

Rechtsvinding Of Historical Waqf: Nazhirship And Bmn Settlement In Blang Padang

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Abstract

Historical waqf raises legal problems when a waqf transaction occurred before the establishment of a modern waqf administration system and was therefore not supported by a Waqf Declaration Deed (*Akta Ikrar Wakaf*), a waqf certificate, or other formal documents. The issue becomes more complex when the waqf declaration, the legal status of the nazhir, and the waqf property intersect with the administration of State-Owned Property (*Barang Milik Negara* or BMN), as illustrated by the Blang Padang case in Banda Aceh, historically associated with a waqf by Sultan Iskandar Muda for the benefit of the Baiturrahman Grand Mosque. This study analyzes the legal construction of historical waqf determination through rechtsvinding by the Sharia Court (*Mahkamah Syar'iyah*) and examines a model for resolving waqf status in relation to BMN administration. Employing a normative juridical method with statutory, conceptual, historical, case, and comparative approaches, the study finds that the absence of an explicit *isbat wakaf* procedure does not eliminate judicial authority to examine historical waqf. Judicial determination should remain declaratory, clarify the identity and continuity of nazhirship, and distinguish waqf status from BMN administration. The proposed four-stage Aceh Model—judicial determination, clarification of nazhirship, administrative harmonization, and institutionalization of waqf—provides legal certainty while balancing waqf objectives, national defense interests, and state asset governance.

Keywords: *Historical Waqf, Rechtsvinding, State-Owned Property.*

INTRODUCTION

Waqf is a legal institution possessing religious, social, and proprietary dimensions simultaneously. In Indonesian history, waqf practices existed long before the establishment of modern land and waqf administration systems. Consequently, not all historical waqf can be found in the form of a Waqf Declaration Deed (*Akta Ikrar Wakaf*), a waqf certificate, a land register, or other administrative documents as recognized today. When an object historically believed to have been endowed is subsequently incorporated into the state administration as government property, the legal problem becomes more complex. The issue concerns not merely ownership, but also the relationship between historical facts, waqf law, land law, BMN administration, and public interests.

The Blang Padang land in Banda Aceh constitutes a relevant example. The land has historically been associated with a waqf attributed to Sultan Iskandar Muda for the benefit of the Baiturrahman Grand Mosque, while in the development of modern administration the land has been recorded as BMN and its use has been associated with the Ministry of Defense and the Indonesian Armed Forces (*Tentara Nasional Indonesia* or TNI). In July 2026, the Government of Aceh, the Ministry of Religious Affairs, the Indonesian Waqf Board, and the central government once again discussed accelerating the resolution of the status of Blang Padang. The Aceh Provincial Office of the Ministry of Religious Affairs recorded that an *isbat wakaf* approach was proposed as one of the possible legal avenues for resolving the matter (Ministry of Religious Affairs of the Republic of Indonesia, Aceh Province, 2026).

The proposal of Prof. Yusril Ihza Mahendra concerning an *isbat wakaf* approach is significant because it addresses a more fundamental issue: how the law can provide certainty concerning a past legal event when the formal legal instruments currently required did not yet exist at the time the event occurred. Article 28D paragraph (1) of the 1945 Constitution of the

Republic of Indonesia guarantees the right to fair legal certainty, while Article 29 paragraph (2) guarantees every person's freedom to embrace a religion and to worship according to that religion. These provisions do not automatically create a procedure called *isbat wakaf*, but they may provide an interpretative basis for ensuring that the legal system provides an effective avenue for proving and protecting waqf property that genuinely exists.

Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power requires judges to explore, follow, and understand the legal values and sense of justice living in society. Article 10 paragraph (1) of the same law prohibits courts from refusing to examine, adjudicate, and decide cases on the ground that the law does not exist or is insufficiently clear. Both provisions constitute important foundations for *rechtsvinding*. Nevertheless, the judicial duty to discover the law does not equate to an unlimited authority to create new procedural law. *Rechtsvinding* must remain grounded in statutory jurisdiction, the nature of the case, principles of fair adjudication, and institutional limits on judicial authority.

