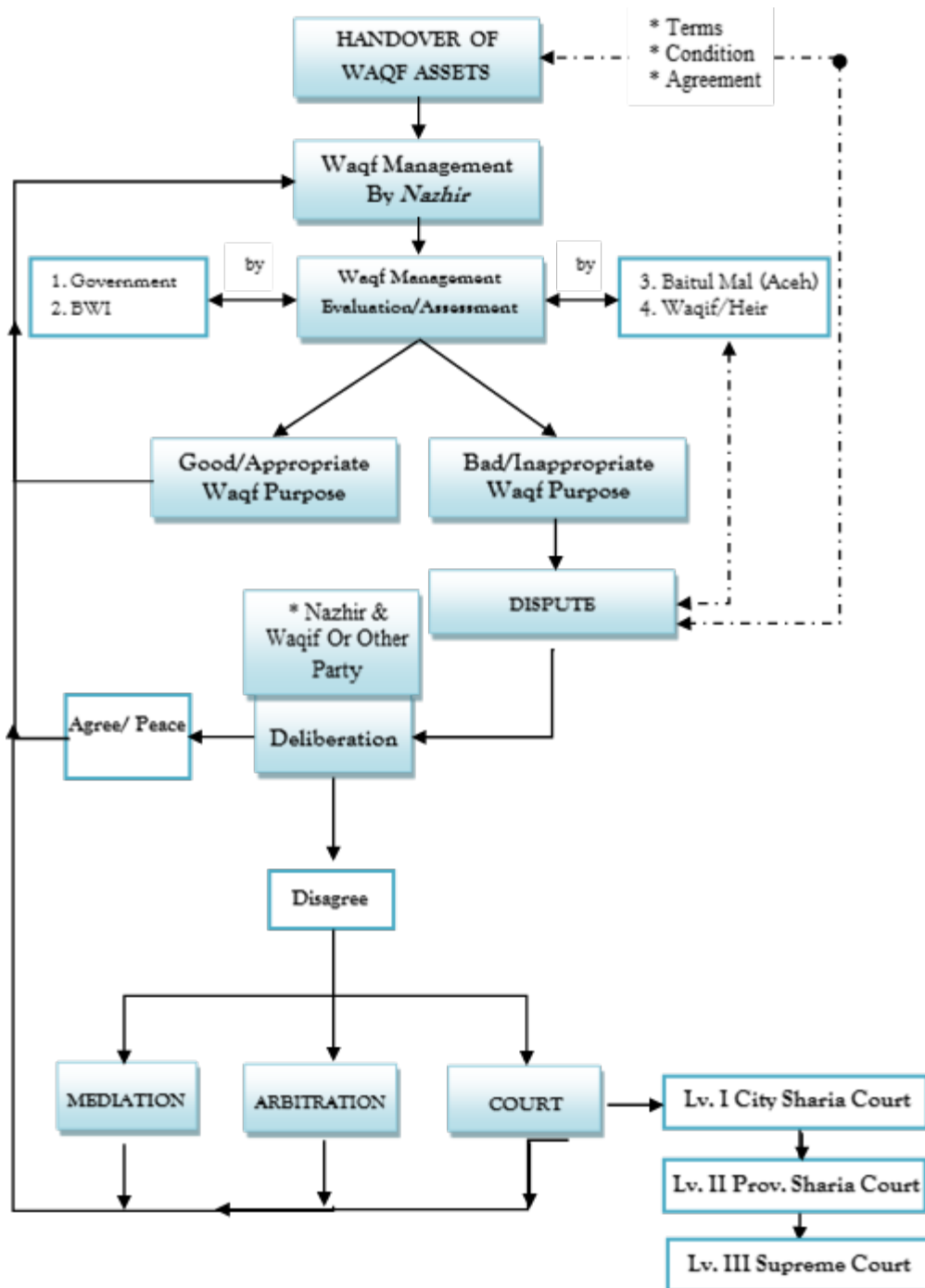
In Indonesia, specific regulations regarding waqf are outlined in Law No. 41 of 2004 concerning Endowments, along with its subsequent various hierarchical derivative regulations in the Indonesian legal system, which will be further elaborated upon. Generally, the theoretical foundation of waqf in this article refers to the regulations on endowments (also known as waqf) in Indonesia (Alay Idrus, 2017). According to Article 6 of Law No. 41 of 2004, the waqf is deemed valid if the following elements are fulfilled: 1) There are individuals who engage in the act of waqf (*waqif*); 2) *Nazir*; 3) Assets of waqf; 4) Waqf declaration; 5) Allocation of waqf assets; 6) Duration of waqf. After the assets have been duly endowed, the subsequent management activities of the waqf assets are undertaken by nazir. As stipulated in Article 11 of Law No. 41 of 2004, nazir assumes responsibility for the following tasks:

1. Administering waqf assets;
2. Managing and developing waqf assets in alignment with their purposes, functions, and allocations;
3. Overseeing and safeguarding waqf assets; and
4. Reporting the execution of duties to the Indonesian Waqf Board.

