Efforts to Resolve Waqf Disputes at the Payakumbuh Religious Court Case Number: 159/Pdt.G/2019/PA.Pyk

Hafizul Mahfuzh[1], Zulfan[2], Elfia[3]

[123]Universitas Islam Negeri Imam Bonjol Padang, Indonesia

*Corresponddence Email: 2320040030@uinib.ac.id

ABSTRACT

This study discusses the process of resolving a waqf dispute at the Payakumbuh Religious Court in case No. 159/Pdt.G/2019/PA.Pyk, which did not reach an agreement during the mediation stage, resulting in the lawsuit being granted. Mediation, as an important part of dispute resolution in court, aims to resolve disputes and reach a peaceful agreement between the parties. This study uses a normative legal research method. The data used in this study are secondary data, namely the decision in Case No. 159/Pdt.G/2019/PA.Pyk and legislation on waqf. To support the research, the legal materials used in this study are books, journals, and other reference sources. The data analysis used is qualitative legal analysis. The resolution of waqf disputes through mediation has legal implications for the parties, enabling them to obtain a swift decision, incur lower costs, avoid further legal proceedings, and have a decision that accommodates the interests of all parties and ensures they receive their rights fairly.

Keywords: Dispute, Waqf, Mediation.

ABSTRAK

Penelitian ini membahas proses penyelesaian sengketa wakaf di Pengadilan Agama Payakumbuh pada perkara Nomor 159/Pdt.G/2019/PA.Pyk, yang tidak menemukan titik temu pada tahap mediasi sehingga gugatan dikabulkan. Mediasi, sebagai bagian penting dari penyelesaian sengketa di pengadilan, bertujuan untuk meredakan perselisihan dan mencapai kesepakatan damai antara para pihak. Penelitian ini mengunakan metode penelitian hukum normative. Dalam penelitian ini jenis data yang digunakan adalah data sekunder yaitu hasil putusan Nomor 159/Pdt.G/2019/PA.Pyk dan perundang-undangan tentang wakaf. Untuk mendukung penelitian, bahan hukum yang digunakan dalam penelitian ini ialah buku, jurnal, dan sumber referensi lainnya. Analisis data yang digunakan adalah analisis yuridis kualitatif. Penyelesaian sengketa wakaf dengan mediasi berimplikasi yuridis bagi para pihak, dapat memperoleh putusan yang cepat, biaya ringan, tidak melakukan upaya hukum lebih lanjut, dan putusan yang dijatuhkan mengakomodir kepentingan para pihak serta mendapatkan hak-hak mereka secara adil.

Kata Kunci: Sengketa, Wakaf, Mediasi.

INTRODUCTION

Waqf is one of the important instruments in Islamic law that has a significant role in the social and economic development of the community. In practice, waqf not only functions as a form of worship, but also as a means of community empowerment,

especially in supporting the construction of public facilities such as mosques, schools, and hospitals (Kahf 1998).

The main legal basis governing waqf in Indonesia is Government Regulation Number 28 of 1977, Compilation of Islamic Law (KHI) and Waqf Law Number 41 of 2004 concerning Waqf which explains that waqf is a legal act of a person or legal entity that separates part of their wealth in the form of land and its institutions forever for the benefit or needs of other people according to Islamic teachings. However, the implementation of waqf often faces various problems, especially related to disputes over ownership or management of waqf assets.

These disputes are often caused by differences in interpretation, lack of legal understanding, or conflicts of interest between the parties involved (Kusdinar, H.M. 2020, 45–62). In this context, mediation can be an effective alternative solution to resolve conflicts that arise. Waqf disputes often occur due to differences in interpretation between the nadzir (waqf manager) and the heirs, or parties related to the status of the waqf land (NU Online 2018). Waqf Law Number 41 of 2004 concerning Waqf has explained that because waqf is seen as a legal act that contains religious and social elements, it requires dispute resolution that prioritizes justice and deliberation. Mediation as one of the non-litigation dispute resolution methods has developed rapidly in Indonesia (Hanifah 2016, 1–13). This method is considered more efficient than the litigation process, which is often time-consuming, expensive, and has the potential to damage good relations between the parties. Mediation offers a more peaceful and flexible approach, by providing an opportunity for the disputing parties to reach an agreement voluntarily and with the guidance of a mediator. In the case of waqf disputes, mediation is in line with Islamic values that encourage peaceful conflict resolution and avoid prolonged disputes.