This article proceeds from the thesis that the problem of historical *isbat wakaf* primarily concerns a procedural gap rather than a gap in substantive law. Indonesian law already recognizes waqf, its elements, the protection of waqf property, waqf administration, and the jurisdiction of religious courts over waqf matters. What has not been expressly formulated is the form of application through which a court may determine whether a historical waqf transaction actually occurred. The judge, therefore, does not create a new waqf, but determines whether the alleged legal relationship was established in the past and can be proven according to law.

Qiyas by analogy to *isbat nikah* may assist in explaining this character. *Isbat nikah* essentially provides judicial recognition of a marriage that has already taken place. By a similar logic, *isbat wakaf* is directed toward determining the existence of a waqf that has already occurred. Nevertheless, *qiyas* constitutes a method of legal reasoning and must not be treated as an independent source of new jurisdiction.

The research questions are: first, how can the legal construction of judicial determination of historical waqf by the Sharia Court be developed through *rechtsvinding* in dealing with procedural gaps and limitations of formal evidence; and second, what model can be developed for resolving the status of historically endowed property that has been judicially determined as waqf in relation to State-Owned Property, particularly in the Blang Padang case, while taking into account the position of the *nazhir*, continuity of *nazhirship*, harmonization of BMN administration, national defense interests, and mechanisms for the exchange of State-Owned Property.

RESEARCH METHODS

This study constitutes normative juridical legal research. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, Law Number 41 of 2004 concerning Waqf, Law Number 7 of 1989 as amended by Law Number 3 of 2006 and Law Number 50 of 2009 concerning Religious Courts, Law Number 11 of 2006 concerning the Government of Aceh, Law Number 5 of 1960 concerning Basic Agrarian Principles, and Government Regulation Number 27 of 2014 as amended by Government Regulation Number 28 of 2020 concerning the Management of State-Owned/Regionally-Owned Property. Government Regulation Number 27 of 2014 remains officially in force and has been amended by Government Regulation Number 28 of 2020. The legal materials are analyzed qualitatively through legal interpretation and construction.

The approaches employed include statutory, conceptual, historical, case, and comparative legal approaches. The statutory approach is used to identify the legal basis of judicial authority and the mechanisms governing waqf and BMN administration. The conceptual approach is used

to analyze *rechtsvinding*, legal certainty, *voluntary proceedings*, proof of legal events, and the separation of judicial and administrative functions. The historical approach is employed to understand the characteristics of waqf before the development of modern administration. The case approach focuses on Blang Padang, while the comparative approach draws functional lessons from Egypt, Turkiye, Malaysia, and England and Wales.

RESULTS AND DISCUSSION

The Concept of Waqf, Its Essential Elements, and the Character of Historical Waqf

The discussion should first establish a conceptual definition of waqf. Waqf should not be understood merely as land used for religious purposes, but as a legal act by which a *waqif* separates and/or transfers part of his or her property to be utilized for purposes of worship and/or public welfare in accordance with Islamic principles. Under Law Number 41 of 2004 concerning Waqf, waqf contains the elements of *waqif*, *nazhir*, waqf property, waqf declaration, purpose, and duration. Accordingly, when examining a historical waqf claim, the court cannot merely establish that a particular parcel of land has long been used for religious purposes, but must trace the legal relationship that gave rise to the waqf.

From the perspective of Islamic jurisprudence (*fiqh*), the discussion of waqf should be placed within the concepts of *waqf*, *waqif*, *mauquf*, *mauquf 'alaih*, and *shighah*. Differences among the schools of Islamic jurisprudence concerning the elements or pillars of waqf should be examined because they influence the manner in which historical waqf established before modern administrative systems is understood. In the *fiqh* perspective, the *nazhir* is generally positioned as the manager or *mutawalli* responsible for safeguarding and administering waqf property, whereas under Indonesian positive law the *nazhir* is expressly recognized as one of the elements of waqf.

The distinctive characteristic of historical waqf lies in the temporal distance between the creation of the waqf and the emergence of modern waqf administration. Accordingly, the absence of an AIW or waqf certificate does not, by itself, establish that a waqf never existed. Nevertheless, reliance on history as evidence must not transform social assumptions into legal facts without judicial examination. The evidentiary inquiry must be directed toward identifying the *waqif*, the endowed property, the purpose of the waqf, the form of the declaration, the party entrusted with its administration, and the continuity of the implementation of its purpose.

