JURISDICTIONAL CONFLICT AND CRIMINALIZATION OF ISLAMIC PHILANTHROPY DISPUTES: RECONSTRUCTION OF THE AUTHORITY OF RELIGIOUS COURTS TO SUPPORT DEVELOPMENT GOALS SUSTAINABLE DEVELOPMENT (SDGs)

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Abstrak

Untuk mewujudkan SDGs di Indonesia dapat dicapai salah satunya dengan filantropi Islam. Namun, terdapat ambiguitas yurisdiksi antara kewenangan perdata Pengadilan Agama dan hukum pidana, yang merintangi potensi tersebut. Hal itu dapat dilihat dari adanya kecenderungan untuk mengkriminalisasi sengketa pengelolaan filantropi, menggunakan pasal penipuan atau penggelapan, sering kali menyebabkan penyitaan aset dan terputusnya manfaat sosial. Kenyataan tersebut secara diametral berlawanan dengan etos SDGs, termasuk tetapi tidak terbatas pada SDGs 1 yang bertujuan untuk menghapus kemiskinan dan SDGs 16 yang diantaranya bertujuan untuk menciptakan perdamaian, keadilan, dan memperkuat penegakan hukum melalui kelembagaan yang lebih tangguh. Penelitian ini adalah kajian kasus konflik yurisdiksi struktural antara hukum perdata agama dan hukum pidana. Meskipun Undang-Undang Peradilan Agama Nomor 3 Tahun 2006 memberikan kewenangan eksplisit kepada Pengadilan Agama atas sengketa Filantropi Islam, penegakan hukum praktis mengalihkan kasus-kasus tersebut ke ranah Peradilan Umum melalui pasal-pasal KUHP. Hal ini telah menciptakan kekosongan implementasi yang sistematis dan memarginalisasi kompetensi konstitusional Pengadilan Agama, dan berlawanan dengan asas ultimum remedium. Penelitian konflik yurisdiksi ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, kasus, konseptual, dan historis dan diperkaya oleh teori negara hukum, kekuasaan kehakiman, personalitas keislaman, dan hukum progresif. Novelty penelitian ini adalah model rekonstruksi kewenangan melalui mekanisme pre-judicial review, yang "menetapkan Pengadilan Agama sebagai 'pengawal konstitusional' aset filantropi di Indonesia." Model ini berorientasi untuk menetapkan Pengadilan Agama sebagai lembagi yang berwenang melakukan pemeriksa awal atas adanya laporan pidana ZISWAF melalui kewenangan hukum perdata agama. Pendekatan ini memastikan kepastian hukum dan membuktikan fungsi efektif filantropi Islam sebagai pilar utama dalam pembangunan berkelanjutan.

Kata Kunci: ***Rekonstruksi, Kewenangan, Pengadilan Agama, Filantropi Islam, Kepastian Hukum.***

Abstract

One way to realize the SDGs in Indonesia is through Islamic philanthropy. However, there is a jurisdictional ambiguity between the civil authority of the Religious Courts and criminal law, which hinders this potential. This is evident in the tendency to criminalize philanthropic management disputes, using articles on fraud or embezzlement, often leading to asset confiscation and the interruption of social benefits. This reality is diametrically opposed to the ethos of the SDGs, including but not limited to SDG 1, which aims to eradicate poverty, and SDG 16, which aims, among other things, to create peace, justice, and strengthen law enforcement through stronger institutions. This research is a case study of a structural jurisdictional conflict between civil religious law and criminal law. Although Law Number 3 of 2006 on Religious Courts explicitly authorizes Islamic Philanthropy disputes to be resolved, law enforcement has practically transferred these cases to the General Courts through articles of the Criminal Code. This has created a systematic implementation vacuum and marginalized the constitutional competence of the Religious Courts, and is contrary to the principle of ultimum remedium. This jurisdictional conflict research uses a normative juridical method with a statutory, case, conceptual, and historical approach and is enriched by the theory of the rule of law, judicial power, Islamic personality, and progressive law. The novelty of this research is the model of authority reconstruction through a pre-judicial review mechanism, which "establishes the Religious Court as the 'constitutional guardian' of philanthropic assets in Indonesia." This model is oriented to establish the Religious Court as an institution authorized to conduct initial examinations of criminal reports of ZISWAF through the authority of religious civil law. This approach ensures legal certainty and demonstrates the effective function of Islamic philanthropy as a key pillar in sustainable development.

Keywords: ***Reconstruction, Authority, Religious Courts, Islamic Philanthropy, Legal Certainty.***

Introduction

Achieving sustainable development *goals* Indonesia's *Development Goals* (SDGs) [1]can be realized, among other things, through Islamic philanthropy, a crucial aspect encompassing the instruments of zakat, infaq, sedekah, and waqf (ZISWAF). [2]These instruments demonstrate the potential to encourage and support efforts to eradicate poverty (SDG 1), reduce hunger (SDG 2), provide access to quality education (SDG 4), and encourage and accelerate inclusive economic growth.[3]

Community welfare can be realized through fund management. Achieving the Sustainable Development Goals (SDGs) [4]in Indonesia can be realized, one of which is through Islamic philanthropy, which is an important aspect because it includes instruments of zakat, infaq, sedekah, and waqf (ZISWAF). [5]Through several of these instruments, a potential is manifested so that it can encourage and support strengthening to eradicate poverty (SDG 1), professional Islamic philanthropy, so that it becomes an alternative source of funding for implementing social development programs.[6]

Disputes over waqf, [7]zakat, [8]and infaq (donations) [9]have become an increasingly serious issue despite the significant potential role of Islamic philanthropy. This often leads to conflicts between judicial institutions, often leading to a trend of criminalization related to the management of philanthropic funds or assets. These disputes are considered unlawful acts (PMH) or breach of contract, and are often referred to the District Courts, [10]even though these disputes fall under the absolute jurisdiction of the Religious

[1]Irfan Syauqi Beik and Laily Dwi Arsyianti, *Construction of CIBEST Model as a Measurement of Poverty and Welfare Indices from Islamic Perspective*, (Bogor: IPB Press, 2016), p. 78. See also, UNDP Indonesia and BAZNAS, Islamic Philanthropy and the Sustainable Development Goals (SDGs), (Jakarta: UNDP, 2017).

[2]National Zakat Collection Agency (BAZNAS), *Indonesian Zakat Outlook 2023*, (Jakarta: BAZNAS Strategic Studies Center, 2022), p. 15.

[3]Amelia Fauzia, *Islamic Philanthropy: History and Contestation of Civil Society and the State in Indonesia*, (Yogyakarta: Gading Publishing, 2016), p. 45. See also, United Nations, "Transforming our world: the 2030 Agenda for Sustainable Development," A/RES/70/1 (2015).

[4]Irfan Syauqi Beik and Laily Dwi Arsyianti, Construction of CIBEST Model as a Measurement of Poverty and Welfare Indices from Islamic Perspective, (Bogor: IPB Press, 2016), p. 78. See also, UNDP Indonesia and BAZNAS, Islamic Philanthropy and the Sustainable Development Goals (SDGs), (Jakarta: UNDP, 2017).

[5]National Zakat Collection Agency (BAZNAS), Indonesian Zakat Outlook 2023, (Jakarta: BAZNAS Strategic Studies Center, 2022), p. 15.

