



Class Action as a Strategy for Saving Waqf Land Assets in Indonesia

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Abstrak

Peristiwa hukum wakaf yang berlangsung sering sekali tidak diiringi oleh kesadaran administrasi yang akuntabel, sehingga memicu ahli waris untuk mengambil kembali aset wakaf tersebut dengan suatu alasan aset tersebut adalah aset pribadi mediang orang tuanya. Dari fenomena tersebut tentunya perlu adanya terobosan hukum, agar aset wakaf yang tetap menjadi aset publik, sehingga nilai keabadian wakaf akan terus terjaga. Penelitian ini difokuskan untuk menemukan kontruksi penyelamatan aset wakaf yang tidak memiliki legalitas yang memadai dari upaya pengambilan kembali oleh ahli waris wakif. Tujuan penelitian ini adalah untuk mencari regulasi apa yang mengatur tentang obek tanah wakaf yang belum ada legalitas formalnya dan untuk mencari prosedur hukum yang dapat digunakan untuk mempertahankan tanah wakaf yang belum ada legalitas formalnya guna mempertahankan aspek keabadiannya. Adapun metode yang digunakan adalah analisis kualitatif dan hasilnya disajikan secara deskriptif. Pola konstruktif penyelamatan aset wakaf dengan mencari peluang atau cara legal yang bisa ditempuh masyarakat atau kelompok masyarakat, dengan meneliti beberapa peraturan mahkamah Agung, hukum Acara Peradilan Agama, dan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf, sebagai sumber data primernya. Berdasarkan PERMA No. 1 Tahun 2002, di PERMA ini mengatur tentang mekanisme gugatan perwakilan kelompok (class action) dengan prosedur beracara dalam perdata yang berhak memberikan prosedural bagi seseorang atau sekelompok untuk menjadi penggugat demi memperjuangkan sengketa yang menyebabkan kerugian dan penderitaan banyak orang. Hasil penelitian menyimpulkan bahwa class action merupakan alternatif beracara yang bisa digunakan sebagai solusi dalam menyelamatkan aset wakaf yang diakuisisi oleh ahli waris wakif, karena ketiadaan bukti wakaf yang memadai.

Kata Kunci: Class Action, Asset, Wakaf

Abstract

The legal events of waqf that take place are often not accompanied by awareness of an accountable administration, thus triggering the heirs to take back the waqf assets on the grounds that the assets are the personal assets of their parents. From this case, it is necessary to have a legal breakthrough, so that the waqf assets remain public assets, so that the eternal value of the waqf will continue to be maintained. This research is focused on finding the construction of salvage waqf assets that do not have adequate legality from reclaiming efforts by wakif heirs. The purpose of this study is to find out what regulations regulate waqf land objects for which there is no formal legality and to find legal procedures that can be used to maintain waqf land for which there is no formal legality in order to maintain its immortality aspect. The method used is qualitative analysis and the results are presented descriptively.

The constructive pattern of saving waqf assets is by looking for legal opportunities or ways that can be taken by the community or community groups, by examining several Supreme Court regulations, the Law of Religious Courts Procedure, and Law Number 41 of 2004 concerning Waqf, as the primary data source. Based on PERMA No. 1 of 2002, PERMA regulates the mechanism for class action with civil proceedings that have the right to provide procedural rights for a person or group to become a plaintiff in order to fight for disputes that cause harm and suffering to many people. The results of the study concluded that class action is an alternative procedure that can be used as a solution in saving waqf assets acquired by wakif heirs, due to the absence of adequate waqf evidence.

Keywords: Class Action, Waqf, Assets

Introduction

Waqf is a means or media for human servitude to Allah SWT, because it prioritizes its love for Him and is driven by appreciation, it will get a reward that does not stop, even though the perpetrator has died, makes a very significant contribution, both in the development of Islamic da'wah missions, and as social assets of the people that are closely related to vertical and horizontal worship. The influence of waqf in the course of Islamic history plays a very large role, from generation to generation, even from Islamic rulers or dynasties to other Islamic dynasties or rulers. in solving economic problems.

