**A Comparative Study on the Implementation of Land Waqf Law in Indonesia and Malaysia as a Stage to Land Waqf Law Reform in Indonesia**

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**ABSTRACT**

This study compared land waqf law implementation in Indonesia and Malaysia. It aimed to identify legal issues and to determine land waqf law reform in Indonesia. It had benefits to be able to help the government in creating fair and optimal land waqf law. The type of this study was *field* *research,* with empirical juridical and comparative law approach*.* The research result showed that comparative study of land waqf law implementation in Indonesia and Malaysia had benefits for the development of land waqf law in Indonesia, such as; able to find out law basic characteristics, similarities and differences, analyze state policies, find out legal formulations, study the progress and legal innovations in land waqf practices that occurred in Indonesia and Malaysia. It could be used as a stage to reform land waqf law in Indonesia, such as; the state stipulated land waqf rules as described in Waqf Law Number 41 Year 2004, as follow; 1) Has orientation on the proof and determination in written form of *wakif, nadzir*, the recipients and the term of waqf; 2) Management of land waqf assets, given orientation on productive waqf; 3) Land waqf dispute settlement through litigation and non-litigation mechanisms; 4) Establishment of BWI as waqf institution that strengthened the enforcement of waqf law. Land waqf law that was from Islamic law principles needed to be perfected by state law in order to meet legal certainty, protection, and justice.

**Key Words** : **Law Reform**; **Comparative Study**; **Land Waqf**.

1. **INTRODUCTION**

Islamic law ordered Muslims to use their assets for good, not only for their own interest, but also for social and religious interests. One of the uses of assets for good was through land waqf. Land waqf was a legal act to transfer land use from private assets to public assets, within the term based on Islamic law teachings, waqf land should not be sold, granted, inherited, and canceled (Omar, Yusof & Manaf, 2014). Land waqf was called social waqf because the waqf assets were for public’s interest in social life (Harsono, 2005).

In Saudi Arabia, whose the place of the occurrence of waqf law, land waqf has been implemented by the Prophet Muhammad SAW. Then, it was followed by His friends, such as; Umar bin Khatab, Anas bin Malik, and Abu Thalhah, who donated land and plants on it for worship and social interest (Sabri, 2008). Then, this waqf practice was followed by the next generations, such as; Bani Umayyah and Bani Abbasiyyah. Currently, Saudi Arabia has established Ministry of Hajj and Endowment, that had jobs in developing and empowering waqf based on the predetermined conditions. Meanwhile, the institution that managed and spent waqf land assets was Waqf Council that consisted of Islamic law expert from Ministry of Justice, economists from Ministry of Economy and Finance, and the Director of Anqiquities and three members from scholars and journalists (Sabri, 2008).

The growth of waqf in Islamic countries, such as; Saudi Arabia, Kuwait, Sudan, Jordan, Turkey, Egypt, Malaysia had rapid progress. Each of these countries had waqf law rules stipulated by the state, and also had authorized waqf institution that provided waqf services and waqf assets management for public interest, as well as encouraged the people to give waqf for social, religious and state interests.

The growth of land waqf in Malaysia was in the form of policies in regulating waqf land to provide benefits to the state and people. Land waqf law rule was from federal constitution, which meant the rules were enforced in each state, where each state had similar rules and also different rules. These rules included; the states in Malaysia had announced the ratification of waqf land trhough waqf certification, given authority for State Islamic Religious Council (SIRC) to manage and develop waqf land, the waqf land registration method that was more effective, and administering waqf land so that the quality and quantity of waqf land could be found out (Kader, Ali & Mohamad, 2013). It could make the existence of waqf land got more role in the development of Malaysia.

In Indonesia, waqf has existed since Islam occurred in Indonesia in the century of 13th AD, at that time land waqf has become one of Muslims’ activities in carrying out their religious teachings. People gave waqf land, because land was a valuable asset, if it was given as waqf, it would give benefits for the one who gave it (*wakif*) and his descendants and the people who used it. At that time, legal basis of waqf used religious law (*fiqh wakaf*) as an applicable law in society (Syamsuri, 2019).

