

Waqf Land Dispute Resolution in Indonesia and Malaysia: Legal and Cultural Approaches

Ratih Agustin Wulandari^{1*}, Raimon Efendi², Neng Vivie Nurfauziah Rukmini³

¹ Universitas Dharmas Indonesia, Indonesia, E-mail: wulandariagustin88@gmail.com

² Universitas Dharmas Indonesia, Indonesia, E-mail: raimon.efendi@gmail.com

³ Universiti Utara Malaysia, Malaysia, E-mail: neng_vivie_n@ahsgs.uum.edu.my

Abstract: Dispute resolution in the *waqf* land context is a matter of particular legal complexity; thus, it requires special attention. This research aims to provide a comparative analysis of *waqf* land dispute resolution mechanisms in Indonesia and Malaysia, with a focus on the role of local cultural values and Islamic legal norms. The present research employs a normative legal research approach, which involves the identification of legal rules, principles and doctrines to provide a resolution to the legal issues under consideration. The results indicate that the resolution of *waqf* land disputes in Indonesia and Malaysia uses divergent legal and cultural approaches. Despite the adherence to the Islamic *waqf* principle, there are discernible discrepancies in the dispute resolution methods, legal structures and cultural influences exhibited by these two nations. The influence of local cultural values on the two nations is evident. Indonesia places significant value on deliberation, cooperation and social sustainability, whereas Malaysia places greater emphasis on negotiation, mediation and economics. This research aims to provide tangible insights into institutional reforms and digital innovations in *waqf* governance and expand comparative analyses to other Islamic jurisdictions, thereby enriching the global discourse on *waqf* legal practices and dispute resolution.

Keywords: cultural values; Indonesia; legal system; Malaysia; *waqf* land disputes

1. Introduction

Waqf (Islamic endowment) is a form of worship with a profound social dimension, realised by dedicating a portion of one’s property permanently or temporarily for religious purposes as per Islamic legal principles.¹ Its unique nature lies in the

*Correspondence

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¹ Fajri Aulia Afisna, Yaswirman, and Yasniwati, “Pengelolaan Tanah Wakaf Untuk Usaha Produktif Dalam Kesejahteraan Sosial Oleh Nazhir Wakaf Menurut Undang-Undang No. 41 Tahun 2004 Tentang Wakaf,” *UNES Law Review* 6, no. 1 (2023): 1324–34, <https://doi.org/10.31933/unesrev.v6i1.928>; Eiman Ahmad Mohammad Khaleel Al Hashmi, “Waqf as a Financing Tool and Its Role in Achieving SDGs and Foreseeing the Future,” in *Wealth Management and Investment in Islamic Settings* (Singapore: Springer Nature Singapore, 2022), 333–55, https://doi.org/10.1007/978-981-19-3686-9_19; Helza Nova Lita, “Waqf And Economic Distribution Justice:



perpetual spiritual rewards (*ṣadaqah jāriyah*) it generates for the donor (*waqif*), making it not only an act of charity but also a legacy of lasting benefit for society. Therefore, *waqf* plays a crucial role in fostering sustainable development and community empowerment through a balance of spiritual and socio-economic values.² Nevertheless, the growing number of *waqf*-related disputes in religious courts indicates increasing legal complexity. Data from the Case Tracking Information System (SIPP) of the Directorate General of Religious Courts show a steady rise in *waqf* dispute cases—from 25 cases in 2020 to 53 by October 2022. These disputes include issues such as the mismanagement of *waqf* property by *nazīr* (trustees), unlawful third-party control and legal ambiguities concerning changes in land status from *waqf* to state-owned assets, particularly in cases involving public institutions. Although Indonesia has enacted Law No. 41 of 2004 on *Waqf*, it lacks clear and detailed provisions regarding dispute resolution mechanisms such as deliberation (*musyawara*), mediation and arbitration, resulting in legal uncertainty in practice.³

In the context of resolving *waqf* cases gathered from the Supreme Court's Religious Chamber, there are several fundamental problems.⁴ Problems associated with the application of material law, including *nazīr*'s incompetence in managing *waqf* assets and administration. Ownership of several *waqf* assets is later transferred in the name of the *waqf* assets.⁵ There has been a change in the status of *waqf* land to become State Property, especially in educational institutions that have changed from private or

Sustainable Poverty Alleviation Efforts,” *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1–6, <https://www.abacademies.org/articles/waqf-and-economic-distribution-justice-sustainable-poverty-alleviation-efforts-12495.html>.

² Yasniwati, “Efektifitas Pengelolaan Wakaf Produktif Bagi Kesejahteraan Sosial Di Indonesia,” *UNES Law Review* 5, no. 4 (2023): 1919–29, <https://doi.org/10.31933/unesrev.v5i4.578>; AbulHasan M. Sadeq, “Waqf, Perpetual Charity and Poverty Alleviation,” *International Journal of Social Economics* 29, no. 1/2 (January 1, 2002): 135–51, <https://doi.org/10.1108/03068290210413038>.

³ Direktorat Jenderal Badan Peradilan Agama, “Gencar Melaksanakan Bimbingan Teknis Bagi Tenaga Teknis Peradilan, Ditjen Badilag Hadirkan YM. Dr. H. Abdul Manaf Sebagai Narasumber,” Mahkamah Agung Republik Indonesia, 2022, <https://www.pa-penajam.go.id/berita-badilag/922-gencar-melaksanakan-bimbingan-teknis-bagi-tenaga-teknis-peradilan-ditjen-badilag-hadirkan-ym-dr-h-abdul-manaf-sebagai-narasumber>.

⁴ Anwar Allah Pitchay Mohamed Asmy Bin Mohd Thas Thaker, “Developing Waqf Land through Crowdfunding-Waqf Model (CWM): The Case of Malaysia,” *Journal of Islamic Accounting and Business Research* 9, no. 3 (2019): 448–56, <https://doi.org/https://doi.org/10.1108/JIABR-05-2016-0062>.