Waqf as one of the Islamic fiscal instruments that has existed since the beginning of Islam. Historical facts show that waqf has played various important roles in developing various social, economic, educational and cultural activities. Waqf has an effective role in building the community, in order to reduce dependence on government funds. Waqf has proven to be a social security instrument in community empowerment, especially in poverty alleviation.¹ Thus waqf becomes a financial alternative to alleviate poverty and various economic problems of the people.²

The provisions of waqf that are used in understanding and carrying out the norms of virtue (waqf) have evolved and even reformed about their implementation, changes occur because of demands for needs, both demands for changing times and demands for factual conditions, which require new regulations or provisions in implementing waqf law.³ One of the new provisions of waqf law is legalization by an authorized institution which by waqf law is designated as a legal institution to issue authentic deeds, as a legal legal basis. This provision does not necessarily make the wakif and the parties related to the event of the waqf make efforts to legalize the waqf assets. This is due to the community's paradigm of waqf, which says that the legal act of waqf is an act of worship that

¹ Andi Triyawan , "A Systematic Review on Waqf and Poverty Alleviation," Konferensi Sistem Ekonomi Islam Internasional – The 9th I-ECONS 2021 , P. 8. A Systematic Review on Waqf and Poverty Alleviation.pdf

² "The Contribution of Waqf on Poverty Alleviation through Digital Platforms: A Case of Indonesia - Penelusuran Google," accessed December 19, 2021,

³ Ibnu Qayyim al-Jauziyah, I'lam al-Muwaqqi'in 'an Rab al-'Alamin, Juz III (Bairut: Dar al-Fikr, t.th), P. 14.

does not require the government's role in legalizing it.⁴ The Basic Regulations on Agrarian Principles, however, for the issue of registering waqf land only came into effect after the waqf regulation itself, which was originally regulated in Book III concerning Waqf Compilation of Islamic Law, which was further emphasized in Law Number 41 of 2004 concerning Waqf.⁵

The implication of the absence of legal formalities in waqf assets, both waqf pledge deeds and waqf certificates, has led to the phenomenon of taking back waqf assets by their heirs, even though the waqf assets in question have been used for a long time and have been known by many parties as waqf assets, but the absence authentic evidence resulted in the waqf assets being acquired by the wakif heirs. This situation and behavior is certainly not in line with the provisions of waqf which requires an element of immortality⁶ waqf assets that must be maintained by all parties, this obligation does not apply only to waqf managers, but becomes a joint obligation, parties who directly and indirectly receive benefits. of the waqf assets in question. Because in fact the waqf assets become public property rights at large.

With the take offer by the heirs of al-Wakif (waqf), the waqf assets as public assets are lost, and the public can no longer use and or take advantage of the waqf assets. There are many cases that occur in waqf assets, experiencing a decrease in the volume of waqf, even the loss of waqf status due to the behavior of transferring by certain parties, as asset owners, what can be done to maintain public ownership, while these assets do not have valid evidence of waqf. adequate or not at all? To describe the purpose of this study, the author presents some previous literature that is relevant to the purpose of finding and determining research gaps as an effort to find novelty in a research activity. Muhammad Rifqi Hidayat and Parman Komarudin in their research entitled *Waqf Dispute Settlement Through Litigation and Non-Litigation Pathways*, stated that land waqf carried out without a proper and proper administrative process is prone to give rise to disputes in the future. So this research was conducted to describe how the process of resolving the waqf dispute was through litigation and non-litigation in accordance with the prevailing laws and regulations in Indonesia. This research is a combination of normative and empirical legal research. Primary data comes from laws and regulations regarding waqf and examples of waqf disputes, while secondary data comes from research and legal opinions on waqf disputes. The data obtained were then analyzed qualitatively. The results of the study indicate that the settlement of waqf property disputes is carried out in several stages which should be carried out in a stratified manner, namely deliberation, mediation, arbitration, and finally through court⁷

⁴ Jeffrey Schoenblum, "The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with the Trust," n.d., 39.

⁵ Zahrul Fatahillah, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Sertifikat" *KALAM*, Volume 7 Nomor 1 Tahun 2019 E-ISSN 2597-9175 | P-ISSN 338-2341 7 (2019): 18.

