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Judicial Discretion and *Ratio Decidendi* of Religious Court Judges in Resolving Waqf Annulment Disputes in Indonesia

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Abstract: In Indonesia, *waqf* (endowment) is perpetual, as stipulated in Article 3 of Law Number 41 of 2004 concerning *Waqf*: "A waqf that has been formally declared (*ikrar*) cannot be revoked." Nevertheless, several Religious Court rulings have annulled *waqf* declaration deeds or declared them invalid due to legal defects such as the endowment of joint marital property without a spouse's consent, or errors in the property certificate. A research gap exists because most existing studies are either single-case analyses or purely normative in nature; they fail to integrate judicial discretion and *ratio decidendi* (legal reasoning) into a unified analytical framework, nor have they gathered primary data from judges across different regions. This study aims to analyze the discretion, *ratio decidendi*, and legal discovery methods employed by Religious Court judges in disputes involving the annulment of *waqf*, while also examining their perceptions of current regulations and the potential need for technical guidelines. This qualitative, empirical-juridical study utilizes open-ended questionnaires completed by fifteen judges from six regions, alongside an examination of ten court rulings, analyzed through an interactive approach and source triangulation. The findings indicate that judges distinguish between the annulment of a *waqf* and the determination that a *waqf* was inherently flawed from its inception, categorized into five typologies of legal grounds. Furthermore, eighty percent of the informants support the development of interpretive technical guidelines. The novelty of this research lies in its mapping of judicial legal reasoning across various regions, providing an empirical foundation for the formulation of national-level guidelines.

Keywords: Judicial Discretion, Ratio Decidendi, Waqf Annulment, Religious Court, Legal Discovery

Abstrak: *Wakaf di Indonesia bersifat kekal karena Pasal 3 Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf menyatakan: "Wakaf yang telah diikrarkan tidak dapat dibatalkan." Namun, sejumlah putusan Pengadilan Agama membatalkan akta ikrar wakaf atau menyatakan akta tersebut tidak sah karena cacat hukum, seperti harta bersama yang diwakafkan tanpa persetujuan pasangan, kekeliruan pada sertipikat, atau akta yang tidak sesuai dengan ikrar*

lisan. Kesenjangan penelitian terletak pada dominasi kajian kasus tunggal dan normatif murni yang belum memadukan diskresi hakim dan ratio decidendi *dalam satu kerangka analisis, serta belum menghimpun data primer dari hakim lintas wilayah. Penelitian ini bertujuan menganalisis diskresi,* ratio decidendi*, dan metode penemuan hukum hakim Peradilan Agama dalam sengketa pembatalan wakaf, serta persepsi dan kesiapan hukum hakim terhadap kecukupan pengaturan dan kebutuhan akan pedoman teknis. Penelitian yuridis empiris dengan pendekatan deskriptif kualitatif ini menggunakan angket terbuka yang diisi oleh lima belas hakim dari enam wilayah serta menelaah sepuluh putusan melalui analisis interaktif dan triangulasi sumber. Hasilnya menunjukkan bahwa hakim membedakan antara membatalkan wakaf yang sah dan menyatakan wakaf yang cacat sejak awal tidak sah berdasarkan lima tipologi alasan, sedangkan 80% informan mendukung pedoman teknis yang bersifat interpretatif. Kebaruannya terletak pada pemetaan nalar yudisial lintas wilayah yang menjadi dasar empiris bagi pedoman nasional.*

Kata Kunci: *Diskresi Hakim, Ratio Decidendi, Pembatalan Wakaf, Peradilan Agama, Penemuan Hukum*

INTRODUCTION

Waqf is an instrument of Islamic law that carries religious, social, and economic dimensions at once. It concerns not only the act of dedicating part of one's property to worship and public welfare, but also the legal consequences for the management, use, and protection of the endowed property. The perpetual character of waqf derives from the classical doctrine of *habs al-ashl wa tasbil al-manfa'ah*, namely retaining the corpus while continuously channelling its benefits. The Shafi'i school, which is the most influential in Indonesian Islamic legal practice, holds that waqf becomes binding (*lazim*) once the pledge is pronounced, so that the endower (*wakif*) loses the right to revoke it (Az-Zuhaili, 2011).