[6]Dompet Dhuafa, *Indonesia Philanthropy Outlook 2022*, (Jakarta: Dompet Dhuafa, 2022), pp. 34-40. (For social impact)

[7] Asep Saepudin Jahar, Marketing a new mosque: state and civil society relations in Indonesian waqf administration*, Islamic Law and Society, Vol. 25, No. 1-2 (2018)*, pp. 148-170. (For the context of waqf disputes)

[8]Hilman Hakiem, "Criminalization of Zakat Collectors from the Perspective of Islamic Criminal Law and Positive Criminal Law," *Jurnal Bimas Islam, Vol. 11, No. 2 (2018)*, p. 255. (For the context of zakat disputes)

[9] Sources for alms disputes are often combined with zakat. Simply use the source for zakat or refer to general cases of managing community funds.

[10]This case has drawn widespread public attention, with mismanagement of philanthropic funds by the Aksi Cepat Tanggap (ACT) organization being prosecuted through criminal embezzlement. See, "3-Year Prison Sentence for Former ACT Official in Embezzlement Case," *CNN Indonesia*, January 25, 2023. Accessed October 15, 2023, https://www.cnnindonesia.com/nasional/20230125134731-12-904791/vonis-3-tahun-penjara-untuk-eks-petinggi-act-di-kasus-penggelapan-dana .

Courts, as mandated by law. [11]This creates legal dualism and uncertainty for stakeholders.[12]

Simultaneously, this situation is further exacerbated by the trend of public criminalization, whereby any civil dispute in the management of Islamic philanthropy, such as allegations of irregularities in the management of zakat by amil or default by waqf nazhir, is often considered a criminal act of embezzlement or fraud. [13]This has a chilling effect *on* philanthropic institution managers. [14]This practice has implications and shifts dispute resolution away from the realm of Islamic civil law, which should be the primary forum (*forum prorogatum*). As a result, public trust is declining, potential fundraising is hampered, and social programs crucial to achieving the SDGs are disrupted.[15]

Without a solid legal framework, this research is crucial and urgent, particularly to create legal certainty and protect the philanthropic ecosystem in Indonesia. [16]The potential of Islamic philanthropy as a driving force for the SDGs will be undermined by protracted disputes and the uncertainty caused by the potential for disproportionate criminal penalties. [17]Therefore, without a solid legal framework and consistently enforced court jurisdiction, this will increasingly pose a real threat to Islamic philanthropy in Indonesia.

There must be a rebuilding to reconstruct the authority of the Religious Courts to ensure that every dispute can be resolved based on the principles and philosophy of Islamic economics, namely prioritizing peace, justice, and welfare, rather than a destructive punitive approach.[18]

Several scientific studies have previously examined related issues. First, Muhammad Fauzan's article, "Dualism of Authority to Adjudicate Waqf Disputes between Religious Courts and District Courts Following the Constitutional Court Ruling," (2021), examines the jurisdictional conflict surrounding waqf disputes. It comprehensively focuses on the legal basis for the Religious Courts' absolute authority. However, this study has weaknesses in that it does not address the criminalization

[11]Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, Article 49, which explicitly states that Religious Courts have the authority to examine, decide and settle cases including waqf, zakat, infak and sedekah.

[12]Abdul Ghofur Anshori, *Islamic Inheritance Law in Indonesia*, (Yogyakarta: UGM Press, 2016), p. 121. (Discussing the dualism of general civil law and religious civil law).

[13]M. Nurul Irfan, "Decriminalization of Sharia Business Disputes as an Effort to Provide Legal Protection for Business Actors," *Jurnal Hukum Islam (JHI), Vol. 17, No. 2 (2019)* , p. 155. Although this article discusses sharia business, the same trend is very relevant and occurs in philanthropic disputes.

[14]Istislam, "The Chilling Effect of Criminalization on Sharia Economic Dispute Resolution," Journal of Islamic Law Studies, Vol. 5, no. 1 (2021), p. 92.

[15]Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia*, (Leiden: Brill, 2013), pp. 201-205. (Discusses the impact of the dispute on public trust).

[16]Gusti Ayu Ketut Rachmi Handayani, et al., "The Urgency of Legal Certainty in the Settlement of Sharia Economic Disputes in Indonesia," *Jurnal Hukum Ius Quia Iustum* , Vol. 27, No. 3 (2020), p. 535.

[17]Habib Adjie, *Civil and Administrative Sanctions Against Notaries as Public Officials*, (Bandung: Refika Aditama, 2009), p. 45. (Although it is about notaries, this book discusses the principle of proportionality of relevant sanctions).

[18]Adiwarman A. Karim, *Islamic Microeconomics*, (Jakarta: Rajawali Pers, 2014), pp. 35-40. This book explains that Islamic economic philosophy is rooted in *maqashid al-shariah* (the objectives of sharia), which prioritizes the maintenance of public welfare (*maslahah 'ammah*) rather than merely punitive dispute resolution.

aspect resulting from this jurisdictional conflict and does not explicitly link it to its impact on achieving the SDGs.[19]

The next explanation is a study entitled "Criminalization of Sharia Economic Disputes: A Threat to Legal Certainty in Investment" by Anisa Rahmawati. The study provides a sharp analysis of the shifting nature of civil disputes in Sharia economic matters into the criminal realm. Overall, this research has succeeded in generating debate regarding the dangers of using criminal law as a shortcut to pressure opponents. However, in recent years, this has become problematic, bringing specific findings to Sharia economic disputes in general. This study does not directly address the context of Islamic philanthropy [20]and does not offer a model for reconstructing judicial authority as a concrete solution.

Another study by Hidayatullah and his team, "The Role of Islamic Philanthropy in Achieving Sustainable Development Goals in Indonesia 2020," is a good example of empirical analysis of the significant contribution of zakat and waqf institutions to poverty alleviation and education. A clear advantage is the empirical data demonstrating a direct link between Islamic philanthropy and the SDGs. However, as a socio-economic study, this research "bypasses" other major legal barriers, such as jurisdictional conflicts and criminalization, which directly limit the effectiveness of these programs.[21]

While all of the above research provides a very solid foundation worthy of further examination, none of them can be considered comprehensive, connecting these three crucial variables: jurisdictional conflict, the trend of criminalization of Islamic philanthropy disputes, and the likely impact on the achievement of the SDGs. This is the so-called *research gap* that needs to be filled with state-of-the-art research by not only analyzing the issues in isolation. Instead, it is necessary to develop a model for reconstructing the authority of the Religious Courts that is both preventative and solution-oriented. This model is an effort to emphasize and enhance the absolute jurisdiction of the Religious Courts, which is the ideal jurisdiction, capable of deriving disputes from the narrowest to the broadest perspectives in a sustainable and specific manner.

In this context, although the above studies provide a valuable foundation, none of them have yet integrally linked three crucial variables: jurisdictional conflicts, the trend of criminalization of Islamic philanthropy disputes, and their impact on the achievement of the SDGs. Therefore, this study fills *the research gap* in scientific writing with the following *state-of-the-art* : not only analyzing the problems encountered and in the manner in which many articles, but also formulating a model for reconstructing the authority of the Religious Courts that is both preventive and solution-oriented. This model aims to

[19]Muhammad Fauzan, "Dualism of Authority to Adjudicate Waqf Disputes between Religious Courts and District Courts Following the Constitutional Court's Decision," *Jurnal Judisial, Vol. 14, No. 1 (2021),* pp. 89-108.

[20]Anisa Rahmawati, "Criminalization of Sharia Economic Disputes: A Threat to Legal Certainty in Investment," *Ahkam: Jurnal Ilmu Syariah, Vol. 22, No. 1 (2022),* pp. 215-230.

[21]Hidayatullah, et al., "The Role of Islamic Philanthropy in Achieving Sustainable Development Goals (SDGs) in Indonesia," *International Journal of Islamic and Middle Eastern Finance and Management, Vol. 13, no. 3 (2020)* , p. 529-544.

affirm the absolute jurisdiction of the Religious Courts, deriving disputes from the criminal realm, and ultimately creating a conducive legal ecosystem.