In addition to resolving waqf disputes through mediation outside the court, waqf disputes can also be submitted for resolution in a religious court that is the jurisdiction of the Defendant or waqf object or the Plaintiff's place if in practice the Defendant's address and legal domicile are not clearly found. The resolution of waqf disputes is the jurisdiction of the Religious Court as stated in Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning the absolute power (absolute competence) of the Religious Court, where civil cases between Muslims related to waqf practices must be resolved in the Religious Court. When a lawsuit is submitted to a religious court related to a waqf dispute, the panel of judges before examining and hearing the case will first go through a peace/mediation process which will later be led by a Mediator.

Mediation is the most important thing in the dispute resolution process in court as a form of implementing case resolution that begins with good faith. Legally, the practice of mediation in the judicial institution is reconstructed from Article 130 HIR/Article 154 RBg which recognizes peaceful efforts or dading. In addition to the HIR/RBg, it is also regulated in Law No. 1 of 1974 Article 39, Law No. 3 of 2006 Article 65, KHI Articles 115, 131 (2), 143 (1-2), 144, and PP No. 9 of 1975 Article 32. Mediation regulations are regulated again through Perma Number 1 of 2008 concerning Mediation and then amended through Article 3 PERMA No. 1 of 2016 concerning Mediation Procedures in Court which states "Every Judge, Mediator, Parties and/or attorney must follow the dispute resolution procedure through Mediation". Before carrying out the trial, the judge is required to carry out the Mediation procedure. that Mediation is a peaceful dispute resolution method that is appropriate, effective, and can open wider access to the Parties to obtain a satisfactory and just settlement. Mediation as an

instrument to increase public access to justice as well as the implementation of the principle of simple, fast, and low-cost justice administration. Therefore, the author is interested in researching related to Efforts to Resolve Waqf Disputes at the Payakumbuh Religious Court Case Number: 159/Pdt.G/2019/PA.Pyk.

METHODS

This study uses a normative legal research method, namely an approach that examines law as a set of social norms or guidelines (Amiruddin 2010, 133). In this method, secondary data is also an important part of the analysis. Normative legal research includes a study of laws and regulations, legal principles, and established legal institutions. These aspects are seen as written (textual) legal forms and not merely as ideal concepts. This type of research also aims to study, build, and compile a positive legal system logically and systematically, so it is often referred to as dogmatic legal research (E. Saefullah Wiradipradja 2015, 5). In the context of this research, the main focus is on Law Number 41 of 2004 concerning Waqf, the Marriage Law, and the Compilation of Islamic Law (KHI) as a representation of Islamic law in Indonesia. The approaches used include a statutory approach and a conceptual approach. The statutory approach is carried out by thoroughly analyzing various related regulations, especially those governing waqf. Meanwhile, the conceptual approach is used to examine cases that are relevant to the conflicts discussed in this study, especially those that have resulted in legal decisions with long-term legal impacts or implications.

RESULTS AND DISCUSSION

Conception of Wakaf

Waqf in language means "to hold" while in terms of waqf it means to hold property whose benefits are taken without being destroyed immediately, and its use for things that are permitted by sharia with the intention of gaining the pleasure of Allah. By releasing the waqf property, legally the waqif has lost his ownership rights so that he no longer has the authority or right to use it for personal interests and the right to transfer or assign his ownership to another party, such as selling, donating including bequeathing to heirs (Muhammad Daud Ali 1988, 4). One type of ownership property is waqf property. Waqf is property owned by a person where the property is given to another person along with its benefits with the aim of the welfare of the community and as a means of getting closer to Allah (Bakhri, Amirul 2017, 129–53). Based on its purpose, waqf is divided into three types, including (1) ahli waqf is a waqf that is only given in a small scope, such as a family. (2) khairi waqf is a waqf given in a broad scope, namely given to individuals or groups for the common interest such as mosques, schools, hospitals, and so on, and (3) musytarak waqf (a combination of the two) namely a waqf given by someone in a small scope such as a family, as well as in a broad scope such as the common interest (society) (Latifah 2019, 1–18). In the Waqf Law No. 41 of 2004 it is stated that waqf is a legal act of a person or group of people or legal entities that separates part of their property and institutionalizes it forever for the benefit of worship or other public needs in accordance with Islamic teachings. The definition contained in this Law seems to be the same as the definition of waqf contained in the compilation of Islamic law in Indonesia, article 215 in conjunction with article 1 (1) PP No. 28 of 1977.