Following the implementation of the legal act of waqf, disputes regarding waqf sometimes arise due to various factors, including disputes between *nazirs* and the heirs (Hadija, Fawzi, 2019) or disputes that occur among *nazirs* (Zaenurrosyid, 2013), and in some cases, the involvement of other parties (Nurjamil, 2019). When disputes arise, the laws governing waqf in Indonesia outline the resolution processes available to the parties involved, such as negotiation, mediation, arbitration, and litigation. Below are several alternatives:

1. **Mediation:** Mediation is a dispute resolution method that involves a neutral third party called a mediator. A mediator is responsible for assisting parties in reaching mutually beneficial agreements. In the context of waqf disputes, mediation can assist the parties involved in reaching a compromise that takes into account the interests of safeguarding waqf assets and principles of peace (Syufaat, 2018).
2. **Arbitration:** Arbitration is a dispute resolution process outside of the court system, wherein the parties agree to select an arbitrator or arbitration panel that will render a final and binding decision. This decision is commonly referred to as an arbitration award. Arbitration can provide swift and efficient legal certainty in the resolution of waqf disputes (Hidayat and Komarudin, 2020).
3. **Litigation in Court:** Litigation is the process of resolving disputes through the court system. In the context of waqf disputes, resolution through Sharia courts or civil courts can be considered as an alternative. The parties involved may choose to bring a waqf dispute to court and let the judge decide the result. However, it should be noted that resolving disputes through the court system often involves significant time and cost (Hidayat and Komarudin, 2020).

Each alternative dispute resolution mentioned above has its own advantages and disadvantages. The appropriate choice depends on the complexity of the dispute, the interests of the parties involved, as well as other factors such as time, cost, and legal certainty (Mahrus, 2016). It is important for all parties involved in a waqf dispute to carefully consider each available alternative for resolution and seek a solution that is most aligned with their needs (Mukarromah, 2017). Here is the illustration:



The Authority of the Sharia Court in Resolving Waqf Disputes in Aceh

According to the national legal system, disputes over waqf fall under the absolute jurisdiction of the Religious Court (known as the Sharia Court in Aceh). The environmental jurisdiction of the Sharia Court in its position as one of the judicial

powers is regulated in several articles as found in Chapter III of the Law on Religious Courts. The Syariah Court, as a part of the Religious Court in Indonesia, has been entrusted with five tasks and authorities. These include the role of adjudication, providing explanations, considerations, and advice on Islamic law to government agencies and other entities, as stipulated by the Law or the provisions based on the Law (Habibi, 2021). Furthermore, the authority of the High Religious Court or Aceh Sharia Court is to adjudicate at the appellate level and adjudicate disputes of relative competence as well as oversee the course of judicial (Harahap, 1990). The authority, commonly referred to as judicial competence, encompasses two aspects, including relative authority and absolute authority, as follows (Ali, 1997):

1. Relative authority is defined as the jurisdiction of a court of a specific type and level, in contrast to the jurisdiction of another court of the same type and level. *Relative Competentie* refers to the authority and jurisdiction granted among courts within the same judicial system or the authority relating jurisdiction among religious court within the realm of the Religious Court or Sharia Court (Soetantio, 1997). Every Religious Court or Sharia Court has a specific jurisdiction, encompassing one municipality or district. The concept of relative jurisdiction holds significant importance concerning which Religious Courts or Sharia Courts an individual will file their case, as well as in connection to the defendant's right to raise exceptions.
2. *Absolute competentie* refers to the authority of the Court that is related to the type of case, type of court, or level of court, distinguishing it from other types of cases, courts, or court levels (Rasyid, 2005). The Religious Court holds jurisdiction over specific Islamic civil cases, exclusively for individuals who adhere to the Islamic faith. Meanwhile, for those of different faiths, they will be taken to the General Court.

The Religious Court possesses the authority to scrutinize and adjudicate cases at the first level. In connection with this absolute authority, the Religious Court is required to examine the cases submitted before it to determine whether they fall within its absolute jurisdiction or not. The religious court, as stipulated in Chapter I Article 2 in conjunction with Chapter III Article 49 of Law No. 7 of 1989, is assigned the task and authority. These include examining, adjudicating, and resolving civil cases pertaining to various aspects, particularly related to: 1) Marriage. 2) Inheritance, wills, and gifts conducted under Islamic law 3) Waqf and Charity.