Along with political developments in Indonesia, land waqf also required law that was reformed by the state as the stage to provide legal protection on waqf practice that was run in society. In this context, the state stipulated Basic Agrarian Law (*UUPA*) Number 5 Year 1960, whose regulated that the state recognized and protected waqf land with religious and social functions (Article 49 of *UUPA*), and its implementing regulation was contained in Government Regulation Number 28 Year 1977 concerning Asset Endowment. In addition, the state also regulated Compilation of Islamic Law (*KHI*) Presidential Instruction No. 1 Year 1991 Book III concerning Waqf and Law No. 41 Year 2004 concerning Waqf. In 2010, the government established Indonesian Waqf Board, as independent institution that had role in developing and running waqf in Indonesia. In relation to the existence of land waqf, BWI also had authority to stipulate derivative regulations such as *BWI* regulation and the regulation of the chairman of Indonesian Waqf Board concerning land waqf asset management, and *PERMA* 73 Year 2013 concerning Procedures for Waqf of Immovable and Movable Assets other than Money, and Ministry Regulation of *ATR/BPN* No.2 Year 2017 concerning Waqf Land Registration Procedures.

According to the legal issues of waqf land practice above, in reality it showed that land waqf practice had legal issue between land waqf law in legislation and land waqf practice in society. Therefore, the study on the implementation of waqf practice in society was really needed to be implemented because land waqf practice might face issue. The study was implemented through the stage of comparing law implementation practice of land waqf in Malaysia. Some aspects being compared were land waqf giver (*wakif*) whether it was private, legal entity/foundation/organization; institution that served land waqf, its procedures, its regulation and nadzir. It was due to Indonesia and Malaysia had similarities and differences about land waqf law implementation practice.

The research problem was how was the comparative study of land waqf law implementation in Indonesia and Malaysia for land waqf law reform in Indonesia. The aim of this study was to analyze the benefits of comparative study of land waqf implementation between Indonesia and Malaysia for land waqf law reform in Indonesia. Its benefits could help the government in creating land waqf law based on its aim and benefit of land waqf assets that had effect for people. Researchh Novelty could formulate land waqf law reform in Indonesia after comparing land waqf implementation law on the both countries.

1. **RESEARCH METHOD**

The study about *A Comparative Study of Land Waqf Law in Indonesia and Malaysia as the Stage for Land Waqf Law Reform in Indonesia* was *Field Research* that took locations in the state of Indonesia and Malaysia. The selection of sample was based on the procedures of *snow ball,* the research sample, included; Central BWI (*Badan Wakaf Indonesia* or Indonesian Waqf Board) and Central Java BWI, BWI in Regency/City, PPAIW located in the District KUA, BPN, Religious Organizations of Muhammadiyah and NU in the state of Indonesia and Malaysia. Although the type of this research was field research, but it also offered the references through library research to find out the theory and concept about the research themes, as followed; land waqf law, law reform, waqf in Indonesia and Malaysia.

The data needed included primary and secondary data, primary data collection was obtained through interview, literature study, documents, web and FGD by presenting the experts to study the research themes. The respondents were *PPAIW, BWI* in District, the institution of Muhammadiyah and NU. Secondary data collection was obtained by reading and studying literature references about land waqf and its legal basis. The research approach used empirical juridical and *comparative law*. Juridical approach was carried out through the study of legislations, but empirical approach was carried out by observing its practice in society. Comparative law approach was carried out by comparing land waqf law implementation practice in Indonesia and Malaysia, by looking for the gaps of their differences and similarities. This comparative sudy had aim as the stage to perfect or complete the rules of land waqf law implementation in Indonesia.

The research specification was descriptive analysis, the research data was analysed qualitatively, and concluded inductively. The research data findings would be a new knowledge and reference about land waqf practice. Although the procedures of land waqf had been regulated by the state through legislations, but the effectiveness of its implementation in the society had to be tested.

1. **RESULTS AND DISCUSSION**

The results of this study would be described about the comparison of land waqf implementation practice in Indonesia and Malaysia, the similarities and differences, the causal factors, problems. Comparative law was one of the research methods that aimed to compare laws with one another, through the explanation of the similarities and differences aspects from legal substance that were being compared. Legal substances that were compared in land waqf law practice in Indonesia and Malaysia, included; *wakif, nadzir*, the origin of land waqf, the management, aims, the term, and land waqf institution.