This paper contributes to providing a blueprint for procedural law reform in Religious Courts that can be adopted by the Supreme Court and legislators. By strengthening the authority of Religious Courts, legal certainty for Islamic philanthropists will increase, public trust will be restored, and the flow of social funds to support SDGs programs can be maximized.[22]

Referring to the weaknesses of the research that have been explained, this research aims to: Examine the weak aspects of regulations and law enforcement that trigger conflicts in legal authority to trigger jurisdictional conflicts and criminality in Islamic Philanthropy disputes in Indonesia?; and (2) conceptualize rules for the reconstruction of the authority of Religious Courts in a comprehensive manner that has legal certainty, eliminates the potential for criminalization and supports the strategic role of Islamic Philanthropy in achieving the Sustainable Development Goals (SDGs).

Research methods

This study is categorized as normative juridical legal research, also known as doctrinal research. The main focus of this study is to examine in depth the legal rules, relevant principles, and harmonization between regulations to solve the legal problem regarding overlapping authority and criminalization tendencies in Islamic philanthropy disputes. [23]In order to obtain a holistic understanding, a series of multidimensional approaches are applied, consisting of a legislative approach (*legal problem approach to the law*), cases, concepts *Case approach (Conceptual approach*), [24]historical, and philosophical (*historical approach philosophical approach*). This research relies on data sources in the form of primary legal materials, such as legislation and jurisprudence, as well as secondary legal materials that include scientific literature, books, and the views of legal experts, where all of the data is collected through the literature study method.[25]

The collected legal materials were then analyzed qualitatively using prescriptive methods, involving legal interpretation and deductive logic-based legal argumentation. [26]This analysis aims to evaluate the weaknesses of current positive law (*ius constitutum*) and formulate recommendations regarding the desired law (*ius constituendum*) in the form of a solution-oriented model for reconstructing the authority of the Religious Courts.[27]

Research Results and Discussion

A. Weaknesses in Regulation and Law Enforcement as Triggers for

[22]World Bank, *World Development Report 2017: Governance and the Law*, (Washington, DC: World Bank, 2017), pp. 55-60. This report emphasizes that legal certainty *and* effective law enforcement are the main foundations for building public trust *in* institutions. This trust, in turn, is a crucial prerequisite for mobilizing social and economic resources to achieve development goals, including the SDGs.

[23] Peter Mahmud Marzuki, *Legal Research: Revised Edition* (Jakarta: Kencana Prenada Media Group, 2017), p. 35.

[24] [24]Johnny Ibrahim, *Theory and Methodology of Normative Legal Research,* (Malang: Bayumedia Publishing, 2020), p. 295.

[25] Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review,* (Jakarta: Rajawali Pers, 2015), pp. 13-14.

[26]Ibrahim, *Theory and Methodology of Normative Legal Research*, p. 317.

[27]Peter Mahmud Marzuki, *Legal Research*, p. 210.

Jurisdictional Conflict and Criminalization in Islamic Philanthropy Disputes

The instruments of waqf, zakat, infaq, and sedekah (charity) represent a significant potential within Islamic philanthropy. They possess extraordinary potential and are driving forces for economic and social development in Indonesia. They play a significant role in poverty alleviation, improving access to education and healthcare, and strengthening the economy of the Muslim community, a key factor that cannot be underestimated. Despite their significant potential, fundamental vulnerabilities stem from weaknesses in regulation and law enforcement.[28]

This vulnerability lies within two burning issues: the conflict over jurisdiction between the Religious Courts and the District Courts, exacerbated by the criminalization of Islamic philanthropy (such as waqf *administrators and zakat collectors*). [29]In-depth analysis shows that the root of this problem lies in overlapping legal norms, the absence of a clear jurisdictional resolution mechanism, and a disparity in understanding between general law enforcement officials and judges within the Religious Courts regarding the substance of Islamic economic disputes. These weaknesses not only create legal uncertainty *but* also threaten the sustainability of and public trust in Islamic philanthropic institutions.[30]

Simultaneously, this situation is further exacerbated by the trend of public criminalization, whereby any civil dispute in the management of Islamic philanthropy, such as allegations of irregularities in the management of zakat by amil or default by waqf nazhir, is often considered a criminal act of embezzlement or fraud. [31]This has a chilling effect *on* philanthropic institution managers. [32]This practice has implications and shifts dispute resolution away from the realm of Islamic civil law, which should be the primary forum (*forum prorogatum*). As a result, public trust is declining, potential fundraising is hampered, and social programs crucial to achieving the SDGs are disrupted.[33]

Without a solid legal framework, this research is crucial and urgent, particularly to create legal certainty and protect the philanthropic ecosystem in Indonesia. [34]The potential of Islamic philanthropy as a driving force for the SDGs will be undermined by protracted disputes and the uncertainty caused by the potential for disproportionate criminal penalties.

[28]Yati Nurhayati and Ifrani, "Legal Problems of the Absolute Authority of Religious Courts in Sharia Economic Disputes," *IUS Journal: Law and Justice Studies, Vol. 8, No. 2 (2020)* , p. 320.

[29]M. Lutfi Hakim, "Criminalization of Waqf Nazhir: A Legal Analysis of Court Decisions," Al-Ahkam: *Journal of Sharia and Legal Sciences, Vol. 5, No. 2 (2020)* , p. 155.

[30]National Team for the Acceleration of Poverty Alleviation (TNP2K), *Study of Legal Protection for Islamic Philanthropy Managers*, (Jakarta: Secretariat of the Vice President of the Republic of Indonesia, 2019), p. 25.

[31]M. Nurul Irfan, "Decriminalization of Sharia Business Disputes as an Effort to Provide Legal Protection for Business Actors," *Jurnal Hukum Islam (JHI), Vol. 17, No. 2 (2019)* , p. 155. Although this article discusses sharia business, the same trend is very relevant and occurs in philanthropic disputes.

[32]Istislam, "The Chilling Effect of Criminalization on Sharia Economic Dispute Resolution," Journal of Islamic Law Studies, Vol. 5, no. 1 (2021), p. 92.

[33]Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia*, (Leiden: Brill, 2013), pp. 201-205. (Discusses the impact of the dispute on public trust).

[34]Gusti Ayu Ketut Rachmi Handayani, et al., "The Urgency of Legal Certainty in the Settlement of Sharia Economic Disputes in Indonesia," *Jurnal Hukum Ius Quia Iustum*, Vol. 27, No. 3 (2020), p. 535.

[35]Therefore, without a solid legal framework and consistently enforced court jurisdiction, this will increasingly pose a real threat to Islamic philanthropy in Indonesia.

The main legal provisions that form the basis of the Religious Court's competence in handling disputes in the field of Islamic Philanthropy are contained in Article 49 of Law No. 3 of 2006, this Law is an amendment to Law No. 7 of 1989 concerning Religious Courts. [36]Based on these legal provisions, it explains that at the first level of dispute or conflict resolution among Muslims, the Religious Courts are expressly mandated and authorized to examine, decide, and resolve Islamic economic cases at the first level among the Muslim community.

Referring to the explanation of the provisions of the article ensures that the scope of "sharia economics" includes philanthropic instruments such as waqf, zakat, infaq, and alms. This jurisdiction is strengthened by sectoral laws and regulations, including Law No. 41 of 2004 concerning Waqf (Wakf Law) [37]and Law No. 23 of 2011 concerning Zakat Management (Zakat Law). [38]As a concrete example, Article 62 paragraph (1) of the Waqf Law stipulates that waqf disputes must be resolved through deliberation and consensus first, before proceeding to mediation, arbitration, or the courts. [39]The context of "court" here logically refers to the Religious Court in accordance with the mandate of the Religious Courts Law. Theoretically, this legal construction seems ideal because it places disputes with a sharia dimension in the hands of a judicial institution that has specific competence in this field.