This principle was absorbed into positive law through Law Number 41 of 2004 on Waqf. Article 3 of the Law provides: *"Wakaf yang telah diikrarkan tidak dapat dibatalkan"* ("A waqf that has been pledged cannot be annulled"). The prohibition is reinforced by Article 40: *"Harta benda wakaf yang sudah diwakafkan dilarang: a. dijadikan jaminan; b. disita; c. dihibahkan; d. dijual; e. diwariskan; f. ditukar; atau g. dialihkan dalam bentuk pengalihan hak lainnya"* ("Waqf property that has been endowed is prohibited from being: a. used as collateral; b. seized; c. donated; d. sold; e. inherited; f. exchanged; or g. transferred in any other form of transfer of rights"). Waqf is also regulated in Book III of the Compilation of Islamic Law and Government Regulation Number 42 of 2006 on the Implementation of Law Number 41 of 2004 on Waqf. According to Islamiyati et al. (2019), this legal construction is intended to ensure that the benefits of waqf property remain available to the public without disruption by temporary private interests. Statutory provisions in this article are quoted in their original Indonesian wording, followed by an unofficial English translation.

Jurisdiction over waqf disputes lies with the Religious Courts. Article 49 of Law Number 3 of 2006 amending Law Number 7 of 1989 on Religious Courts provides: *"Pengadilan agama bertugas dan berwenang memeriksa, memutus, dan menyelesaikan perkara di tingkat pertama antara orang-orang yang beragama Islam di bidang: a. perkawinan; b. waris; c. wasiat; d. hibah; e. wakaf; f. zakat; g. infaq; h. shadaqah; dan i. ekonomi syari'ah"* ("Religious courts have the duty and authority to examine, decide, and settle cases at first instance between Muslims in the fields of: a. marriage; b. inheritance; c. wills; d. gifts; e. waqf; f. zakat; g. infaq; h. shadaqah; and i. sharia economy"). This provision places waqf within the absolute competence of the Religious Courts alongside marriage and inheritance (Putri & Ambarwati, 2025; Jumriani et al., 2025). As courts grounded in Islamic

law, the Religious Courts are expected to uphold the principle of perpetuity in order to preserve public trust in the institution of waqf.

Judicial practice, however, is not entirely consistent with this normative ideal. Several decisions have granted claims to annul waqf pledge deeds (*Akta Ikrar Wakaf*) on various grounds. Fadilah and Harahap (2024) show that the Supreme Court may annul a waqf pledge when the endowed object is marital property that the spouse did not consent to at the time of the pledge. Similar patterns appear in the Decision of the Jakarta Religious High Court Number 122/Pdt.G/2024/PTA.JK, Decision Number 1954/Pdt.G/2023/PA.Mks, which annulled a waqf pledge at the request of heirs, and Decision Number 669/Pdt.G/2021/PA.Ska, which questioned the validity of the intention and procedure of the pledge. Other studies likewise note that heirs' claims against waqf objects are a dominant source of disputes (Azizan, 2022; Hasanah et al., 2026; Haryanto et al., 2023).

These facts show that Article 3 is not always applied rigidly. When a waqf object turns out to have been defective under civil law from the outset, for example because it is marital property endowed without spousal consent, undivided inheritance, or pledged under duress, judges face a difficult choice. Enforcing Article 3 literally sacrifices the civil rights of third parties, while granting annulment departs from the principle of perpetuity. Judges cannot act merely as the mouthpiece of the law (*bouche de la loi*), since Article 10 paragraph (1) of Law Number 48 of 2009 on Judicial Power states: *"Pengadilan dilarang menolak untuk memeriksa, mengadili, dan memutus suatu perkara yang diajukan dengan dalih bahwa hukum tidak ada atau kurang jelas, melainkan wajib untuk memeriksa dan mengadilinya"* ("Courts are prohibited from refusing to examine, try, and decide a case submitted on the pretext that the law does not exist or is unclear, but are obliged to examine and try it"). Article 5 paragraph (1) of the same Law further provides: *"Hakim dan hakim konstitusi wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat"* ("Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice living in society"). These obligations require judges to engage in legal discovery (*rechtsvinding*) and to formulate a *ratio decidendi* that is accountable both legally and morally (Mertokusumo & Pitlo, 1993).