From several definitions of waqf, it can be concluded that waqf aims to provide benefits or advantages of the property that is donated to the rightful person and is used in accordance with the teachings of Islamic law. As the function of waqf mentioned in

article 5 of Law Number 41 of 2004, namely waqf functions to realize the potential and economic benefits of waqf property for the benefit of worship and to advance public welfare. In the Dictionary of Fiqh terms, waqf is transferring personal property rights that become the property of an entity that benefits the community. This is based on religious provisions and the purpose of taqarub to Allah SWT, to obtain His goodness and pleasure (M. Abdul Mujieb et al. 1994, 414).

In line with the development of the times, in Indonesia waqf began to be regulated in positive law and problems related to it were resolved in the Religious Court. In (KHI) Compilation of Islamic Law, article 215 states that waqf is a legal act of a person or group of people or legal entity that separates part of their property and institutionalizes it forever for the sake of worship or other public needs in accordance with Islamic teachings (Abdurrahman 1979, 165).

Authority of Religious Courts in Wakaf Disputes

Article 49 of Law Number 3 of 2006 states that the Religious Court has the duty and authority to examine, decide and settle cases at the first level between Muslims in the fields of Marriage, Inheritance, Grants, Waqf, Zakat, Infaq, Shadaqah and Sharia Economics. In the course of the history of the Indonesian nation, the Religious Court was established based on Staasblad No.152 of 1882, one of its authorities is to resolve waqf problems. After Indonesia's independence, the government issued several waqf regulations, namely Government Regulation No.28 of 1997 concerning waqf of owned land, Regulation of the Minister of Religion Number 1 of 1978 concerning regulations, implementation of Government Regulation No.28 of 1977 concerning waqf of owned land, Compilation of Islamic Law (KHI) and then Law Number 41 of 2004 (Asep Riyadi 2022, 5–6).

Mediation in Court

Mediation according to several conflict resolution experts, including Laurence Bolle, states that mediation is a process carried out by the parties to resolve a dispute through peace that can be done in or out of court with the consideration that the settlement can satisfy the 3 parties and no party feels like they have won or lost, so that the settlement can lead to peace of mind, satisfaction and strengthen ties (Abbas 2018). This settlement pattern can be developed into various alternative dispute resolution methods in the form of mediation, arbitration, negotiation, adjudication and others.

The application of mediation in court began with article 130 HIR, article 154 RBg and article 31 Rv which regulates the peace institution (dading). The mediation process in court was institutionalized through PERMA No. 2 of 2003 concerning Mediation Procedures in Court, then refined by PERMA No. 1 of 2008. 17 PERMA No. 1 of 2008 has not been able to optimize the role of mediation in court, therefore PERMA No. 1 of 2016 concerning Mediation Procedures in Court was re-enacted with the aim of strengthening and maximizing the effectiveness of mediation in the litigation process in Court (Rundle 1984, 31–46). The reasons for institutionalizing mediation in the judiciary are, to overcome the problem of case backlog, mediation is a faster and cheaper dispute resolution process, mediation provides access for the parties to find a satisfactory solution and fulfill a sense of justice, and to maximize the function of the judiciary in resolving cases in addition to adjudicative resolution (Rundle 1984). With the Indonesian legal system that provides opportunities for legal remedies for appeal, cassation or judicial review, the application of the principle of simplicity, speed and low cost is constrained by the large number of cases received, limited judges, and minimal

facilities. The existence of mediation will strengthen and maximize the function of the judiciary in resolving cases and can be an effective instrument in overcoming the backlog of cases, in addition to using the adjudication system. Therefore, civil cases that go to court must be attempted to reach a settlement before being examined in the trial process based on Article 130 HIR and Article 154 RBg.