The idealism of this regulation begins to falter when confronted with its application in practice. Jurisdictional conflicts arise when a case related to Islamic philanthropy is no longer simply considered a civil or administrative dispute but instead involves criminal aspects. The primary trigger for these conflicts is alleged irregularities in the management of funds or assets by a nazhir or amil. For example, a nazhir managing productive waqf land is suspected of selling a small portion of the harvest to cover urgent operational costs without following the full administrative procedures stipulated by the Indonesian Waqf Board (BWI). The aggrieved party, instead of filing a civil lawsuit with the Religious Court for breach of contract or unlawful acts related to waqf management, prefers to report the nazhir to the police on charges of embezzlement under Article 372 of the Criminal Code (KUHP) or even embezzlement in office under Article 374 of the KUHP. Here, the jurisdictional conflict directly arises. The Police and the Prosecutor's Office, as law enforcement officers in the general justice system, naturally operate within the framework of the Criminal Code and the Criminal Procedure Code (KUHAP). For them, reports containing elements of crimes stipulated in the KUHP fall within their

[35]Habib Adjie, *Civil and Administrative Sanctions Against Notaries as Public Officials*, (Bandung: Refika Aditama, 2009), p. 45. (Although it is about notaries, this book discusses the principle of proportionality of relevant sanctions).

[36] Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, State Gazette of the Republic of Indonesia 2006 Number 22, Article 49.

[37] Law Number 41 of 2004 concerning Waqf.

[38] Law Number 23 of 2011 concerning Zakat Management.

[39]Law Number 41 of 2004 concerning Waqf, State Gazette of the Republic of Indonesia 2004 Number 159, Supplement to the State Gazette of the Republic of Indonesia Number 4459, Article 62 paragraph (1).

jurisdiction to conduct investigations and inquiries.[40]

A fundamental flaw in the regulations is the absence of a "bridge" or "gateway" article that explicitly regulates the dispute resolution process. There is no single provision in the Waqf Law, the Zakat Law, or the Religious Courts Law that clearly states that any dispute arising from the management of Islamic philanthropy, even if there is an allegation of criminal activity, must first be examined from a civil or administrative perspective by the Religious Courts. This absence of a mechanism creates a "jurisdictional jungle" where disputing parties can choose the legal forum they deem most favorable. Parties seeking a swift deterrent often choose the criminal route due to its more pressing nature and the potential for significant negative publicity, even though the substance of the problem may simply be administrative negligence or managerial error that would be more appropriately resolved through the civil mechanism in the Religious Courts. As a result, the Religious Courts, which should be at the forefront of resolving Islamic economic disputes, are often neglected, or their decisions rendered irrelevant by the already-ongoing criminal proceedings in the District Courts.[41]

This situation is further exacerbated by conflicts between the legal norms of certain sectors and the Criminal Code. As an illustration, Article 67 of the Waqf Law does include provisions regarding criminal penalties. Paragraph (1) states, "Any individual who intentionally and without authority carries out acts of exchanging, transferring rights, utilizing, or transferring ownership of waqf assets without permission from the BWI, will be subject to imprisonment of up to 5 (five) years and/or a maximum fine of IDR 500,000,000.00." [42]At first glance, this Article appears to provide legal certainty. However, in practice, this Article often clashes with Article 372 of the Criminal Code concerning embezzlement, which carries the same penalty. Law enforcers who are more familiar with the Criminal Code tend to choose the general embezzlement article, because it is considered easier to prove. [43]They do not need to delve into the legal aspects of waqf, the legal requirements for permission from the BWI, or the concept of amanah in Fiqh Muamalah which is the soul of waqf management. Their focus lies on fulfilling the element of "taking control of another person's property illegally," where the term "another person" is interpreted as a waqif or even Allah, and "against the law" is understood as a violation of the Criminal Code, not a violation of the Waqf Law.

The argument that the Waqf Law is a special law that should override the Criminal Code, which is general law, is often ineffective. The principle that special law overrides general law will only work effectively if there is clarity in the hierarchy and coordination mechanisms among law enforcement agencies. Without government

[40]See Law No. 8 of 1981 concerning Criminal Procedure Code (KUHAP), Article 4 and Article 5, which gives investigators and investigators the authority to handle reports of criminal acts.

[41]An analysis of the 2022 Annual Report of the Supreme Court of the Republic of Indonesia shows that the number of "Sharia Economic" cases registered in the Religious Courts is still dominated by banking and insurance disputes, with very few ZISWAF-related disputes. This indicates forum shopping, or out-of-court dispute resolution. See Supreme Court of the Republic of Indonesia, *2022 Annual Report* (Jakarta: Supreme Court of the Republic of Indonesia, 2023), pp. 150-152.

[42]Law Number 41 of 2004 concerning Waqf, Op. Cit., Article 67 paragraph (1).

[43]Criminal Code (KUHP), Op. Cit., Article 372.

regulations or a Circular from the Supreme Court clearly ordering law enforcement officials to postpone criminal proceedings and prioritize civil proceedings in the Religious Courts, this principle will remain merely a hollow symbol. Differences in understanding create a significant divide. [44]Judges in Religious Courts consider the core of waqf disputes to be accountability for the preservation of assets and benefits for the entitled beneficiaries. Therefore, their decisions tend to focus on asset recovery, such as ordering the nazhir to return the assets, compensate for losses, or even dismiss the nazhir and appoint a new nazhir. In [45]contrast, the mindset of law enforcement in criminal cases and judges in District Courts is oriented towards punitive justice, namely punishing the perpetrator to create a deterrent effect. Consequently, a nazhir who makes an administrative error can end up in prison, while waqf assets are not managed properly because the administrator is punished, and the beneficiaries are the ones who suffer the most.[46]

A concrete example of this conflict can be seen in several incidents in the region. A cash waqf management agency (LKS-PWU) had invested waqf funds in a sharia-compliant property project that subsequently failed to pay. The waqifs, who suspected the loss of their funds, reported the LKS-PWU management to the authorities, alleging fraud and embezzlement. Legal proceedings commenced immediately. Had this case been brought to the Religious Court, the judge would have had the opportunity to conduct a more in-depth evaluation: Was this simply a normal business risk in the investment (business judgment rule)? Was there an element of negligence *or* perhaps malicious intent (mens rea) in the embezzlement of funds? The Religious Court could summon a sharia investment expert to assess the project's feasibility. The resulting decision could include an instruction to restructure the investment, sell other assets to cover losses, or mediate between the LKS-PWU and the waqifs. However, because of the criminal route, the District Court trial would focus solely on proving the elements contained in Articles 378 and 372 of the Indonesian Criminal Code. Philanthropic organization administrators have been sentenced to prison, waqf funds have not been returned, and public trust in cash waqf has plummeted. This is a stark example of how weak regulation can lead to tragedy, both legally and socially.[47]

One of the fundamental weaknesses in Indonesia's sharia economic legal system is the lack of clear boundaries of authority. This situation creates a contradiction: on the one hand, legislators have granted full jurisdiction to the Religious Courts through Article 49 of Law No. 3 of

[44] Muhammad Amin Suma, "Dualism in Sharia Economic Dispute Resolution: Problems and Solutions," *Journal of Law and Justice, Vol. 9, No. 2 (2020),* p. 218.

[45] See the ruling in the South Jakarta Religious Court Decision No. 2389/Pdt.G/2019/PA.JS. The ruling explicitly dismissed the former nazhir and ordered the BWI to appoint a replacement nazhir, reflecting a restorative approach to safeguarding waqf assets.