Based on the research data, it was explained that the similarities and differences in land waqf practice law in Indonesia and Malaysia, as followed;

* 1. Between Indonesia and Malaysia, there were similarities in its law in its basis or guidelines of land waqf practice law. Initially, both countries used Islamic law rules, then it was strengthened by state law in legislations. In its practice, land waqf law in Indonesia, frequently went hand in hand with National Agrarian law in the correlation with waqf land certificates. On the other hand, land waqf law in Malaysia, frequently went hand in hand with Islamic economic law, Islamic trade and business law, in its relation to waqf land management. As for the difference, land waqf practice in those countries was land waqf practice in Indonesia frequently faced some problems on its land waqf legality. Meanwhile, in Malaysia, land waqf practice frequently faced some problems on its land waqf management productively, where the allocation of waqf land had frequently changed and lack of coordination with *nadzir*, so it caused misunderstanding with *nadzir*.
  2. Indonesia and Malaysia had similarity regarding *wakif*. *Wakif* of land waqf from Indonesia consisted of; private, foundations/institutions, and legal entities. If the state provided waqf land, there should be a legal submission from institution or foundation, in its relation to *nadzir* or the person in charge and land waqf management. *Wakif* of land waqf in Malaysia, also consisted of private, companies, legal entities, and organizations. In Malaysia, the state could take a role as *wakif* of land waqf, that was given on behalf of the state to *nadzir* that was chosen by the state.
  3. Indonesia and Malaysia had similarities regarding the form of *nadzir* of land waqf, that were; private, institutions/foundations, and legal entities. In Indonesia, *nadzir* of private waqf on the land waqf management was frequently aimed for worship/religious aspects. *Nadzir* of waqf in the form of institutions/foundations on land waqf management was frequently aimed for educational, health, and social aspects, while the productive land waqf management, *nadzir* was frequently in the form of legal entities. In addition, in Malaysia, *nadzir* of land waqf was frequently developed in the form of institutions/foundations, legal entities and companies. Waqf land that was aimed for worship/religious, social, education, and health, so the *nadzir* was in the form of institutions/foundations and legal entities, while waqf land that was managed productively, so the *nadzir* was in the form of company. *Nadzir* that was company frequently implemented on land waqf management in Malaysia.
  4. The pillars or elements that should be met in land waqf law act had differences between Indonesia and Malaysia. In Indonesia, the pillars of land waqf referred to Law Number 41 Year 2004 concerning Waqf, as followed; *wakif, nadzir*, land waqf assets, *ikrar* *wakaf*, the allocation of waqf land, and the term of land waqf. Meanwhile, the pillars and requirements of land waqf in Malaysia, referred to classical fiqh teachings that was based on the opinions of madzab scholars. According to majority of the scholars of *Malikiyah, Syafi’iyah, Zaidiyah*, and Hanabilah stated that there were four pillars of waqf as followed (Al-Khurasyi, 1317); *Waqif* (the one who gave waqf), *Mauqūf ‘alaih* (destination or place for giving waqf), *Māl al-Mauqūf* (the asset that was given as waqf), *Sighah* (*ikrar* or *akad* of waqf). Thus, the differences on the elements or pillars of land waqf between Indonesia and Malaysia were *nadzir* of waqf land and the term of waqf. There were no those elements in Malaysia, and it was included in the element of *Mauqūf ‘alaih* (destination or the place for giving waqf).
  5. There was difference in managing the practice of land waqf in Indonesia and Malaysia. In Indonesia, it tended to be traditional and semi-traditional/semi-productive, while in Malaysia, the land waqf management tended to be productively oriented, so waqf asset would be much more and more extensive. The impact of this waqf management affected the increase of waqf assets. In Malaysia, there were additions on waqf assets that were from productive waqf management. Moreover, in Indonesia, there were waqf assets additions from *wakif* or fund collection from the people.
  6. Indonesia and Malaysia had similarity in the position of land waqf witnesses. The witnesses were not included in the pillars of waqf, but it became a requirement for the validity of waqf pledge that was done in front of the state officials (PPAIW-Indonesia, MAIN-Malaysia), without the attendance of two (2) male witnesses that had fulfilled the requirements, so land waqf could not be implemeted. The witness was the proof of the statement for waqf pledge from *wakif* to *nadzir* in front of *majlis ikrar wakaf*, so the witness’ name, *wakif, nadzir*, and the state official, were written in the deed of waqf pledge.
  7. In the practice of land waqf, Indonesia and Malaysia had differences. In Indonesia, land waqf institutions were generally one of the authorities of the Ministry of Religion in the terms of *zakat, waqf, infaq,* and *shadaqah*. The institutions that served land waqf in the society were KUA, that was *ex officio* also had job as PPAIW, where PPAIW was the institution appointed by Ministry of Religion and under it. Along with the growth of waqf in Indonesia, so the government established BWI as independent institution that managed and guaranteed the growth of waqf in Indonesia. Thus, the growth of waqf institutions in Indonesia had changed from a government-dependent institution to an independent and private institution, separated from the government’s interference. Meanwhile, waqf institutions in Malaysia, were under the authority of JAWHAR, the Ministry of Waqf and Zakat, and the state could take roles as *wakif* and *nadzir*. The state gave a large budget for the growth of *wakaf*, because the result of waqf could give big contribution for the state in the field of welfare and social justice.
  8. There were differences between the dispute settlement of waqf land in Indonesia and Malaysia. In Indonesia, waqf land dispute settlement used non-litigation and litigation mechanisms. Non-litigation mechanism was done through deliberation, if it could not achieve reconciliation, so mediation was used, if mediation could not be achieved, so arbitration was used. If non-litigation mechanism could not be reached, so litigation mechanism was used by submitting the land waqf case through the Religious Courts. It was explained that waqf land disputes settlement used negotiation, mediation, arbitration and Civil Court. The difference was Indonesia used deliberation, and Malaysia used negotiation. Deliberation and negotiation had different concept, deliberation was internal waqf land dispute settlement. While negotiation was deliberation by presenting a referee who led the dispute settlement to be the mediator during the process of dispute settlement. The result of negotiation was stated in the minutes of dispute settlement. By understanding the differences, so the negotiation has stronger law than deliberation. Negotiation could be used as written agreements and authentic evidence, to avoid misappropriation from the parties who involved in the agreement that had been made by them. In Malaysia, waqf land dispute settlement through litigation was under the authority of the District Court.
  9. The allocation of waqf land in Indonesia and Malaysia was different. In Indonesia, waqf land allocation was intended for public to fulfill social interest. In Malaysia, land waqf allocation was intended for relatives/family for certain circles, and for public.
  10. The term of land waqf in Indonesia and Malaysia was different. The term of land waqf in Indonesia was everlasting, except for waqf on the right of land, such as; right for the rent, right to use, the right of structure, so the term was in certain time. The term of land waqf in Malaysia was everlasting, because the land that was given always had permanent buildings on it that could not be demolished.