⁶ "Undang-Undang-Tentang-Wakaf.pdf," pasal 41

⁷ Muhammad Rifqi Hidayat And Parman Komarudin, "PENYELESAIAN SENGKETA WAKAF MELALUI JALUR LITIGASI DAN NON-LITIGASI," *Al-Adl: Jurnal Hukum* 11, no. 2 (January 23, 2020): 184–96, <https://doi.org/10.31602/al-adl.v11i2.1936>.

Islamiyati Islamiyati, Ahmad Rofiq, Ro'fah Setyowati, Dewi Hendrawati in their publication entitled; *The implementation of the Waqf Law in the Settlement of Waqf Disputes in the Coastal Region of Central Java*, states that the practice of waqf in the northern part of the Central Java region has led to disputes over the waqf law. The study analyzed the implementation of Article 62 of Law no. 41/2004 in the settlement of waqf disputes in Central Java in 2016 and the settlement model. This type of research is *field research* with research samples from the Kendal Regency, Demak and Semarang City areas. The approach method used is empirical juridical. The results showed that the settlement of waqf disputes in the northern part of Central Java used the method according to Article 62 of the Waqf Law, namely litigation and non-litigation. The parties mostly use non-litigation channels through deliberation (23%) and through mediation (60.8%).⁸

This study aims to find out how regulations in Indonesia regulate waqf objects for which there is no legality and what must be done by the community, both nazhir waqf and the community who are waqf beneficiaries, to maintain waqf objects that do not have proof of the legality of efforts to return them by experts, wakif heirs or other parties. Based on this explanation, the author can formulate a problem formulation as follows, 1. How do waqf regulations in Indonesia regulate waqf objects for which there is no legality? and 2. What should be done by the community to maintain waqf objects that do not have proof of the legality of efforts to return them by wakif heirs?

Research Method

The method used in this research, the authors use *normative juridical*. As for what is meant by normative juridical research that has a qualitative nature is research that makes the legal norms contained in laws and regulations and other regulations relating to the object of research as well as norms that live and develop in society as objects of research.⁹ This research is a type of normative legal research or library law research. Normative legal research examines the doctrines and principles in legal science. In other words, what is meant by normative research is research with literature taken from books, legal science literature.¹⁰

Conditions and Regulations for Legalization of Waqf Assets

Waqf is a legal act of wakif to separate and/or surrender 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.¹¹

Thus, it can be understood that the purpose of waqf is to realize the needs of worship or to realize the general benefit and welfare based on the provisions of the Shari'a. The purpose of this waqf is a goal that must always be preserved, and

⁸ "Implementasi UU Wakaf Dalam Penyelesaian Sengketa Wakaf Di Wilayah Pesisir Jawa Tengah Islamiyati Masalah-Masalah Hukum," accessed May 19, 2022, <https://ejournal.undip.ac.id/index.php/mmh/article/view/24954>.

⁹ Zainuddin Ali, *Metode Penelitian Hukum*. Sinar Grafika, Jakarta: 2011), P.105

¹⁰ Soerjono, Abdurrahman, *Metode Penelitian Hukum*. Rineka Cipta, Jakarta: 2003), p. 1

¹¹ "Undang-Undang-Tentang-Wakaf.Pdf."

it is the responsibility of all parties, especially nazhir waqf, to manage, develop waqf assets and defend against efforts to eliminate waqf assets, whether intentionally or not. Land as the most popular waqf asset in Indonesia, plays a strategic role for religious and social purposes. The contribution of waqf in filling the history of implementing elements of worship and as an alternative solution to social problems, both economic and other socio-religious, is recognized by many groups, both from within Islam itself and from external Islam. The success of waqf philanthropy teachings has made waqf the thing that gets the most attention from the teachings that continue to be disseminated and serve as objects of research.

Director General of Determination of Land Rights and Registration, Ministry of ATR/BPN, Suyus Windayana, said that until September 2021, only about 40% of waqf lands already have waqf land certificates. The total number of waqf lands in Indonesia is estimated at around 411,333 parcels/locations, this data provides information that the waqf assets in the form of land are still in a condition that does not yet have adequate or authentic legal instruments, amounting to 60%, of course, this amount is enough to give serious attention in Indonesia. In the midst of the land crisis which is getting narrower with the increasing population and the need for land as material for economic activities and settlements, of course this condition can trigger conflicts or land disputes, especially waqf land.