After conducting observations and interviews at 4 (four) Sharia Courts, the following information was found:

1. Sharia Court Judges in Meulaboh and Waqf Disputes (Interview with the Chief Justice of Meulaboh Sharia Court, 2022): 1) The number of judges in Meulaboh Sharia Court is three individuals (consisting of only one panel). 2) The Chief Justice of the Sharia Court is Sahril, S.HI, M.H. The Vice Chief Justice is Zulfikri, S.HI,

M.H, and Evi Jusmaidar, S.HI, serves as a judge. Then the court clerk is Khairan S.H. 3) All three judges of Meulaboh Sharia Court are alumni of Islamic Religious Colleges. 4) The Chief Justice and Vice Chief Justice of Meulaboh Sharia Court have previously handled waqf disputes which were initiated by nazir as the plaintiff. 5) Meulaboh Sharia Court once adjudicated a case involving a dispute over a waqf land lawsuit dispute filed against nazir, under the ruling number 0146/Pdt.G/2015/MS.Mbo. In this decision, there was a technical error, essentially the issue brought up was adjudicated by the panel of judges, and a decision pertained to a waqf case. However, upon closer examination, it is evident that the case at hand pertains to a divorce matter (divorce petition). The error occurred from page 2 to page 7 (Decision of Meulaboh Sharia Court Number 0146/Pdt.G/2015/MS.Mbo). Subsequently, as going into the 'adjudication', the decision once again sheds light on a waqf dispute. The court's decision was subsequently appealed by the plaintiff to Aceh Sharia Court but ultimately upheld the win of the defendant/respondent, namely nazir.

2. Sharia Court Judges in Banda Aceh and Waqf Disputes: 1) The number of judges in Banda Aceh Sharia Court is fourteen individuals. 2) The Chief Justice of the Sharia Court is Drs. Muslim, S.H, M.A. The Vice Chief Justice is Drs. Juwaini, S.H, M.H, and additionally serves as a judge. Then the court clerk is Drs. A Mukthi, S.H. 3) The Chief Justice and Vice Chief Justice of Banda Aceh Sharia Court have previously handled waqf disputes, which were initiated by nazir as the plaintiff. 4) There are three cases of waqf disputes recorded in Banda Aceh Sharia Court, including: 1) A lawsuit filed by heirs against nazir, Number 03/Pdt.G/2017/MS.Bna. 2) The cancellation of waqf assets by heirs, with nazir as the defendant, Number 0194/Pdt.G/2016/MS.Bna. 3) Nazir as the plaintiff, Number 0194/Pdt.G/2016/MS.Bna, subsequently filed an appeal, and the appellate court ruled that nazir lost in the Aceh Sharia Court Appeal Decision Number 51/Pdt.G/2018/Ms.Aceh, thereby annulling the previous ruling of Banda Aceh Sharia Court decision number 0194/Pdt.G/2016/MS.Bna.
3. Sharia Court Judges in Takengon, in Takengon Sharia Court, there was one case of a waqf dispute filed at the first level, with the number 0080/Pdt.G/2015/MS-Tkn, related to the cancellation of waqf. In its deliberation, the judge subsequently explained that the plaintiff was the losing party.

Waqf Dispute Model in Sharia Court

This section describes the handling of waqf disputes in Sharia Court.

1. The positions of the parties in the waqf disputes resolution.

No	Decision Number	Nazir Position	Disputes Model
1.	Bireuen Sharia Court Decision Number 0190/Pdt.G/2016/MS.Bir.	Nazir as the Plaintiff	Misuse of waqf assets

2.	Sigli Sharia Court Decision Number 048/Pdt.G/2017/MS.Sgi	Nazir as the Defendant	Waqf cancellation by heirs
3.	Lhokseumawe Sharia Court Decision Number 0128/Pdt.G/2017/Ms.Lsm	New nazir sues previous nazir	Lawsuit for reluctant to resign from nazir position
4.	Jantho Sharia Court Decision Number 0306/Pdt.G/2020/MS.Jth	Nazir as the Defendant	Lawsuit ends amicably
5.	Bireuen Sharia Court Decision Number 0314/Pdt.G/2014/MS.Bir	Nazir as the Defendant	Lawsuit dismissed
6.	Banda Aceh Sharia Court Decision Number 03/Pdt.G/2017/MS.Bna	Nazir as the Defendant	Lawsuit is filed by the heirs.
7.	Banda Aceh Sharia Court Decision Number 0147/Pdt.G/2016/ MS.Bna	Nazir as the Defendant	Cancellation of waqf assets by heirs
8.	Banda Aceh Sharia Court Decision Number 0194/Pdt.G/2016/ MS.Bna	Nazir as the Plaintiff	Lawsuit won by Nazir as plaintiff
9.	Appeal Decision of Aceh Sharia Court Number 51/Pdt.G/2018/Ms.Aceh	Third party as the comparator	Annulment of the decision of Banda Aceh Sharia Court, Number 0194/Pdt.G/2016/MS. Bna
10.	Appeal Decision of Aceh Sharia Court Number 022/Pdt.G/2017/MS.Aceh	Nazir as the comparator	Annulment of the decision of Bireun Sharia Court, Number 0190/Pdt.G/2016/MS. Bir
11.	Appeal Decision of Aceh Sharia Court Number 059/Pdt.G/2016/MS.Aceh	Nazir as the Defendant	Amending the decision of Meulaboh Sharia Court, Number 0146/Pdt.G/2015/MS. Mbo