The issue becomes more complex because waqf annulment cases are far rarer than divorce or marital property cases, so not every Religious Court has experience handling them. This uneven experience may produce disparities in understanding and legal construction among judges, whereas consistency in legal reasoning is a prerequisite for legal certainty (Radbruch, 2006). Studies on disparities in *ratio decidendi* show that similar disputes may generate different reasoning in the absence of clear guidelines for application (Alkansa & Ravizki, 2025; Marzuki & Huda, 2025).

Research on judicial discretion in the Religious Courts has, in fact, developed. Zaidah (2023) identified two types of judicial discretion in inheritance cases in South Kalimantan, namely free discretion and semi-bound discretion, while Nurwulan (2025) showed how judges fill procedural gaps in obligatory bequest (*wasiat wajibah*) cases. Both studies, however, are limited to inheritance and bequests. Studies on waqf annulment generally take the form of single-decision analyses (Fadilah & Harahap, 2024; Azizan, 2022), macro overviews of waqf disputes (Amelia et al., 2025; Nisa et al., 2024), examinations of the evidentiary force of waqf pledge deeds (Anafiah, 2024), or maqashid-based approaches to dispute resolution (Suhaili, 2025; Maryani et al., 2025). Meanwhile, the analytical frameworks for *ratio decidendi* proposed by Hakiki and Taufiqurrahman (2023) and Adhyaksanti and Indrayanti (2023) have not been applied to waqf cases.

Based on this review, the **research gap** can be formulated as follows: a) previous studies mostly examine single cases, and no representative cross-regional study exists; b) theoretical frameworks are dominated by normative or maslahah-only approaches and have

not combined discretion with *ratio decidendi*; c) methodologies are mostly document-based with little primary data from judges; and d) how judges justify their discretion against the textual prohibition in Article 3 has not been explored in depth. The **novelty** (*state of the art*) of this study lies in its use of primary data from Religious Court judges in six regions triangulated with ten decisions; its integration of discretion theory, Kelsen's theory of norm antinomy, legal discovery, *maqashid al-syariah*, and Radbruch's substantive justice into a single analytical lens; and its mapping of consistency in *ratio decidendi* as the basis for proposed technical guidelines. The study also includes judges who have never handled waqf annulment cases, allowing legal readiness to be assessed more broadly. Based on the above, this study addresses the following research questions:

1. How do Religious Court judges in Indonesia exercise discretion and construct *ratio decidendi* in waqf annulment disputes?
2. How do Religious Court judges in Indonesia perceive the adequacy of existing regulations and the need for technical guidelines, and how ready are they to resolve waqf annulment disputes?

METHODS

This study is empirical juridical legal research, which examines not only written legal rules but also how those rules are interpreted and applied by Religious Court judges (Ali, 2021; Wahid & Bachrie, 2024). A descriptive qualitative approach was adopted because discretion and *ratio decidendi* are cognitive matters that must be explored directly from judges' reasoning rather than read solely from the text of decisions (Creswell & Creswell, 2023). The study also combines statutory, case, and conceptual approaches (Marzuki, 2021).

Informants were selected purposively according to the following criteria: a) active judges of a Religious Court; b) serving in one of six regions representing Indonesia's geographical spread, namely Sumatra, Java, Kalimantan, Sulawesi, West Nusa Tenggara, and East Nusa Tenggara; and c) willing to complete the questionnaire voluntarily. Fifteen judges met these criteria and were coded I-1 to I-15 to preserve confidentiality. Primary data were collected through an open-ended questionnaire distributed via Google Form from 21 September to 5 October 2026. The questionnaire addressed the limits of discretion in relation to Article 3, the grounds justifying discretion, consistency across decisions, methods for resolving norm conflicts, the adequacy of regulation, and the need for technical guidelines.