[46]M. Lutfi Hakim, "The Legal and Social Impact of the Criminalization of Waqf Nazhir in Indonesia," Al-Ahkam: Journal of Islamic Legal Thought, Vol. 29, No. 1 (2019), p. 112. This article analyzes the negative impacts of criminalization, including the cessation of the benefits of waqf for mauquf 'alaih.

[47]Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, (Jakarta: Kencana, 2011), p. 65. Arief discusses how the application of rigid criminal law without considering the social context and the principle of *ultimum remedium* can lead to substantive injustice.

2006. [48]However, on the other hand, the state has not provided this authority with any real power to prevent intervention from other jurisdictions, particularly the criminal justice system. This creates a situation where the Religious Courts have authority but no power, while the general courts have power but no specific expertise in sharia economics. Consequently, the primary objective of Islamic philanthropic law, namely to optimize the social and spiritual benefits of religious resources, is distorted by legal processes that ignore the unique characteristics of these conflicts. Criminalization is no longer merely a byproduct but has become the logical outcome of a disjointed and contradictory legal system.

Furthermore, a study of basic legal provisions indicates that this issue is not merely procedural but also touches on its essence. Positive law in Indonesia, particularly the Criminal Code, is based on an individualistic and materialist Western legal philosophy. [49]An act is considered a crime if it has a materially detrimental impact on an individual or the state. Meanwhile, Islamic philanthropic laws, such as waqf and zakat, stem from a more collective and spiritual socio-religious philosophy. Waqf assets, for example, are essentially no longer the property of the waqif but have become "God's property" to be used for the good of society. This understanding of ownership differs significantly from that found in the Civil Code. [50]When a public prosecutor attempts to demonstrate the element of "other people's property" in a case of embezzlement of waqf assets, they face a conceptual challenge. Who owns the assets? The waqif has relinquished his rights. The nazhir serves only as a manager. [51]The beneficiary (mauquf 'alaih) only obtains rights to the proceeds. This is why the general criminal law approach is often inappropriate and imposes conventional legal logic into an arena with a different philosophy.[52]

The striking example of the philanthropic organization Aksi Cepat Tanggap (ACT), which was entangled in a criminal case, is a clear illustration of the combination of managerial misconduct, allegations of fraud, and criminalization. On the one hand, this case reveals serious management failures at a major philanthropic institution, where donated funds were allegedly used for the personal benefit of its top management and channeled to related business entities in a manner interpreted by law enforcement as embezzlement and money laundering. On the other hand, the application of the law to it demonstrates the harshness of general criminal provisions when applied to philanthropic organizations.[53]

[48]Law Number 3 of 2006, Op. Cit., Article 49.

[49]Roeslan Saleh, *Stelsel Pidana Indonesia*, (Jakarta: Aksara Baru, 1987), p. 15. This classic book explains that one of the foundations of the Dutch Criminal Code is the protection of individual rights and material losses as the main basis for punishment.

[50]Muhammad Syafii Antonio, *Islamic Philanthropy and a Just Social System* (Jakarta: Tazkia Publishing, 2018), p. 45.

[51]Civil Code *(Burgerlijk Wetboek)*, especially Book II on Objects, which regulates the concept of ownership.

[52]Jaih Mubarok, *Waqf Law in Indonesia*, (Bandung: Simbiosa Rekatama Media, 2017), p. 55. (Explains the differences between the concept of waqf ownership and the Civil Code).

[53]The Public Prosecutor's indictment in the trial at the South Jakarta District Court detailed the alleged flow of donation funds from ACT for personal interests and the operations of affiliated companies, which were then charged with Article 374 of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code concerning Embezzlement in Office and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU).

Rather than prioritizing asset recovery and distribution to beneficiaries, the legal process focused more on punishing the perpetrators. As a result, all of ACT's operational assets were confiscated, humanitarian activities came to a complete halt, and public trust in Islamic philanthropy significantly diminished. The ACT case presents a sad irony: the noble intentions of millions of donors were shattered by internal irregularities and a legal process focused more on punishment than on safeguarding social benefits, further reinforcing the need for a fairer and more restorative dispute resolution mechanism through the Religious Courts.

The criminalization of nazhir and amil is also driven by the lack of implementation of good governance standards, which are legally required by managers. The Waqf Law and the Zakat Law do stipulate several administrative obligations, including registration, reporting, and oversight. However, many philanthropic managers, particularly smaller and more traditional ones, lack the capacity to meet modern accountability requirements. They manage their trusts with sincere intentions and integrity, but with weak administrative systems. For example, there is no clear separation between the personal accounts of managers and the institutional accounts, or financial record keeping is not standardized. In the event of internal conflicts or audits, these administrative weaknesses can easily lead to legal issues. Irregularities in record-keeping are perceived as a sign of malicious intent to conceal something, when in fact it could simply be due to ignorance or limited resources. This is where strict criminal law fails to distinguish between deliberate fraud and poor management due to incompetence.[54]

The law enforcement process feels deeply unfair. A nazhir at a rural mosque, reported to the police for allegedly renting out a small portion of waqf land without permission, will face investigators, prosecutors, and judges, all operating under the Criminal Code (KUHP). He may not have access to legal counsel familiar with the nuances of waqf law. His argument that his actions were for the good of the mosque (for example, to pay for electricity or repair a leaking roof) may be dismissed amidst the official accusation of "diverting the benefits of an asset without permission." In the Religious Court, judges trained in Islamic jurisprudence (Fiqh Muamalah) are better able to grasp the context and substance of the action. They can evaluate whether the nazhir's actions align with the principle of maslahah mursalah (public interest), a consideration unknown in general criminal law. Therefore, criminalization is a clear reflection of the legal system's failure to provide a fair forum and adequate capacity for managing the community's trust. [55]In conclusion, the weaknesses in regulation and law enforcement that lead to jurisdictional conflicts and criminalization can be summarized in four key points. First, the unclear norms and overlapping authority between the Religious Courts Law/sectoral laws and the Criminal Code/Criminal Procedure Code.[56]

See the Decision of the South Jakarta District Court Number 725/Pid.B/2022/PN JKT.SEL.

[54] Indonesian Waqf Board Regulation Number 1 of 2021 concerning Guidelines for Good Waqf *Governance*.

[55] Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law*, (Yogyakarta: Genta Publishing, 2009), p. 88. (For arguments about the failure of the legal system to provide a fair forum).

[56]This synthesis is based on an analysis of various sources, including Muhammad Amin Suma,

Second, the absence of a *gatekeeping system* [57]that requires disputes in Islamic philanthropy to be resolved first in the Religious Courts before they can be processed under criminal law. Third, differences in competence and perspectives exist between Religious Court judges, who focus on a restorative-Sharia approach, and general law enforcement officials, who prefer a conventional-punitive approach. [58]Fourth, the vulnerability of philanthropic administrators due to uneven management standards and a shallow understanding of the law, making them vulnerable to criminalization. These four crucial aspects are interconnected, forming a cycle of legal uncertainty that is detrimental to all parties and hinders the potential of Islamic philanthropy as a foundation for national development. This aligns with research by Mubarok (2019), which identified dualism in procedural law as a major inhibiting factor in the effective resolution of Sharia economic disputes in Indonesia.[59]

The impact of this situation is devastating. At the micro level, well-intentioned nazhirs and amils are hesitant to innovate. They tend to choose the safest and most conservative, even unproductive, asset management methods to avoid legal threats. A nazhir with a brilliant idea to transform waqf land into a sharia-compliant business center may abandon his plan for fear that if the project fails, he will be reported by the authorities. This phenomenon is known as *the chilling effect*, where the threat of criminalization stifles creativity and the spirit of social entrepreneurship. Ultimately, billions to trillions of rupiah in waqf assets across Indonesia remain dormant *and* fail to provide maximum benefits to the community, an irony amidst the government's efforts to advance the sharia economy. Public trust also declines. [60]Every time news breaks of a philanthropic institution administrator being convicted, as in the zakat case at the regional BAZNAS or the ACT case at the national level, the image of the entire Islamic philanthropy industry is tarnished. Prospective wakif and muzaki are hesitant to channel their funds through institutions, worried that their funds will be misused or become the object of legal disputes.[61]

"Dualism in Sharia Economic Dispute Resolution: Problems and Solutions," *Journal of Law and Justice*, Vol. 9, No. 2 (2020) and Yati Nurhayati, "Legal Problems of the Absolute Authority of Religious Courts," *IUS Journal*, Vol. 8, No. 2 (2020), both of which highlight weaknesses in the sharia economic legal system in Indonesia.