2. The waqf dispute model in terms of movable and immovable assets.

The waqf disputes involving nazir that have reached the court are immovable waqf assets, whether in the form of land or buildings. For instance, a case occurred in Bireun, which explains the role of nazir in this case as the manager of the building that was assigned as a waqf for the foundation. Then the building was lent to a madrasah for the benefit of the school. However, over time, in response to formal school management regulations, the school authorities have decided to change the building loan letter into school property. Due to this uncertainty, nazir subsequently filed a lawsuit to sue the Court/Sharia Court to clarify the truth regarding the waqf land. Another case occurred in Takengon (interview with the chief justice of Takengon Sharia court), which revealed that the dispute over waqf also involved immovable assets, specifically land endowed by the deceased and later deemed invalid waqf legal act. Therefore, the heirs filed a lawsuit against the implementation of waqf carried out by nazir. However, in the trial process, the judge subsequently ruled that the winner of the case regarding the cancellation of the waqf

land was the defendant, nazir, based on the evidence presented (Decision Number 0080/Pdt.G/2015/MS/Tkn).

In Meulaboh, the ruling of Decision Number 0146/Pdt.G/2015/MS.Mbo, it is stated that the disputed waqf land object in Meulaboh is immovable land, due to its inconsistency with the purpose of waqf assets. In another case, for instance, in Banda Aceh, it has been reported that nazir has filed a lawsuit in court due to the immovable waqf assets. Specifically, a building that has been utilized as a waqf asset has allegedly been misused by certain parties, claiming that the immovable land has become the property of the defendant. This can be seen in Decision Number 194.Pdt.G.2016.MS.Bna Where Nazir acts as the plaintiff.

3. The waqf assets nature model in terms of productive and unproductive.

Furthermore, out of the twenty decisions analyzed in this study, combined with the results of interviews conducted at the Sharia Court, it was found that the most common subject of lawsuits regarding waqf assets is productive waqf assets. The Clerk of Meulaboh Sharia Court explained that "the majority of the disputed waqf assets are productive assets that have already been utilized. For instance, land in a forest initially holds no value. However, over time, the value of this forest land increases and it becomes capable of being utilized as waqf land. Due to its value, the waqf land can cause conflicts, especially in the absence of clear evidence indicating that it has been dedicated as a waqf" (Interview with the Clerk of Meulaboh Sharia Court).

In another case, judicial proceedings ensued due to the productivity of waqf assets, leading to a situation where a new nazir filed a lawsuit against the previous nazir. This incident took place at the Lhokseumawe Sharia Court in Decision Number 0128/Pdt.G/2017/Ms.Lsm. The new nazir who was recently appointed has filed a lawsuit in court because the previous nazir refuses to step down from their position as nazir. One of the reasons for reluctance to step down is due to the well-managed waqf assets that have generated certain values and are subsequently transferred to other nazir (Decision of Lhoksumawe Sharia Court Number 0128/Pdt.G/2017/Ms.Lsm).

Reasons for Parties Choosing Litigation in Resolving Waqf Disputes

Based on the results of interviews and document analysis, it has been found that there are two primary reasons behind the parties decision to filed a lawsuit regarding the waqf through litigation. Firstly, ligitation is widely regarded as the best step towards reconciliation, and secondly, it serves as a fulfillment of interests, particularly the interest in the spirit of safeguarding waqf assets. The following provides the explanation of these reasons.

1. Peaceful

Numerous parties have filed waqf lawsuit with the grounds of peace. For instance, in the case that occurred in Meulaboh, despite the subsequent failure to reconcile, the initial intention of filing a waqf lawsuit was aimed at reaching the best agreement to maintain harmony between the plaintiff and the defendant regarding waqf assets. Even in several considerations, the element of peace has been pursued since even with the assistance of the local village apparatus to reach a win-win solution (Interview with Judge of Meulaboh Sharia Court).

Another case, which later succeeded in reaching peace, is the case of a waqf lawsuit filed in Jantho Sharia Court. In the course of determining the status of a waqf land, the heirs have subsequently filed a lawsuit against nazir for the management of the land believed to be a waqf from the heir's parents. With a mutually beneficial policy that resulted in a win-win solution, the lawsuit eventually reached a peaceful resolution, taking into consideration the interests of the endowed assets (Decision of Jantho Sharia Court Number 0306/Pdt.G/2020/MS.Jth).

2. Interests (Spirit of Safeguarding waqf assets)

In addition to pursuing the interests of peace, as outlined above, the waqf lawsuits filed in the Shari Court across various regions in Aceh appear to have the objective of preserving the existence of waqf assets. The case involves a lawsuit filed by Nazir regarding the misuse of waqf assets by a government official, specifically the school principal, which has gained significant attention. The aforementioned is stated in the lawsuit filed in the decision of Bireuen Syariah Court Number 0190/Pdt.G/2016/MS.Bir. Nazir has filed a lawsuit regarding a waqf to address the alleged misuse of the waqf assets, which were originally dedicated by the waqif for the development of an Islamic foundation but have been allegedly misused by the defendants for purposes other than the intended objectives of the waqf. With the spirit of safeguarding waqf assets, nazir, as the plaintiff, then brings the case to Bireun Sharia Court to be resolved formally and accountable in a juridical manner. However, in the course of the judicial proceedings, the plaintiff, Nazir, was declared defeated by the panel of judges based on the exception raised by the defendant, stating that the plaintiff cannot act as a legal subject in waqf matters. Furthermore, the defendant argued that the issue raised by the plaintiff was not within the authority of the Sharia Court but rather fell under the administrative jurisdiction of the Administrative Court (PTUN) due to its relation to the issue of waqf land correspondance. The considerations of the judge in Bireuen Sharia Court were strongly refuted by Aceh Sharia Court.