⁵ Ahmad Ridwan, “Dinamika Pengelolaan Wakaf Dalam Upaya Pembangunan Ekonomi Keumatan Di Indonesia,” *TIJAROTANA: Jurnal Ekonomi Dan Bisnis Syariah* 1, no. 02 (2020), <https://ejournal.stiesbabussalam.ac.id/index.php/tijarotana/article/view/16>; Maryani et al., “Islamic Philanthropy: Implementation of Regulations And Utilization of Waqf Proceeds in Jambi,” *Jurnal Hukum Islam* 21, no. 1 (June 24, 2023): 159–80, https://doi.org/10.28918/jhi_v21i1_07; J. Junaidi, “Revitalisasi Pengelolaan Wakaf Di Kota Langsa Perspektif Undang-Undang Wakaf,” *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (November 11, 2021): 223, <https://doi.org/10.29240/jhi.v6i2.2924>.

foundations to state schools.⁶ The status of the donated *waqf* land is still mixed with joint and inherited assets that are yet to be distributed to the entitled parties.⁷ The *waqf* land is controlled by a third-party unlawfully.⁸ Some *waqfs* are also false because the *waaqif* deliberately hides his assets or wants to obscure the status of the *waqf* assets for specific purposes.⁹

Based on data from the Ministry of Religion's *Waqf* Information System, the potential for land *waqf* in Indonesia reached 414,829 locations with an area of 55,259.87 hectares by the end of 2021. However, according to the Indonesian Waqf Board (BWI), the potential of cash *waqf* to reach IDR 180 trillion per year is yet to be adequately optimised by the essence and objectives of *waqf*.¹⁰

In contrast, Malaysia has developed a more structured and Sharia-oriented legal framework for *waqf* dispute resolution, supported by institutionalised religious courts and formal mediation bodies. This divergence is rooted in distinct historical legal trajectories: Indonesia's legal system, influenced by Hindu–Buddhist traditions, Islamic jurisprudence and Dutch colonial law, versus Malaysia's system shaped by a British colonial legal legacy and a more centralised approach to Islamic law implementation.

In Indonesia, a democratic state grounded in the rule of law and home to the world's largest Muslim population, *waqf* is a crucial instrument for socio-religious development.¹¹ However, its optimal utilisation—particularly with regard to land *waqf*—remains constrained by several challenges, including inadequate regulatory frameworks, low *waqf* literacy among stakeholders, limited professional capacity of *nazir*, and the

⁶ Afisna, Yaswirman, and Yasniwati, "Pengelolaan Tanah Wakaf Untuk Usaha Produktif Dalam Kesejahteraan Sosial Oleh Nazhir Wakaf Menurut Undang-Undang No. 41 Tahun 2004 Tentang Wakaf."

⁷ Usman Zainuddin et al., "Peran Zakat Dan Wakaf Dalam Pembangunan Ekonomi Umat Perspektif Ekonomi Islam," *FiTUA: Jurnal Studi Islam* 1, no. 2 (2020): 202–34, <https://doi.org/10.47625/fitua.v1i2.270>.

⁸ Ratih Agustin Wulandari et al., "Juridical Analysis of Transitional Land Rights Unregistered in Dharmasraya Regency," in *Proceedings of the 1st Paris Van Java International Seminar on Health, Economics, Social Science and Humanities (PVJ-ISHESSH 2020)*, vol. 535 (atlantis-press.com, 2021), <https://doi.org/10.2991/assehr.k.210304.127>.

⁹ Muhammad Taufan Djafri et al., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah)," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 2, no. 3 (November 18, 2021): 396–412, <https://doi.org/10.36701/bustanul.v2i3.402>; Muhammad Hadi et al., "Toward a Holistic Legal Framework for Effective Waqf Implementation: Integrating Islamic Socio-Economic Models," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, April 18, 2025, 15–42, <https://doi.org/10.24090/volksgeist.v8i1.12590>.

¹⁰ Kementerian Agama Republik Indonesia, "Sistem Informasi Wakaf," 2023, <https://siwak.kemenag.go.id/>.

¹¹ Ahmad Sofyan Mustafa and Nurul Hikmah, "Konsep Wakaf Profesi Pada Hukum Positif Di Indonesia," *Novum: Jurnal Hukum*, 2023, 119–29, <https://doi.org/https://doi.org/10.2674/novum.v3i3.56414>; Encup Supriatna et al., "A Waqf Empowerment Model Based on Benefit Analysis," *Journal of Islamic Thought and Civilization* 14, no. 1 (June 14, 2024): 303–19, <https://doi.org/10.32350/jitc.141.18>; Mujahidin Mujahidin et al., "Challenge of Waqf to the Social and Economic Welfare of Muslim Communities: A Comparative Analysis Between Countries," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 1 (April 22, 2025): 168, <https://doi.org/10.29300/mzn.v12i1.7765>; Yuliani Dwi Lestari et al., "The Development of National Waqf Index in Indonesia: A Fuzzy AHP Approach," *Heliyon* 9, no. 5 (May 2023): e15783, <https://doi.org/10.1016/j.heliyon.2023.e15783>.

minimal use of digital technologies in *waqf* management; these systemic limitations hinder the full realisation of *waqf*'s economic and spiritual potential.¹²

To explore solutions to these persistent challenges, this study adopts a comparative legal systems approach, anchored in Friedman's legal system theory, which conceptualises law as a dynamic interaction between legal structures, legal culture and legal substance. This framework enables a nuanced analysis of how legal institutions, normative content and socio-cultural influences shape the mechanisms for resolving *waqf* land disputes in different jurisdictions.

In this context, this study compares the *waqf* dispute resolution systems of Indonesia and Malaysia—two Muslim-majority countries—with divergent legal and historical trajectories. Indonesia's pluralistic legal system¹³ reflects the confluence of Islamic law, *adat* (customary law) and Dutch colonial heritage.¹⁴ In contrast, Malaysia has developed a more structured and Sharia-oriented legal framework, supported by institutionalised religious courts and formal mediation bodies. This divergence is rooted in their respective colonial legacies: the Dutch in Indonesia and the British in Malaysia, which resulted in differing levels of centralisation and integration of Islamic law.

This research addresses the following central question: how do the mechanisms for resolving *waqf* land disputes differ between Indonesia and Malaysia, and to what extent do local cultural values and Islamic legal norms shape their respective approaches? By analysing the legal frameworks, cultural contexts and practical implementations of Islamic principles in both countries, this study aims to provide policymakers and legal practitioners with valuable insights for developing more effective and culturally resonant models for *waqf* governance and dispute resolution.

M. Roem Syibly et al. pointed out that despite the existence of *waqf* laws dating back to the Sultanate period, the legal systems in both countries continue to evolve in response to modern financial and business dynamics. This evolution is indicative of efforts to strike a balance between the traditional values of *waqf* and contemporary economic practices, thereby ensuring the sustainable development of *waqf* assets.¹⁵

¹² Itang and Lik Syakhabyatin, "Sejarah Wakaf Di Indonesia (The History of Waqf Development In Indonesia)," *TAZKIYA Jurnal Keislaman, Kemasyarakatan Dan Kebudayaan* 18, no. 2 (2017): 220–37, <https://jurnal.uinbanten.ac.id/index.php/tazkiya/article/view/1151>.

¹³ John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

¹⁴ Firdaus Arifin et al., "Recognition of Customary Norms Within the Framework of Indonesian Legal Positivism," *Khazanah Hukum* 7, no. 1 (April 7, 2025): 92–104, <https://doi.org/10.15575/kh.v7i1.39409>. Keebet Von Benda-Beckmann, "Balancing Islam, ADAT and the State: Comparing Islamic and Civil Courts in Indonesia," in *The Power of Law in a Transnational World: Anthropological Enquiries* (Germany: Berghahn Books, 2009), 211–30.

