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Regulation of The Waqif Heirs In The Law of Waqf in Indonesia And Malaysia

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Abstract: Indonesia and Malaysia, as developing countries, have similarities and differences regarding the heirs of the waqf, from their implementation, legal basis, and system, to the resolution of waqf disputes. This investigation scrutinizes the convergences and divergences within the waqf juridical frameworks of Indonesia and Malaysia, with implications that enrich the global dialogue on waqf jurisprudence. The study adopts a doctrinal, literature-oriented methodology, employing a normative juridical paradigm and relying on secondary data comprising primary, secondary, and tertiary legal sources. The analytical technique employed is comparative in nature. The outcomes of this inquiry elucidate that the legal configuration governing the heirs of a waqf in both Indonesia and Malaysia embodies distinct attributes reflective of their respective sociocultural typologies. The legislative treatment of waqf heirs in the two jurisdictions diverges; in Indonesia, their recognition is expressly articulated in Article 6, paragraphs (2) and (4) of Government Regulation No. 42 of 2006, which operationalizes the Waqf Law. The existing nazir informs the waqf or the waqif heirs, and the waqif heirs have the right to propose to the Indonesian Waqf Board (BWI) for the nazir's termination and replacement. In Malaysia, the waqif heirs are not specifically regulated, but there is legislation stipulating that in the waqf practice, the waqif must obtain approval from the King and the waqif heirs. The common point between these two countries lies in the framework of Islamic law, which follows the Shafi'i madhhab but is not absolute. However, in Malaysia, this only applies in certain states.

Keyword: Regulation, the Waqif Heirs, Indonesia, Malaysia

INTRODUCTION

"*Waqf*" in the language denotes the act of restraining or withholding. Specifically, it involves the practice of withholding an object and directing its benefits towards lawful endeavours (Al-Anshori, 2005). "*Waqf*" constitutes a legal deed wherein a "wakif" voluntarily segregates and/or transfers a portion of their assets, with the intention of perpetual or specified-term utilization by their religious or philanthropic objectives, as dictated by Sharia law. "Waqf" represents a form of benevolence in Islam, characterized by both worshipful and transactional dimensions. Etymologically, the term "waqf" originates from the Arabic verb "*waqafa-yaqifu-waqfan*," which denotes the action of ceasing or withholding, commonly referred to as "*al-*

habs” (Islamiyati & Musyafah, 2020). It is deemed an act of worship due to its classification as an enduring charitable endeavour (*amal jariyah*), persistently yielding rewards (*ajrun*) in perpetuity, even beyond the lifetime of the benefactor (the *waqif*), provided the endowed asset continues to serve the communal welfare. The social aspect of waqf entails the commendable act of contributing one's wealth towards societal objectives.

The waqf system represents a welfare mechanism instituted within the framework of Islam (Islamiyati & Musyafah, 2020). Waqf occupies a pivotal position as an institution in Islamic civilization (Mujani et al., 2018). Across the annals of Islamic history, waqf has functioned as a cornerstone for fostering communal prosperity among Muslims. Its inception can be traced to the Prophetic era, when the Prophet Muhammad (peace be upon him) advised his companion, ‘Umar ibn al-Khaṭṭāb, to dedicate his wealth by preserving the core property while allocating its returns for philanthropic endeavors. Moreover, the Prophet expressly forbade the sale, inheritance, or donation of endowed assets, underscoring their enduring social utility and collective benefit. Employing waqf as a mechanism for socioeconomic empowerment and poverty eradication presents distinct advantages compared to the contemporary fiscal frameworks currently practiced (Islamiyati & Musyafah, 2020).

The endowment tradition was instituted by the companions of Prophet Muhammad (peace be upon him), and the juridical construct of waqf law subsequently emerged as the foundation for its execution. Thereafter, the waqf practice was sustained by the successive generation of companions, known as the Tabi’in, continuing through the Umayyad and Abbasid dominions, and further into the Ottoman epoch.

The differentiation between waqf and zakat resides in the fact that zakat is compulsory, whereas waqf is discretionary (Yaacob, 2013). The progression of waqf law has experienced notable acceleration, broadening its scope beyond Saudi Arabia to attain transnational prominence, particularly among Islamic polities such as Turkey, Egypt, Iran, Pakistan, Malaysia, Bahrain, Bangladesh, Indonesia, and others. In Indonesia, the supervision of waqf affairs was administered by the Ministry of Religious Affairs for Zakat, Infaq, Sadaqah, and Waqf (ZISWAF). Since 2004, subsequent to the enactment of Waqf Law No. 41/2004, waqf administration has been coordinated between the Ministry of Religious Affairs and the Indonesian Waqf Board (BWI) (Islamiyati & Musyafah, 2020).

The advancement Indonesia waqf has reached a significant milestone, where it has been codified into law with operational guidelines established by the state while ensuring adherence to religious principles. This has facilitated the harmonization of state legislation with religious doctrine. Such alignment is crucial as the objectives and benefits derived from waqf assets contribute to the attainment of national development objectives, as enshrined in the preamble of the 1945 Constitution, which serves as the constitutional bedrock of the nation.

