

## Land Waqf Practices Based on Local Wisdom of Tribes In Dosay Village, Papua

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### **Abstract**

*Papua, which is a part of Indonesia, has a vibrant ethnic culture. Traditions are frequently tied to religion in practice. Waqf is an Islamic principle that does not necessarily contradict regional traditions. The purpose of this study is to describe the land waqf practices in the Papuan community of Dosay. With its subject in Papua's Dosay village, this study used a descriptive-qualitative methodology. The conclusion of this study is that there is an additional mechanism for implementing waqf, namely one based on customary law, particularly through approval from Ondoafi as the head of tradition, who has rights to all land and all of its natural resources in a customary territory, or through customary deliberations. In Dosay village, the land waqf was given support for the implementation of Islamic worship, and Ondoafi fully backed this up by demonstrating that he had been given waqf land for free to use for religious services, proselytizing, education, and public facilities. However, the administration of waqf certificates, which have not fully utilized all existing assets, continues to be a problem. Despite Islam being a minority faith, the consequences of this study offer examples of religious moderation in waqf practice.*

**Keywords:** Land Waqf; Local Wisdom of Tribes; Ondoafi; Dosay Village.

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## **Introduction**

Papua is located in the eastern region of Indonesia. As in the rest of the east, Islam is a minority religion. The practice of waqf in this area has been running from the early days of Islam until now, and has been carried out for generations so that various dimensions can be built according to developments to provide progress for Islam and the people in particular and the world in general (Budi, 2015).

Waqf management is typically employed in Indonesia's worship and educational sectors as a way to support Islamic civilization and growth, which may subsequently be used as a gauge of an Islamic community's development over time (BWI, 2021). Waqf management is typically employed in Indonesia's worship and educational sectors as a way to support Islamic civilization and growth, which may subsequently be used as a gauge of an Islamic community's development over time.

In general, it can be said that Papua's social society and culture are unusual in that a traditional leader holds the highest authority over a region and all of the items that are found there, including the land, which is frequently the focus of waqf worship. Since waqf implementation is a practice that must be done in accordance with both Islamic and customary law, we aim to show that it is a type of religion that cannot be divorced from the circumstances that surround it, both supporting and impeding it.

Implementing waqf worship necessitates research on how to evaluate it entirely from a religious perspective, which is then correlated with customary law, which enjoys particular autonomy, and state law as a framework. This practice primarily involves the ownership of land, which in Papua is entirely held by customary leaders. Official law in Indonesia governs how waqf is implemented.

## **Literature review**

### *Waqf*

Etymologically, waqf comes from the Arabic word "Waqf" which means "al-Habs". It is a word in the form of masdar (infinitive noun) which basically means to hold back, stop, or be silent. When the word is associated with property such as land, animals and others, it means the freezing of property rights for certain purposes (Jaenudin,

2019)done by wakif as eternal good deeds, to promote economic equality of the people. It has been carried out from the beginning of Islam, being developed up to the present time. By reviewing library materials related to waqf, it was found that waqf law has its own characteristics. Commonly, endowments are binding and should not be traded, but in Hanafi schools of thought, waqf is seen as a *ghair lazim* contract. Because of its unique and important position, the waqf law needs to be studied thoroughly, and should be designated as special law.

**Abstraks:** Perwakafan dalam hukum Islam merupakan salah satu bagian penting dalam mewujudkan keadilan ekonomi serta amal kebajikan yang terus berlangsung bagi wakif. Wakaf telah dilaksanakan sejak masa Nabi saw dan terus berkembang pada masa sahabat dan generasi setelahnya. Dengan penelusuran bahan pustaka yang terkait permasalahan hukum wakaf, ditemukan bahwa hukum wakaf memiliki ciri tersendiri dari hukum kebendaan (fikih muamalat). As a term in Islamic sharia, waqf is defined as the retention of property rights over material objects (*al-'ain*) for the purpose of providing benefits or benefits (*al-manfa'ah*). Whereas in the books of fiqh, the scholars differed in giving the meaning of waqf. These differences bring different consequences to the laws that arise (David, 1988). The definition of waqf according to fiqh experts is as follows.