¹⁵ M. Roem Syibly et al., "A Comparative Analysis of Legal Products on the Development of Productive Waqf in Indonesia and Malaysia," *Millah: Journal of Religious Studies* 21, no. 3 (2022): 1003–24, <https://doi.org/10.20885/millah.vol21.iss3.art14>.

The legal and institutional reforms required for the more efficient management of *waqf* land were further underscored by Ghazali et al., who proposed a new framework for managing *waqf* land registration in Malaysia. This framework addresses issues such as complicated registration procedures and jurisdictional conflicts between civil and Sharia courts. Such reforms are imperative to enhance the transparency, accessibility and protection of *waqf* assets, thereby minimising potential disputes and conflicts.¹⁶

This study's novelty lies in its comparative legal analysis of two countries with shared religious foundations but differing socio-legal architectures. Through this approach, the research highlights how Islamic law has adapted to diverse legal environments, offering potential pathways for reform and innovation in the governance of *waqf* institutions. This contribution is particularly relevant in addressing the growing complexity of *waqf* disputes and the urgent requirement for sustainable and accountable legal mechanisms to safeguard endowed assets for future generations.

2. Methods

This legal research uses a normative juridical approach combined with a comparative legal method to examine the mechanisms for resolving *waqf* land disputes in Indonesia and Malaysia. Normative legal analysis is conducted by identifying relevant legal norms, doctrines and principles that form the foundation of dispute resolution practices in both countries.¹⁷ The statutory approach is applied to systematically review the existing laws and regulations governing *waqf*, land ownership, religious court jurisdiction and dispute settlement procedures. To conduct the comparative analysis, this study adopts the functional method of comparative law, which emphasises the comparison of how different legal systems solve similar practical problems. The choice of this method allows the research to focus on the functionality of legal norms and institutions when addressing *waqf* land disputes across jurisdictions with differing historical and cultural contexts. Furthermore, elements of institutionalism are integrated to examine how legal institutions, including religious courts and *waqf* boards, influence the effectiveness and legitimacy of dispute resolution.

To ensure analytical clarity, the research defines legal-cultural elements—such as the role of Islamic jurisprudence (*fiqh*), customary practices (*adat*) and public trust in legal institutions—as key variables. These are operationalised through the review of court decisions, statutory interpretations and empirical studies, which reflect how cultural

¹⁶ Noor Azimah Ghazali et al., "New Framework for the Management of Waqf Land Registration System in Malaysia," *International Journal of Islamic and Middle Eastern Finance and Management* 14, no. 3 (2020): 625–40, <https://doi.org/10.1108/IMEFM-04-2019-0172>.

¹⁷ Ahmad Zuhdi Muhdlor, "Perkembangan Metodologi Penelitian Hukum," *Jurnal Hukum Dan Peradilan* 1, no. 2 (2012): 189, <https://doi.org/10.25216/jhp.1.2.2012.189-206>.

values are embedded in the legal reasoning and processes in each jurisdiction.¹⁷ The analytical units in this study include substantive legal norms (laws and regulations on *waqf* and land disputes), dispute resolution mechanisms (court-based and non-litigation), institutional structures (the roles of *nazir*, religious courts and mediation bodies) and cultural-legal narratives (how local values influence legal interpretation and compliance). The case selection criteria are purposive, focusing on landmark or representative cases of *waqf* land disputes adjudicated in religious or civil courts in Indonesia and Malaysia within the last 2 decades. The jurisdictional scope is limited to the national and regional levels in both countries, particularly areas with high concentrations of *waqf* land and active legal institutions (e.g. West Java and Selangor). Legal materials are classified into primary legal sources: legislation and court decisions relevant to *waqf* and land disputes; secondary legal sources: scholarly books, journal articles, theses and dissertations analysing *waqf* governance and dispute settlement practices; non-legal sources: dictionaries, socio-cultural studies and policy documents that support the contextual analysis. Data collection was conducted through a documentary and literature review, and legal materials were categorised thematically based on the research questions. Legal material analysis uses a prescriptive-qualitative technique involving interpretative and critical evaluation to formulate recommendations. This process includes normative reconstruction, in which ideal legal formulations are proposed based on the best practices observed in the comparative analysis.¹⁸ By integrating comparative functionalism with cultural and institutional contextualisation, this research aims to produce a nuanced, interdisciplinary understanding of how legal systems and cultural values converge in the governance and dispute resolution of *waqf* land in Indonesia and Malaysia.

3. Results and Discussion

3.1. Settlement of *Waqf* Land Disputes in Indonesia

Waqf, as defined in Article 1 of Law Number 41 of 2004 concerning *Waqf*, is a legal act of a waqif who separates and transfers part of his wealth for religious or public welfare purposes, either permanently or for a certain period. The Compilation of Islamic Law in Article 215 paragraph (1) also defines *waqf* as a legal act of an individual or legal entity to institutionalise part of their wealth for religious or social purposes as per Islamic principles.¹⁹

¹⁸ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (2016): 201–7, <https://doi.org/10.1016/j.sbspro.2016.05.006>.

¹⁹ Atika Sandra Dewi and Mhd. Yadi Harahap, "Penyelesaian Sengketa Wakaf Menurut Perpektif Islam Dan Hukum Positif," *Rayah Al-Islam* 7, no. 1 (2023): 199–215, <https://doi.org/10.37274/rais.v7i1.656>.

The State of Indonesia formally recognises and protects the *waqf* in its religious and national legal systems. This reflects a broader constitutional commitment to religious freedom, as guaranteed in Article 29 paragraphs (1) and (2) of the 1945 Constitution, and the First Principle of Pancasila: Belief in the One Almighty God. This recognition guarantees the fulfilment of citizens' rights to worship and perform religious worship, including *waqf*, which is an integral part of Islamic philanthropy.²⁰ *Waqf* law in Indonesia is formed by a dual system—religious law (Islamic jurisprudence) and state law. While the concept of *waqf* is generally based on the Shafi'i school of thought, Indonesia has incorporated elements from the Hanafi and Maliki schools, particularly regarding innovations such as productive *waqf*, cash *waqf*, and *istibdal* (*waqf* asset exchange). Meanwhile, state law emphasises legal certainty, particularly regarding movable property *waqf*, temporary *waqf*, and land certification.²¹

However, the convergence of religious and state laws does not always result in coherent or efficient implementation. For instance, although Law Number 41 of 2004 on *Waqf* and Government Regulation Number 42 of 2006 on the Implementation of Law Number 41 of 2004 on *Waqf* provide a structured framework for *waqf*, in practice, legal ambiguities persist, particularly regarding temporary *waqf* and asset management transparency. The lack of institutional synergy often hampers the effectiveness of these regulations.²²

The resolution of *waqf* disputes is guided by Article 62 of Law Number 41 of 2004 concerning *waqf*, which stipulates a hierarchical process: deliberation, mediation, arbitration and, as a last resort, adjudication through the religious court.²³ This approach reflects the cultural value of deliberation—a communal deliberation process inherent in Indonesian society. However, there are questions about the practical application of this principle. In several cases, especially in rural areas, community-based dispute resolution does not have legal force, and parties may feel forced to escalate cases to formal courts that often lack understanding of local norms.²⁴

A case in point is the *waqf* land dispute in Cirebon (2019), in which there was a conflict between the heirs of a deceased *nazhir* (*waqf* manager) and the community. Although

²⁰ Muhammad Taufan Djafri et al., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah)."