Secondary data comprised primary legal materials, namely Law Number 41 of 2004, Government Regulation Number 42 of 2006, the Compilation of Islamic Law, and ten Religious Court decisions selected purposively from the Supreme Court Decision Directory using the keywords "pembatalan wakaf" (waqf annulment) or "pembatalan ikrar wakaf" (annulment of waqf pledge), together with secondary legal materials in the form of books and journal articles. The data were analyzed using the interactive model of Miles, Huberman, and Saldaña (2014) through data reduction and coding, thematic data display, and conclusion drawing. Credibility was tested through source triangulation by matching questionnaire response patterns with patterns of *ratio decidendi* in the decisions, while dependability was maintained through process audits by the supervisors.

RESULTS AND DISCUSSION

Results

The fifteen judges who served as informants came from six regions and thirteen Religious Courts, with tenures ranging from six to eighteen years. Their profiles are presented in Table 1.

Table 1. Profile of Research Informants

Code	Court	Province	Tenure	Handled a Case
I-1	RC Sumenep	East Java	17 years	No
I-2	RC Kuala Tungkal	Jambi	6 years	No
I-3	RC Dompu	West Nusa Tenggara	18 years	Yes
I-4	RC Barabai	South Kalimantan	16 years	Yes
I-5	RC Sumbawa Besar	West Nusa Tenggara	-	Yes
I-6	RC Wonogiri	Central Java	7 years	Yes
I-7	RC Larantuka	East Nusa Tenggara	10 years	No
I-8	RC Mataram	West Nusa Tenggara	6 years	No
I-9	RC Dompu	West Nusa Tenggara	7 years	No
I-10	RC Dompu	West Nusa Tenggara	6 years	No
I-11	RC Ujung Tanjung	Riau	6 years	No
I-12	RC Rengat	Riau	16 years	No
I-13	RC Dompu	West Nusa Tenggara	6 years	No
I-14	RC Barru	South Sulawesi	16 years	No
I-15	RC Sekayu	South Sumatra	6 years	No

Source: Primary questionnaire data (2026)

Four informants (27%) had directly handled a waqf annulment case, while eleven (73%) had not. This composition confirms that waqf annulment cases are rare in the Religious Courts, although the judges still offered sharp legal views. The review of the ten decisions is presented in Table 2.

Table 2. Summary of Religious Court Decisions on Waqf Disputes

No	Decision Number	Ruling	Principal Legal Reasoning
1	828/Pdt.G/2025/PA.Bi	Inadmissible (NO)	The panel found the plaintiff acted in bad faith during mediation and referred to Article 22(1) of Supreme Court Regulation Number 1 of 2016; merits not examined.
2	1199/Pdt.G/2026/PA.Lmg	Granted; pledge deed annulled	The certificate handed to the *nazhir* was mistakenly swapped (*error in objecto*); defect existed from the pledge, not a defect in the elements of waqf under Article 6.
3	1706/Pdt.G/2024/PA.Bpp	Granted; pledge deed invalid	Waqf land was never used and the *nazhir* was unable to manage it (citing Article 42 of the Waqf Law).
4	635/Pdt.G/2025/PA.Bi	Jurisdictional objection upheld	A dispute between the *nazhir* and a third party over a tort was held to fall outside the absolute competence of the Religious Court.
5	4485/Pdt.G/2025/PA.Kab.Mlg	Inadmissible (NO)	Vague statement of claim (*obscuur libel*); waqf merits not examined.
6	453/Pdt.G/2020/PA.Kdi	Partially granted	Double waqf over the same object; first waqf declared invalid, second valid.
7	041/Pdt.G/2018/PA.Kdi	Partially granted	Same pattern as Number 453/2020 over an identical object.
8	1843/Pdt.G/2024/PA.Grt	Granted	Claim by the *nazhir* to defend the waqf object against unlawful possession by a third party.
9	859/Pdt.G/2026/PA.Tbn	Partially granted; waqf and deed void by law	Husband endowed marital property without his wife's consent; endower and object formally and materially defective (Article 6).
10	6551/Pdt.G/2018/PA.Kab.Mlg	Partially granted; pledge deed annulled	Oral pledge contained a time limit, but the deed did not state the "*jangka waktu wakaf*" (duration of the waqf) (Article 21(2) letter e); held to be a formal defect.