Hanafiyah defines waqf as retaining material objects (*al-'ain*) belonging to the Wakif and donating or donating its benefits to anyone desired for benevolent purposes (Ibnu al-Humam: 6/203). The definition of waqf explains that the position of waqf assets is still stuck or stopped in the hands of the wakif itself. In this sense, the wakif is still the owner of the property he is donating, when the endowment only applies to the benefits of the property, not including the assets.

Malikiyah argues, waqf is making the benefits of an asset owned (even if the ownership is by way of leasing) to be given to the rightful person with a contract (*shighat*) for a certain period of time according to the Wakif's wishes (*al-Dasuqi*: 2/187). The definition of waqf only determines the granting of waqf to the rightful person or place.

Syafi'iyah interprets waqf by holding assets that can provide benefits and eternal material objects (al-'ain) by severing the management rights owned by the waqif to be handed over to Nazhir which is permitted by sharia (al-Syarbini: 2/376). This group requires that the assets that are donated must be assets that are eternal in material terms (al-'ain) meaning that assets are not easily damaged or destroyed and can be used continuously (al-Syairazi: 1/575).

Hanabilah defines waqf in simple language, namely holding back the origin of property (land) and giving alms to the resulting benefits (Ibn Qudamah: 6/185). That's according to the scholars of fiqh. What according to the law in Indonesia? In Law No. 41 of 2004, waqf is defined as the legal act of Wakif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to sharia (Directorate General of Islamic Community Guidance, 2007).

From the several definitions of waqf, it can be concluded that waqf aims to provide benefits or benefits of the waqf property to people who are entitled and used in accordance with Islamic sharia teachings which is in line and proven that waqf if properly managed has a beneficial development impact (Munawar & Mufraini, 2021). This is in accordance with the waqf function mentioned in article 5 of Law no. 41 of 2004 which states that waqf functions to realize the potential and economic benefits of waqf assets for the benefit of worship and to advance public welfare (Abdullah & Qodin, 2014).

Benefits of waqf, waqf has several benefits, namely: Get Eternal Reward, Cultivate a Social Spirit, Helping Other People's Troubles, Bringing Awareness That Property Is Impermanent, Helping Communities Get Better Facilities, Eliminate Social Gaps, Encourage Development in the Field of Science (BWI, 2021)

### *Land Waqf*

Land waqf is a waqf within the scope of immovable assets. Immovable objects that can be donated are: Land rights are in accordance with the provisions of the applicable laws and regulations, both registered

and unregistered; Buildings or parts of buildings that stand on the ground; Plants and other objects related to the soil; Property rights to apartment units in accordance with the provisions of the applicable laws and regulations; Other immovable objects in accordance with sharia provisions and applicable laws and regulations.

In the applicable legislation, namely Article 16 paragraph 2, Law no. 41 of 2004 has also been explained regarding the procedures for waqf property, sequentially, can be described as follows: Individuals or legal entities who endow their land rights (as candidates for wakif) are required to come in person to carry out the Waqf Pledge through the religious affairs office namely PPAIW as the organizer of the registration of land assets to be donated (MA & Muhayatsyah, 2020); Candidates for waqif before pledging waqf, first submit to PPAIW, the following documents: Certificate of ownership or proof of land ownership; The Village Head Certificate is strengthened by the local Camat regarding the truth of land ownership and is not in dispute; Certificate of land registration; Permission from the Regent/Mayor cq the local Agrarian Sub-Directorate, this is mainly in the context of city planning or city master plans (Senjiati et al., 2020). PPAIW examines the letters and conditions, whether they have complied with the relinquishment of land rights (for waqf), examines the witnesses and legalizes the nadzir composition. In front of PPAIW and two witnesses, the wakif makes a pledge or pronounces the will of the waqf to the nadzir that has been ratified.