Waqf Declaration: Original Text, Historical Context, and Flexibility of the Waqif's Intention

The waqf declaration constitutes a crucial point in historical waqf research because it represents the expression of the *waqif's* intention that gives rise to the waqf relationship. Therefore, where historical sources are capable of establishing the original text or substance of the waqf declaration, the research must distinguish between the textual content of the original declaration and the context of its implementation in the present day.

The legal question is not merely whether the declaration can still be implemented literally, but whether changes in circumstances may alter the manner of implementation without eliminating the fundamental objective of the *waqif*. In this context, a distinction must be drawn between changes to the substance or purpose of the waqf and changes to the manner, form, or means by which the waqf is implemented. A change in the means of implementation does not necessarily constitute a change to the waqf, provided that the fundamental purpose of the *waqif* is maintained and the change has a legal basis.

From the perspective of Islamic jurisprudence, the discussion of *shighah* must be connected with the principle that the intention of the *waqif* has an important position in determining the purpose and designation of the waqf. However, the flexibility of implementation

may differ among the schools of Islamic jurisprudence, particularly where the condition of the property, social needs, or the ability to implement the original intention has changed. In this context, the concepts of *istibdal*, *maslahah*, and preservation of the purpose of waqf become relevant.

Accordingly, the research must address whether changed circumstances in Blang Padang permit an adjustment in the manner of implementing the waqf without changing its legal identity. Such an adjustment must be distinguished from unilateral alteration of the *waqif's* intention. The fundamental principle is that the purpose of the waqf should be preserved as far as possible, while changes to the means of implementation may only be justified where necessary, legally grounded, and consistent with the interests originally intended to be protected by the waqf.

Historical Waqf and the Problem of Formal Proof

The principal characteristic of historical waqf is the temporal distance between the occurrence of the waqf transaction and the establishment of modern waqf administration. Waqf could historically be established through an oral declaration, religious documents, delivery to a manager, a decision of a ruler, or social practices recognized at the time. When the state subsequently introduced more formal administrative procedures, the absence of modern documents did not necessarily mean the absence of the underlying legal event. Accordingly, a distinction must be made between the existence of a legal event and its registration. Registration is important for publicity and protection, but conceptually it is not always identical to the creation of the legal relationship. With respect to historical waqf, an excessively formalistic approach may be unjust if society is required to prove events occurring hundreds of years ago solely through evidentiary instruments introduced at a later period.

Law Number 41 of 2004 concerning Waqf establishes a modern waqf regime, including provisions concerning the *waqif*, *nazhir*, waqf property, declaration, Waqf Declaration Deed, registration, management, and protection. Article 40 of Law Number 41 of 2004 prohibits certain acts that may unlawfully cause waqf property to be transferred or lost. Therefore, where an object is historically proven to have become waqf property, recognition of such status serves a tangible legal protection function. This does not mean, however, that every parcel of land socially regarded as waqf automatically constitutes waqf in law. The court must examine the identity of the *waqif*, the object, the time and manner in which the waqf was established, its purpose, the *nazhir* or beneficiaries, and the continuity of its use. Evidence must be assessed cumulatively. The absence of a single document does not automatically extinguish all historical evidence, but a historical claim must likewise not be accepted without adequate proof.

Nazhirship: Identity, Succession, and Legitimacy of Management

The issue of *nazhirship* must constitute one of the principal focuses because waqf is not merely a relationship between the *waqif* and the property, but also concerns the party legally entrusted with its management. Under positive law, a *nazhir* may take the form of an individual, organization, or legal entity. Its duties include administration, management and development, supervision and protection of waqf property, and reporting. Accordingly, a person's position as a mosque imam, mosque administrator, or community leader does not automatically make that person a *nazhir*.

In the context of the Baiturrahman Grand Mosque, the research must clearly distinguish between the Mosque Prosperity Board (*Badan Kemakmuran Masjid* or BKM), the mosque imam, mosque administrators, and the *nazhir* of the waqf. These positions cannot be equated without evidence establishing the respective source of authority. The questions that must be answered include: who was appointed by the *waqif*; whether there is evidence of the appointment of the *nazhir*; whether the appointment was personal or institutional; who continued the duties after the first *nazhir* died or became unable to perform the duties; and who is legally authorized to represent the waqf at present.