According to the Ministry of ATR/BPN noted a number of problems related to waqf land. Among them, the letter of proof of land ownership / title rights does not exist or no longer exists. So that the nadzir (the party who receives the waqf property) has difficulty registering the waqf land. According to the Ministry of ATR/BPN, the reason why a number of waqf assets have not been certified is that there is no proof of ownership/rights or there is no more or lost, so that waqf managers have difficulty in managing wakaf certificates. On the other hand, there is an assumption in the community that it is not too important that the waqf assets are certified or not, it turns out that so far there have been no claims from other parties.¹² In fact, when viewed from the aspect of the number of waqf assets recorded by the Ministry of Religion through the SIWAK system, it states that the total number of waqf assets in Indonesia is 422,005 areas with an area of 55,547.45 ha, while those that have been certified are 246,330 fields or 20,830.05 ha, the rest that have not been certified amounted to 175,675 plots or 34,717.39 ha.¹³

The following is a table of the state of waqf assets in the form of land in Indonesia.¹⁴

No	Name of area	Total	Area (ha)	Certified		Not yet certified	
				Total	Area (ha)	Total	Area (ha)
1	NAD	17.886	9.442,56	8.708	1.158,05	9.178	8.284,51

¹² Ibid.29

¹³ "Sistem Informasi Wakaf," accessed December 19, 2021, http://siwak.kemenag.go.id/tabel_jumlah_tanah_wakaf.php.

¹⁴ " : Sistem Informasi Wakaf :."

2	North Sumatra	11.881	7.943,34	6.850	837,03	5.031	7.106,32
3	west sumatra	5.881	670,31	3.836	414,72	2.045	255,59
4	Riau	8.217	2.109,56	2.824	458,14	5.393	1.651,42
5	Jambi	6.530	1.072,60	3.587	458,12	2.943	614,48
6	south sumetra	4.163	986,45	2.029	149,95	2.134	836,50
7	Bengkulu	2.384	435,46	1.705	246,37	679	189,10
8	Lampung	14.067	5.835,13	7.750	2.879,46	6.317	2.955,66
9	bangka belitung islands	1.309	388,44	865	217,84	444	170,60
10	Riau Islands	1.599	323,66	564	75,66	1.035	248,00
11	DKI Jakarta	6.772	272,76	4.117	158,58	2.566	114,18
12	West Java	82.567	6.043,24	41.058	2.366,74	41.509	3.676,50
13	Central Java	108.630	5.527,35	76.126	3.801,38	32.504	1.725,97
14	DIY Yogyakarta	10.820	440,94	9.677	395,65	1.143	45,29
15	East Java	73.604	4.839,99	36.794	2.363,64	36.809	2.476,32
16	Banten	16.847	1.139,07	9.146	580,90	7.701	558,17
17	Bali	1.481	213,77	1.349	190,13	132	23,64
18	West Nusa Tenggara	9.799	1.547,16	6.114	988,49	3.685	558,67
19	Nusa East Southeast	1.307	335,26	985	209,90	322	125,36
20	West Kalimantan	3.301	692,28	1.673	258,91	1.628	433,37
21	Central Kalimantan	3.163	643,77	1.872	345,44	1.291	298,33

22	South Kalimantan	8.395	994,74	7.303	830,04	1.092	164,70
23	East Kalimantan	3.040	711,62	1.487	219,48	1.553	492,14
24	North Kalimantan	523	153,50	160	94,09	363	59,41
25	North Sulawesi	775	102,78	344	34,40	431	68,37
26	Central Sulawesi	2.340	366,51	1.446	144,19	894	222,32
27	South Sulawesi	7.526	974,12	4.554	383,05	2.972	591,07
28	Southeast Sulawesi	1.110	110,64	827	71,37	283	39,27
29	Gorontalo	1.947	391,84	981	276,18	966	115,66
30	West Sulawesi	3.051	460,04	1.014	132,38	2.037	327,66
31	Maluku	469	121,36	213	38,96	256	82,39
32	North Maluku	313	46,72	225	25,37	88	21,35
33	Papua	287	59,97	141	19,28	146	40,69
34	West Papua	76	105,22	41	7,33	35	97,89
JUMLAH		422.060	55.502,26	246.366	246.366	175.694	34.670,87