Islam is a faith imparted by the Prophet Muhammad, directed by the Holy Qur'an, and unveiled to humanity through the divine revelation of Allah (Kencana et al., 2019). In Malaysia, the benefits of waqf have significantly broadened, transcending religious spheres to encompass various sectors such as business, commerce, banking, insurance, stocks, and companies, and even extending into industries and tourism. When juxtaposed with Indonesia, despite both being developing countries and neighbours, there are significant similarities and differences in the implementation, legal foundation, system, and dispute resolution of waqf law. However, the regulation of heirs of the waqif in waqf law in Indonesia and Malaysia has not been extensively examined.

The concept of waqf law in Islam derives from the foundational principles delineated in Islamic religious scriptures, notably the Qur'an, Hadith, and the scholarly exegeses thereof (Islamiyati & Musyafah, 2020). According to Islamic law, once a waqif (the person making the endowment) has correctly verbalized the prescribed formula, ownership of the endowed property is transferred from them. Consequently, the waqf assets are then under the

management of a trustee (Nazir). Subsequently, the heirs of the waqf are not entitled to inherit the endowed property because waqf ownership cannot be passed down, and it has already been designated as the property of Allah (*intiqolu ilallah*).

In practical terms, numerous deviations persist. The inclusion of third parties beyond the trustee and waqf stands as a prominent factor leading to waqf disputes, notably involving the heirs of the waqf. Despite Article 40 of the Waqf Law stipulating that waqf land is not inheritable, many heirs of the waqf persist in asserting entitlement to the waqf property. One of the frequently encountered waqf disputes pertains to the inheritance claim over waqf property (Andaresa et al., 2020). A common occurrence observed among heirs is their tendency to regain control, annul, vend, or otherwise liquidate waqf assets upon assuming authority (Andaresa et al., 2020).

In the case that transpired in the community of Manisrenggo, Kediri, East Java, Indonesia, a dispute arose concerning the administration of a waqf between the heirs of the waqf and the community (formerly takmir), both asserting authority over the determination of the mosque's trusteeship. Their contention revolves around Article 6, paragraph (4) of Government Regulation of the Republic of Indonesia No. 42 of 2006, which pertains to the implementation of Law No. 41 of 2004 concerning Waqf. This article stipulates that heirs possess the right to nominate individuals to serve as trustees for waqf management.

Another notable instance of waqf disputes involves the case outlined in Decision Number 987/Pdt.G/2003/PA.Smg. This dispute emerged when a deceased individual, before their passing, had dedicated a parcel of land they owned, upon which a mosque was subsequently constructed. It was discovered that this land constituted joint property between the waqif (the endower) and their first and second wives, with no prior distribution to their heirs nor formal declaration as Waqf, nor the existence of a Waqf Declaration Deed (AIW). Consequently, upon learning of this situation, the heirs initiated legal action in the Semarang Religious Court to reclaim the endowed land for distribution as part of the inheritance (David, 2023).

Based on the aforementioned issues, it is imperative to elucidate the similarities and disparities between the waqf legal frameworks of Indonesia and Malaysia concerning the governance of heirs of the waqif. The aim is to comprehensively understand and analyze the juxtaposition of regulations about heirs of the waqif in waqf law across Indonesia and Malaysia. This endeavour holds significant merit for fostering an enhanced discourse on waqf law on the global stage and as substantive material for appraising waqf legal policies. Consequently, the author proposes three problem formulations: firstly, an examination of the regulations governing heirs of the waqif in Indonesia; secondly, an exploration of the regulations governing heirs of the waqif in Malaysia; and thirdly, a comparative analysis of the heirs of the waqif systems between Indonesia and Malaysia.

METHOD

This inquiry is classified as normative juridical research. It entails the scrutiny and dissection of documents encompassing statutory enactments, judicial decrees, legal doctrines, and jurisprudential interpretations, while potentially integrating scholarly expositions. Juridical research comprises multiple methodological orientations, including the statutory, case-based, conceptual, and comparative paradigms, all of which are employed by the researcher in this examination (Marzuki, 2005), in addition to the philosophical trajectory (Efendi & Rijadi, 2022). Various types and origins of primary and secondary research data exist, with data collection methods encompassing literature review and document analysis. Additionally, data processing techniques and analysis methods are employed to interpret the collected data (Muhaimin, 2020).

RESULTS AND DISCUSSION

Regulation of The Waqf Heirs in Indonesia

The concept of waqf in Indonesia originated during the 13th century concurrent with the spread of Islam, a period marked by the existence of diverse kingdoms across the archipelago. Nonetheless, the substantive realization of waqf within society underwent substantial advancement from the 15th century onwards (Djarmiko, 1962). During that era, waqf practices manifested in various forms, including places of worship such as prayer halls, mosques, and surplus, as well as venues for Islamic education and boarding schools. Additionally, they encompassed spaces for community activities such as farming, gardening, and the construction of public facilities. The practice of waqf by Muslims can be regarded as an integral component of their daily worship, alongside other facets of life. During this period, the cultivation of brotherhood and unity among Muslims commenced through the utilization, benefit, maintenance, and administration of waqf assets (Islamiyati & Musyafah, 2020).