In contemporary waqf law, a *nazhir* must be identifiable and registered. The Indonesian Waqf Board (*Badan Wakaf Indonesia* or BWI) explains that a *nazhir* may be an individual, organization, or legal entity and performs functions of management and protection of waqf property. Therefore, where historical waqf no longer has an identifiable *nazhir*, the issue cannot be resolved merely by assuming that every mosque administrator or community leader may act on behalf of the waqf.

The succession of *nazhirship* must also be examined. Replacement of a *nazhir* cannot be carried out merely informally, but must follow the applicable legal mechanism. In 2026, the Indonesian Waqf Board also emphasized mechanisms for the dismissal and replacement of *nazhirs* where a *nazhir* dies, dissolves, resigns, or falls into another legally recognized circumstance. Accordingly, continuity of *nazhirship* in historical waqf must be demonstrated through a clear chain of authority rather than through claims of community representation.

Jurisdiction of the Sharia Court and the Procedural Gap

Within the Religious Courts regime, waqf constitutes a field of Islamic law falling within the jurisdiction of the religious courts. In Aceh, the Sharia Court performs the functions of the religious judiciary within the framework of Aceh's special legal status. Accordingly, the principal issue is not the creation of new substantive jurisdiction, but the appropriate form of application for determining historical waqf that has not been formally documented.

Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power requires judges to explore, follow, and understand the legal values and sense of justice living in society. Article 10 paragraph (1) of the same law requires courts to examine and decide cases and prohibits refusal merely because the law does not exist or is insufficiently clear. These provisions constitute the foundation of *rechtsvinding*, but cannot be understood as conferring unlimited authority.

The term *isbat wakaf* should be regarded as a descriptive term for an application seeking a determination concerning the existence or status of historical waqf. The judge is not creating a new institution, but exercising existing jurisdiction in the field of waqf to examine a past legal event. The relief sought should therefore be directed toward determination of status rather than creation of a new waqf.

Determination of the Religious Court of Cilegon Number 281/Pdt.P/2011/PA.Clg demonstrates that an *isbat wakaf* application was previously accepted and granted. The case arose from an oral waqf established in 1941 and subsequently became an object of academic study because the legal basis for *isbat wakaf* had not been expressly formulated. The practice is important as material for *rechtsvinding*, while simultaneously demonstrating the need for more uniform procedural guidance.

Rechtsvinding: The Duty to Discover the Law and Its Limits

Rechtsvinding is not judicial legislation. It constitutes a process of discovering the appropriate legal norm through interpretation, construction, systematization, and an understanding of legal values living in society. In historical waqf cases, substantive norms concerning waqf and judicial jurisdiction already exist, but uncertainty remains regarding the procedural form for determining a waqf transaction that occurred before modern administration.

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia provides a constitutional dimension through the right to fair legal certainty. If a legal relationship that genuinely existed cannot be determined merely because modern administrative instruments did not yet exist when that relationship arose, legal certainty becomes ineffective. Article 29 paragraph (2) of the 1945 Constitution provides the context that legal protection must enable society to practice religion and preserve religious institutions, without disregarding positive law or public interests.

The appropriate formula is that judges are obliged to discover the law within the scope of authority already granted to them. Judges may fill procedural gaps through rational legal

construction, but may not eliminate the administrative authority of other institutions or create new rights without a legal basis. Therefore, determination of historical waqf must be declaratory: it determines whether the alleged waqf occurred, rather than creating a waqf at the time the determination is rendered.

Qiyas by Analogy to Isbat Nikah

Analogy with *isbat nikah* has substantial explanatory value. *Isbat nikah* is essentially retrospective: the court determines the existence of a marriage that was previously solemnized. Historical *isbat wakaf* may be understood in a similar manner, namely that the court examines whether a waqf was established in the past and whether that event can be proven.

The distinction must nevertheless be emphasized. *Isbat nikah* has a more explicit procedural basis in family law, whereas *isbat wakaf* has not been expressly formulated as a distinct category of application. Therefore, *qiyas* serves merely as a method of legal reasoning for explaining its declaratory character and cannot constitute an independent source of jurisdiction.