The provisions stipulated in Law No. 1 of 1974 on Marriage are aimed at ensuring the successful achievement of the institution of marriage.

Article 15, Paragraph 1 and Paragraph 2 that sound,

1. In order to ensure the well-being of families and households, marriage can only be entered into by prospective spouses who have reached the age as stipulated in Article 7 of Law No. 1 of 1974. This means that the prospective husband must be at least 19 years old, while the prospective wife must be at least 16 years old.
2. For prospective spouses who have not yet reached the age of 21, they must obtain permission as regulated in Article 6 paragraphs 2, 3, 4, and 5 of Law No. 1 of 1974 (Ghazali 2003).

Judges' Considerations in Resolving Waqf Disputes in Aceh

In general, disputes concerning waqf litigation are classified into four types, which include: 1) Cases of Heirs suing Nazir; 2) Cases of Nazir suing the Heirs; 3) Cases of Nazir suing another Nazir; 4) Cases of Nazir suing a third party. These four categories can be classified based on the jurisdiction of the Sharia Court, arranged chronologically by the year. The dispute over this waqf assets, which has arisen due to conflicts between nazir and waqif and/or other parties, is quite significant, including:

1. A lawsuit filed by nazir due to a dispute over the misuse of waqf assets by another party, found in the Decision of Bireuen Sharia Court Number 0190/Pdt.G/2016/MS.Bir;
2. Cancellation of waqf by heirs in the Decision of Sigli Sharia Court Number 048/Pdt.G/2017/MS.Sgi;
3. A lawsuit filed by the new nazir against the previous nazir because he was reluctant to resign from the position of 'kenaziran' in the Decision of Lhoksumawe Sharia Court Number 0128/Pdt.G/2017/Ms.Lsm;
4. A lawsuit involving nazir as the defendant and was resolved with reconciliation through mediation in the Decision of Jantho Sharia Court Number 0306/Pdt.G/2020/MS.Jth;
5. A lawsuit involving nazir as a defendant in the Decision of Bireuen Sharia Court Number 0314/Pdt.G/2014/MS.Bir;
6. Nazir as a defendant by the heirs in the Decision of Banda Aceh Sharia Court Number 03/Pdt.G/2017/MS.Bna;
7. A lawsuit for the cancellation of waqf assets by heirs involving nazir as the defendant in the Decision of Banda Aceh Sharia Court Number 0147/Pdt.G/2016/MS.Bna;
8. A case involving nazir as the plaintiff in the Decision of Banda Aceh Sharia Court Number 0194/Pdt.G/2016/MS.Bna;
9. Appeal Decision of Aceh Sharia Court Number 51/Pdt.G/2018/Ms.Aceh, which cancelled the Decision of Banda Aceh Sharia Court Number 0194/Pdt.G/2016/MS.Bna;
10. Appeal Decision of Aceh Sharia Court Number 022/Pdt.G/2017/MS.Aceh, which cancelled the Decision of Bireuen Sharia Court Number 0190/Pdt.G/2016/MS.Bir;

11. The Decision of the Aceh Sharia Court Number 059/Pdt.G/2016/MS.Aceh, which amended the ruling of the Meulaboh Sharia Court Number 0146/Pdt.G/2015/MS.Mbo, involving Nazir as the Plaintiff/Appellant and declared as the losing party.

Based on the aforementioned case elaboration, it can be asserted that judges in the Sharia Court, when deliberating on dispute resolution, consistently consider the Facts of the Event, Legal Facts, and Validity of Evidence. However, they do not take into consideration the efforts made to safeguard waqf assets (Interview with Judge of the Meulaboh Sharia Court). Even explicitly, the judge stated that when a lawsuit is filed in court, each party is obliged to explain the strength of the evidence presented. This enables the judge to decide each case based on the validity of the evidence submitted.

According to Article 62 paragraphs (1) and (2) of Law No. 41 of 2004, as well as Article 226 of the Islamic Law Compilation (KHI), Aceh Sharia Court has endeavored to ensure that every dispute over waqf assets brought before the panel of judges undergoes a reconciliation effort mediated by non-judicial mediators. However, many have failed to reach a consensus (Decision of the Banda Aceh Sharia Court, Number 003/Pdt.G/2017/Ms.Bna). Subsequently, if the issue does not progress towards a more beneficial pace, it is then reassigned to a panel of judges for resolution in a court hearing, culminating in a decision that entails elements of 'winning and losing' (win-lose solution).¹ The next step, for the party that loses, is to exercise their right to appeal to the second-level court, specifically Aceh Sharia Court, which then provides another chance for the losing party to win the ongoing legal dispute (Ali and Heryani, 2014).