Looking at the data, there is a potential loss of waqf assets due to several factors, including being acquired by other parties or taken back by the heirs amounting to 34,670.87 or 175,694 waqf land parcels, this number may be even greater because not all waqf assets have been recorded. by the SIWAK system of the Indonesian Ministry of Religion.

Waqf is a legal act in its implementation requiring procedures that have become provisions in the regulations of waqf in Indonesia, both in the Compilation of Laws in Indonesia in book III and in Law No. 41 of 2004 on Waqf. In the KHI and in Law Number 41 of 2004 concerning Waqf, it does not regulate the recording of waqf land. The two legal rules regarding waqf only discuss the rules regarding the process of implementing waqf in which one of them must make an AIW or APAIW issued by PPAIW domiciled at the local KUA.

The registration of waqf assets is how much land is regulated in Article 32 of Law No. 41 of 2004 concerning Waqf, giving PPAIW the authority to legalize

waqf assets and then registering them with the authorized agency no later than 7 (seven) working days from the waqf deed signed by the parties before the local PPAIW. Meanwhile, what is meant by related institutions in Article 32 of the Waqf Law is the BPN office (National Land Office). Furthermore, in registering waqf land to the National Land Agency, PPAIW submits several requirements to BPN to be managed and issued a certificate of the waqf land. The requirements are: a copy of the Waqf Pledge Deed, and letters or proof of ownership and other related documents submitted by the wakif to PPAIW when making the Waqf Pledge Deed at the Office of Religious Affairs.¹⁵

Waqf management is the most important part of waqf, because the function or benefits of waqf can be felt by mauquf alaihi if it is managed properly, professionally and productively.¹⁶ this requires the legality of waqf land assets to ensure the immortality of waqf assets in the form of land, with the aim of obtaining all-time benefits.

As for the purpose and objective of legalizing waqf assets, in order to guarantee legal certainty about waqf legal events that have occurred, legalization by authorized officials is an activity of proving legal events, to serve as evidence of a legal event. In addition, the legalization of waqf legal events in order to protect aspects of the permanence of waqf assets, so that in the future these assets are not changed, sold, granted, pawned and or other actions that result in the loss and reduction of the volume of waqf assets.

The phenomenon of reduced volume or even loss of waqf assets as public assets often occurs in our society, whether taken back by heirs or recognized by other parties, as their assets. Of course, this is contrary to the waqf provisions which require the perpetuity of waqf assets and the termination of charities that will be enjoyed by the waqif. This phenomenon causes waqf disputes, and becomes a serious problem if the disputed assets do not have adequate evidence. There is no evidence of waqf owned by nazhir and the community using waqf assets, resulting in no evidence to sue or reject the claims of other parties. If this happens, it is very possible that a lawsuit or refutation of the waqf asset claim can be won by a party who has strong evidence.

Class Action as a Legal Normative Strategy in an Effort to Maintain Waqf Assets From the Action of Returning Waqf Assets by Wakif Heirs and other Claims.

According to Article 62 (2) No. In 2004 and its explanation, in the event that the Sharia Arbitration Board is unable to resolve the dispute, the dispute may be brought to the Religious Court and/or the Sharia Court. Of course, this effort to settle through the court is the last resort after all the solutions taken have failed. Waqf lawsuits can be filed by parties who have legal relations and sufficient legal

¹⁵ Fatahillah, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Sertifikat." *Kalam*, Volume 7 Nomor 1 Tahun 2019 E-ISSN 2597-9175 | P-ISSN: 338-2341

¹⁶ Khurun'in Zahro' et al., "Implementasi Pendistribusian Wakaf Tunai Sebagai Penunjang Usaha Kecil Menengah di Badan Wakaf Uang & Badan Wakaf Tunai MUI Yogyakarta," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 3, no. 1 (January 12, 2020): 49–66.

interests, such as wakif or their heirs, nazhir and mauquf 'alaihi, both individuals and the wider community. And the waqf case submitted is in the form of an ordinary case, meaning that few or many members of the community individually file a waqf lawsuit to the court, and it can also be in the form of a *class action* or group representative lawsuit.