²¹ Afisna, Yaswirman, and Yasniwati, "Pengelolaan Tanah Wakaf Untuk Usaha Produktif Dalam Kesejahteraan Sosial Oleh Nazhir Wakaf Menurut Undang-Undang No. 41 Tahun 2004 Tentang Wakaf."

²² Abdurrohman Kasdi et al., "The Development of Waqf in the Middle East and Its Role in Pioneering Contemporary Islamic Civilization: A Historical Approach," *Journal of Islamic Thought and Civilization* 12, no. 1 (2022): 186–98, <https://doi.org/10.32350/jitc.121.10>.

²³ Muhammad Taufan Djafri et al., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah)."

²⁴ Yasniwati, "Efektifitas Pengelolaan Wakaf Produktif Bagi Kesejahteraan Sosial Di Indonesia."

deliberation had initially been conducted, the dispute escalated owing to differences in interpretation of the *waqf* certificate and management rights. The religious court ultimately ruled in favour of the community; however, the decision highlights the limited capacity of the courts to mediate culturally sensitive issues without adequate local insight.²⁵ Article 49 of Law of the Republic of Indonesia Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning religious courts authorises religious courts to adjudicate disputes involving Muslims, including *waqf*. In theory, judges are required to seek peace during the process. However, in practice, limited resources and a large number of cases reduce the time and effort devoted to actual mediation. Judges often make formalistic decisions rather than seek restorative solutions.²⁶

In terms of institutional authority, *waqf*-related issues are divided into three categories: (1) administrative violations—under the Ministry of Religious Affairs; (2) criminal acts—handled by the General Court and (3) civil disputes—within the jurisdiction of the religious courts. Although this structure is intended to streamline dispute resolution, overlapping jurisdictions and a lack of coordination between institutions often delay the process and confuse the disputing parties.²⁷ The regulatory landscape has evolved from Government Regulation No. 28 of 1977 on Land *Waqf* to the more comprehensive Law No. 41 of 2004 on *waqf*. Nevertheless, enforcement challenges remain, particularly in rural or underdeveloped areas where local religious leaders often act as informal adjudicators. This can both help and hinder dispute resolution—while culturally resonant, such resolutions may lack legal finality or bias. The above breakdown shows the early stages of dispute resolution.²⁸

A *waqf* dispute is a deliberation in which the disputing parties try to reach a mutual agreement to end the dispute while building good relations. If the deliberation does not produce a satisfactory decision, the next stage is mediation. If mediation is unsuccessful, the next step is arbitration. If all alternative efforts to resolve the dispute do not produce results, the dispute is resolved through the courts, especially the religious courts.²⁹

²⁵ Itang and Syakhabyatin, “Sejarah Wakaf Di Indonesia (The History of Waqf Development In Indonesia).”

²⁶ Junaidi Abdullah and Nur Qodin, “Penyelesaian Sengketa Wakaf Dalam Hukum Positif,” *ZISWAF: Jurnal Zakat Dan Wakaf* 1, no. 1 (2014): 37–54, <https://doi.org/10.21043/ziswaf.v1i1.1524>. Weny Almoravid; Dunga and Lucyane Muhtar, Mohamad Hidayat; Djaafar, “The Assessment of Indonesia’s Religious Courts in Resolving Shari’ah Banking Disputes According to the Principles of Justice.,” *Manchester Journal of Transnational Islamic Law & Practice* Vol 19, no. Issue 3 (2023): 179–93, <https://www.electronicpublications.org/stuff/997>.

²⁷ Mustafa and Hikmah, “Konsep Wakaf Profesi Pada Hukum Positif Di Indonesia.”

²⁸ Abdullah and Qodin, “Penyelesaian Sengketa Wakaf Dalam Hukum Positif,” 2014.

²⁹ Raditya Sukmana, “Critical Assessment of Islamic Endowment Funds (Waqf) Literature: Lesson for Government and Future Directions,” *Heliyon* 6, no. 10 (2020): e05074, <https://doi.org/10.1016/j.heliyon.2020.e05074>.

The details above show that the initial stage in resolving *waqf* disputes is deliberation, where the disputing parties try to reach a mutual agreement to end the dispute while building good relations. If the deliberation does not produce a satisfactory decision, the next stage is mediation.³⁰ If mediation is unsuccessful, the next step is arbitration. If all alternative efforts to resolve the dispute do not produce results, the dispute is resolved through the courts, especially the religious courts.³¹

Although Indonesia has established a strong legal framework to regulate *waqf*, the effectiveness of the dispute resolution mechanism still shows an imbalance. The integration of the cultural values of deliberation is very much appreciated; however, in practice, it is often symbolic and not yet fully substantial.³² Therefore, future reforms should focus on improving legal literacy for the *nazhir* and *waqf* stakeholders, strengthening coordination between institutions and training judges to be able to conduct culturally aware adjudication. Combining best practices from community-based dispute resolution mechanisms with effective law enforcement is expected to improve justice and harmony in *waqf* dispute resolution.³³

3.2. Settlement of Land *Waqf* Disputes in Malaysia

The management of *waqf* in Malaysia falls under the jurisdiction of the State Islamic Religious Councils (Majlis Agama Islam Negeri [MAIN]), which serve as the sole *nazhir* (trustee) of *waqf* assets. Over time, the Malaysian government, through the Department of Islamic Development Malaysia (Jabatan Kemajuan Islam Malaysia), established the *Waqf* Property Development Coordination Committee to coordinate *waqf* property development at the national level. This initiative involves experts and officials from government and private institutions.³⁴

In 2004, the government also established the Department of *Waqf*, Zakat and Hajj (Jabatan Wakaf, Zakat dan Haji [JAWHAR]) to improve the efficiency and effectiveness of *waqf* management.³⁵ Subsequently, in 2008, JAWHAR reintroduced the Malaysia

³⁰ Muhammad Taufan Djafri et al., "Permasalahan Dan Penyelesaian Sengketa Wakaf Menurut UU No. 41 Tahun 2004 Dan Hukum Islam (Studi Sengketa Wakaf Tanah Wahdah Islamiyah)."

³¹ Sukmana, "Critical Assessment of Islamic Endowment Funds (Waqf) Literature: Lesson for Government and Future Directions."

³² Islamiyati et al., "Religious Practices of Land Endowment: Examining Reform and Dispute Resolution Alternatives of Land Waqf in Indonesia and Malaysia," *International Journal of Public Policy and Administration Research* 9, no. 3 (2022): 71–78, <https://doi.org/10.18488/74.v9i3.3204>.