The waqf pledge is pronounced clearly, firmly and stated in written form (W.1 form of waqf pledge). As for those who cannot pronounce (eg mute) then they can state their will with a sign and then fill in the blank with the form W.1. If the wakif itself cannot appear before the Waqf Pledge Deed Official (PPAIW), then the wakif can make a written pledge with the approval of the Ministry of Religion in charge of the waqf land and then the letter or text is read before the nadzir after obtaining approval from the Ministry of Religion and all those present at the event. the waqf pledge ceremony also signed the Waqf Pledge (form W.1).

PPAIW immediately makes a Waqf Pledge Deed (form W.2) in four copies with material added according to the applicable

provisions and then, no later than one month a waqf pledge is made, each sheet must have been sent with the distribution arrangements as follows: Deed of Waqf Pledge: The first sheet is saved by PPAIW, The second sheet is an attachment to the application for registration of waqf land to the local Agrarian Sub-Directorate office (W.7), The third sheet is for the local Religious Court. Copy of Waqf Pledge Deed: First sheet for wakif, second sheet for nadzir, third sheet for Kandep, Regency/Municipality Religion, fourth sheet for the local Village Head. Besides having made the Deed, PPAIW recorded it in the Register of Waqf Pledge Deeds (form W.4) and stored it properly with the deed (BWI, 2021).

#### *Ethno-law/ Local Wisdom of Tribes*

Customary law or customary law is general law referring to a series of rules that are binding on a society that are unwritten and originate from habits that grow and develop in a particular indigenous community. Indonesian customary law that applies now is customary law that was in effect before 1808 AD when Thomas Stamford Raffles made changes, namely "rules that are unwritten and are guidelines for all Indonesian people and are maintained by native Indonesian people in their daily social life both in cities and in the village (Tahali, 2018).

Customary law is a term from the past related to the provision of legal knowledge to groups to several guidelines and facts that regulate and publish the lives of Indonesian people (Warjiyati, 2020).

Customary law as a law that was born from the personality of the Indonesian nation is clearly very important for the Indonesian nation itself which then becomes local wisdom as an indigenous way of life as one of the shapers and supports of philnatrophic potential (Addiarrahman, 2019). In addition, it is also important for the formation of national law in the Republic of Indonesia. The benefits of customary law are to understand Indonesian customs and legal culture, with the existence of customary law, we can find out which customary law can approach uniformity that can be applied as national law, customary law as a law born from the personality of the Indonesian nation itself is of course continuously maintained as a positive law of society.

Thus, customary law can be used as a source of benchmarks or benchmarks in studying and developing the laws of the Republic of Indonesia for its adherents (Nugroho, 2016).

### **Methods**

This study uses a qualitative method that seeks to explain in detail a complex problem using a structured concept or systematic so that it will answer a study which is then discussed using a descriptive approach that explains the various findings from the research carried out (Creswell, 2021). The object of this research is a traditional village in the village of dosay which is included in the Moy customary territory which is in the West Sentani district, Jayapura Regency, Papua province. Data collection was carried out directly through interviews with purposive sampling to Ondoafi (traditional head), mosque administrators, and employees of the Jayapura Ministry of Religion which were then analyzed which explained in detail the research study, namely waqf land in an ethnolaw perspective.

### **Results and Discussion**

#### *The early history of Islam entered the Dosay Village*

Kampung Dosay is a village located in the area of Papua where in social life the people still adhere to culture, which in terms of location, Kampung Dosay is included in the Moy mainland, namely the Konim Depoyo, Konim Arway, Konim Krebu and Boy Bayu. In this early period there were still wars between tribes and the extinction of the remaining Konim Krebu tribe, namely in 1919 AD. A year later there was migration of several tribes to the area and the first was the news of the Bible by Dutch envoys who then continuously formed the main congregation until it was formed also the building of the Efata Church which directly has a good impact on life that is more tolerant between tribes and differences so that there are no more wars between tribes.