Class action is a legal effort carried out by a group of people who have the same interests to fight for their rights.¹⁷

As a state of law, of course, adheres to the principle of legal equality for every citizen, it is possible and even a necessity to fight for their rights, if they feel that their civil rights have been harmed by other parties. This is also the principle of thought regarding the regulation of civil lawsuits. Civil lawsuits in general can be carried out in court processes and can also be carried out outside the court. Civil lawsuits for violations of civil relations can be carried out in two ways. *First*, by the person concerned or his heirs. *Second*, a group of people who have the same interests (class action).¹⁸

In general, M. Yahya Harahap provides limitations on class action as: 1. A lawsuit that contains a lawsuit filed by one or several people acting as group representatives, 2. A group representative who files a lawsuit does not only act for and on behalf of the group. them, but at the same time for and on behalf of the group they represent without requiring a power of attorney from the group members, 3. In filing the lawsuit, it is not necessary to mention individually the identity of the group members represented, 4. The group represented can be defined by identification of group members specifically, and 5. Between all group members and group representatives there is a common fact or legal basis that gives rise to common interests, similarities, suffering and demands to meet requirements for the benefit of all members.¹⁹

In the Supreme Court Regulation Number 1 of 2002 Article 1 letter (a) it is stated that a class representative lawsuit is stated, namely: 1. A procedure for filing a lawsuit by one or more people, 2. The person acts as a class representative for himself. themselves and at the same time a large number of class members, and 3. Between those who represent groups that are represented by the same facts and legal basis.

Thus, the main requirement in class action is the similarity of interests of group representatives with other group members. If there are differences in interests among group members or competing interests, a class action lawsuit cannot be filed as a class action lawsuit. Equality of interest and legal basis is the principle and determines the continuity of the lawsuit, if there is a similarity of

¹⁷ RL Sinaulan, "Pengaturan Dan Prospek Implementasi Gugatan Perwakilan (Class Action) Di Indonesia," *Jurnal Nuansa Kenotariatan*, no. Query date: 2021-12-03 21:22:40 (2016), http://ejournal.jayabaya.ac.id/index.php/Nuansa_Notariat/article/view/156.

¹⁸ E MUSTIKOWATI, "Analisis Normatif Terhadap Pengajuan Gugatan Perwakilan Kelompok (Class Action) Di Pengadilan Menurut Hukum Acara Perdata," *Jurnal Yustisiabel*, no. Query date: 2021-12-03 21:22:40 (2019), <http://lonsuit.unismuhluwuk.ac.id/index.php/yustisiabel/article/view/298>.

¹⁹ M. Yahya Harahap. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, (Jakarta: Sinar Grafika, 2005) p.139

purpose between those represented and represented and there is a similarity in the object of the lawsuit, a class action lawsuit can be taken and if not, class action steps cannot be continued.

Seeing the above, it certainly sets a precedent for the settlement of waqf disputes where the disputed assets do not have adequate legal grounds to be declared as legal waqf assets and have legal force. In the field of waqf, especially waqf khairi, waqf assets are intended for the general public in accordance with the criteria desired by the wakif when making a waqf pledge. Therefore, any community member who meets the criteria determined by the wakif can file a class action lawsuit to the Religious Court. As for expert waqf, any family member appointed by the wakif to receive the benefits of waqf property, then he has the right to submit a class action to the court for irregularities that occur.²⁰

To file a class action lawsuit, Nazhir or the community who are beneficiaries of waqf assets must pay attention to and do the following.²¹

In the provisions of proceedings using the class action model in Indonesia, it has been regulated in PERMA No. 1 of 2002, thus the procedural law applied is the applicable civil procedural law, namely HIR/RBg, which usually applies in other civil lawsuits, in the provisions of civil procedural law in Indonesia there is no provision that requires a lawsuit to be represented by another party. The parties in the trial can directly attend each trial, but if the process is represented, this has become a common occurrence.