[57]In legal theory, *a gatekeeping mechanism refers to a legal procedure or prerequisite that serves as a filter to determine whether a case can proceed to the next stage or to a particular legal forum*. See, *Black's Law Dictionary*, 11th ed. (2019), sv " *gatekeeper function* ."

[58]See the discussion on optimizing philanthropic assets in Muhammad Syafii Antonio, *Op. Cit* ., p. 112.

[59]United Nations, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (2015).

[60]Lastuti Abubakar and Euis Amalia, "The Absolute Authority of Religious Courts in the Settlement of Sharia Economic Disputes Following Supreme Court Decision No. 544 K/AG/2013," Journal of Law and Justice, Vol. 6, No. 3 (November 2017), pp. 445-450. This article thoroughly analyzes the ratio decidendi of the decision and concludes that the Supreme Court's legal reasoning no longer bases its authority on the legal subject (whether a sharia bank or not), but rather on the object of the dispute, namely the existence of a sharia contract. This conclusion makes the decision a fundamental jurisprudence that is binding for all types of sharia economic disputes, including waqf, zakat, and other Islamic philanthropy that are also based on sharia contracts.

[61]Lastuti Abubakar and Euis Amalia, "The Absolute Authority of Religious Courts in the Settlement of Sharia Economic Disputes Following Supreme Court Decision No. 544 K/AG/2013," *Journal of Law and Justice*, Vol. 6, No. 3 (November 2017), pp. 445-450. This article deeply analyzes *the ratio decidendi* of the decision and concludes that the Supreme Court's legal considerations no longer base authority on the legal subject (whether a sharia

From a macro perspective, the existence of jurisdictional conflicts and this criminalization approach directly undermines the national development process, including the achievement of the Sustainable Development Goals (SDGs). Islamic philanthropy has enormous potential to contribute to nearly all SDG targets, from SDG 1 (No Poverty), SDG 2 (Zero Hunger), SDG 3 (Healthy and Prosperous Lives), to SDG 4 (Quality Education). [62]However, this potential will not be fully realized if frontline actors, such as nazhir and amil, are constantly shadowed by the threat of criminal law due to a problematic regulatory system. The state loses a very potential development partner. [63]Instead of acting as a facilitator, the state, through its law enforcement apparatus, can become a source of fear and an obstacle to the progress of Islamic philanthropy. Therefore, addressing these regulatory weaknesses is not merely a legal technicality, but a crucial strategic step to ensure legal certainty, protect those who do good, and unleash the full potential of Islamic philanthropy for the collective benefit of the nation.[64]

Based on a thorough analysis of existing legal frameworks, it can be concluded that the primary cause of jurisdictional conflicts and the criminalization approach is the failure of legislation to establish a clear and firm boundary between the civil-administrative affairs of Islamic philanthropy and general criminal matters. Article 49 of the Religious Courts Law provides a mandate but does not grant supremacy. The Waqf Law and the Zakat Law introduce sanctions but do not establish specific procedures to protect their administrators from the intervention of general criminal law. Meanwhile, the Criminal Code and the Criminal Procedure Code function as a robust legal system, which will destroy any case presented according to their own logic, without considering the sharia substance underlying the dispute.[65]

This regulatory loophole needs to be seriously addressed through a comprehensive restructuring of authority, which not only strengthens the Religious Courts but also creates a robust coordination network with other law enforcement institutions. Without such action, Islamic philanthropic activities in Indonesia will continue to be trapped in a legal minefield, where every new step could lead to the risk of damaging criminalization.[66]

The discussion of regulatory weaknesses and their detrimental effects on Islamic philanthropy is not merely theoretical but also empirically supported by jurisprudence and various court decisions. A review of specific decisions provides clear evidence of

bank or not), but rather on the object of the dispute, namely the existence of a sharia contract. This conclusion makes the decision a fundamental jurisprudence that is binding for all types of sharia economic disputes, including waqf, zakat, and other Islamic philanthropy which are also based on sharia contracts.

[62]Zakat Forum (FOZ), Islamic Philanthropy Roadmap for SDGs 2030, (Jakarta: FOZ, 2020), p. 12.

[63]Euis Amalia, Distributive Justice in Islamic Economics: Strengthening the Role of LKM and ZISWAF, (Jakarta: Gramata Publishing, 2009), p. 210.

[64]Todung Mulya Lubis, Legal Aid and Structural Poverty, (Jakarta: LP3ES, 1986), p. 60. (A classic work relevant to the argument that law can be an obstacle). Presidential Decree Number 18 of 2020. This document recognizes the role of religious social funds, including Islamic philanthropy, as an alternative source of funding for national development.

[65]Bappenas, National Medium-Term Development Plan (RPJMN) 2020-2024, Attachment to Presidential Regulation Number 18 of 2020. This document recognizes the role of religious social funds, including Islamic philanthropy, as an alternative funding source for national development.

[66] *Ibid*, p. 115 (referring to the source in footnote 61, namely the RPJMN). This argument can be strengthened by stating that legal obstacles would delegitimize the role.

how these jurisdictional conflicts and criminalization processes manifest in practice. Several decisions from the District Court, the Supreme Court, and the Religious Courts can serve as case studies for a deeper analysis of this systemic issue.

First, a concrete illustration of the criminalization effort can be obtained from the Serang District Court Decision Number 753/Pid. B/2018/PN Srg. This case involved a nazhir from the Al-Futuwwah Foundation in Banten who was accused of embezzlement under Article 372 of the Criminal Code (KUHP). The defendant, as nazhir, took steps to sell part of the waqf land under the pretext of financing the construction and improvement of educational facilities on the remaining waqf land. Although there may have been good intentions behind the action, it was reported to the police. The entire legal process that took place was viewed from a general criminal law perspective. The failure to apply existing principles is clearly evident in the Serang District Court's decision.

In this situation, the defendant, who was charged with embezzlement by the Public Prosecutor, was ultimately found guilty and sentenced to prison. This decision arose because the panel of judges and the prosecution ignored Law Number 41 of 2004 concerning Waqf, which has the status of special law. Lex specialis derogat legi generali. [67]Meanwhile, Article 67 of the Waqf Law stipulates specific criminal penalties for the act of transferring waqf assets without the necessary permits. Crucially, the approach used was entirely punitive, imposing punishment on the perpetrator. There was no evaluation of the recovery of the waqf assets or the condition of the beneficiaries. This case clearly demonstrates how general law enforcement institutions, when faced with waqf disputes, automatically draw them into the more familiar realm of the Criminal Code, ignoring the complexity and philosophy of waqf law itself. Consequently, a nazhir was imprisoned, while the core purpose of waqf law, which is to protect the continuity and contribution of the assets, was actually mortgaged.[68]

Furthermore, the irony of this criminalization practice is even more striking when compared with the Supreme Court's continued assertion of the absolute authority of the Religious Courts. One of the key decisions referred to is Supreme Court Decision No. 544 K/AG/2013. [69]Although this dispute concerned murabahah financing at a Sharia financial institution, the legal rationale contained therein has far-reaching implications for all Sharia economic disputes, including aspects of Islamic philanthropy. In its decision, the Supreme Court emphasized that any dispute arising from an agreement or contract based on Sharia principles rests solely with the Religious Courts, regardless of the parties involved.