The Indonesian government recognizes and safeguards waqf law within the country as it can contribute to the attainment of national development objectives. Furthermore, in upholding citizens' constitutional rights, this is intricately linked to Indonesia's constitutional framework, characterized by its belief in the one and only god, ensuring protection for individuals to practice their respective faiths and religions. Muslims, along with adherents of other religious beliefs, are afforded state protection to exercise their religious teachings, including the establishment of waqf, as delineated in the First Principle of Pancasila and Articles 29, Paragraphs (1) and (2) of the 1945 Constitution (Mubarak et al., 2021).

The enforcement of waqf law in Indonesia integrates both religious (Islamic) jurisprudence and state legislation. The religious dimension primarily adheres to the Shafi'i madhhab, yet remains receptive to doctrinal influences from other legal schools, such as the Hanafi and Maliki madhhabs. This encompasses diverse forms of waqf, including productive waqf, cash waqf, and the substitution of endowed property. Conversely, the state legal apparatus presides over elements related to legal certainty, movable endowed assets, time-bound waqf, and the formal certification of waqf property. The legitimacy of waqf is thus ascertained through the synthesis of religious jurisprudence and statutory regulation, acknowledging the substantial economic and social magnitude of waqf assets.

The legislation formulated by the government serves as a framework for the recognition and protection of waqf law, providing Muslims with guidelines for conducting waqf deeds and ensuring legal certainty. This legislation comprises Government Regulation No. 28/1977 regarding land ownership endowment, Presidential Decree Inpres No. 1/1991 Part III concerning waqf law, Law No. 41/2004 regarding Waqf, and Government Regulation No. 42/2006 regarding the Implementation of Government Regulation No. 41/2004.

The execution of waqf practices operates under the auspices of the Ministry of Religious Affairs, supervised through the District Office of Religious Affairs (Kantor Urusan Agama). In conjunction with state directives, the regulatory framework governing waqf law is also shaped by the Indonesian Ulama Council (Majelis Ulama Indonesia) via the issuance of fatwas. These fatwas encompass diverse domains, including cash waqf, intellectual property waqf, and productive waqf. Regarding administration, the Indonesian Waqf Board (Badan Waqf Indonesia) is mandated to oversee the stewardship of endowed assets. The BWI engages in collaborative undertakings with trustees drawn from various societal entities, such as institutions, foundations, and civic organizations, to administer waqf property in alignment with communal exigencies (Harahap, 2006).

Quoting from the book *"Fathul Wahab"* by Sheikh Zakaria Al-Anshori, the term "waqf" linguistically denotes the act of restraint. In technical parlance, waqf signifies the act of reserving an asset and directing its proceeds toward lawful endeavours (Al-Anshori, 2005). By Islamic law concerning waqf matters, once the waqif (the endower) has formally expressed the

appropriate declaration, ownership of the endowed property is transferred from them. Consequently, the assets under waqf are designated to be overseen by a trustee, known as the nazir. Subsequently, the heirs of the waqif are not entitled to claim ownership of the endowed property because the ownership of waqf assets cannot be inherited; rather, it has already been vested as the property of Allah (*intiqolu ilallah*).

According to Islamic law, the establishment of a waqf occurs immediately after the waqf pledge or declaration from the party intending to endow their property. However, as stipulated in Article 6 of Law number 41 of 2004 concerning Waqf, the execution of a waqf must adhere to certain essential elements. These elements include the waqif (the endower), trustee (nazir), waqf property, waqf pledge, allocation of waqf property, and the duration of the waqf. Each of these elements entails specific requirements that must be met, with the waqf pledge being particularly significant. The waqf pledge, according to its provisions, cannot be undertaken casually.

Article 17, paragraph (1) of the Waqf Law stipulates that the commitment to establish a waqf is made by the donor (waqif) to the trustee in the presence of the Official of Waqf Deed Making (PPAIW), with the presence of 2 (two) witnesses. Subsequently, Article 17, paragraph (2) of the Waqf Law mandates that this commitment be officially documented in a waqf deed. The waqf deed serves as a fundamental piece of evidence that bestows legal validity and protection upon waqf assets (Andaresa et al., 2020).

The management and development of waqf assets by the trustee (nazir) indeed hold legal authority as prescribed by the Waqf Law. Article 40 of the Waqf Law explicitly prohibits the mortgaging, seizure, donation, sale, inheritance, exchange, or any other form of transfer of rights concerning endowed waqf assets.

Despite the presence of regulations and prohibitions outlined in the Waqf Law concerning endowments, deviations persist in practice. The involvement of third parties beyond the trustee (nazir) and the waqif often precipitates waqf disputes, particularly involving the heirs of the waqif (Nafi'Addawami & Zamzami, 2022). Despite Article 40 of the Waqf Law stipulating that waqf land cannot be inherited, many heirs of the waqf still assert claims to waqf property. A common scenario involves disputes over land or buildings, given the current high market value of real estate.