In PERMA No.1 of 2002 it is stated that if the class action is represented by a legal representative, then the party who represents, namely Nazhir waqf or community groups who receive the benefits of waqf management, must make a power of attorney addressed to the appointed lawyer, and in article 2 letter d mentions that the judge can recommend the group representative to carry out the replacement of legal counsel, if the power of attorney performs actions that are contrary to the legal interests of the party giving the power of attorney, namely Nazhir and/or the beneficiaries of the waqf assets.²²

Thus, in a class action lawsuit in a dispute over waqf nazhir or the beneficiaries of waqf assets, they can appoint a representative or lawyer to proceed or take proceedings in court, and after receiving a power of attorney from the attorney, they can have proceedings to fight for their civil rights. his client, and if there is an indication that the lawyer is not fighting for the legal interests of his client, then the panel of judges has the authority to propose a change of attorney.

As for the requirements to file a class action lawsuit as stated in PERMA No. 1 of 2002 and Law No. 8 of 1999 concerning Consumer Protection, and based

²⁰ Ahamd Mujahidin, *Hukum Wakaf Di Indonesia Dan Proses Penanganan Sengketanya*, (Jakarta; Kencana, edisi pertama, 2021) p.417-418

²¹ Itok Dwi Kurniawan et al., "Analisis Putusan Gugatan Perwakilan Kelompok Sebagai Upaya Mendapatkan Mendapatkan Jaminan Perlindungan Hak Atas Tanah (Studi Putusan No. 262.Pdt.G/Class.Action/2016/PN.Jkt.Pst)," *Jurnal Hukum Mimbar Justitia* 6, no. 2 (December 30, 2020): 153, <https://doi.org/10.35194/jhmj.v6i2.1269>.

²² "PERATURAN MA RI NO 1 TAHUN 2002.Pdf," accessed December 22, 2021, <https://www.kejaksaan.go.id/upldoc/produkukm/PERATURAN%20MA%20RI%20NO%201%20TAHUN%202002.pdf>.

on PERMA No. In 2002, there were several requirements that the plaintiff had to fulfill, including.²³ First; Requirements Amount, the claim for representation must relate to the public interest or at least involve the interests of at least 10 people, second, the requirements for equality of fact, namely that both the representative and the class members represented must have the same legal basis, third, the conditions for the similarity of types of claims, the plaintiff and class members must have the same types of demands, fourth; eligibility requirements for representation, meaning that the party who will become a class representative must meet a number of requirements to determine whether or not he is eligible to file a lawsuit in court.

In this provision, it is explained that for a class action lawsuit in a waqf dispute case, then there are people who are harmed by a waqf dispute, if the waqf object has been and or will be acquired by another party, there are heirs or other parties who recognize and take the waqf asset as public assets, then there are basic similarities and the same legal facts that are substantial, meaning that for example in the case of waqf disputes, the same time and the impact of the loss of waqf assets have an impact at the same time.

Furthermore, in a class action lawsuit in a waqf dispute lawsuit, it requires that there are similar types of demands, namely both demanding the return of the disputed object to its original position, namely as a waqf asset that brings collective benefit and finally in a waqf lawsuit by means of class action, the party who representing must meet the aspects of eligibility as a legal representative, propriety, capability and integrity.

These provisions can be described as follows:

1. Have the same facts or legal basis with the group of money represented,
2. Have strong evidence that is accounted for,
3. Integrity and able to account for statements and actions before the law,
4. Committed to fighting for the rights of the group he represents for losses caused by the defendant,
5. Prioritizing group interests over personal interests,
6. Willing and willing to bear the costs needed during the process of filing a lawsuit in court.

In the class suit then it is obligatory to include a class representative lawsuit which contains the following.²⁴

1. Complete and clear identity of group representatives,
2. The definition of the group is clear and specific.
3. Information regarding group members as a condition for making notifications,
4. Posita (basic claim) from all groups, both representatives and members, which is stated clearly and in detail,
5. Representatives can list claims based on sub-classes if the claims are filed differently because the amount of damage is also different;
6. Claims must be stated clearly and in detail.