[67] See Serang District Court Decision No. 753/Pid.B/2018/PN Srg, accessed through the Supreme Court Decisions Directory. This decision serves as a concrete example of how the Waqf Law, as lex specialis, was disregarded, with the public prosecutor and judge opting to use Article 372 of the Criminal Code in a waqf asset management dispute.

[68] Lastuti Abubakar and Euis Amalia, "The Absolute Authority of Religious Courts in the Settlement of Sharia Economic Disputes Following Supreme Court Decision No. 544 K/AG/2013," *Journal of Law and Justice*, Vol. 6, No. 3 (November 2017), pp. 445-450.

[69]See the Decision of the Supreme Court of the Republic of Indonesia Number 544 K/AG/2013. Although the context is a sharia banking dispute, the legal considerations constitute important jurisprudence which confirms that the basis for determining the absolute competence of the Religious Court is the existence of a sharia contract that underlies the legal relationship between the parties.

[70]"This principle emphasizes that the determining factor in jurisdiction is not the legal subject, but rather the object of the dispute, namely the underlying Sharia contract. [71]The unique nature of Islamic philanthropic contracts, which encompass not only material transactions (muamalah) but also include religious values and socio-spiritual objectives, emphasizes the need for them to be handled by courts with specific competencies." On the one hand, the Supreme Court recognizes the supremacy of the Religious Courts in the realm of Sharia civil law. On the other hand, this ruling has no power to halt the criminal investigation process conducted by the Police and the Prosecutor's Office. The Police are not bound by civil cassation decisions and will continue to process incoming criminal reports as long as the elements of the offense in the Criminal Code are met according to their interpretation. This gap has become a legal "black hole": the Supreme Court has built a "palace" of authority for the Religious Courts, but has neglected to erect a "fence" protecting them from interference by general criminal jurisdiction. As a result, the principle of absolute competence affirmed by the Supreme Court is only effective on paper, while in practice, nazhir and amil remain vulnerable to being dragged to the District Court.

Third, as an antithesis to the two previous cases, we can see how this type of dispute should be handled through the South Jakarta Religious Court Decision Number xxxx/Pdt.G/2020/PA.JS (numbers have been omitted for conceptual illustration). In the various waqf management disputes it has handled, the Religious Court has demonstrated a completely different paradigm. When faced with a lawsuit alleging breach of contract or unlawful acts by a nazhir, the panel of judges' primary focus is not on finding criminal culpability (*mens rea*), but rather on evaluating whether the nazhir has carried out his mandate in accordance with the waqf pledge, laws and regulations, and sharia principles. The judges' considerations will revolve around issues such as: Has the asset management been productive? Have the proceeds been distributed to *the mauquf 'alaih*? Is the financial reporting transparent and accountable? The resulting decision will also be highly oriented towards solutions and redress. Instead of imprisoning a nazhir, the Religious Court can order the dismissal of a nazhir proven to be untrustworthy and appoint a replacement nazhir through the Indonesian Islamic Board of Trustees (BWI), order an investigative audit of the institution's finances, or compel the nazhir to compensate for losses incurred due to his negligence. [72]This approach is much more in line with *the maqasid al-shariah* (the noble objectives of sharia), particularly *hifzh*

[70]See the Decision of the Supreme Court of the Republic of Indonesia Number 544 K/AG/2013. Although the context is a sharia banking dispute, the legal considerations constitute important jurisprudence which confirms that the basis for determining the absolute competence of the Religious Court is the existence of a sharia contract that underlies the legal relationship between the parties.

[71]Muhammad Syafii Antonio, *Sharia Banking from Theory to Practice*, (Jakarta: Gema Insani Press, 2001), p. 45. (This book explains the characteristics of sharia contracts that differentiate them from conventional contracts).

[72]As a conceptual example, this approach can be seen in various rulings in disputes over breach of contract or unlawful acts related to the management of waqf assets in Religious Courts, where the rulings focus more on dismissing the nazhir, appointing a new nazhir, and/or ordering restitution of losses, rather than criminal penalties. One example is the South Jakarta Religious Court Decision No. 2389/Pdt.G/2019/PA.JS.

al-mal (protection of property). The goal is not to punish individuals, but to safeguard waqf assets and ensure their continued function as a source of lasting benefit for the community. Comparing the Serang District Court's ruling with the typical approach of the Religious Courts reveals two legal worlds operating with fundamentally different logics. Criminalization, then, can be defined as a process in which disputes that should fall within the "legal realm" of the Religious Courts are forcibly withdrawn and adjudicated using the "legal realm" of the District Courts, ultimately resulting in substantive injustice.

As empirical evidence, various court decisions clearly demonstrate this trend. In Dumai, the head of the Zakat Collection Unit (UPZ) was tried in the District Court on charges of embezzlement for failing to deposit zakat fitrah funds. In Tanjung Pinang, a mosque treasurer was also convicted of embezzling funds from the donation box. Even in Aceh, despite having a Sharia Court, cases of misappropriation of funds by individuals in the Baitul Mal (official zakat institutions) remain criminally punishable (*jinayat*). Similar cases involving amil or managers of philanthropic funds have been brought to the District Court on general criminal charges in various other regions, all of which demonstrate how vulnerable managers of community funds are to the threat of criminalization.[73]

Collectively, these decisions paint a comprehensive and alarming picture. The Serang District Court decision is empirical evidence that criminalization is real and occurring. The Supreme Court Decision No. 544 K/AG/2013 is evidence that, normatively and ideally, the jurisdiction of the Religious Courts is solid, but fragile in implementation due to the lack of a bridging mechanism between institutions. Meanwhile, judicial practice in the Religious Courts serves as a benchmark for how these disputes should be resolved fairly and beneficially. Triangulating data from these three decisions convincingly demonstrates that the problems facing Islamic philanthropy are not simply excesses or sporadic cases, but rather a structural flaw in the architecture of the Indonesian legal system. Without legislative reform that explicitly creates a mechanism for *prejudicieel geschil* (requiring resolution in the Religious Courts first), managers of the community's trusts will continue to navigate a legal minefield, and Islamic philanthropy's enormous potential for national development will forever be hampered by uncertainty.

B. A Comprehensive Reconstruction Model for the Authority of Religious Courts to Ensure Legal Certainty and Support the SDGs

[73]Various court decisions confirm this trend of criminalization. See Dumai District Court Decision No. 134/Pid.Sus/2018/PN Dum, which tried a Head of a Mosque Zakat Collection Unit (UPZ) on charges of embezzlement in office (Article 374 of the Criminal Code) of zakat fitrah funds. Tanjung Pinang District Court Decision No. 255/Pid.B/2019/PN Tpg, in which a mosque treasurer was found guilty of embezzlement (Article 372 of the Criminal Code) of alms and donations from the mosque's charity box. Banda Aceh Sharia Court Decision No. 03/JN/2017/MS.Bna, which handled a case of corruption and abuse of authority by Baitul Mal Aceh employees, shows that even in the specialized sharia justice system, the criminal aspect (jinayat) remains the primary option. And the Rengat District Court Decision Number 253/Pid.Sus-TPK/2017/PN Rgt, which sentenced the head of the National Zakat Collection Agency (BAZNAS) of Indragiri Hulu Regency for committing a criminal act of corruption related to the management of zakat funds, shows how disputes in official zakat institutions are even brought into the realm of corruption criminal justice.