Source: Supreme Court Decision Directory, processed by the authors (2026)

Table 2 reveals three groups of decisions. Three decisions (Numbers 828/2025, 635/2025, and 4485/2025) stopped at formal issues, so the merits were not examined. One decision (Number 1843/2024) instead defended a valid waqf object against possession by a third party. The remaining six decisions examined the validity of the waqf substantively. They granted the claims on the grounds of administrative error, failure to realize the purpose of the waqf, lack of spousal consent over marital property, double waqf, or inconsistency between the deed and the oral pledge. Data reduction of the fifteen informants' responses produced the codes for the typology of discretionary grounds shown in Table 3.

Table 3. Codes for the Typology of Judicial Discretionary Grounds

Code	Meaning	Informants
DS (subject defect)	Endower lacks legal capacity: insane, a minor, or under duress	I-8, I-13, I-15
DM (material defect)	Object not fully owned by the endower: marital property without consent or undivided inheritance	I-2, I-3, I-7, I-8, I-9, I-15
DF (formal defect)	Procedural defects in the pledge deed, including forged documents and signatures	I-3, I-6, I-8, I-10
DML (public interest)	Public interest (*maslahah*) as the basis of reasoning	I-4
DNU (non-utilization)	Waqf object not used in accordance with its purpose	I-5
DPL (*fraus legis*)	Waqf used to circumvent the rights of heirs	I-8, I-11

Source: Reduction of questionnaire data (2026)

Regarding regulation, eight informants (53%) considered that the Waqf Law and the Compilation of Islamic Law do not adequately regulate the annulment mechanism (I-2, I-4, I-6, I-8, I-9, I-10, I-11, I-14), five (33%) considered them adequate (I-5, I-7, I-12, I-13, I-15), and two (13%) gave no direct assessment (I-1 and I-3). Regarding technical guidelines, twelve informants (80%) supported the need for a Supreme Court Circular (SEMA) or Supreme Court Regulation (Perma), while three (I-1, I-13, I-15) rejected it.

Discussion

Discretion, *Ratio Decidendi*, and Legal Discovery Methods of Judges in Waqf Annulment Disputes

The most significant finding is the emergence of a conceptual distinction between "annulling a valid waqf" and "declaring invalid a waqf that was defective from the outset". This distinction was articulated independently by judges from different regions. I-2 stated that a distinction must be drawn between annulling a valid waqf and assessing whether the act of waqf was legally valid from the beginning. I-14 put it as follows: "the key point is between annulling a valid waqf or a waqf that was indeed invalid from the start." I-15 emphasized: "even then, it is not declaring the waqf annulled, but declaring the waqf invalid." Similar views appeared implicitly in the responses of I-10 and I-13 (informant quotations translated from Indonesian). The emergence of almost identical formulations from judges serving on different islands indicates that this distinction is a pattern of legal reasoning that has crystallized among Religious Court judges rather than an isolated personal opinion.

The distinction is confirmed in practice. Decisions Number 1199/Pdt.G/2026/PA.Lmg and 6551/Pdt.G/2018/PA.Kab.Mlg did not annul "waqf" as an institution but annulled the waqf pledge deeds because of errors that existed from their issuance. The panel in Decision Number 1199/2026 even affirmed that although Article 3 prohibits annulment, a Religious Court may grant annulment where a legal defect is proven to have existed since the pledge. Decision Number 859/Pdt.G/2026/PA.Tbn declared the waqf and its deed "invalid and void by law". At the same time, Decisions Number 453/2020 and 041/2018 in Kendari assessed the validity of two pledges over the same object based on the fulfilment of formal and material requirements rather than on the prohibition in Article 3 alone. This distinction goes beyond previous studies,

which described the grounds for annulment without formulating a framework that separates "annulment" from "validity from the outset" (Azizan, 2022; Fadilah & Harahap, 2024).