Mediation Procedure in Perma No. 1 Year 2016

The mediation procedure regulated in PERMA No. 1 of 2008 is considered not optimal in fulfilling the usefulness of mediation in the judicial institution, so it needs to be improved with PERMA No. 1 of 2016. PERMA No. 1 of 2016 was enacted on February 4, 2016 and changed several rules in PERMA No. 1 of 2008 and added new things to IX (nine) CHAPTERS and 39 articles. The regulations in the new PERMA apply in General Courts or Religious Courts only and other courts can apply if permitted by law. Mediation must be offered by the panel of judges of the First Instance Court before the case examination process, otherwise it means that the rules in the PERMA have been violated. If the parties appeal or cassation, the Appellate Court or Supreme Court orders mediation with an interlocutory decision (Ostrom 2016). In the new PERMA, the elimination of mediation before the case examination process does not result in the decision being null and void as stated in Article 2 paragraph (3) of PERMA No. 1 of 2008. Cases that must be mediated and the exceptions are detailed in Article 4, while the provisions on the types of cases stated in PERMA No. 1 of 2008 are only general. Exceptions to cases in Article 4 can be resolved through voluntary peace as stated in Articles 33 and 34. Mediation cannot be carried out if the dispute involves the authority of the ministry/institution/agency and BUMN/BUMD which are the parties to the case unless it has been agreed in writing to carry out mediation. The confidentiality of mediation does not prevent the parties from attending the mediation meeting via communication tools to facilitate the implementation of mediation. This also avoids parties who do not attend mediation activities due to long distances. Based on these provisions, the parties are required to play an active role in attending meetings in person in the implementation of mediation. The absence of the parties can only be accepted if it is accompanied by valid reasons such as illness, under guardianship, being abroad or carrying out duties that cannot be missed (Ostrom 2016).

Additional rules in this PERMA concern the good faith of the parties in participating in the mediation process in article 7 and their legal representatives in article 18 as well as the legal consequences if the parties do not act in good faith in articles 22 and 23. Parties who do not have good faith are required to pay mediation costs as a sanction determined by the panel of judges at the trial. However, if the parties both show a lack of good faith during the mediation process, then the lawsuit submitted cannot be accepted. Apart from being played by advocates and legal academics as mentioned in PERMA No. 1 of 2008, can also be played by court employees, namely clerks, secretaries, substitute clerks, bailiffs, substitute bailiffs, prospective judges and other employees (Ruling, D., Agung, M., Indonesia, R., Keadilan, D., Ketuhanan, B., & Maha 2008).

This PERMA also regulates the governance of mediation in court to maximize the existence of mediation as an effort to resolve disputes. For judge mediators who succeed in reconciling the parties are given more value as an encouragement to carry out the duties and functions of the mediator optimally. The provisions for the duration of mediation efforts have also been shortened to 30 (thirty) working days, but the extension of mediation has been increased to 30 (thirty) days to provide an opportunity

for the parties if the previous deadline has not succeeded in formulating an agreement (Ostrom 2016).

If the parties can reconcile, the agreement made can be strengthened in a peace deed and can also be withdrawn by the lawsuit if the parties want the agreement not to be stated in writing. Peace agreements in PERMA are divided into several types, namely complete and partial peace agreements. This partial peace agreement occurs when part of the defendant agrees with the plaintiff. However, if the plaintiff only partially agrees with the defendant, then the mediation is considered to have failed.

Efforts to Settle the Wakaf Dispute in Case Number: 159/Pdt.G/2019/Pa.Pyk

Settlement of waqf disputes is the absolute competence of religious courts which are intended for Muslims. In resolving waqf disputes, they can be resolved through non-litigation (outside the court) and in court (litigation). In case Number: 159/Pdt.g/2019/Pa.Pyk, the settlement of waqf disputes was carried out through litigation at the Payakumbuh Religious Court which was marked by the existence of a lawsuit and a case number that had been deregistered in the case book at the Payakumbuh Religious Court. The process of resolving waqf disputes at the Payakumbuh Religious Court, case Number: 159/Pdt.g/2019/Pa.Pyk began with the summons of the parties, namely Dharma Budi as Plaintiff I and Mutia Dewi as Plaintiff II, Drs. Masrul, Head of KUA Kec. Akabirul, Hudaya Alfaz, Nasrun Naib who were each referred to as Defendant I, Defendant II, Defendant III and Defendant IV. The Plaintiffs and Defendants have been brought before the panel of judges who examined and tried the a quo case in April 2019.