Based on the explanation of land waqf implementation practice in Indonesia and Malaysia above, so the comparisons could be seen in this following table;

**Table .1. Land Waqf Implementation Practice in Indonesia and Malaysia**

|  |  |  |  |
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| **No** | **The Differences** | **Indonesia** | **Malaysia** |
| 1. | Land Waqf Legal Basis | Islamic law was supported by Waqf Law No. 41 Year 2004. Legislations . | Islamic law rules/ Islamic Law, *adat* law and enactments in the state. |
| 2. | *Wakif* | *Wakif* gave land waqf through four (4) procedures; *wakif* gave land waqf and became *nadzir* as well, *wakif* gave land waqf orally to *nadzir*, *wakif* gave land waqf to PPAIW, *wakif* gave land waqf to PPAIW, that was followed up with the registration to BPN. | In the form of private, state/organizations; religious institutions, company. *Wakif* might intervene the management and the allocation of waqf asset. The state might be *wakif*, whose name was *Yayasan wakaf Malaysia* or Malaysia waqf Foundation. |
| 3. | *Nadzir* | *Nadzir* was private, institution/Foundation, and organization. *Wakif* tended to give waqf to *nadzir* in the form of institution/foundation and organization. | He was waqf trustee who had role nationally, and could establish institution of *nadzir* in every state/federal country. *Nadzir* was also a foundation/institution/organization and company. |
| 4. | Waqf land asset | From a private, joint land, *adat* land, the state land on behalf of an institution, inherited land and wills. Most of them were from private land. | From private asset, the state, *adat* land, will, inheritance, and corporate institutions. |
| 5. | Witness | Not considered as waqf requirements or pillars, but he was the validity of *akad ikrar wakaf* or waqf pledge contract and the position/exsistence of waqf land. | Not considered as waqf requirements or pillars, but he was the validity for *akad ikrar wakaf* or waqf pledge contract. |
| 6. | The allocation of waqf land | For family/relatives and public, mostly for public. | For family/relatives and public |
| 7. | Term of land waqf | *Wakif* gave land waqf, in everlasting term (*wakaf mu’abbad*) | Everlasting. |
| 8. | Land waqf management | Semi-productive, but BWI always gave guidelines productively, | Consumptive for religious, social, educational, and health activities.  Productive/had economical value, for business ventures, for rented, and profit-sharing investments. |
| 9. | Land waqf Institution | Religious Court (waqf dispute settlement), Ministry of Religion (the institution in charge for the growth of waqf asset), PPAIW (land waqf service institution in society), District Office (additional institution in the fulfillment of administrative requirement), BPN (waqf land certificate and registration institution), and BWI (waqf independent institution). | Under the authority of the state (dependent), such as JAWHAR (Ministry of Waqf, Infaq and Zakat), MAIN (management institution and institution in charge for the existence of waqf asset), SIRC (waqf administration institution), independent institution/Foundation of waqf *nadzir*. |
| 10 . | Waqf land dispute settlement institution | Through non-litigation and litigation. Non-litigation was assisted by contemporary mediation, litigation was under the authority of Religious Court. A criminal case was settled by District Court. | Through non-litigation and litigation. Non litigation was assisted by professional mediator, litigation was under the authority of District Court, there was also the state whose under the authority of Religious Court. |