²³ "PERATURAN MA RI NO 1 TAHUN 2002.Pdf."

²⁴ M. Yahya Harahab. *Op cit.* p. 420

The implementation of the above can be illustrated as follows; In filing a waqf lawsuit by way of class action, there must be clarity on the group or community of beneficiaries of the disputed waqf, the group is indeed the user and or recipient of the results of the utilization of the waqf asset, then the group of beneficiaries of the waqf must have clarity, including the domicile statement which will be adjusted. its location with the disputed waqf assets. There is a *posita* or legal basis for why the lawsuit is appropriate, namely the disappearance or transfer of waqf assets that violates the provisions of waqf law in Indonesia, and no less important is the clarity of the contents of the claim, namely demanding to the court to decide that the waqf assets disputed with the defendant are terminated. with the decision to return the waqf assets, they remain waqf assets as public assets and can provide sustainable benefits and benefits for the community at large.

The existence of a Class Action lawsuit that is applied in waqf disputes is very helpful in resolving cases in cases of protecting waqf beneficiaries. This is due to the fact that the number of beneficiaries of waqf who are harmed is not small, so that they submit a claim to the court. So that if each user or recipient of waqf assets files a case individually, it will be inefficient, especially if each beneficiary of waqf who makes a claim uses the services of a lawyer, it will require a special power of attorney for each lawyer representing *nazhir* or waqf beneficiary who filed a case. . This shows that the Class Action lawsuit is very appropriate to be applied to cases of protection of waqf assets because the beneficiaries of the waqf often consist of many people. Thus the class action lawsuit becomes a solution that can be taken by *Nazhir* or waqf asset users to take legal action against the acquisition or claim of waqf assets by other parties. A class action lawsuit consisting of *nazhir* and the community using waqf assets, of course, becomes a very significant force.

On the other hand, a class action lawsuit is a systematic effort to fight for the realization of *maqashid ash-syariah*, two of which are to maintain the existence of assets. and religion, as stated by al Ghazali: that the objectives (intentions) of the Shari'a are five; protect religion, soul, mind, lineage and property. Efforts to maintain waqf assets so that their immortality is always maintained is an effort to realize the purpose of waqf provisions, namely assets that bring benefits to the people of all times, both for the sake of ritual worship and socio-economic interests and realizing religious values, namely the implementation of the practice of *Jariyah* teachings, even though the perpetrators are has died.

From this statement it has been explained that one of the objectives or even conditions for the enactment of Shari'ah for its adherents is to be able to understand the teachings that are applied and *Maqāshid* Shari'ah as an explanation/bridge understanding between Shari'ah and society. Because of these

reasons, the consideration of maqasid sharia needs to be understood and understood carefully according to the rules that apply therein.²⁵

Conclusion

Waqf assets in the form of land in accordance with the basic concept of waqf, must always maintain the immortality aspect of the waqf asset, and to ensure the realization of its eternal aspect, waqf assets must be equipped with legal requirements, namely the existence of authentic evidence issued by State officials appointed by regulations waqf, both the Waqf Pledge Deed (AIW) and the waqf certificate issued by the National Land Agency (BPN) Office. And if the legal aspects of the waqf are not fulfilled, then in order to defend the waqf assets from the actions of other parties in the acquisition effort, then the class action lawsuit can be taken by nazhir waqf and the community who receive benefits from the use and or management of waqf assets. A class action lawsuit is a legal procedure in civil law that provides procedural rights for a person or group of people to become a plaintiff in order to fight for a dispute that causes losses to many people. The class action lawsuit is a solution for resolving waqf disputes, especially waqf assets that do not have adequate legality and in the context of realizing *maqashid ash-syariah*, namely maintaining property (waqf assets) and maintaining and implementing religious values (maintaining the eternal value of jariyah charity).

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²⁵ Nor Mohammad Abdoeh, "Tinjauan Maqāshid Syari'ah Terhadap Pandangan Ulama Mengenai Ruislagh," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 3, no. 1 (January 12, 2020): 67–88.

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