The considerations arise when there are differing judgments² between the first-level decision of the Sharia Court and the decision of Aceh Sharia Court, in which, generally, the factual events, legal facts, disputed objects, and parties involved remain unchanged (Sarong and Armia, 2021). This issue can be seen, for example, in the

¹ There is a negative tendency towards courts that frequently render decisions without thorough deliberation. Achmad Ali and Wiwie Heryani in their book put forth statements that challenge the notion that the judiciary is the exclusive entity responsible for resolving disputes in contemporary society. However, in reality, beyond the confines of the judicial system (non-litigation), numerous alternative approaches and methods exist for resolving disputes, including mediation, arbitration, and conciliation. In addition, he bolstered his argument by citing the opinion of Abraham Lincoln, who asserted that the method of resolving disputes through the judicial system yields more negative consequences than advantages.

² A court decision is a reflection of a judge's ability in their endeavor to examine, adjudicate, and render a decision in a case. A good decision must be composed under clear, detailed, complete, and accurate facts of the event and legal facts found in the trial proceedings and recorded in the Minutes of the Trial. The decision, systematically composed (coherent) following proper language, contains accurate, clear, and precise legal arguments. This reflects the professionalism of a judge.

Decision of Aceh Sharia Court which annulled the Decision of Bireuen Sharia Court Number 0190/Pdt.G/206/Ms.Bir dated November 24, 2016, thus the case which was won by the Defendant at the first level (Bireuen Sharia Court), was later won by the Plaintiff/Appellant at the appellate level. In its ruling, the Panel of Judges of Aceh Sharia Court firmly asserting that Bireun Sharia Court had erred in considering the decision of the case submitted to it (Aceh Sharia Court Decision Number 22/Pdt.G/2017/MS-Aceh).

The judge's deliberations give rise to the question of the disparity of decisions taken into consideration by the judge in an attempt to resolve the dispute over the waqf land lawsuit mentioned above, which stems from the "freedom of the judge" in resolving a case, which essentially originates from the "understanding and interpretation of the judge" towards the legislation and the facts of the case being handled. The interpretation and understanding of judges, as exemplified in the aforementioned case, have formed a legal construct that reflects the perspective, perceptions, or paradigms³ of the judge's legal thinking when handling a case, particularly a dispute over waqf land. The paradigm of the judge's thinking is realized after observing a truth solely through formal evidence (Kuhn, 2012). It cannot be denied that in the general civil case, the attempts made must indeed be in alignment with formal truth. This results in judges taking a passive approach in considering their opinions. Even though he is aware that parties are hiding facts, the judge in his examination is limited to the information provided by the parties (Analiansyah, 2018).⁴ This consideration that led the Bireuen Sharia Court to rule in favor of the defendant was based on the panel of judges' consideration that the disputed case presented by the plaintiff had been won by the defendant due to formal reasons. The defendant successfully convinced the judges through their exception (Soetantio, 1997; Fakhriah, 2009). However, the considerations of the judges of Bireuen Sharia Court were explicitly rejected by Aceh Sharia Court, which asserted that the formal evidence considered by the Bireuen Sharia Court regarding the plaintiff's lack of legal standing in the proceedings. Furthermore, the panel of judges of the Aceh Sharia Court stated that the defendant (the winning party) in the first-level case had committed a misuse of the benefits of waqf land by creating a new deed without valid legal authority (Decision of the Aceh Sharia Court Number 22/Pdt.G/2017/MS-Aceh).

³ In the theory proposed by Thomas Kuhn, a paradigm refers to a set of values that subsequently shape an individual's mindset, serving as the fundamental basis of their perspective. This, in turn resulting in the formation of a subjective image of reality and ultimately determining how one responds to that reality. Look, page 22.

⁴ Furthermore, it has been asserted that the Religious Court, based on Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, mentions that the Religious Court only has the authority to handle limited cases. This implies that the intended goal is to obtain formal truth or to apply a positive system of evidence according to the law (*positief ettelijk bewijsleer*). This has resulted in a system of proof that is solely based on the evidence presented in the law, with the judge's conviction playing no role whatsoever.

Disparities in judicial decisions have also been found in the rulings of Aceh Sharia Court, where a decision made by the Banda Aceh Sharia Court (No. 194/Pdt.G/2016/MS.Bna) regarding material evidence was annulled. Banda Aceh Sharia Court had determined that the disputed object was waqf land, whereas Aceh Sharia Court, in annulling the ruling, stated that the disputed object was not waqf land due to insufficient strong formal evidence (Decision of Aceh Sharia Court Number 51/Pdt.G/2018/MS.Aceh).