The data was taken from secondary legal material

Based on the explanation above, it could be concluded that the similarities of land waqf practice in Indonesia and Malaysia could be seen on several aspects such as; land waqf legal basis; the form of *wakif* and *nadzir*; as well as the position of land waqf witness. The differences could be seen on several aspects, such as; management practice, institutions, allocation, the term, and land waqf dispute settlement mechanism. The similarities and differences were caused by several factors as followed;

* + - 1. Community legal culture in Indonesia and Malaysia was different. Community legal culture in Indonesia was based on Hindu-Buddhist, Islamic and Dutch colonial culture. They made legal culture grew through local wisdom to civil law system, from law in action to law in book. The correlation with land waqf, so the law used was law in book from Islamic law rules, then supported by law in action in the form of legislation. Therefore, the state frequently stipulated waqf rules in the form of legislations, although the people sometimes did not know and understand it yet, for example; Basic Agrarian Law Number 5 Year 1960, Government Regulation Number 28 Year 1977 concerning Endowment of Owned Land, Waqf Law Number 41 Year 2004, Government Regulation Number 42 Year 2006 concerning Waqf Implementation. Meanwhile, community legal culture in Malaysia was based on British colonial background, that used common law system. Therefore, law system used by Malaysia tended to use applicable legal rules in society that was enforced as waqf law. The correlation with land waqf was Malaysia used Islamic law rules in formulating waqf law (*Enakmen Wakaf*). Therefore, there was waqf rule that did not miss Islamic law basis, such as; the determination of waqf requirements and pillars, the allocation and term of waqf.

1. Different form of the state of Indonesia and Malaysia, had effect on government policies in land waqf implementation. Malaysia was an Islamic country that had given land waqf owned by its state for waqf purpose. Moreover, Malaysia also had appointed professional *nadzir* as waqf management, so waqf land asset had grown rapidly in Malaysia. On the other side, Indonesia whose mostly Muslims also protected and provided waqf land for the interest of religious, social and for developing economical activity in society, so a justice and prosperity for the people could be created. The correlation with land waqf, Indonesia did not give waqf in the form of land, but they owned the land. Therefore, Indonesia gave land waqf through offering from the people, institution/foundation, or organization to turn the state land into waqf land after minimum ten (10) years of use.
2. Malaysia as Islamic country also had impact on waqf institution. Malaysia had given waqf affair to Ministry of Waqf and Zakat, to take the responsibility in waqf implementation in Malaysia. This Ministry was also assisted by other institutions, such as; MAIN, SIRC and waqf Foundations/institutions that were established in society. Land waqf institutions in Indonesia were initially managed by Ministry of Religion in the administration, progress, and management of waqf land, as well as the empowerment of waqf nadzir. Since Indonesia stipulated Waqf Law, so the government had established BWI as independent institutions that had the responsibility on land waqf progress in Indonesia. Therefore, based on the institutional aspects, land waqf between Indonesia and Malaysia had differences in the characteristics. In Malaysia, the characteristic of waqf institutions was under the authority of the state (Ministry of JAWHAR). On the other side, in Indonesia, the characteristics of waqf institutions were under the authority of the state (Ministry of Religion) and under the authority of independent institution or non-governmental instutions, such as BWI that had main office in Jakarta, and had the representatives in provinces and districts. Thus, based on land waqf institutions aspects, so Indonesia had stronger position than Malaysia.
3. Malaysia as Islamic country did not give impact on land waqf dispute settlement, because land waf dispute settlement institution in Malaysia, was under the authority of Civil/State Court, although land waqf law was from Islamic law, so there was the waqf case settled by the judges who did not know about waqf law. It had impact on the judge’s verdict that not reflected justice for the seekers. In Indonesia, waqf dispute settlement case was under the authority of Religious Court, because waqf law was from Islamic law. Based on legal system in Indonesia, it was explained that Religious Court was law enforcement institution that settled Islamic law case submitted by Muslims (Article 49 Law Number 3 Year 2006).
4. Malaysia also had policy in managing land waqf asset, in the form of granting fund allocation to empower *nadzir* in managing and empowering land waqf, so *nadzir* institution was established and worked professionally. Therefore, in waqf management, Malaysia had managed waqf in modern way/productively to develop and expand land waqf asset, and becoming the fund source for consumptive waqf asset maintenance. In Indonesia, the existence of *nadzir* that was appointed by *wakif*, was still dominated based on social relations and trusts, unprofessional, so that land waqf management was mostly still carried out through semi-traditional method, in the form of the combination between traditional land waqf management (concumptive waqf) and modern waqf management (productive waqf).