A common deviation observed among heirs occurs when they assume control, terminate, sell, or otherwise dispose of waqf properties. Another deviation involves heirs assuming management of waqf properties such as mosques. This action contradicts rightful authority, which dictates that the trustee (nazir) is the authorized entity for management.

Indonesia addresses the heirs of the waqif by the provisions outlined in Article 6, paragraphs (2) and (4) of Government Regulation No. 42 of 2006 the Waqf Law implementation. The current trustees are responsible for informing the waqif or their heirs, who then possess the right to propose to the Indonesian Waqf Board (Badan Waqf Indonesia) for the dismissal and replacement of a trustee. However, the final decision ultimately rests with the BWI, which is the government-appointed body responsible for making determinations in such matters. Heirs do not have the authority to directly select waqf trustees, thus situations often arise where heirs attempt to influence or lobby authorities to approve their nominated candidates. This practice can give rise to concerns that Article 6, paragraph (4) is being exploited, allowing heirs to arbitrarily determine trustees based on their own criteria. Consequently, disputes may emerge between heirs of the waqif and various stakeholders such as mosque management committees, religious leaders, and community leaders, particularly in cases where there is disagreement among heirs regarding the appointment of waqf trustees. The basis for the proposal to dismiss and appoint trustees at Masjid Al-Ikhsan is typically grounded in Article 6, paragraph (4) of Government Regulation no. 42 of 2006, which pertains to the implementation of Law no. 41 of 2004 concerning waqf (Afandi, 2021). The prevailing reality

in society demonstrates the persistence of numerous cases involving waqf disputes in daily life. Examples include instances of land withdrawal that has been designated as waqf and the rejection of waqf pledges by heirs (David, 2023).

The issue emerged in 2022 when the descendants of the benefactor expressed their intention to reclaim the property allocated for charitable purposes (waqf). Despite efforts to mediate and reach a resolution through discussions between the involved parties, satisfactory terms could not be agreed upon. Subsequently, the descendants of the benefactor proceeded by nominating a new trustee according to their preferences. Notably, the proposed candidates for the new trustee remained within the familial lineage of the benefactor's heirs.

According to Article 11 of Law Number 41 of 2004, the administration and development of waqf assets are exclusively entrusted to the trustee. This trustee can be an individual, organization, or legal entity designated by the waqif. It's important to note that individuals who are not specifically appointed by the waqif as trustees, including the waqif's heirs, lack the authority to manage waqf assets. Therefore, heirs assuming control of waqf assets from the trustee do so without proper legitimacy (Andaresa et al., 2020).

The resolution of waqf disputes should endeavour to be grounded in Islamic legal principles, specifically emphasizing reconciliation (Islah) and brotherhood (*ukhuwah*), as delineated in various verses of the Qur'an, including Surah *Al-Hujurat* (49): 9, Surah *Al-Hujurat* (49): 10, and Surah *Al-Imran* (3): 103, which mandate resolving conflicts through peace and fraternity. One of the avenues for resolution is through consultation (*musyawarah*), where parties can settle disputes as stipulated in Article 62, paragraph (1) of the Waqf Law. Additionally, dispute resolution can be pursued through mediation, Sharia arbitration, and adjudication in religious courts (Andaresa et al., 2020).

The Indonesian Waqf Board (BWI) plays a significant role in resolving disputes concerning waqf land, particularly at the Tawakkal Mosque, through alternative dispute resolution methods stipulated in Law Number 41 of 2004 regarding waqf. Specifically, BWI acts as a mediator, employing mediation or consensus approaches as mandated by Article 62, Paragraph (1) of the aforementioned law. This entails facilitating discussions and negotiations between trustees and heirs of the waqif, aiming to reach mutually agreeable resolutions outside the formal court system (Arifin, 2020).

The withdrawal and conversion of waqf land, as well as disputes surrounding waqf assets in Semarang City, Central Java, particularly in coastal areas, exemplify concerning intentions towards these endowed properties. Such disputes entail various issues encompassing the parties involved, the assets themselves, and the procedural aspects of waqf management. Root causes include discord among stakeholders, manifested through actions by the waqif (donor) and the trustee (nazir) vis-à-vis the community and government entities. Moreover, breaches of agreements between the waqif and trustee regarding asset allocation, misunderstandings regarding the intersection of religious and governmental regulations governing waqf procedures, and the economic imperatives facing the waqif's heirs upon the donor's passing, all contribute to these disputes (Islamiyati & Musyafah, 2020).

The research is centred around the phenomenon of legal pluralism in resolving waqf land disputes in Indonesia, which is manifested through the coexistence of legal frameworks derived from Islamic law and national legislation. This legal pluralism presents a dual nature, offering opportunities and posing challenges for the community in selecting the most appropriate legal framework to address waqf land disputes (Yudistira, 2022).