³³ Syibly et al., "A Comparative Analysis of Legal Products on the Development of Productive Waqf in Indonesia and Malaysia."

³⁴ Mahsun Mahsun, "Hukum Dan Manajerial Wakaf Di Malaysia," *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 2, no. 1 (April 1, 2011): 49–66, <https://doi.org/10.56997/ALMABSUT.V2I1.47>.

³⁵ Abdul Aziz bin Sulaiman et al., "Kanun Tanah Wakaf Negara: Adakah Satu Keperluan: National Waqf Land Code: Is It Necessary," *Journal of Fatwa Management and Research* 28, no. 3 (September 30, 2023): 129–47,

Waqf Foundation (Yayasan Wakaf Malaysia, [YWM]) as an institution under JAWHAR. YWM is tasked with supporting MAIN in *waqf* fund collection and the sustainable development of commercial *waqf* projects. Despite these institutional developments, *waqf* management remains the prerogative of the MAIN in each state, where the Sultan holds the highest authority.³⁶

At the national level, the Ministry of Islamic Affairs and National Unity coordinates *waqf* management in collaboration with JAWHAR.³⁷ JAWHAR oversees the YWM, which is under the supervision of the Minister in the Prime Minister's Department (Religious Affairs). JAWHAR's Advisory Board is chaired by the Chairman of the JAWHAR Steering Committee and includes representatives from each state MAIN, the Ministry of Finance and academics.³⁸

Each Malaysian state adopts a different approach to *waqf* management. Some states have established *waqf* institutions under MAIN, such as the Selangor *Waqf* Corporation (Perbadanan Wakaf Selangor, 2009), the Negeri Sembilan *Waqf* Institution, the Sabah Baitulmal and the Kedah Baitulmal Fund.³⁹ Meanwhile, in Johor and Kelantan, *waqf* management remains directly under MAIN's control.⁴⁰ The allocation of *waqf* funds in Malaysia generally focuses on education (building schools, *madrasahs* and *pesantrens*), social welfare (basic needs and healthcare facilities), economic activities (economic centres and agriculture) and religious purposes (mosques and cemeteries).⁴¹

<https://doi.org/10.33102/JFATWA.VOL28NO3.546>; Che Zuina Ismail, Nor Jana Salim, and Nor Jawanees Ahmad Hanafiah, "Administration and Management of Waqf Land in Malaysia: Issues and Solutions," *Mediterranean Journal of Social Sciences*, July 1, 2015, <https://doi.org/10.5901/mjss.2015.v6n4s2p613>.

³⁶ R Hussin, "An Overview Of The Regulatory Framework For Waqf Implementation In Higher Educational Institutions In Malaysia," *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1–5; Hussin, Mohammed Ghazali, and Mohamad Akhir, "Waqf Land Development For Private Tahfiz Schools In The State Of Perlis, Malaysia: Procedures And Advantages.," Nur Aqidah Suhaili, Mohd Rizal Palil, and Rohayati Husin, "Wakaf CSR: An Emperical Study of Polycentric Collaborative Waqf Governance," *Jurnal Pengurusan* 53 (2018): 133–46, <https://doi.org/10.17576/pengurusan-2018-53-12>.

³⁷ Nan Noorhidayu Megat Laksana, Marhanum Che Mohd Salleh, and Nor Azizan Che Embi, "Examining the Feasibility of Waqf (Islamic Endowment)-Based Takaful Model from the Malaysian Legal Perspective," *International Journal of Fiqh and Usul Al-Fiqh Studies* 4, no. 1 (January 31, 2020): 118–25, <https://doi.org/10.31436/ijfus.v4i1.175>.

³⁸ Aziz bin Sulaiman et al., "Kanun Tanah Wakaf Negara: Adakah Satu Keperluan: National Waqf Land Code: Is It Necessary"; Ismail, Salim, and Hanafiah, "Administration and Management of Waqf Land in Malaysia: Issues and Solutions."

³⁹ Syibly et al., "A Comparative Analysis of Legal Products on the Development of Productive Waqf in Indonesia and Malaysia."

⁴⁰ Asma Hakimah et al., "The Implementation of Land Waqf Law in Indonesia and Malaysia as a Stage to Land Waqf Law Reform in Indonesia: A Comparative Study," *Law Reform: Jurnal Pembaharuan Hukum* 18, no. 2 (2022): 164–83, <https://doi.org/10.14710/lr.v18i2.46673>.

⁴¹ Mahsun, "Hukum Dan Manajerial Wakaf Di Malaysia."

However, *waqf* development in Malaysia faces several challenges, which can be categorised into four aspects:⁴² First, regulatory issues; existing regulations have not fully resolved *waqf*-related problems. For instance, *waqf* disputes, which fall under religious jurisdiction, are often brought to civil courts instead of Syariah Courts owing to perceptions of higher authority, causing inconsistencies in dispute resolution. Second, low public awareness; several community members lack understanding of the *waqf*'s legal status. Instances where heirs of *waqf* donors sell *waqf* land after their parents' death illustrate a weak comprehension of *waqf* law and principles. Third, administrative disparities among states; Although MAIN is the sole trustee of *waqf* land, JAWHAR also acts as a developer and mediator between MAIN and third parties. Each *waqf* land project requires approval from MAIN and JAWHAR, often resulting in lengthy bureaucracy that hampers effective *waqf* management. Fourth, lack of commercialisation of *waqf* land; historically, *waqf* has been dedicated to free public services such as education and healthcare. However, in a modern context, sustainable commercialisation approaches are required to enhance *waqf*'s economic value and empower communities.⁴³

The Shafi'i school of thought significantly influences *waqf* implementation in Malaysia, as early Islamic scholars who spread Islam in the region adhered to this madhhab.⁴⁴ Consequently, *waqf* regulation is conducted by the Islamic Religious Councils (Majlis Ugama Islam, [MUI]) in each state.⁴⁵ These councils hold full authority to authorise, regulate and supervise *waqf* management, including cash and productive *waqf*.⁴⁶

Each MUI is supported by an Advisory Board and a *Waqf* Property Management Committee, comprising muftis, MUI secretaries, land directors, legal officers, as well as academics and professionals specialising in Shariah, property management and finance.⁴⁷ Nevertheless, the legal framework for *waqf* in Malaysia varies significantly between states. Regulatory disharmony and inconsistencies in management practices reduce the efficiency of *waqf* planning and distribution.⁴⁸ Several *waqf* lands remain

⁴² Mohamed Asmy Bin Mohd Thas Thaker, "Factors Influencing the Adoption of the Crowdfunding-Waqf Model (CWM) in the Waqf Land Development," *Journal of Islamic Marketing* 9, no. 3 (2018): 578–97, <https://doi.org/10.1108/JIMA-05-2016-0043>.