In 1965, for the first time, the government of the Republic of Indonesia began building people's houses by migrating from traditional houses to building semi-permanent houses with the aim of being more durable to live in, in order to eliminate the nomadic life system that was previously carried out. In the following 2 years, to be precise, in 1967 AD, there was the first transmigration



placement in Papua, more precisely, in Dosay Village, as many as 10 families with a total of 30 people and became the first milestone for the entry of Islam into the Dosay village. The development of the Islamic religion began with the establishment of a langgar for worship which was given by the customary head/ondoafi as the owner of the entire customary land, which was followed by the second transmigration of 100 families/300 people, all of whom were Muslim. This is also a milestone in the development of Islam in the area. Even though Islam is a minority, which is only about 25% (majority of Christians 75%) are religious, the response of the natives is very good and tolerant of other people so that it makes the size of inter-religious communities to build each other in the Dosay village with a system that previously existed in Java, both in the agricultural sector. , trade, mining, government, and so on.

#### *Waqf in the perspective of Ethnolaw*

Land as one of the objects in waqf worship which is currently one of the supporters in the progress of Islamic civilization is certainly inseparable from the culture and customs of the system that already exists in an area. In Papua or more specifically, Dosay village still applies customary law with the land system being the customary rights of the Indigenous Peoples led by Ondoafi. Ondoafi is the head of the tribe/king who has full or prioritative rights in customary affairs, including the customary land sector. Furthermore, as stated by Yohanes Done, S.

#### *The customary land rights system in Papua.*

The concept of national land law is rooted in customary law, thus recognizing the existence of customary rights of customary law communities in various regions in Indonesia that already existed and inhabited lands in Indonesia, even before Indonesia's independence. Although it is not explained in detail regarding the meaning of customary rights, Article 3 of the Basic Agrarian Law (UUPA) provides recognition of the existence of customary rights in national land law. Ulayat rights are the highest tenure rights in certain customary law communities over land which is jointly owned by its citizens. Nevertheless, the provisions in the LoGA also provide limitations related to the existence of customary law community customary rights. As for these limitations, insofar as in reality they still exist, in accordance with national and state



interests (Fathoni, 2021).

Arliman states that ulayat rights are the highest rights to land owned by a legal alliance to ensure orderly use/utilization of land. The community has the right to control the land where its implementation is regulated by the tribal chief or village head. Furthermore, this can also be interpreted as a rights that are inherent as special competencies in customary law communities, in the form of authority/power to manage and regulate the land in its entirety by applying internally and externally (Arliman, 2018).

Ulayat rights are closely related to customary law communities because customary rights are the authority and obligations that exist in a customary law community. Customary law communities are different from legal communities. Customary law communities arise spontaneously in a certain area whose establishment is not determined or ordered by a higher authority and uses sources of wealth for the benefit of fellow indigenous peoples (Hasan et al., 2020). This is different from a legal community, which is a society that determines, is bound by, and is subject to its own legal system.

Customary rights have the authority to regulate and organize land use (for settlements, farming), inventory (building new settlements/ fields), and land maintenance, regulate and determine the legal relationship between people and land, establish legal relations between people and legal actions related to land (buying and selling, inheritance).

This ulayat right includes all land that is in the area of the legal community concerned, whether it is already owned by someone or not. The subject of this ulayat right is the customary law community, which is a legal alliance based on the same place of residence (territorial), as well as those based on descent (genealogical), which are known by various names that are unique to the area concerned, for example ethnicity, clan, *dati*, hamlets, villages and so on. If there is a person who seems to be the subject of customary rights, that person is the chairman or customary elder who has been delegated authority from the relevant customary law community according to the provisions of its customary law. It is not the subject of customary rights,

Furthermore, Article 1 of the Regulation of the Minister of Agrarian Affairs Number 5 of 1999 explains that ulayat rights are the authority which according to customary law belongs to a certain customary law community which is the environment of its citizens to take advantage of natural resources, including land, in the area. , for survival and life(Law & National, 2010)research result and also the expert insight in relation to issue studied. The analyse result shows that hak ulayat in which as the Indiginous rights has position as an entity of rights to the land in Indonesia's agrarian national law. The rights of those indigenous peopleis recognized its existency if it fulfills two requirements cumulatively are as follow: 1. Meanwhile, customary law communities are considered to still exist if there is a group of people who still feel bound by their customary law order as citizens with a certain legal alliance, there is certain ulayat land which is the living environment of the indigenous peoples, and there is a customary law order regarding the management, control and customary land use, and adhered to by the indigenous peoples.