Ideally, an application should distinguish three questions: whether the waqf occurred; whether the object, purpose, *waqif*, and manager can be identified; and what legal consequences follow from the determination. The first two questions constitute the core of the judicial function. The third question, particularly where it concerns BMN, may require administrative action by executive institutions.

Blang Padang: Distinguishing Waqf Status from BMN Administration

Blang Padang should not be analyzed in binary terms as a conflict between waqf land and land owned by the TNI. Under the BMN regime, the status of a Government User or the determination of use status is not identical to private ownership by an institution. State ownership, use, utilization, and transfer constitute distinct legal layers.

Information concerning Blang Padang indicates the existence of a determination of use status for the Ministry of Defense through KMK-193/KM.6/WKN.1/KNL.01/2021. Accordingly, if such BMN status is valid, the settlement must take into account the law governing state asset administration and national defense interests. A judicial determination concerning waqf does not automatically erase BMN registration or order the transfer of assets without administrative procedures.

This distinction creates space for a peaceful settlement. The court may determine whether the historical waqf has been proven. The government may subsequently determine how the legal consequences of the determination are to be implemented without disregarding national defense interests and BMN governance. Where a government institution or another party raises a substantive objection concerning rights over the land, the court must also ensure a fair examination and must not use the *voluntary* character of the proceedings as a means of eliminating third-party rights.

Exchange of State-Owned Property as a Settlement Instrument

Government Regulation Number 27 of 2014 concerning the Management of State-Owned/Regionally-Owned Property, as amended by Government Regulation Number 28 of 2020, recognizes exchange as one form of transfer of BMN through replacement subject to applicable requirements. Accordingly, if, following a determination of historical waqf, the defense function of the property must still be maintained, an exchange of BMN may be considered as an administrative instrument. However, describing exchange as the sole legal avenue would be overly absolute. The available mechanism must be determined according to the status of the asset, the competent authority, the purpose of the transfer, valuation, approvals, and applicable technical provisions.

The government cannot simply transfer BMN to a religious institution without complying with state asset governance. A principle of functional equivalence may be applied. The state continues to obtain an asset or facility adequate to perform the defense function, while the

historical purpose of the waqf may be restored through a lawful mechanism. Thus, no party is necessarily placed in the position of an absolute winner or loser.

Comparative Legal Analysis

Country	Mechanism	Principle	Lesson
Egypt	Centralized waqf administration and state supervision.	Separation of recognition of waqf status from administrative management.	Waqf status should first be determined; consequences concerning possession or control should subsequently be resolved administratively.
Turkiye	Directorate General of Foundations under Foundations Law No. 5737.	Historical verification and institutional protection.	Historical claims must be supported by archives and verification, rather than merely political support.
Malaysia	State Islamic councils and Sharia Courts operate under state enactments; <i>sulh</i> is available in certain matters.	Integration of judicial, administrative, and mediation functions.	Once status is clarified, peaceful settlement may be pursued through the relevant institutions.
England/Wales	Charities Act 2011 recognizes the <i>cy-près</i> mechanism.	Charitable purposes remain protected when the original method can no longer be implemented.	The purpose of waqf should be preserved through a lawful and functionally equivalent alternative arrangement.

The comparison is not intended to transplant foreign law into Indonesia. Its comparative value is functional. The different systems demonstrate a tendency for religious or charitable property to remain protected through institutional mechanisms even when factual circumstances change.

The most relevant lesson is sequencing. Legal status is determined through the competent mechanism; management and adjustment of use are subsequently resolved through administrative institutions. Malaysia provides an additional lesson through *sulh*, while England and Wales demonstrate the importance of preserving charitable purposes through the *cy-près* mechanism.

Comparative analysis should not be limited to recognition of historical waqf, but should also address how other legal systems resolve changes in waqf circumstances, replacement of *nazhirs*, changes in use, and *istibdal*. Such comparison demonstrates that protection of the purpose of waqf may be achieved by adjusting the means of implementation without eliminating its fundamental purpose.

3.11. The Aceh Model: Four Stages of Settlement

First Stage: Judicial Determination of the Existence and Status of the Waqf

The first stage must begin with the fundamental question of whether a legal event constituting a waqf actually occurred. The Sharia Court should not immediately address the transfer of land, changes in BMN status, or appointment of a new manager before the historical existence of the waqf has been adequately established through evidence. The court's function at this stage is to examine the past legal event using all available evidence, including the waqf declaration, historical documents or archives, evidence of the use of the land, testimony from

persons familiar with the history of the waqf, religious documents, and administrative documents subsequently created.