The heirs have redeemed the waqf land, and all family members have reached a consensus on this matter. According to the Shafi'i school of thought, the beneficiary of the waqf is prohibited from undertaking any legal actions concerning the waqf property, such as selling, bequeathing, donating, or others. However, with the redemption of the waqf land, the community has transitioned to the Hanafi school of thought, which permits the waqif to revoke

their endowed property or to engage in activities such as selling, donating, bequeathing, and so forth (Malisi, 2022).

In the context of Islamic legal analysis, the withdrawal of waqf by heirs after the demise of the waqif (the individual who established the waqf) in Sigalapang Julu village, Panyabungan District, Mandailing Natal Regency, North Sumatra, is subject to scrutiny. The heirs, feeling a lack of substantial evidence, opt to manage and sell the land. However, according to Islamic law, such an endeavour to withdraw the waqf land is deemed invalid since it is impermissible to retract endowed property (Ritonga et al., 2022).

The juridical review of withdrawing waqf land for distribution as inheritance is examined within the framework of Waqf Law. The research addresses several key issues, particularly focusing on the withdrawal of waqf land for inheritance distribution as per the stipulations of Waqf Law. The findings highlight concerns regarding the withdrawal of waqf land in cases of waqf disputes, specifically those adjudicated by the Semarang Religious Court in Decision Number 987/Pdt.G/2003/PA.Smg. The contention arises from instances where the established waqf fails to meet the requisite standards outlined in Law Number 41 of 2004 regarding waqf (David, 2023).

The legal foundations established by the government for waqf aim to facilitate Muslims in performing waqf-related legal activities and offer guidance for resolving waqf disputes, ensuring that conflicts can be efficiently and beneficially settled. Waqf disputes arise when multiple parties involved in waqf transactions disagree over valuable assets, whether monetary or tangible property. These disputes, governed by waqf law, are termed waqf legal disputes, encompassing legal matters arising between two or more parties wherein each fails to uphold its obligations, leading to grievances and hindering the fulfilment of the waqf's objectives and purposes (Santoso, 2017).

Article 62 of Law No. 41/2004 explains the steps for resolving waqf disputes as follows:

- 1) Resolution of waqf disputes is sought through deliberation with the aim of reaching consensus.
- 2) If the resolution process outlined in paragraph (1) is unsuccessful, the dispute can be resolved through mediation, arbitration, or litigation in court.

The aforementioned article delineates a procedural approach for resolving waqf disputes. Initially, the primary recourse involves engaging in deliberative processes aimed at attaining consensus or mutual agreement to effectively address the matter and preserve amicable relations thereafter. Should deliberation prove ineffective, the subsequent course of action entails resorting to mediation. If mediation fails to yield a resolution, the third step involves arbitration. If resolution remains elusive through arbitration, the final recourse is pursuing legal channels, specifically the Religious Court.

Dispute resolution through deliberation to achieve consensus and mediation is essentially the same, as both involve resolving without court intervention. This model of resolution is referred to as non-litigation. Meanwhile, dispute resolution through arbitration and court proceedings shares similarities, as both involve judicial institutions. However, the distinction lies in arbitration, where the judges' composition is appointed or determined by the parties. Thus, this model of resolution, involving arbitration and court proceedings, is termed litigation. Based on the explanation above, it can be concluded through the following table:

Table 1. The Waqif Heirs in Waqf Law Indonesia

The Elements of Waqf Law	Description
Regulation of Waqif Heirs	Article 6, paragraphs (2) and (4) of Government Regulation No. 42 of 2006 regarding the Implementation of Law No. 41 of 2004 concerning Waqf stipulate that the incumbent trustee must notify the waqif or the waqif's

	heirs, and the heirs of the waqif are entitled to petition the Indonesian Waqf Board (BWI) for the removal and substitution of the trustee.
Source of Law	The Quran and Hadith The regulations mentioned encompass Government Regulation No. 28/1977 regarding land endowment, Presidential Decree No. 1/1991 Part Three concerning waqf law, Law No. 41/2004 regarding Waqf, and Government Regulation No. 42/2006 regarding the Implementation of Government Regulation No. 41/2004
Madhhab (Legal School)	Following the Shafi'i school of thought is not absolute; it primarily adheres to Shafi'i opinions but also acknowledges the Hanafi school in cases of endowment (Waqf) suitable for application in Indonesian society, such as productive endowments, cash endowments, and endowment exchanges.
Resolution of Waqf Disputes	The competent authority for resolving Sharia disputes is the Religious Court, utilizing both litigation and non-litigation methods.

Regulation of Waqf Heirs in Malaysia

The introduction and assimilation of waqf in Malaysia circa 1800 AD are ascribed to Gujarati merchants, who played a pivotal role in disseminating Islam throughout the region. This historical trajectory is corroborated by the presence of numerous waqf-endowed mosques, such as the Hulu Mosque in Malacca and the Sultan Abu Bakar Mosque in Johor. During this epoch, waqf became interwoven with the quotidian religious life of the populace. Beyond the construction of sacred edifices, it embodied the philanthropic spirit of Malaysian society through vigorous participation in waqf undertakings (Harahap, 2006). According to Yaacob (2013), the waqf tradition in Malaysia has endured for over eight centuries, originating from the Arab Muslim traders who introduced Islam to the Malay Peninsula during the 10th century AD. The juridical framework regulating waqf in Malaysia corresponds with Islamic law, which functions as the principal normative foundation within the country (Othman, 1999).