Based on the explanation above, it could be concluded that several factors that distinguished the implementation of land waqf in Indonesia and Malaysia, were; the form of the state, legal culture, and government’s policies.

**DISCUSSION**

Based on the explanation of the differences of land waqf implementation practice above, so the benefits of it could be obtained as followed;

* + - 1. Able to find out and analyze legal basis characteristics used as the guidelines in land waqf practice in Indonesia and Malaysia. In Indonesia, land waqf law characteristics used religious rules that were supported with the state regulations, such as; Basic Agrarian Law Number 5 Year 1960, Government Regulation Number 28 Year 1977 concerning Endowment of Owned Land, Waqf Law Number 41 Year 2004, Government Regulation Number 42 Year 2006 concerning Waqf Implementation. However, in its practice, people tended to use the rules of fiqh teachings in the books written by previous scholars that explained about waqf, for example; Naulil Authar, Subulus Salam, Kifayatul Ahyar, and others. The teachings of these books were delivered by kyai or scholars in *majlis ta’lim*, such as; lectures, *madrasah* or Islamic school, and Islamic boarding school.

Land waqf law characteristics in Malaysia were based on Islamic law that was stipulated as written rules, and added with scholars’ opinion that explained the procedures of waqf and waqf management also other waqf rules in detail that were needed by the people. Malaysia that was an Islamic country and consisted of several states, stipulated that each country had authority to make land waqf rules separated from another country. The difference of legal basis had impact on legislation conflict issue. The state government stated that waqf law was from Islamic law, so its implementation and dispute settlement of waqf law case was also from Islamic law, and the institution that settled it was Shariah court (Religious Court). While other state government stated that land waqf law had become the issue in the state generally, so its legal basis used the state law, and the court that settled it was the Civil Court (District Court).