In historical waqf cases, the standard of proof must take into account the characteristics of the period in which the event occurred. The absence of an Akta Ikrar Wakaf, a waqf certificate, or modern administrative documents cannot automatically be interpreted as evidence that the waqf never existed. Nevertheless, the age of an event should not become a reason for lowering the evidentiary standard. Therefore, evidence must be assessed cumulatively by examining the consistency among the identity of the *waqif*, the waqf object, the purpose of the waqf, the substance of the declaration, the beneficiaries, the managing party, and the historical use of the property.

If the examination establishes that the waqf actually occurred, the judicial determination should be declaratory and retrospective. In other words, the court declares that the waqf was established in the past based on the proven legal event rather than creating a new waqf at the time the determination is issued. Consequently, the relief sought should ideally be directed toward determining the existence and status of the waqf rather than requesting the court to create a new waqf right.

Second Stage: Determination or Clarification of the Legally Authorized *Nazhir*

Once the existence of the waqf has been determined, the next issue concerns the party legally authorized to receive the trust and manage the waqf property. This stage is particularly important in historical waqf cases because the *nazhir* originally appointed by the *waqif* may have died, ceased to perform the duties, become untraceable, or been replaced by a different institutional structure.

In the context of Blang Padang, a clear distinction must be made among the *nazhir*, the BKM of the Baiturrahman Grand Mosque, the mosque imam, mosque administrators, the Government of Aceh, and community leaders. A person cannot be regarded as a *nazhir* merely because of his or her social or religious position or because that person has historically participated in managing the mosque. What must be traced is who was appointed by the *waqif*, the legal basis of the appointment, the relationship between the original *nazhir* and subsequent managers, and the mechanism through which the succession or continuation of *nazhirship* occurred.

Thus, the second stage does not merely seek to identify “who manages the land,” but determines which legal subject has legitimate authority to act on behalf of the waqf. This is essential to prevent a situation in which, after the court determines the historical waqf, various parties claim to represent the waqf without legitimate *nazhirship*. The earlier framework of this study itself places the identification of the *nazhir* or beneficiaries among the matters requiring judicial examination.

At this stage, the succession of *nazhirship* must also be considered. If the original *nazhir* no longer exists, it must be determined how the position is continued under waqf law and whether a replacement *nazhir* has acquired legitimacy according to the applicable mechanism. Accordingly, the continuity of waqf is protected not only materially through the existence of the land, but also institutionally through the existence of a clearly identified *nazhir*. Academically, this is important for correcting the widespread perception in society that any religious leader, imam, mosque administrator, or community member who claims a historical relationship with the waqf may act as its representative. Representation of waqf property must have a legally accountable source of authority.

Third Stage: Administrative Harmonization and Resolution of BMN Status

Once the waqf status and the legally authorized *nazhir* have been clarified, the state-administration issue may then be addressed. This stage must be conceptually separated from the judicial function. If the waqf property has been administratively recorded as State-Owned

Property, a judicial determination concerning the existence of the waqf does not automatically erase the BMN registration or order the transfer of state assets.

This distinction is important because several different legal layers are involved: the historical status of the waqf, land rights, state ownership, BMN use status, and actual use for national defense purposes. In the Blang Padang case, for example, the manuscript records a determination of use status for the Ministry of Defense through KMK-193/KM.6/WKN.1/KNL.01/2021. Therefore, the administrative consequences of a judicial determination of waqf must continue to be processed through institutions possessing authority over BMN and land administration.

This is where the concept of harmonization becomes important. The court determines legal status within its jurisdiction, while the government determines how that status can be implemented within the state administrative system. This prevents overlapping jurisdiction: the court does not take over BMN administrative authority, while state administration does not disregard a legal status established by judicial determination.

If the defense need associated with the property remains actual and cannot be immediately discontinued, the government may assess the possibility of exchanging BMN or employing another lawful mechanism. Exchange is not an automatic consequence of a judicial determination of waqf, nor is it the only available option. The mechanism must be adapted to the asset's status, the authority of the relevant officials, valuation, approvals, public interest, defense requirements, and technical provisions governing BMN management.