⁴³ Latiff Azha et al., "The Practice and Management of Waqf Education in Malaysia," *Procedia - Social and Behavioral Sciences* 90, no. InCULT 2012 (2013): 22–30, <https://doi.org/10.1016/j.sbspro.2013.07.061>.

⁴⁴ Azha et al.

⁴⁵ Mohd Thas Thaker, "Factors Influencing the Adoption of the Crowdfunding-Waqf Model (CWM) in the Waqf Land Development."

⁴⁶ Ghazali et al., "New Framework for the Management of Waqf Land Registration System in Malaysia."

⁴⁷ Ghazali et al.

⁴⁸ Syibly et al., "A Comparative Analysis of Legal Products on the Development of Productive Waqf in Indonesia and Malaysia."

unproductive and are often managed by non-authoritative parties lacking adequate economic or managerial competence.⁴⁹

3.3. Key Differences in Approaches to *Waqf* Land Dispute Resolution in Indonesia and Malaysia

The most common problem in land *waqf* in Indonesia is the legality of the land, which means that it is always related to national agrarian law. In Malaysia, land *waqf* practices often result in problems with the productive use of *waqf* land. In contrast, the allotment of *waqf* land often causes problems and needs to be coordinated with the *nazir*, resulting in a lack of understanding between the *nazir*. The principles of Islamic economic law, trade law, and Islamic business relate to managing *waqf* land in solving legal problems.⁵⁰

The legal basis for *waqf* in Indonesia and Malaysia is similar. Both derive from Islamic law, specifically explained systematically in the Syafi'i school of *fiqh*, which is not absolute.⁵¹ Scholars have compiled it by interpreting and explaining the details of *waqf* law because no detailed explanation is provided in the Quran. However, the difference lies in the Malaysian states that follow the absolute Shafi'i school of *fiqh*, such as Sabah, Sarawak, Malacca, Kuala Lumpur, and Putrajaya; at the same time, some states also combine the Shafi'i and Hanafi schools.

Malaysia, comprising 13 states, tends to use different *waqf* legal systems, including their legal basis, provisions for *waqf*, schools of *waqf* legal doctrine and management of *waqf* property. Malaysian states that follow the Shafi'i school of thought allow credit *waqf* as an alternative for immovable property that is difficult to pay for in cash. This plurality creates variations in the implementation of *waqf* law.⁵²

In Indonesia, Law Number 41 of 2004 has constitutionally enacted the *waqf* legal system for the whole society. Several legal innovations were introduced, such as permitting *waqf* of movable objects with the condition of retaining the principal asset

⁴⁹ Megat Laksana, Che Mohd Salleh, and Che Embi, "Examining the Feasibility of Waqf (Islamic Endowment)-Based Takaful Model from the Malaysian Legal Perspective."

⁵⁰ M. I. Sukmana, R., Pitchay, A. A., & Abd. Jalil, "Comparison of Government and Private Based Waqf Institutions Management: Case Study of Indonesia and Malaysia.," *Labuan E-Journal of Muamalat and Society* 1, no. 14 (2020), <https://jurcon.ums.edu.my/ojums/index.php/LJMS/article/view/3479>.

⁵¹ Fathurrohman Ghozalie, Amir Muallim, and Sidik Tono, "Reformulation of Allah's Ownership on Waqf (Theoretical Analysis Toward Syafi'i School)," *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 2 (December 11, 2020): 145, <https://doi.org/10.18592/sjhp.v20i2.4129>.

⁵² Muhajirin Tohir, I Gusti Ketut Ayu Rachmi Handayani, and . Hartwiningsih, "Problems of Waqf Management in Indonesia: A Review of Positive Law," *International Journal of Religion* 5, no. 11 (September 2, 2024): 8285–94, <https://doi.org/10.61707/zpgxej88>.

and its benefits, *waqf* time limit with perpetual utilisation, professional management of *waqf* assets and *waqf* certification for land.⁵³

Regarding *waqf* dispute resolution, Malaysians tend to rely on non-litigation channels, such as deliberation and mediation, because the utilisation of *waqf* property is more focused on the function of worship in states that emphasise economic value, especially those that adhere to the non-absolute Shafi'i school of thought, resort to resolving *waqf* disputes through Sharia arbitration with the Islamic financial system. The General or Conventional Courts in Malaysia are appointed to settle *waqf* conflicts related to Islamic economics.⁵⁴

The allocation of *waqf* land in Malaysia and Indonesia is done for family/relatives and the public, with the majority for the people. The period of *waqf* land in both countries is regulated as perpetual. In Indonesia, *waqf* land management is semi-productive. In contrast, in Malaysia, there are wasteful and productive aspects, where land is used for religious, social, educational and health activities and for lease- and profit-sharing businesses.

Land *waqf* institutions in Indonesia, such as the Religious Court, Ministry of Religious Affairs, *Waqf* Pledge Deed Making Officer (PPAIW), District Office, National Land Agency and BWI, have their respective roles in dispute resolution, *waqf* property development, land *waqf* services, fulfilment of administrative requirements, registration of *waqf* land and overall supervision. In Malaysia, institutions such as JAWHAR, MAIN, State Islamic Religious Council (SIRC) and independent foundations are responsible for managing and developing *waqf* assets under the state's authority and becoming *nazir waqf*.⁵⁵

Based on the explanation provided, there are several aspects associated with *waqf*, including the resolution of *waqf* land disputes and the allocation of *waqf* land in these two countries. In Indonesia, *waqf* land dispute resolution can be achieved through non-litigation and litigation involving professional mediators based on the Religious Court Procedure Law. In the litigation section, there are differences in the authority to handle *waqf* disputes between the religious and district courts for criminal cases in Indonesia. In contrast, in Malaysia, several *waqf* conflicts have ended in general courts,

⁵³ Hakimah et al., "The Implementation of Land Waqf Law in Indonesia and Malaysia as a Stage to Land Waqf Law Reform in Indonesia: A Comparative Study."

⁵⁴ H. Abdull Manaf, A. W., Hua Siong, W., & Abdul Razak, "Legal Barriers and Opportunities in The Digital Transformation of Waqf Management in Malaysia: A Critical Analysis," *AZKA International Journal of Zakat & Social Finance* 6, no. 1 (2023): 1–15, <https://doi.org/10.51377/azjaf.vol6no1.202>.

⁵⁵ Abdull Manaf, A. W., Hua Siong, W., & Abdul Razak.

not in Sharia courts. These two countries also impose a permanent land *waqf* period for *waaqifs*.⁵⁶

For *waqf* land management in Indonesia, a semi-productive system is implemented as per the guidelines provided by the Indonesian *Waqf* Board. In Malaysia, control of *waqf* land is consumptive, including religious, social, educational and health activities, and productive with economic value, involving rental and profit sharing. This reflects the differences in *waqf* land management approaches between the two countries. Overall, both countries have regulations and institutions that play a role in *waqf* management and development. Still, variations exist in the approach and implementation, creating dynamics and plurality in *waqf* practices in Indonesia and Malaysia.