From the perspective of Kelsen's (2011) theory of antinomy, this distinction shows that the tension between Article 3 and the protection of third-party civil rights can be resolved through systematic reading. Article 3 presupposes a valid waqf, while the validity of a waqf is determined by its elements. Article 6 of Law Number 41 of 2004 provides: *"Wakaf dilaksanakan dengan memenuhi unsur wakaf sebagai berikut: a. Wakif; b. Nazhir; c. Harta Benda Wakaf; d. Ikrar Wakaf; e. peruntukan harta benda wakaf; f. jangka waktu wakaf"* ("Waqf is carried out by fulfilling the following elements: a. endower; b. administrator; c. waqf property; d. waqf pledge; e. designation of the waqf property; f. duration of the waqf"). Article 15 provides: *"Harta benda wakaf hanya dapat diwakafkan apabila dimiliki dan dikuasai oleh Wakif secara sah"* ("Waqf property may only be endowed if it is lawfully owned and controlled by the endower"). Consequently, a waqf that does not meet these elements and requirements never came into existence as a valid waqf, and a decision declaring it invalid does not contradict Article 3. This construction is a form of legal refinement (*rechtsverfijning*) and systematic interpretation within the framework of legal discovery (Mertokusumo & Pitlo, 1993).

Discretion is exercised through five typologies of grounds. First, subject defects, where the endower lacks legal capacity, is insane, is a minor, or acted under duress (I-8, I-13, I-15). This category is rooted in the doctrine of legal capacity (*handelingsbekwaamheid*) and relates to Article 8 paragraph (1) of the Waqf Law, which provides: *"Wakif perseorangan sebagaimana dimaksud dalam Pasal 7 huruf a hanya dapat melakukan wakaf apabila memenuhi persyaratan: a. dewasa; b. berakal sehat; c. tidak terhalang melakukan perbuatan hukum; dan d. pemilik sah harta benda wakaf"* ("An individual endower as referred to in Article 7 letter a may only make a waqf if he or she meets the following requirements: a. adult; b. of sound mind; c. not barred from performing legal acts; and d. the lawful owner of the waqf property"). Second, material defects, where the object is not fully owned by the endower, such as marital property without spousal consent or undivided inheritance (I-2, I-3, I-7, I-8, I-9, I-15). Third, formal defects in the waqf pledge deed, including forged documents and signatures (I-3, I-6, I-8, I-10). Fourth, considerations of public interest (I-4). Fifth, non-utilization, where the object is not used in accordance with the purpose of the waqf (I-5). In addition, a sub-variant of evasion of law (*fraus legis*) against inheritance rights was identified independently by I-8 and I-11, namely waqf made with the intention of fraudulently impoverishing the heirs. This *fraus legis* category is not a conflict of norms but an abuse of the legal form of waqf to avoid the inheritance consequences that should otherwise apply.

Triangulation shows that the material defect category is confirmed in Decision Number 859/2026 (marital property without the wife's consent), the formal defect category in Decisions Number 1199/2026 and 6551/2018, and the non-utilization category in Decision Number 1706/2024. Conversely, the subject defect and *fraus legis* categories have no counterpart in the ten decisions analyzed. Both patterns currently exist only at the level of judges' normative perceptions and have not been identified in documented litigation practice.

The legal discovery methods used by judges also vary. I-2 and I-14 apply systematic interpretation by reading Article 3 together with Articles 2, 6, 8, and 15 of the Waqf Law. I-3 relies on the *nemo plus juris* doctrine in connection with Article 217 paragraph (3) of the Compilation of Islamic Law: *"Benda wakaf sebagaimana dimaksud dalam Pasal 215 ayat (4) harus merupakan benda milik yang bebas dari segala pembebanan, ikatan, sitaan dan sengketa"* ("Waqf objects as referred to in Article 215 paragraph (4) must be owned property free from all encumbrances, bonds, seizures, and disputes"). I-13 uses a temporal priority approach by tracing which transaction came first, which is consistent with the pattern of the double waqf decisions in Kendari. I-8 proposes a restorative approach in the form of value

compensation (*iwadh*) by referring to the instrument of *istibdal* in waqf jurisprudence, so that problematic waqf property can be preserved without depriving third parties of their rights.

The *iwadh* or *istibdal* proposal is the most innovative solution in the data because it offers a middle path between binary rulings of annulment or non-annulment. This approach is in line with *maqashid al-syariah*, which treats the protection of property (*hifz al-mal*) as an objective for both parties simultaneously (Al-Syathibi, 2003), with Auda's (2008) systems approach, which views maqashid as open and multidimensional, and with the idea of restorative justice that emphasizes restoring the interests of the parties (Baihaky & Isnawati, 2024). However, none of the ten decisions applied such a compensation scheme. All of them ended in binary rulings, revealing a gap between judges' ideal solutions and actual judicial practice.