A principle of functional equivalence may therefore be applied. The state need not lose its defense function, while the historical purpose of the waqf need not disappear. Where legally permissible, a replacement asset or facility may be provided to fulfill the state function, while the purpose of the waqf is restored through a lawful object or mechanism.

Fourth Stage: Institutionalization, Registration, and Management of the Waqf by a Legally Authorized Nazhir

The final stage is to ensure that the settlement does not stop at judicial determination or administrative agreement, but produces a waqf that can be sustainably managed. Once the status of the property and the BMN settlement have acquired a legal basis, the waqf must be institutionalized through the appointment or recognition of a legally authorized *nazhir*, recording, registration, and management in accordance with the purpose of the waqf.

This stage is important because historical waqf faces the risk of being “historically recognized but institutionally unprotected.” If, after judicial determination, there is no clearly identified *nazhir*, no registration, and no management mechanism, the same dispute may re-emerge in future generations. Accordingly, the result of the determination must be translated into concrete waqf governance.

The clarified or appointed *nazhir* must possess clear authority to manage the waqf property, safeguard the property, maintain its designated purpose, and account for its management. The purpose of the historical waqf should also be clearly recorded in the relevant legal documents so that its purpose cannot be unilaterally altered.

At this point, the substance of the historical waqf declaration becomes particularly important. Where the *waqif's* intention can be established from an authentic text or historical source, that text becomes a parameter for determining the fundamental purpose of the waqf. However, implementation may face changes in social, geographical, institutional, and community circumstances. Therefore, a distinction must be made between altering the *waqif's* intention and adapting the means by which that intention is implemented. The former should be treated strictly, whereas the latter may be considered where it has a legal basis and continues to preserve the fundamental purpose of the waqf.

Standards of Proof and Protection of Third Parties

Historical waqf requires a cumulative evidentiary approach. Evidence may consist of royal or governmental archives, historical maps, religious documents, inscriptions, management

records, continuous use, testimony from religious figures or managers, testimony from Acehese historians, and government documents subsequently created. The court must assess the origin, authenticity, consistency, temporal proximity, and relationship among the evidence.

The evidentiary inquiry must encompass not only the existence of the waqf but also the identity of the *waqif*, the object, purpose, substance of the declaration, *nazhir*, continuity of management, and changes in circumstances throughout history. Where the property has been recorded as BMN, the institution directly concerned must be given adequate opportunity to present evidence and arguments.

The court must neither lower the standard of proof merely because the event occurred long ago nor apply modern administrative requirements anachronistically. This balance constitutes the essence of justice in historical waqf adjudication.

The application should identify the object, *waqif*, purpose, *nazhir* or beneficiaries, and historical basis. If the property has become BMN, the institution possessing a direct legal interest must be given an opportunity to present evidence. The absence of an objection does not automatically constitute an admission of all allegations made by the applicant.

If a substantive dispute concerning another party's rights arises, the court must assess whether *voluntary* proceedings remain appropriate. A judicial determination must not be used to deprive a third party of the right to a fair examination.

Constitutional Meaning and Peace Through Law

Legal certainty does not always mean maintaining the latest administrative status without historical examination. Legal certainty also means providing a lawful procedure for determining whether a historical status actually exists. A democratic state must not merely record assets; it must also provide a credible forum for testing legally grounded claims.

Protection of waqf does not mean that religious interests automatically prevail over state interests. National defense, BMN governance, and public interests possess their own legal foundations. Accordingly, a sustainable settlement should not follow a winner-takes-all paradigm, but rather establish legal certainty first and then pursue proportionate implementation.

The term *peace through law* used in this article does not constitute a new branch of positive law. It refers to an orientation in which potentially divisive conflicts are transformed into a sequence of legal procedures: adjudication, administration, negotiation, and implementation. Peace is not built by avoiding legal truth, but by creating trusted mechanisms for determining facts and regulating their consequences.

This model is substantively consistent with the Sustainable Development Goal of promoting peaceful and inclusive societies, providing access to justice for all, and building effective, accountable, and inclusive institutions (SDG 16). Its relevance lies in transforming conflicts involving identity, religion, state administration, and defense into institutional processes that can be legally and publicly accounted for.