The Federal Constitution of Malaysia prescribes that Islamic religious affairs, encompassing waqf administration, within states governed by sultans or their equivalents, are subject to the statutory enactments operative in those jurisdictions. In contrast, in non-monarchical states such as Sabah, Sarawak, and Malacca, as well as within federal territories including Kuala Lumpur and Putrajaya, the management of Islamic religious matters, including waqf governance, adheres to the Administration of the Religion of Islam (Federal Territories) Act 1993 (Zubaidah, 2016).

Subsequent to Malaysia's independence, each state promulgated its own corpus of Islamic Family Law, embedding distinct clauses pertaining to waqf regulation, which remain operative to this day. The legislative instruments governing waqf within various states are enumerated as follows; In Selangor, the Administration of Islamic Religion Enactment No. 3 of 1952 is enforced. Within the Federal Territories, the Baitul al-Mal Rules of 1988 and the Administration of Islamic Law Act of 1993 are applicable. In Melaka, waqf matters are governed by the Administration of Sharia Law Enactment of 1991. Kelantan upholds the Islamic Religious Council and Malay Custom Enactment of 1994 (Zubaidah, 2016).

In Negeri Sembilan, governance is established under the Islamic Religious Council Enactment of 1957, the Administration of Islamic Law Enactment of 1960, and the Administration of Sharia Law Enactment of 1991. Penang applies the Administration of Islamic Law Enactment of 1959, while Perak enforces both the Waqf Control Regulation of 1959 and the Administration of Islamic Religion Enactment of 1992. Each of these frameworks confers authority upon the respective State Islamic Religious Councils, designating them as the principal administrative entities for waqf implementation (Haron, 2002).

One significant provision of the Waqf Act stipulates that the assets endowed as Waqf must not exceed one-third of the deceased's estate. However, in Kelantan and Terengganu, the waqif (endower) may endow assets exceeding one-third, provided they obtain legitimacy or

written consent from the King or interested parties (heirs). Following the enactment of the State Enactments, Waqf documents, originally recorded, are deemed sufficiently strong and valid even if witnessed by only two witnesses, but they must be ratified by the King or State Council. Malaysia does not extensively regulate waqif heirs. Yet, rules and laws require the waqif to obtain approval from the King and heirs in the endowment practice.

The legal sources utilized as guiding principles in Waqf law in Malaysia, as articulated by Zubaidah and Hilal (Zubaidah, 2016). The legal framework governing land ownership and administration in Malaysia comprises various statutes and regulations, including but not limited to the Federal Constitution of 1957 (section 3.4.1, article 3), the National Land Code of 1965 (NLC), the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), the Selangor Waqf Enactment of 1999 (No. 7), the Trustee Act of 1949 (Act 208), the Malacca Waqf Enactment of 2005, the Negeri Sembilan Waqf Enactment of 2005, and other Islamic legal regulations enacted by individual states. Additionally, statutes such as the Specific Relief Act of 1950 and the Contracts Act of 1950 play significant roles in governing legal matters related to land and contracts.

The centralization of the Waqf system in Malaysia occurs within each state government due to the predominant presence of sultanates, comprising 9 out of 13 states, wherein a Sultan or equivalent holds authority as both the local government head and the Islamic leader. Conversely, in states lacking a Sultan, namely Sabah, Sarawak, Malacca, and federal territories like Kuala Lumpur and Putrajaya, Waqf regulations, akin to other Islamic legal statutes, are governed by the federal government. Consequently, variations in Waqf legal frameworks may arise across different states (Cizaska, 2000).

The practice of Waqf in Malaysia adheres to the principles of the predominant Shafi'i school of thought in Islam. This particular school was adopted by the initial Islamic scholars who propagated Islam throughout the Asian region, including Malaysia and was subsequently embraced by the community, leading to the flourishing of the Shafi'i school. Moreover, the Shafi'i ideology is acknowledged as a legal school that embodies a harmonious balance between textual tradition and has served as a fundamental influence on the development of Waqf laws in Malaysia (Amin, 1989).

The mandate for enforcing waqf regulations in Malaysia resides with the State Islamic Religious Council (Majlis Agama Islam Negeri), which functions as the implementing authority of waqf legislation within each respective state. Accordingly, each Council possesses the prerogative to authorize, regulate, oversee, and administer consumptive waqf undertakings within its territorial domain. The Council's organizational composition encompasses an Advisory Board and a Waqf Asset Management Committee. The Advisory Board consists of erudite figures versed in Shariah jurisprudence, appointed by the Council, alongside the State Mufti, the Council Secretary, the State Land Director, and state legal officers serving as permanent members. Additional members include state fiscal authorities, Islamic scholars, and experts in Shariah law, asset administration, and financial governance.