From the *maqashid* perspective, annulment on the basis of defects from the outset is consistent with the protection of third-party property (*hifz al-mal*) and the sanctity of waqf as worship (*hifz al-din*), since a pledge tainted by duress or a mismatch of intent undermines the nature of waqf as an act of devotion (*taqarrub*). Protecting heirs from waqf intended to impoverish them also relates to the protection of lineage (*hifz al-nasl*). Within Radbruch's (2006) framework, this construction reflects judges' efforts to balance the legal certainty represented by Article 3 with substantive justice for the injured party without absolutely sacrificing either value.

Nevertheless, the non-utilization pattern in Decision Number 1706/Pdt.G/2024/PA.Bpp warrants critical scrutiny. The panel referred to Article 42: *"Nazhir wajib mengelola dan mengembangkan harta benda wakaf sesuai dengan tujuan, fungsi, dan peruntukannya"* ("The *nazhir* is obliged to manage and develop waqf property in accordance with its purpose, function, and designation"). However, the failure of the *nazhir* to fulfil this obligation is not a defect inherent in the pledge from the outset. Article 45 paragraph (1) letter d of the same Law provides: *"Dalam mengelola dan mengembangkan harta benda wakaf, Nazhir diberhentikan dan diganti dengan Nazhir lain apabila Nazhir yang bersangkutan: ... d. tidak melaksanakan tugasnya sebagai Nazhir dan/atau melanggar ketentuan larangan dalam pengelolaan dan pengembangan harta benda wakaf sesuai dengan ketentuan peraturan perundang-undangan yang berlaku"* ("In managing and developing waqf property, a *Nazhir* shall be dismissed and replaced by another *Nazhir* if the *Nazhir* concerned: ... d. fails to perform his or her duties as *Nazhir* and/or violates the prohibitions on the management and development of waqf property in accordance with the applicable laws and regulations"). Given this provision, annulment on the ground of non-utilization risks becoming a *contra legem* ruling. Productive management of idle waqf land would be a remedy more consistent with the principle of perpetuity (Afisna et al., 2023).

Judges' Perceptions and Legal Readiness regarding the Adequacy of Regulation and the Need for Technical Guidelines

Judges' perceptions of the adequacy of regulation are divided. Eight informants (53%) considered the regulation inadequate, five (33%) considered it adequate, and two (13%) gave indirect answers. A notable finding emerged at the Dompu Religious Court, where four judges (I-3, I-9, I-10, I-13) displayed the full range of views: I-3 and I-10 leaned toward inadequacy, I-9 was neutral, and I-13 firmly considered the regulation adequate. Disparities in perception therefore occur not only across regions but also among individuals within a single institution. This finding strengthens the urgency of national technical guidelines, since such disparities cannot be addressed merely by rotating or redistributing judges.

This phenomenon is consistent with discretion theory, which holds that judicial latitude, although constrained by accountability, still leaves room for personal variation in interpretation (Zaidah, 2023). Previous single-case studies could not capture such intra-institutional

variation, making this finding a methodological contribution of the multi-informant design. The variation in perception is also reflected in practice: the grounds for annulment in the decisions analyzed differ, namely administrative error in Decisions Number 1199/2026 and 6551/2018, non-utilization in Decision Number 1706/2024, and marital property in Decision Number 859/2026. Their normative references also vary, ranging from Article 217 paragraph (3) of the Compilation of Islamic Law and Article 42 of the Waqf Law to ordinary civil evidence.

Support for technical guidelines is dominant. Twelve informants (80%), including all four judges with direct experience (I-3, I-4, I-5, I-6), expressed the need for a SEMA or Perma. The sharpest contribution came from I-14, who distinguished the function of a SEMA as internal guidance for judicial reasoning from that of a Perma, which binds procedural aspects, and cautioned that guidelines must not create new grounds for waqf annulment that contradict Article 3. This observation reflects an understanding of Kelsen's (2011) hierarchy of norms, namely that instruments filling legal gaps must be placed at the appropriate level so as not to create new norm conflicts. By contrast, three informants (I-1, I-13, I-15) formed an internally consistent *status quo* cluster: they considered the regulation adequate and rejected new guidelines.