The Panel of Judges has tried to advise and reconcile the Plaintiffs and Defendants so that they can resolve the a quo case peacefully and amicably and reminded the parties that as long as the verdict has not been made, the parties are given space to reconcile outside the court in order to realize justice for all parties to the case. Furthermore, to fulfill the provisions of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, by agreement of the Plaintiffs and Defendants, they have chosen a Mediator Judge, namely Dra. Hj.Yuhi, MA to seek peace through mediation, but these efforts did not produce results or failed to reconcile.

The mediation process carried out by Mediator Judge Dra.Hj.Yuhi, MA is a requirement that must be carried out in the trial stage before continuing. This is because this mediation process is a legal provision that applies to require mediation for the parties to the case in order to realize a fast, simple and low-cost trial process. This is as mandated by Perma Number 1 of 2008 concerning Mediation and was later amended through Article 3 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court which essentially states "Every Judge, Mediator, Parties and/or attorney must follow the dispute resolution procedure through Mediation.

The provisions above are a space provided by the court to provide greater access in accelerating and facilitating justice seekers (justiciabellen). Mediation as an effective instrument to overcome the backlog of cases in Court, and at the same time maximize the function of the court institution in resolving disputes in addition to the adjudicative court process. Referring to case Number: 159/Pdt.g/2019/Pa.Pyk Payakumbuh Religious Court, the Panel of Judges of the first instance has held mediation between the two parties between the Plaintiffs and the Defendants with the result that the mediation failed. Even though the two parties have met in the mediation room and the Mediator Judge Dra. Hj.Yuhi, MA has explained regarding the Mediation rules. The Plaintiffs remain with the arguments of their lawsuit which essentially state "that the assets

donated by the Plaintiffs' mothers is a high inheritance property of the Plaintiffs, namely in the Dt. Sipado Bagonjong Caniago tribe which has been controlled for generations. And the deed of Waqf is not legally valid because it was made after the Plaintiffs' uncle died". After hearing the statements of the Plaintiffs, the Mediator Judge also gave the Defendants the opportunity to convey the reasons why the deed of waqf of the Plaintiffs' uncle was issued. The Defendants have stated that "The property that was waqfed by the Plaintiffs' uncle is not a high inheritance property of the Dt. Sipado Bagonjong of the Caniago tribe, but the property is the ancestral property of the Plaintiffs' Mamak which was purchased by the Plaintiffs' Mamak's biological mother who was purchased from the Guci Tanjung Bayua tribe". The Mediator Judge has tried to reconcile the parties but has not found a common ground so that the Mediator Judge cannot force the parties to reconcile. The Parties do not have good intentions to resolve the dispute through family and peace because the Plaintiffs and Defendants have prioritized their respective interests to maintain the waqf property. With no agreement being reached between the two parties, in accordance with applicable regulations, the trial process will continue with the reading of the lawsuit and the answer from both parties.

Based on this, the author observes and assesses that the mediation carried out by Judge Mediator Dra. Hj.Yuhi, MA at the Payakumbuh Religious Court is only a formalistic mediation effort to fulfill the applicable legal provisions. And in the mediation, the parties were only brought together directly from beginning to end, there was no caucus process in the mediation that allowed the Mediator to obtain important information from both parties to find a solution so that when they were brought together again, it was hoped that the resolution of the waqf problem could be carried out peacefully and calmly. A mediator must maximize and take various ways to resolve a problem through mediation so that the interests of the parties are not harmed and there are no winners and losers. If the mediation process is not carried out optimally by the mediator in the court in casu the Payakumbuh Religious Court, then all cases registered in the court will be carried out until the end of the legal effort. Where if this is maintained, the jargon "winning becomes charcoal, losing becomes ashes" cannot be avoided. Moreover, the problem of waqf disputes is related to the property of the people.

CONCLUSIONS

Based on the discussion above, the author concludes as follows:

1. Existing legal provisions show that resolving waqf disputes through mediation has legal implications for the parties, can obtain a quick decision, low cost, no further legal efforts, and the decision issued accommodates the interests of the parties and obtains their rights fairly.
2. The mediator who is used as a mediator in the conflict between the Plaintiffs and the Defendants should not be taken from the judge appointed as a mediator, but it would be more optimal if the mediator comes from an academic, legal practitioner other than a judge or others, who have the capability and experience to resolve disputes through mediation.
3. The failure of mediation has a significant impact on the future justice system because mediation is only used as a complement to formal requirements in the trial formula. In fact, if mediation itself is carried out optimally and is able to reconcile the parties, the backlog of cases that have been in court can be resolved.

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