Based on the aforementioned case, it is important to understand that waqf is one of the guiding principles of Islamic teachings that pertains to communal living in the context of social worship. Waqf (*ibadah ijtima'iyah*), as one of the social acts closely related to agrarian matters involving land, water, and airspace, as well as the natural resources contained within them. Therefore, apart from being governed by Islamic laws, waqf is also governed by national agrarian laws. The significance of waqf matters in the eyes of the law has led to its recognition and protection by the state. Article 49, paragraph (1) of Law Number 5 of 1960 states that the ownership rights of Religious and Social Institutions over land, as long as it is used for religious and social purposes, are recognized and protected. These organizations are also guaranteed to obtain sufficient land for their buildings and endeavors in the realms of religion and social welfare.

In Indonesia, the establishment and implementation of waqf land are governed by specific legislation due to their speciality status in national agrarian law. This is outlined in Article 49, paragraph (3), which states that the ownership of waqf land is protected and regulated by Government Regulation.

Law Number 41 of 2004 is the first law that regulates the provisions of waqf in Indonesia, with its formation rooted on the following considerations: a) The institution of waqf, as a religious institution with economic potential and advantages, needs to be effectively and efficiently managed for its intended use in worship and advancing the general welfare; b) Waqf is a legal act that has long been practiced and implemented in society, but its regulation is incomplete and scattered across various legislation.

The definition of waqf, as stated in Law Number 41 of 2004 concerning Endowment, refers to legal action undertaken by an individual, known as the waqif to allocated and/or hand over a portion of their property to be utilized indefinitely or for a temporary time in compliance with their interests for purposes of worship and/or public welfare according to Shariah.

In common practice among Muslims, the implementation of waqf encounters numerous challenges. One of the frequently encountered issues is the lack of clarity regarding the status of waqf land that was dedicated before the establishment of regulations for certifying or officially registering the waqf land. In such circumstances, it is conceivable for an individual or heir to refuse to acknowledge the implementation of

a waqf pledge from the waqif to the nazir, as has been observed in waqf disputes that have been resolved in every Sharia Court in the Aceh region.

For instance, in the case of the cancellation of waqf land in Aceh, it is fundamentally forbidden and prohibited by law. This has been emphasized in Article 3 of Law Number 41 of 2004 concerning Endowment, which states that a waqf that has been declared is irrevocable and cannot be canceled. If any of the six pillars of waqf mentioned previously are not met, the implementation of the waqf is considered imperfect, resulting in the waqf being deemed invalid and legally void, ultimately rendering the waqf devoid of legal safeguards.

According to Islamic law, the act of reclaiming waqf land is strictly prohibited within the framework of the religion. This aligns with a hadith narrated by Muslim, which confirms that the Prophet Muhammad (PBUH) likened the act of retracting one's charity, encompassing zakat, infaq, grants, wills, and waqf, to the behavior of a dog that vomits and then consumes its vomit again (Narrated by Muslim).

The opinions of the scholars of Islamic jurisprudence (Imam Madzhab) also exhibit certain differences, one of which is Imam Hanafi. In the context of waqf, Imam Abu Hanifah holds the opinion that the property that has been endowed remains the possession of the endower and can be revoked. Thus, the property remains owned by the person who donates it, with only its proceeds and benefits being utilized for waqf. However, Abu Hanifah makes an exception for waqf of the mosque, which is determined by court decisions or legal rulings, as well as testamentary waqf, which cannot be revoked. Abu Hanifah clarifies that by endowing a property; it does not imply that the ownership of the property is relinquished. Therefore, it is permissible to return and reclaim the endowed property. There is even possible of selling it. Abu Hanifah considers waqf to be analogous to a loaned item, and as a loaned item, the owner still retains ownership of the property and is entitled to request and sell it back whenever desired.

The second thought is provided by Imam Maliki Madhhab. According to this madhhab, the owner of a waqf property is considered to be the same as the perspective held by Hanafi madhhab, which states that the waqf property remains the possession of the person who made the waqf. The difference pertaining to the *ijtihad* of Hanafi madhhab lies solely in its application. Abu Hanifah permits the handing over of the property, while Imam Maliki's madhhab does not allow it as long as the property remains in the status of waqf. However, according to this madhhab, it is permissible to endow for a specific period of time, and once the time limit has elapsed, the endower may reclaim the endowed property. The opinion of the Maliki madhhab is founded upon the hadith of Ibn Umar, in which the Prophet Muhammad said to Umar, "If you desire, withhold the principal and donate the proceeds." According to Imam Maliki, it is sated that Prophet Muhammad exclusively instructed his followers to donate the proceeds. As per the provided explanation, waqf is deemed permissible for a specific

period of time. Furthermore, Imam Maliki asserts that there is no proving evidence that mandates a perpetual waqf.