* + - 1. Able to understand the similarities and differences in land waqf practice law between Malaysia and Indonesia. The similarities of land waqf practice law in Indonesia and Malaysia, were on several aspects, as followed; land waqf law basis; the form of *wakif* and *nadzir*; and the position of land waqf witnesses. The differences of land waqf practice law in Indonesia and Malaysia were on several aspects, as followed; management practice, institution, allocation, the term, and land waqf dispute settlement.
      2. Able to analyze the policies stipulated by the state of Malaysia and Indonesia, in their relation to land waqf practice. Therefore, we could understand the enforcement of land waqf law in a state. Indonesia’s policies had correlation with land waqf practice in term of stipulating land waqf rules, as followed; Basic Agrarian Law Number 5 Year 1960, Government Regulation Number 28 Year 1977 concerning Endowment of Owned Waqf, Waqf Law Number 41 Year 2004, Government Regulation Number 42 Year 2006 concerning Waqf Implementation. The waqf regulations above were valid generally for all the people in (universal). The consequence of the state stipulated the rules above meant that the state also gave authority to the judiciary to settle the cases, if there was a land waqf dispute. The state had given authority to Religious Court to settle land waqf case through civil settlement, and the Criminal Court to settle waqf case that contained criminal offense. If it was compared with land waqf law culture in Malaysia, that directly used Islamic law as written law and applicable law in society. Therefore, land waqf practice law occurred in Malaysia, that was based on Islamic law. Moreover, waqf institution was established by the people (*penghulu/kyai/modin*), then it was changed into waqf institution that was established by the state (MAIN), through authentic proof or documentations. Thus, Malaysians had used the state law in implementing waqf land, because the state was Islamic country, that enforced Islamic law as guidelines in giving land waqf.
      3. Able to find out legal issues/problems on land waqf practice in Indonesia and Malaysia as well as the settlement procedures that were carried out by each state. Land waqf law problems in Indonesia had occurred on waqf law institution or waqf law enforcers, community culture and the rules used as guidelines in waqf practice. In waqf law culture, people used to give land waqf orally, not going through PPAIW, but going through *nadzir* directly to manage waqf asset. People acted like that because several factors, such as; they gave land waqf because of Allah, and only expected Allah’s blessing; they did not understand waqf rules stipulated by the state, lack of patience and persistence in fulfilling land waqf requirements and pillars as regulated in the legisations, lack of understanding in bureaucracy, and had problems in the fund/cost (Daryadi, 2021). Those problems hampered the proof, so it caused further problems in the future, such as abandoned waqf assets, less maintained / stalled asset, the transfer of the asset, the lost of asset, the asset was controlled by others. If *wakif* died, the problems that caused disputes frequently occurred, both between *nadzir* and the heir of *wakif*, and between *nadzir* and the people.

Land waqf law implementation in Malaysia, faced legal issues on waqf law dispute settlement institution, that involved the judge who did not run his authority as a legal expert including waqf law, so he was not able to master waqf law. It affected the judge’s verdict product that did not reflect justice value for the seekers. If the government did not take a step to enforce justice through intitutional role, then the people would not trust the judicial judges.

* + - 1. Able to study the progress and innovations land waqf practice law in Malaysia, as the material for rearranging the law or updating the law in Indonesia so the law could be implemented.

Based on the explanation above, it could be concluded that the benefits of comparing land waqf practice law between Indonesia and Malaysia, were; able to find out legal basis characteristics, the similarities and differences, analyzing the state’s policies, finding out law formulation, studying the progress and innovation of land waqf practice that occurred in Indonesia and Malaysia. It could be used as the stage for reforming waqf law in Indonesia.

Based on the history of land waqf progress and enactment, it showed that Malaysia was more advanced than Indonesia. Therefore, in 2004 the state stipulated Waqf Law Number 41 Year 2004 to reform waqf law in Indonesia, and its implementing regulation that was Government Regulation Number 42 Year 2006. The government stipulated the legislation above generally aimed to reform land waqf law in Indonesia. Moreover, government’s specific objectives in stipulating Law Number 41 Year 2004 concerning Waqf, were; to turn people’s mindset from traditional into modern; to support waqf law rules from the rules of religious institutions; to save, to give legal certainty and protection for the involved parties in land waqf law act, such as; *wakif, nadzir*, witness, waqf asset and the person who used land waqf asset. Moreover, land waqf rules that were stated in Law Number 41 Year 2004 concerning waqf, were;