Indonesia and Malaysia have a solid commitment to resolving *waqf* land disputes.⁵⁷ This commitment is reflected in the implementation of the regulations set by each country. Malaysia regulates *waqf* dispute resolution through the *waqf* law in each state, whereas Indonesia governs *waqf* through Article 62 of Law Number 41 of 2004. This article details the dispute resolution mechanism, including non-litigation and litigation channels.⁵⁸ Both countries are trying to provide alternative solutions to *waqf* land disputes that are effective, efficient and solution-oriented and benefit all parties. These alternatives involve socialising the law on resolving *waqf* land disputes through non-litigation mechanisms, such as deliberation, mediation and arbitration outside court. This effort educates the public to prefer this approach rather than directly using the judiciary.

Furthermore, both countries advocate for the effective resolution of *waqf* land disputes in society.⁵⁹ This is done by establishing *waqf* institutions such as SIRC (Malaysia) and BWI (Indonesia). These institutions protect and provide legal certainty regarding *waqf* land through certification. In this way, conflicts related to *waqf* land can be prevented, and land *waqf* laws can be enforced fairly. Similarities between Indonesia and Malaysia can also be seen in their efforts to provide human rights to citizens when implementing the teachings of Islamic religious law, especially land *waqf* law. Land *waqf* is considered

⁵⁶ Hakimah et al., "The Implementation of Land Waqf Law in Indonesia and Malaysia as a Stage to Land Waqf Law Reform in Indonesia: A Comparative Study."

⁵⁷ Islamiyati et al., "Religious Practices of Land Endowment: Examining Reform and Dispute Resolution Alternatives of Land Waqf in Indonesia and Malaysia," *International Journal of Public Policy and Administration Research* 9, no. 3 (November 28, 2022): 71–78, <https://doi.org/10.18488/74.v9i3.3204>.

⁵⁸ Ghazali et al., "New Framework for the Management of Waqf Land Registration System in Malaysia."

⁵⁹ Hussin, Mohammed Ghazali, and Mohamad Akhir, "Waqf Land Development For Private Tahfiz Schools In The State Of Perlis, Malaysia: Procedures And Advantages."

a social aspect of religion, and *waqf* land dispute resolution institutions are under the authority of ecclesiastical/Syariah courts.

However, there are differences between Indonesia and Malaysia regarding the mechanism for resolving *waqf* land disputes and the legal rules governing them. Indonesia stipulates deliberation, mediation, arbitration and religious courts as the stages for resolving *waqf* land disputes (Article 62 of the *Waqf* Law). Meanwhile, the Malaysian *waqf* law includes negotiation, mediation, arbitration and Sharia courts as mechanisms for resolving *waqf* land disputes. These differences guide the stages of dispute resolution and act as mediators when the parties negotiate, with the results of the agreement being recorded in the minutes of the dispute resolution.⁶⁰

The importance of this difference can be seen in resolving *waqf* land disputes through mediation. In Indonesia, mediation is conducted by the PPAIW, village officials, community leaders and religious leaders. In Malaysia, the state trains SIRC and *waqf* managers, who are professional mediators, to facilitate mediation. Although professional mediation institutions have yet to develop in Indonesia, the SIRC in Malaysia has been established since 1957, providing a family approach to resolving *waqf* land disputes.⁶¹ The importance of this understanding can also be seen in the role of arbitration as a mechanism for resolving *waqf* disputes. In Malaysia, arbitration is often used as most of the *waqf* land is used for economic activities. In contrast, arbitration is less common in Indonesia as most *waqf* land is used for social, educational and religious activities.⁶²

By understanding these differences, negotiations in Indonesia can be strengthened more than deliberations; this is because talks can produce written agreements that become authentic evidence, ensuring that the parties do not deviate from the arrangements made together. Therefore, the differences in *waqf* land dispute resolution mechanisms show the differences in legal culture and society between Indonesia and Malaysia and their efforts to achieve effective and fair solutions to *waqf* land disputes.⁶³

Overall, both countries have regulations and institutions that play a role in *waqf* management and development. Still, variations exist in the approach and implementation, creating dynamics and plurality in *waqf* practices in Indonesia and Malaysia (see table 1).

⁶⁰ Abdull Manaf, A. W., Hua Siong, W., & Abdul Razak, "Legal Barriers and Opportunities in The Digital Transformation of Waqf Management in Malaysia: A Critical Analysis."

⁶¹ Abdull Manaf, A. W., Hua Siong, W., & Abdul Razak.

⁶² Miftahul Huda, Lia Noviana, and Lukman Santoso, "Pengembangan Tata Kelola Wakaf Berbasis Korporasi Di Asia Tenggara/Development The Governance of Corporate-Based Waqf In South East Asia," *De Jure: Jurnal Hukum Dan Syaria'h* 12, no. 2 (December 31, 2020): 120–39, <https://doi.org/10.18860/j-fsh.v12i2.3908>.

⁶³ Huda, Noviana, and Santoso.

Table 1. Comparative Analysis of Institutional, Cultural and Dispute Resolution Aspects of *Waqf* Management in Indonesia and Malaysia.

Aspect	Malaysia	Indonesia
Waqf Institution	MAIN (State Islamic Religious Council), JAWHAR (Coordinator and Mediator)	BWI (Indonesian <i>Waqf</i> Board)
Legal Framework	Decentralised, state-based, non-uniform regulations	Centralised under Law No. 41/2004 on <i>Waqf</i> , supported by national regulations
School of Thought	Shafi'i school (dominant)	Shafi'i school (dominant) integrated with national law
Asset Focus	Predominantly land; limited commercial value	Land, money and other movable and immovable assets; with an effort to enhance productivity
Dispute Resolution	General Court (limited competence); mostly resolved through mediation	Religious Court (exclusive jurisdiction over <i>waqf</i> disputes); also supports non-litigation means
Legal Culture Challenges	Lack of uniformity; dualism between MAIN and JAWHAR; weak court competence in Sharia	Better integration with national law; religious courts align with Islamic jurisprudence
Public Perception	Demands for centralised <i>waqf</i> authority owing to inefficiency and inconsistency	Relatively more trust in BWI, although challenges remain in its implementation

Source: Authors Framework

3.4. Local Cultural Values and Legal Systems in Indonesia and Malaysia in the *Waqf* Land Dispute Resolution Mechanism

The mechanisms for resolving *waqf* land disputes in Indonesia and Malaysia are shaped by local cultural values and the structures of their respective legal systems. These mechanisms are not only reflections of historical legal traditions but also operate within modern socio-legal environments that continue to evolve.⁶⁴ Lawrence M. Friedman (1975) characterised legal systems as composed of three essential elements: structure, substance and legal culture. The structure refers to the institutions responsible for law enforcement, such as courts, prosecutors and law enforcement agencies. Substance includes the content of legal norms and legislation, while legal culture encompasses the values, attitudes and beliefs that influence legal behaviour and interpretation in society.⁶⁵

⁶⁴ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2017): 148–63, <https://doi.org/10.35586/v4i2.244>.