The foregoing elucidation demonstrates that the juridical framework in Malaysia diverges across states, as each state apparatus autonomously administers all matters pertaining to waqf. This heterogeneity in legal architecture and managerial execution exerts a major impact on the efficacy of planning and the equitable allocation of waqf resources among the states. As such, in Malaysia, Waqf practices primarily focus around land and their management is constrained by the stipulations set forth by the waqif. Further, numerous Waqf lands are administered by unaffiliated entities with the Religious Council, and their administrators often lack economic expertise and management backgrounds. Hence, Waqf in Malaysia suffer from reduced productivity and a deficiency in economic value (Harahap, 2006).

Additionally, discrepancies in the resolution of Waqf disputes arise from differing interpretations of regulations by institutions vested with the authority to establish and interpret

Waqf laws. Numerous cases in Malaysia illustrate varying opinions and understandings among legal entities responsible for formulating and overseeing Waqf regulations and administration. A ruling by the State Legislature, for instance, can be rendered invalid if contradicted by a decision from the Federal Council (Parliament), which holds higher authority. In addressing this issue, Hokker contends that the Federal Court should ideally refrain from excessive intervention in matters within the jurisdiction of lower courts, as such interference could suggest a dictatorial system in Waqf regulation. He further underscores the urgent need for amendments or additional regulations in Malaysia's Waqf sector (Hoker, 1991).

Additionally, the management of endowments (Waqf) in Malaysia, typically overseen by the State Islamic Religious Councils (Majelis Ulama Indonesia), is perceived as having a limited impact on societal welfare, both economically and socially. This is attributed to the widespread practice of donating to Waqf without strict adherence to Waqf regulations, leading to disparities in interpretation and implementation guidelines. Consequently, there is a proposal among Malaysians to establish a centralized Waqf institution under governmental authority, rather than being under the jurisdiction of the State Majelis Ugama Islam. This is aimed at fostering the expansion of Waqf assets in Malaysia.

Due to the predominant judicial authority vested in the Civil Court rather than the Sharia Court for resolving Waqf disputes in Malaysia, non-litigious approaches such as negotiation and mediation are favoured by Malaysians. Despite the Waqf system being administered by the Islamic Religious Councils (Majelis Ugama Islam), disputes often escalate to civil courts due to their higher jurisdictional power, despite ideally belonging to Sharia courts for matters concerning Islamic law. Paradoxically, judges in civil courts often possess a limited understanding of Islamic legal principles (Hasan, 2008). Although Waqf cases must be administered by Muslims by Islamic law or Shariah, the policy regarding the heirs of the waqif in Waqf law in Malaysia can be succinctly summarized in the following table:

Table 2. The Waqif Heirs in Waqf Law Malaysia

The Elements of Waqf Law	Description
Regulation of Waqif Heirs	In Malaysia, there is not a detailed regulation specifically addressing the heirs of the waqif. Nevertheless, there exist laws, or enactments, overseeing the administration of endowments. It is required for the waqif to seek approval from the King and the heirs of the waqif according to these laws.
Source of Law	The specified legal provisions include the Federal Constitution of 1957 (section 3.4.1, article 3), the National Land Code of 1965 (NLC), the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), the Selangor Waqf Enactment of 1999 (No. 7), the Trustee Act of 1949 (Act 208), the Malacca Waqf Enactment of 2005, the Negeri Sembilan Waqf Enactment of 2005, the Specific Relief Act of 1950, the Contracts Act of 1950, and various other Islamic legal regulations enacted by individual states.
Madhhab (Legal School)	The application of Islamic law, including the administration of waqf, in Sabah, Sarawak, Malacca, as well as federal territories such as Kuala Lumpur and Putrajaya, is predominantly based on the Shafi'i school of thought. Nonetheless, it's important to note that while the Shafi'i school predominates, the Hanafi school of thought may also be considered, albeit to a lesser extent.
Resolution of Waqf Disputes	The utilization of non-litigation avenues is preferred, and the competent court for resolving waqf disputes is the General Court.

Comparison of the Regulation of Waqf Heirs in Indonesia and Malaysia

Comparing the regulation of waqf heirs between Indonesia and Malaysia aims to clarify the components embedded in the waqf laws of both countries. Subsequently, these elements are juxtaposed to delineate differences in how waqf heirs are addressed within their respective

legal frameworks. This comparative analysis seeks to elucidate the unique characteristics of each nation's approach to administering waqf heirs within the context of waqf legislation.