* + - 1. There were two tyes of land waqf, as followed; giving land waqf with everlasting ownesip right, and giving land waqf with lease rights in specific time, after the term of land rights of lease waqf had finished, so *nadzir* returned it to the owner.
      2. The allocation of waqf land asset for public (*wakaf Khairi*) and certain circles (waqf experts), but in waqf certificate was intended for public.
      3. *Wakif*, that was private, group (giving waqf jointly, by buying the land per m2), institution, foundation, and organization. Wakif must give land waqf to PPAIW by presenting required elements in land waqf, then PPAIW expressed it in land waqf pledge deed.
      4. *Nadzir*, that was private, foundation/institution, organization and legal entities that had met the requirements and proven by the letter of appointment of *nadzir* from BWI. *Nadzir* must live in the same sub-district with the waqf land. Nadzir was assisted by PPAIW to manage waqf land registration in BPN, so the issuance waqf land certificate, as as authentic proof of the implementation of land waqf law act. Waqf land certificate on behalf of *nadzir* because *nadzir* had responsibility for the maintenance, management and saving of waqf land.
      5. Land waqf asset was a legal asset of *wakif*, that was proven by certificate or other proofs that showed the ownership of *wakif*. Moreover, land waqf asset was not in dispute, not in guarantee, and not in debt, that was proven with letter of statement from the Head of Village.
      6. Land waqf managements were not only for *ibadah mahdhoh* but also for *ibadah ghoiru mahdhoh*, and had economic value. Waqf land management was intended for productive waqf, and waqf land management result was used for social interest or for developing waqf land asset, so it could increase waqf land asset and could fulfill people’s needs.
      7. The institutions that managed land waqf were; PPAIW, BPN, *Kalurahan* Office, District Office, and notaries for land waqf that was in the form of inheritance and wills whose certificate had been broken.
      8. Land waqf dispute settlement was carried out through deliberation, if it could not be settled, so it would be settled through mediation, if it could not be settled, so it would be settled through arbitration, it it could not be settled, so legal process through the Religious Court would be used for civil case, and District Court for criminal offenses;
      9. The existence of BWI as an institution that took role in collecting data dan administration, as well as licensing in the changes to the allocation and transfer of land waqf asset. Moreover, BWI also had role as mediator or arbitrator in waqf dispute settlement.

Currently, the applicable law waqf was Waqf Law Number 41 Year 2004 concerning Waqf, if it was compared with previous land waqf regulations, so there were similarities and differences. The similarities were in the elements that must be met in land waqf, such as; *wakif, nadzir*, waqf land asset, waqf pledge in front of PPAIW, the presence of witness, and Religious Court as waqf dispute settlement institution. The differences were on several aspects, such as; the validity of *nadzir* that must be proven by letter of statement form BWI; nadzir’s residence that must be in the same sub-district with land waqf; productive land waqf management; non-litigation and litigation waqf dispute settlement, and the position of BWI in land waqf law enforcement.

Thus, the position of Waqf Law Number 41 Year 2004 concerning Waqf was to support land waqf law that had been regulated in Basic Agrarian Law Number 5 Year 1960, Government Regulation Number 28 Year 1977 concerning Waqf Granting of Owned Land, and KHI of Presidential Instruction Number 1 Year 1991 Book III concerning Waqf. Moreover, Waqf Law Number 41 Year 2004 concerning Waqf also reformed land waqf law, both in its substance and its law implementation procedures.

1. **CONCLUSION AND SUGGESTIONS**

Based on the explanation above, it could be concluded that the comparative study on the implementation of land waqf law in Indonesia and Malaysia, had big impact for the growth of land waqf in Indonesia, such as; able to find out the characteristics of legal basis, the similarities and differences, analyzing the state policies, finding out legal formulations, studying the progress and innovations of land waqf practice law in Indonesia and Malaysia. They could be used as the stage for reforming waqf law in Indonesia.

It was quite important to reform the waqf law in Indonesia because there were several legal issues on land waqf practice, that was from *wakif*, *nadzir* and PPAIW. On *wakif*, there was still the *wakif* who gave waqf using Islamic law rules and did not know the progress of land waqf law from the state, so *wakif* gave land waqf because of the intention of worship itself, not in PPAIW, but to nadzir directly and orally, because *wakif* did not believe on the state rules thoroughly. On *nadzir*, there was still the *nadzir* that was not professional, had no legal entity, had no understanding on the waqf asset management, was not trusted by the people fully, and had no awareness in creating waqf land certificate. On PPAIW, there was still the PPAIW that did not implement their jobs and obligation properly, in relation to the coordination and the empowerment of *nadzir*; excellent service (*good governance*) to the people, the administration of waqf land, and land waqf law socialization in the society.

The steps that should be taken were reforming the law on its judicial rules where the state stipulated land waqf rules as explained in Waqf Law Number 41 Year 2004, as followed; 1) Focused on the written proof and determination on *wakif*, *nadzir*, the one who got the waqf and the term of waqf; 2) The management of land waqf asset that had changed from consumptive waqf to productive waqf, so the number of waqf asset was not only from the *wakif* himself, but also from the management of productive waqf; 3) Land waqf disputes were settled through litigation and non-litigation mechanisms; 4) the establishment of independent institution of BWI, as waqf institution that encouraged the enforcement of waqf law. Land waqf law that was from Islamic law rules needed to be perfected by the state law so that the aspect of certainty, legal protection and legal justice could be acieved.

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