⁶⁵ Sigit Somadiyono, "Perbandingan Sistem Hukum Antara Indonesia Dan Malaysia," *Wajah Hukum* 4, no. 2 (2020): 414, <https://doi.org/10.33087/wjh.v4i2.243>.

In Indonesia, the legal system is rooted in the Civil Law tradition, which was inherited from the Dutch colonial legacy. Judges primarily apply codified law, and judicial precedents carry limited binding effects. However, this formal structure is layered with legal pluralism elements, where customary (*adat*) laws and Islamic law operate alongside state law. *Waqf* disputes, particularly over land, often involve intersecting legal domains where community norms and religious values influence formal and informal dispute resolution.⁶⁶

By contrast, Malaysia adopted the Common Law system shaped by the British colonial administration. However, the country's legal framework incorporates dual legal jurisdictions: civil courts and Sharia courts, particularly in matters involving Islamic personal and charitable law, including *waqf*. This duality is constitutionally recognised, and *waqf* institutions such as the SIRC's possess legal standing as sole trustees (*mutawalli*) of *waqf* property. Dispute resolution often occurs through Sharia Court Mediation Centres, emphasising negotiation, mediation and Islamic jurisprudential reasoning.⁶⁷

Empirical studies in Indonesia have revealed that community-based dispute resolution methods—such as *musyawara*—are widely used and culturally embedded, particularly in rural areas. A 2019 study by Badan Wakaf Indonesia revealed that several *waqf* land disputes are first addressed at the village level through informal mediation, only escalating to formal litigation when consensus fails. These practices demonstrate the operative role of legal culture, as communities often prioritise social harmony over strict legal formalism.⁶⁸

In Malaysia, the emphasis on professional management and legal certainty is evident in how SIRC's enforce standardised procedures for registration, monitoring and conflict resolution. Several state-level SIRC's have adopted digital *waqf* land management systems, thereby reducing ambiguity and enhancing transparency. For instance, in Selangor, the establishment of an e-*Waqf* platform has facilitated documentation and

⁶⁶ Sunarjo, "Perbandingan Hukum Indonesia Dan Malaysia," *Jurnal Cakrawala Hukum* 6, no. 1 (2015): 109–17, <https://jurnal.unmer.ac.id/index.php/jch/article/download/690/356>.

⁶⁷ Syifa Lailia and Sri Hadiningrum, "Komparasi Sistem Hukum Dalam Peradilan : Studi Kasus Hukum Indonesia Dan Hukum Malaysia," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 2, no. 1 (November 28, 2024): 53–65, <https://doi.org/10.59581/DOKTRIN.V2I1.1879>; S Mokhtar and M Ibrahim, "The Contemporary Methods of Waqf Land Development in Malaysia," in *Managing It in Construction/Managing Construction for Tomorrow* (Faculty of Architecture, University Technology MARA, Malaysia, 2009), 665–72, <https://doi.org/10.1201/9781482266665-92>; Norfaridah Ali Azizan et al., "Revitalising Waqf (Endowment) Lands for Agribusiness: Potentials of the Anchor Company Models," *Journal of Agribusiness in Developing and Emerging Economies* 12, no. 3 (May 2022): 345–70, <https://doi.org/10.1108/JADEE-05-2021-0128>.

⁶⁸ Solikhul Hadi, "Dinamika Regulasi Wakaf Di Indonesia Dalam Konfigurasi Politik," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 11, no. 2 (2020): 271, <https://doi.org/10.21043/yudisia.v11i2.7841>.

clarified ownership status, thereby reducing disputes.⁶⁹ While Indonesia tends to rely on local norms and deliberative processes rooted in communal values, Malaysia's resolution mechanisms emphasise institutional efficiency, Sharia compliance and legal consistency across states. These differences are not merely the outcomes of different legal traditions but reflect varying configurations of legal pluralism and state authority. The characterisation of Indonesia as a 'rule-of-law state' and Malaysia as an 'Islamic state' should be nuanced. In practice, both countries exhibit hybrid legal systems in which symbolic references to Islam and operative legal rules may differ. For instance, although Indonesia does not formally declare itself an Islamic state, Islamic principles strongly influence areas such as *waqf*, marriage and inheritance law through the Indonesian Compilation of Islamic Law and the role of religious courts.

Meanwhile, Malaysia's federal constitution identifies Islam as the religion of the Federation, yet legal authority over Islamic affairs is decentralised to the states, creating variability in *waqf* governance. In both countries, Islamic legal identity interacts with modern bureaucratic practices, and dispute outcomes are shaped not only by ideology but also by procedural norms, institutional capacities and public trust in legal institutions.

A comparative analysis of *waqf* land dispute resolution in Indonesia and Malaysia reveals that legal culture, institutional design and political history jointly influence legal outcomes. Legal pluralism—manifested in the coexistence of religious, customary and statutory law—plays a crucial role in both jurisdictions. Rather than relying on generalisations, it is essential to understand the operative mechanisms—such as court practices, mediation centres and local governance frameworks—that concretely shape how *waqf* land disputes are managed and resolved.

4. Conclusion

The resolution of *waqf* land disputes in Indonesia and Malaysia is shaped by distinct legal and cultural approaches. While both nations share a commitment to Islamic *waqf* principles, variations arise in their dispute resolution methods, legal structures and cultural influences. Indonesia, as a rule-of-law state, emphasises legal sources shaped by diverse traditions and colonial history, accommodating interpretations of Islamic law. Malaysia, an Islamic state, adopts an Islamic-oriented approach influenced by British colonial history, with negotiation and mediation, particularly through the SIRC, playing a crucial role. These differences extend to institutional components that affect the landscape of *waqf* practices in each country. Local cultural values shape priorities,

⁶⁹ Hadi.

with Indonesia emphasising deliberation, cooperation and social sustainability, while Malaysia prioritises negotiation, mediation and economic considerations. Despite nuanced variations, both nations share a commitment to fairness, professionalism and community welfare in striving for effective *waqf* land dispute solutions. Recognising these differences is crucial for navigating the complex blend of legal provisions, Islamic principles and cultural values in *waqf* practices in Indonesia and Malaysia. These differences have significant implications for comparative legal studies, showing how legal pluralism and institutional design influence *waqf* dispute outcomes in Islamic legal contexts shaped by different colonial legacies.

The scholarly contribution lies in deepening the understanding of the interplay between legal culture, *fiqh* traditions and national legal systems in *waqf* practice. Policy recommendations include enhancing inter-agency coordination, improving legal literacy and judicial sensitivity to cultural values and adopting innovative, contextually adaptive *waqf* management strategies to boost the effectiveness of dispute resolution and economic empowerment. Future research should explore the tangible impacts of institutional reforms and digital innovations on *waqf* governance and expand comparative analyses to other Islamic jurisdictions to enrich the global discourse on *waqf* legal practices and dispute resolution.

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