The assertion provided elucidates that the regulations concerning waqf heirs in waqf law are applicable both in Indonesia and Malaysia. A comparative analysis in table 3 reveals the following distinctions:

Table 3. Comparison of The Regulations System of Waqf Heirs in Waqf Law Between Indonesia and Malaysia

The Elements of Waqf Law	Malaysia	Indonesia
Regulation of Waqif Heirs	In Malaysia, the regulation of waqf heirs lacks detailed provisions. Nonetheless, there exists legislation governing endowment practices, stipulating that the endower (waqif) must seek approval from both the King and the waqf heirs.	Article 6, paragraphs (2) and (4) of Government Regulation No. 42 of 2006 regarding the Execution of Law No. 41 of 2004 concerning Waqf stipulates that the current trustee must notify the waqif or the waqif's heirs, and the waqif's heirs are entitled to submit a request to the Indonesian Waqf Board (BWI) for the removal and appointment of a new trustee.
Source of Law	The referenced legal framework comprises the Federal Constitution of 1957 (specifically section 3.4.1, article 3), the National Land Code of 1965 (NLC), the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), the Selangor Waqf Enactment of 1999 (No. 7), the Trustee Act of 1949 (Act 208), the Malacca Waqf Enactment of 2005, the Negeri Sembilan Waqf Enactment of 2005, the Specific Relief Act of 1950, the Contracts Act of 1950, and additional Islamic legal regulations promulgated by individual states	The Qur'an and the Hadiths Presidential Decree No. 28/1977 pertains to the grant of land ownership, Presidential Decree Inpres No. 1/1991 Part III addresses the regulation on endowments, Law No. 41/2004 deals with Endowments, and Presidential Decree No. 42/2006 governs the Implementation of Government Regulation No. 41/2004.
Madhhab (Legal School)	The implementation of Islamic jurisprudence, encompassing the administration of waqf, in Sabah, Sarawak, and Malacca, as well as in federal territories such as Kuala Lumpur and Putrajaya, is principally predicated upon the Shafi'i madhhab. However, it's important to note that the use of the Hanafi school of thought is also permissible, albeit not as extensively as the Shafi'i school.	Adherence to the Shafi'i school of thought is not strictly binding; it primarily adheres to Shafi'i opinions but also accommodates Hanafi jurisprudence, particularly in cases of endowment (Waqf) applicable to Indonesian society, such as productive endowments, cash endowments, and endowment exchanges.
Resolution of Waqf Disputes	Utilization of non-litigation avenues is more frequent. The competent judicial body for resolving waqf disputes is the General Court.	The resolution of Sharia disputes occurs both through litigation and non-litigation channels. The appropriate judicial body for adjudicating such matters is the Religious Court.

According to the tabulated data, the analysis discloses that the similarity between the waqf legal frameworks of Indonesia and Malaysia originates from their mutual adherence to the Shafi'i madhhab of Islamic jurisprudence. Nevertheless, a distinct divergence is observed in Malaysia, wherein certain states exclusively apply the Shafi'i madhhab in the realm of waqf law, notably Sabah, Sarawak, and Malacca, along with federal territories such as Kuala Lumpur and Putrajaya. Furthermore, in several Malaysian states, a hybrid application of the Shafi'i and Hanafi madhhabs is evident within the juridical structure of waqf law.

The notable divergence lies in the structure of Malaysia, comprising thirteen (13) states, each exhibiting varying systems concerning waqf law. These differences encompass the legal framework, asset allocation, madhhab adherence to waqf law, and asset utilization. Even within Malaysian states strictly adhering to the Shafi'i madhhab of waqf law, which prohibits waqf of movable property, provisions are made for waqf credit. Waqf credit entails instalment-based or monthly credit payments for immovable property due to its high cost and impracticality for upfront cash payments. This diversity contributes to the heterogeneous or pluralistic implementation of waqf law.

In Indonesia, following the introduction of Waqf Law No. 41/2004, the application of waqf law is uniformly constitutional across the entire Indonesian populace. The Waqf Law introduces various legal advancements, including permitting the waqf of movable assets while preserving the principal or source and ensuring continuous development of their utilization, allowing for time-limited waqf provided that perpetual utilization is feasible, professional management of waqf assets, and certification of waqf, particularly for land.

In Malaysian society, the resolution of waqf disputes often veers towards non-litigious avenues, such as consultation and mediation, given the primary purpose of waqf assets for worship. However, in states adhering to the Shafi'i madhhab, particularly those with a more economically driven approach to waqf asset allocation, Sharia arbitration is employed for dispute resolution, integrating Islamic financial systems. In cases where waqf disputes are litigated, Malaysia designates either the General Court or Conventional Court to adjudicate within the framework of Islamic economics.

CONCLUSION

The regulation concerning waqif heirs within the waqf legal frameworks of Indonesia and Malaysia manifests both congruities and divergences, mirroring the distinct sociocultural typologies inherent to each state. Although both nations are partially aligned with the Shafi'i madhhab of Islamic jurisprudence, their legal architectures and regulatory modalities diverge. In Indonesia, the Waqf Law, codified under Government Regulation No. 42 of 2006, explicitly delineates provisions regarding waqif heirs in Article 6, paragraphs (2) and (4). Within this context, the incumbent trustee bears the obligation to notify the waqif or their heirs, who retain the prerogative to petition the Indonesian Waqf Board (BWI) for the revocation and substitution of the said trustee. Conversely, Malaysia lacks detailed regulation regarding waqif heirs but mandates that waqif (donors) must obtain approval from the King and waqif heirs for waqf practices. Despite these differences, the overarching framework of Islamic law, specifically the Shafi'i school of thought, serves as a common foundation for both countries' waqf laws, albeit with regional variations.

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