The criteria for determining whether or not customary rights are still present can be seen in three things, namely the existence of customary law communities that fulfill certain characteristics as the subject of customary rights, the existence of land or territory with certain boundaries as lebensraum which is the object of customary rights, the existence of the authority of customary law communities to carry out certain actions as described above.

With the fulfillment of all these criteria, it can determine whether customary rights in a customary law community still exist or not. If there are still customary law communities and land or territory, but if the customary law community does not have the authority to take action, then the customary rights of the customary law community are considered no longer there. The ulayat rights that are considered no longer exist and cannot be revived.

Ulayat rights are contained in customary law. This is due to the implementation and management of customary rights in accordance with the customary law of each region where the customary rights are located. This then causes customary rights between one region and another to vary. This situation then gave birth to diversity in

customary law which indirectly affected land law, because ulayat rights are the right to control customary land.(Liani & Winanti, 2021).

Law (UU) No. 21 of 2001 concerning Special Autonomy for Papua (Otsus Papua) also provides recognition of the existence of customary rights in Papua. Article 1 letter s explains that ulayat rights are community rights owned by certain customary law communities over a certain area, which is the living environment of its citizens, which includes the right to use land, forest, water and its contents in accordance with the laws and regulations.(Rahmadi, 2022). Recognition of customary rights in Papua is also emphasized in Article 38 paragraph (2) of the Papua Special Autonomy Law which states that economic efforts in Papua Province that utilize natural resources must be carried out while respecting the rights of indigenous peoples, providing guarantees of legal certainty for indigenous peoples. entrepreneurs, and sustainable development whose arrangements are stipulated by a Perdasus. Based on these provisions, the government must synchronize the interests to provide protection for customary rights by providing legal certainty to entrepreneurs. Article 43 of the Special Autonomy Law also provides legitimacy for the recognition of the Papuan Provincial Government for the customary rights of indigenous peoples in Papua, which in this article discusses the protection of the rights of indigenous peoples.

Referring to the nature of land is ancestral inheritance and the owner of full rights, namely Ondoafi as the customary head, then in the land system the handover of land is based on Ondoafi's letter which is absolute as property rights to the land, even when there is a certificate of ownership without an Ondoafi letter then its legal power is still weak. So that the level of legal force in this case is stronger. Customary letters from Ondoafi only then as a complement are certificates of land ownership rights. Then, in determining the waqf of land as a form of worship, the use of which is determined in a certain corridor so that the land waqf must have a permit and a letter from Ondoafi so that whether it is permitted or not is a prerogative that cannot be disputed in the area of customary law.

Completing and preparing the administration of the assets to be

donated. Within the scope of completing the administration of waqf there are several administrations that must be prepared in advance which includes land documents from both the national land agency and from the local ondoafi which are then supplemented with witnesses so that the instrument documentation and witnesses to the transfer or change of land use are complete in order to prevent disputes in the future; Asking Ondoafi's permission. Ondoafi as the main policy stakeholder and as the owner of the entire nature which has been inherited from generation to generation has the right to give full permission and permission to use the natural wealth in his customary territory so that it can be maintained and protected. In this case, there is no exception regarding waqf, where its use will depend on the wishes of the owner of the property, of course, ondoafi will adapt it to the rules or conditions of customary values that have been maintained for generations, if permitted by ondoafi, the waqf will continue at the next stage and if it is not granted the permit will not continue or be given input conditions for its use in other fields that do not conflict with customary values; Make a waqf pledge to Nadzir. The pledge is carried out as a form of fulfilling the pillars in the implementation of waqf in the transfer of property either orally or in writing so that the completeness of the waqf process according to the Shari'a is fulfilled; Carry out further administration at PPAIW and the National Land Agency. In the final process of waqf administration and implementation is the legalization of the waqf property, which in this case is the land to be fully surrendered both in essence and benefits to the nadzir so that it can be used according to its purpose. However, in the implementation in this village, there are land waqf assets that do not yet have certificates.