Limitations and Regulatory Recommendations

The *rechtsvinding* argument nevertheless has limitations. Because no explicit procedure for *isbat wakaf* currently exists, there is a risk of divergent practices among courts. The risk becomes greater where the object constitutes a strategic state asset. Therefore, the Supreme Court, together with the Ministry of Religious Affairs and relevant institutions, should consider developing procedural guidelines for the judicial determination of historical waqf.

Such guidelines should at least regulate the minimum requirements for applications, categories of historical evidence, notification to government institutions where the object constitutes BMN, the distinction between *voluntary* and *contentious* proceedings, the legal consequences of the determination, the relationship between judicial determination and the Waqf Declaration Deed or other administrative instruments, and the relationship with land registration.

In the long term, the legislature may consider explicit regulation if the need for *isbat wakaf* becomes sufficiently established. Regulation should prevent two extremes: formalism that

prevents access to legal recognition of genuinely existing historical waqf and excessive permissiveness that allows unsupported historical claims to override legitimate state or third-party rights.

Political support, demonstrations, or statements by public figures cannot replace judicial proof. Historical claims must be independently examined. Thus, *isbat wakaf* should function as an instrument of legal certainty rather than as a shortcut for circumventing land law and BMN administration.

CONCLUSION

First, historical waqf established before the development of modern waqf administration may remain subject to judicial examination even when it is not supported by a Waqf Declaration Deed, a waqf certificate, or formal documents required under contemporary administrative systems. The absence of modern documentation does not necessarily eliminate the possibility that a waqf legal event was established, but a historical claim must nevertheless be proven cumulatively by considering the identity of the *waqif*, the object, the purpose of the waqf, the substance of the declaration, the beneficiaries, the *nazhir*, and the continuity of its implementation. Where the law does not explicitly regulate an *isbat wakaf* procedure, the Sharia Court may employ *rechtsvinding* on the basis of existing jurisdiction, including the mandate contained in Article 5 paragraph (1) and Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Such *rechtsvinding* is declaratory and retrospective rather than constitutive of a new waqf or new judicial authority. *Qiyas* by analogy to *isbat nikah* may be used to explain this declaratory character but does not constitute an independent source of procedural jurisdiction. In determining the existence of the waqf, the substance and purpose of the *waqif's* declaration must receive primary attention. Changes in circumstances do not automatically justify altering the *waqif's* intention, although adaptations in the means of implementation may be considered where they have a legal basis and continue to preserve the fundamental purpose of the waqf. At the same time, the position of the *nazhir* must be clearly established, including the basis of appointment, continuity of *nazhirship*, and the party legally authorized to represent the waqf at present. The BKM, mosque imam, mosque administrators, or community leaders cannot automatically be regarded as *nazhirs* merely on the basis of social status or management practices without an accountable legal basis of authority.

Second, the settlement of historical waqf whose property has been recorded as BMN, as in the context of Blang Padang, must clearly distinguish between the judicial determination of waqf status and the administrative settlement of BMN. A judicial determination concerning the existence of waqf does not automatically extinguish BMN status, transfer state asset control, or assume the administrative authority of the government. Conversely, the recording of property as BMN does not, by itself, resolve the historical question of whether a waqf was established. Accordingly, an **Aceh Four-Stage Model** may be constructed, consisting of: (1) judicial determination of the existence and status of the waqf; (2) clarification and legitimization of the *nazhir*, including continuity of *nazhirship*; (3) administrative harmonization and settlement of BMN status through exchange or another lawful mechanism; and (4) institutionalization, registration, and management of the waqf by a legally authorized *nazhir*. This model places the judiciary, state administration, and waqf management institutions within their respective functions and prevents overlapping jurisdiction. Where national defense interests must continue to be maintained, the exchange of BMN may be considered as one settlement instrument, subject to the status of the asset, valuation, authority, approval, public interest, and applicable technical provisions. Through this construction, the resolution of Blang Padang should not be placed within a winner-takes-all paradigm, but rather understood as a sequential legal process that

reconciles historical truth, the *waqif's* intention, certainty of *nazhirship*, the purpose of the waqf, national defense interests, and state asset governance. Such a model positions law as a means of *peace through law*, namely by constructing a settlement that enables legitimate interests to coexist peacefully within a lawful framework.

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