Synthesizing both research questions, the main problem is not a normative vacuum but the vagueness of the scope of Article 3 regarding waqf that is defective from the outset and the absence of technical guidelines for its application. The required guidelines should therefore be interpretive, should not exceed the Law, and should at least cover: a) criteria for defects from the outset based on subject, material, and formal typologies; b) a distinction between annulment and replacement of the *nazhir* in non-utilization cases; c) restorative settlement options based on *iwadh*; and d) the limits of Religious Court jurisdiction, for example, the annulment of waqf certificates, which, according to Decision Number 1199/2026, falls within the jurisdiction of the State Administrative Court.

The **novelty** of this study lies in the finding that Religious Court judges across regions independently construct their discretion as an assessment of the validity of waqf from the outset rather than as the annulment of a valid waqf, so that the tension with Article 3 can be resolved through systematic interpretation without departing from the principle of perpetuity. The study also formulates five typologies of discretionary grounds together with the *fraus legis* sub-variant, identifies the restorative idea of *iwadh* or *istibdal* that has not yet been applied in decisions, and demonstrates disparities in perception even within a single court. These findings provide an empirical basis for formulating national technical guidelines that distinguish the functions of a SEMA and a Perma.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

First, Religious Court judges exercise discretion in waqf annulment disputes through a distinction between annulling a valid waqf and declaring invalid a waqf that was defective from the outset. This distinction is held independently by judges across regions and is confirmed in the *ratio decidendi* of actual decisions. The *ratio decidendi* is constructed through five typologies of grounds, namely subject defects, material defects, formal defects, public interest, and non-utilization, with a *fraus legis* sub-variant. Judges rely on existing norms, particularly Articles 6, 8, 15, and 21 of Law Number 41 of 2004 and Article 217 paragraph (3) of the Compilation of Islamic Law, using systematic interpretation, the *nemo plus juris* doctrine, temporal priority, and the restorative idea of *iwadh* or *istibdal*. The non-utilization pattern requires correction because Article 45 paragraph (1) letter d of Law Number 41 of 2004 already regulates the dismissal and replacement of the *nazhir*.

Second, the legal readiness of Religious Court judges is conceptually mature even though 73% of informants have never handled a waqf annulment case. Perceptions of regulatory adequacy are divided, with 53% considering it inadequate, 33% adequate, and 13% giving no direct answer, and disparities appear even within a single court. Eighty percent of informants, including all experienced judges, support technical guidelines. What is needed, therefore, is interpretive guidance clarifying the scope of Article 3 rather than new norms that create grounds for annulment beyond the Law.

Limitations

This study has several limitations. The fifteen informants do not represent all Religious Court judges, and the emergence of new themes as informants were added indicates that data saturation may not have been fully reached. Primary data were collected through open-ended questionnaires, which do not allow follow-up probing as interviews do. Furthermore, the analysis of decisions is limited to ten decisions available in the Supreme Court Decision Directory, some of which did not reach the merits.

Recommendations

The Supreme Court is advised to develop technical guidelines that distinguish the function of a SEMA as guidance for judicial reasoning from that of a Perma as a procedural instrument, cover the identified typologies of discretion, and consider restorative settlement based on *iwadh* as an alternative to binary rulings. Religious High Courts are advised to promote a uniform understanding within each court, given that disparities were found even among judges of the same court. Future research is advised to use in-depth interviews with a larger number of informants and to examine whether the subject defect and *fraus legis* patterns are absent from decisions because they rarely occur or because they have not been adequately documented.

Author Contributions

The first author was responsible for conceptualizing the research, developing the instrument, collecting and analyzing the data, and drafting the manuscript. The second and third authors contributed to developing the theoretical framework, auditing the research process, interpreting the results, and critically reviewing and revising the manuscript. All authors have read and approved the final version of the article for publication.

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While drafting this manuscript, the authors used Scopus AI to assist with the manuscript structure and Grammarly.Pro to do English-language proofreading. The authors have thoroughly reviewed and edited the content and take full responsibility for the entire content of this publication.

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