So, what makes the difference is the role of Ondoafi. But one of the uniqueness of this system is that if support is obtained and it turns out to be a response and support, land will usually be given free of charge or free as a form of grant and tolerance by Ondoafi to the surrounding community. Such as land for mosques, education, cemeteries, and other public facilities and even residential land for the first Muslim transmigrants each family is given 2 hectares each.

#### *Waqf contributions and perceptions of indigenous peoples*

Waqf directly provides benefits to the Muslim community in

Dosay village in various fields even though the management is still consumptive or traditional management patterns. These benefits are reflected in various fields such as facilities for worship and da'wah, educational facilities, and public facilities. Within the scope of worship facilities, there is currently a very large mosque with various facilities available including a prayer room, separate ablution area, mosque hall, literacy corner, warehouse, 2 rooms for mosque caretakers/marbot, badminton court, garage and ambulance managed by mosque. In addition, besides the mosque but outside the mosque's fence environment there is a public cemetery which is divided into several localities according to religion where the tombs lined up are also part of the tolerance that is reflected between religious communities in the village of dosay, namely not only when living in the world but also when they have died. There is land allocated as a Qur'an educational park or TPQ so that it can be a facility that Muslim children can use to learn about the holy book. Not only in the scope of waqf which is specifically for Muslims but there are also land grants specifically for use by the wider community such as football fields, volleyball fields, police stations, health centers, and village secretariat offices.

### **Conclusion**

Islam entered the Dosay Village starting in 1967 in the form of a transmigration program by the government which then began to develop the practice of carrying out Islamic religious worship in various fields. In Papua or more specifically, Dosay village still applies customary law with the land system being the customary rights of the Indigenous Peoples led by Ondoafi. Ondoafi is the head of the tribe/king who has full or prioritative rights in customary affairs, including the customary land sector. Furthermore, as stated by Yohanes Done, S. Pd as Ondoafi in the area of Dosay village, namely "Customary land is land inherited from ancestors for generations within the scope of customary law which is controlled without the ownership of other people and then as the right of the owner and manager is Ondoafi" therefore to discuss land waqf in the perspective of customary law then you must first know about the existing land system or concept. So there are some worships that must go through several processes according to the prevailing

culture in society such as waqf worship. In conducting land waqf, the following mechanisms are followed completing and preparing the administration of the assets to be donated, asking Ondoafi's permission, make a waqf pledge to Nadzir, carry out further administration at PPAIW and the National Land Agency

So, what makes the difference is the role of Ondoafi. However, one of the uniqueness of this system is that if support is obtained and it turns out that a response and support is received, land will usually be given free of charge or free of charge as a form of grant and tolerance by Ondoafi to the surrounding community. Such as land for mosques, education, cemeteries, and other public facilities and even residential land for the first Muslim transmigrants, each family was given 2 hectares each but what is still in trouble is the administration of waqf certificates that have not fulfilled all existing assets. The waqf in Dosay village has also contributed in several areas, namely prayer and da'wah facilities, educational facilities, and public facilities.

This research has the benefit of providing an overview and knowledge about the implementation of waqf which is not only in tandem with sharia law and state law but in certain areas there is a culture that must go hand in hand as a form of religious support instrument in its implementation, such as in Dosay village which still adheres to customary law.

This research has limitations in presenting accurate data on the number and types of waqf that have been carried out so that later it can provide a clear picture of the implementation of waqf carried out by communities in the midst of adat. countries regarding waqf in more detail.

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