The third thought is given by Imam Shafi'i Madhhab. Differs from the *ijtihad* of the previous Imam, according to Imam Shafi'i, it is believed that the wealth that has been endowed is completely detached from the waqif who has endowed it, and it becomes the property of Allah SWT. Therefore, according to Imam Shafi'i, waqf property is intended to be perpetual, and waqf with a specific time limit is strictly prohibited. According to Madhhab, it is not permissible to return waqf property to the waqif if the waqif desires to reclaim it. The reason for Imam Shafi'i's stance is a hadith narrated by Ibn Umar regarding the land in Khaibar. Imam Shafi'i recognizes that the act of donating one's wealth without selling, bequeathing, or gifting it during that time was simply overlooked by the Prophet Muhammad, while the silence of the Prophet Muhammad is considered as a *hadits taqriry* in the realm of Islamic jurisprudence. Therefore, the concept of waqf is applicable for perpetuity. In addition, according to Shafi'i madhhab, a nazir is allowed to dismiss them-selves (resign), and a waqif who becomes a nazir is permitted to dismiss the appointed individual and appoint someone else. This is analogous to a person who has delegated authority being able to dismiss their representative and appoint another individual. Unless the waqif stipulates someone to oversee the waqf at the time of endowing, it is not permissible for them or anyone else to dismiss them, even if it is deemed beneficial to do so. Because indeed there should be no alteration to what has been stipulated, and because indeed with the dismissal, it means there is no longer supervision at that time. Regarding non-nadir waqifs, it is deemed invalid for them to carry out appointments and dismissals, as the authority to appoint and dismiss lies with the judge.

The last thought held by Hambali Madhhab, Imam Hambali posits that it is believed that the ownership of an endowed property is transferred to Allah SWT, signifying that the property that has been dedicated is no longer under human authority. The aforementioned statement implies that once an item or object has been dedicated as a waqf, it cannot be revoked, as the waqf property will immediately become the possession of Allah SWT.

Therefore, when it comes to the deliberations of a judge in reaching the decision, it is crucial to consider not only the rationale and principles involved but also to include provisions derived from the relevant regulations or unwritten legal sources that serve as the basis for adjudication.

The decision rendered by the panel of judges serves as an analysis of the case in the ruling on the subject of this study. Henceforth, the judge's decision will establish a law and be binding upon the concerned parties engaged in the dispute over the cancellation of waqf land. The aforementioned law must undergo an approach that aligns with the objectives of law, including the pursuit of justice, the aim to safeguard

the interests of every individual, ensuring that these interests are not infringed upon, and the primary focus remaining on the well-being of the people.

According to Apeldoorn in his book *Inleiden tot de studie van het Nederlandse recht*, the purpose of law is stated as follows: "the purpose of law is to regulate the order in society in a peaceful and just manner." According to *Kamus Besar Bahasa Indonesia*, "adil" means "impartial", treating or considering anything in an equal and similar manner, without bias or favoritism towards what is right; adhering to the truth. "Just" is an absolute attitude that does not display inclinations of love or anger, nor does it alter rules based on affection or hatred. Justice does not influence perspectives due to familial considerations, harboring no animosity between different groups, and not differentiating humans based on their race, lineage, wealth, rank, and so on. But, one and other must be treated equally.

Justice in cases of waqf land revocation disputes means that in delivering a decision, the panel of judges must carefully and thoroughly consider what decision should be rendered to the parties involved in the waqf land revocation dispute. The portions obtained by nazir and the heirs must align with their respective shares as specified in the relevant legislation, thus ensuring the legal objective of achieving justice.

The second approach of the legal objectives is the law to safeguard human interests to prevent harm to one another. Regarding the purpose of the law, Van Kan argues that "the law aims to safeguard the interests of every individual so that these interests cannot be disturbed." In the case of a dispute over the revocation of waqf, the panel of judges must protect the interests of both the heirs and nazir, ensuring that their respective interests are upheld within the framework of implementing the decision of the Sharia Court.

The third approach to the legal objectives is that it should provide benefits. The Purpose of Law According to Jeremy Bentham, in his book "Introduction to the Morals and Legislation," it is stated that: "Law aims solely at what is beneficial for individuals." The primary objective of law is to ensure the utmost benefit or happiness for a wide range of individuals within society.

CONCLUSION

Based on the previous explanation, several conclusions can be drawn, *Firstly*, the model of dispute resolution in the sharia court is classified into three types: 1) The waqf dispute model examined from the positions of parties in waqf dispute resolution, affecting the evidentiary strength in court; 2) The waqf dispute model examined from the perspective of movable and immovable assets; 3) The waqf assets nature model examined from the perspective of productive and non-productive.

Secondly, there are various reasons why parties opt to resolve Waqf disputes in the Syariah Court, which can be attributed to two factors: 1) The desire for peace; and 2) The

presence of personal interests, both aimed at achieving legal certainty.

Thirdly, judges in considering dispute resolution in the Sharia Court consistently prioritize taking account of the Facts of the Event, Legal Facts, and the Validity of Evidence, but do not consider efforts to safeguard waqf assets. The novelty of this research lies in the hope that the special authority granted to judges of the Sharia Court will establish a legal framework for judges to actively engage in the resolution of waqf disputes, rather than merely taking a passive role.

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