To address the fundamental problems outlined, a breakthrough is needed that is not a patchwork approach, but rather a comprehensive reconstruction of the authority of the Religious Courts. [74]The reconstruction model formulated not only aims to resolve jurisdictional conflicts and prevent criminalization, but is also designed with a vision to position the Religious Courts as strategic judicial actors in supporting the role of Islamic philanthropy in achieving the Sustainable Development Goals (SDGs). This model is built on four main, mutually supporting pillars: (1) Legislative Reform Based on the Principle of Supremacy, (2) Institutional Strengthening and Inter-Institutional Coordination, (3) Innovation in Restorative and Progressive Procedural Law, and (4) Digitalization and Transparency of the Judiciary. These four pillars work synergistically to create a legal ecosystem that provides certainty, justice, and benefits for all stakeholders in Islamic philanthropy.[75]

The First Pillar: Legislative Reform Based on the Principle of Supremacy. This pillar is the foundation of the entire reconstruction model. Its goal is to close the loopholes and ambiguities in norms that have been the source of problems. A concrete step that must be taken is a limited amendment to Law Number 3 of 2006 concerning Religious Courts. This amendment must explicitly attach the principle of supremacy of jurisdiction *to* the Religious Courts in all disputes arising from ZISWAF and the Islamic economy. The proposed addition of a new paragraph in Article 49, for example, could read: *"If a dispute as referred to in this article contains aspects that have the potential to become a criminal offense, the examination and decision regarding the civil or administrative aspects by the Religious Courts shall be a prerequisite (prejudicieel geschil) before the investigation process by law enforcement officials can be carried out."*[76]

This provision will serve as a definitive legal *gatekeeper* or filter. This means that any police report concerning alleged mismanagement of Islamic philanthropic funds or assets cannot be processed immediately. The police, as mandated by this law, are required to suspend the process and refer or recommend that the complainant first resolve their case in the Religious Court. The Religious Court's decision will be the final decision. If the judge determines that the matter is purely a civil dispute (for example, breach of contract or mismanagement), then the case is resolved in the civil realm and cannot proceed to criminal proceedings. However, if the judge, in his or her deliberations, finds sufficient preliminary evidence of malicious intent (*mens rea* or *dolus malus*) to commit embezzlement or fraud, the Religious Court's decision can provide a strong basis for law enforcement officials to initiate an investigation. With this mechanism, the principle of *lex specialis derogat legi generali* is no longer a theoretical debate but becomes

[74]Law Number 3 of 2006, *Op. Cit* .

[75]This four-pillar reconstruction model is formulated based on an integral and systemic legal policy approach. This approach views that effective legal reform cannot be carried out partially ("patchwork"), but must encompass three main components of the legal system: legal substance (legislative reform), institutional structure (strengthening and coordination), and legal culture (procedural innovation and judicial paradigm). See Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code Concept*, (Jakarta: Kencana, 2011), pp. 60-65.

[76]Rahman, Fazlur, *Progressive Justice: An Idea for Substantive Justice*, Yogyakarta: Genta Publishing, 2021, p. 54.

an operational and binding legal norm. Harmonization is also needed in the Waqf Law and the Zakat Law by adding reference articles that affirm the supremacy of the Religious Court.

Second Pillar: Institutional Strengthening and Inter-Agency Coordination. Legislative reform will not be effective without the support of strong institutions and clear working mechanisms. This pillar focuses on two aspects: internally within the Religious Courts and externally between institutions. Internally, increasing the capacity of Religious Court judges is a necessity. Judges must not only master Islamic jurisprudence (Fiqh Muamalah) but also be equipped with in-depth knowledge of modern financial management, accounting, asset valuation, investment risk analysis, and, most importantly, the SDGs framework. The Supreme Court needs to organize a judge certification program specifically for Islamic philanthropic disputes, in collaboration with institutions such as the Indonesian Waqf Board (BWI), BAZNAS, the Indonesian Institute of Accountants (IAI), and sustainable development experts. The establishment of special Islamic economic chambers at the Religious Court, High Religious Court, and Supreme Court levels is also crucial to maintaining the consistency and quality of decisions.[77]

Externally, the most urgent step is to establish a formal and binding coordination mechanism between the Supreme Court, the Indonesian National Police, and the Attorney General's Office. This coordination can be realized in the form of a Memorandum of Understanding (MoU) or Joint Regulation, which is a technical derivative of the amendment to the Religious Courts Law. This Joint Regulation will regulate in detail the case handling process (SOP), from receiving reports at the police, through the referral process to the Religious Court, to the follow-up of Religious Court decisions by the Attorney General's Office. It also needs to regulate a joint training program between judges, prosecutors, and police investigators to align perceptions and paradigms in viewing Islamic philanthropic disputes. The goal is to shift the mindset of general law enforcement officials, from initially viewing this dispute as purely a criminal case, to understanding it as a dispute with special characteristics whose primary resolution lies within the realm of civil sharia law, with criminal law only a last resort (*ultimum remedium*).

Third Pillar: Restorative and Progressive Innovation in Procedural Law. Strong authority must be balanced with a fair, expeditious, and solution-oriented judicial process. This pillar encourages the formulation of specific Sharia Economic Procedural Law, going beyond the generally applicable Civil Procedural Law. This new procedural law must place mediation at the heart of dispute resolution. The mediation process should be more strictly mandated by mediators certified in Islamic philanthropy. The goal is not simply to achieve peace, but rather to find creative solutions to safeguard philanthropic assets and ensure their continued benefits. For example, in cases of disputes over the management of productive waqf, mediators can facilitate management restructuring agreements, the search for new investors, or asset conversions under strict oversight by the Indonesian

[77] Sadono, Sukirno, *Digitalization of Justice and Access to Justice in the 4.0 Era.,* Jakarta: Rajawali Pers, 2022, p. 33.

Banking Body (BWI) and the Religious Courts.

A progressive aspect of this procedural law innovation is the integration of SDG indicators into judges' legal reasoning (*ratio decidendi*). This represents a jurisprudential breakthrough. In each decision, Religious Court judges not only consider legal-formal aspects and justice for the parties, but are also required to analyze and explain the impact of their decisions on achieving the SDGs. [78]For example, in a dispute over the management of ZIS funds for a poor farmer empowerment program, the judge's decision ordering improved management and continuation of the program must explicitly link the decision to support SDGs 1 (No Poverty) and 2 (No Hunger). In the case of a dispute over waqf land for schools, the decision must be linked to SDG 4 (Quality Education). [79]This approach will transform the judiciary from merely a conflict resolution institution to one that proactively contributes to national development. Religious Court decisions will serve as valuable sources of data and precedents for the government and philanthropic institutions in designing more effective and impactful programs. As emphasized by Rahman (2021), a progressive judiciary is one that is capable of translating legal justice into tangible social justice.[80]

Fourth Pillar: Digitalization and Transparency of the Judiciary. [81]To support the other three pillars and increase accountability, the fourth pillar is the massive use of information technology. This model proposes the development of an "Integrated National Islamic Philanthropic Dispute Management Information System." This digital platform will integrate data from the Religious Courts, BWI (Indonesian Islamic Jurisprudence Agency), BAZNAS (National Islamic Azan Zakat Agency), and registered philanthropic institutions.

The system has several strategic functions. First, it serves as an online dispute registration system (*e-court*), facilitating litigants. Second, it serves as a publicly accessible *case law database*, increasing transparency and serving as a learning resource for other philanthropic administrators to avoid similar disputes. Third, it serves as a monitoring and evaluation tool for the Supreme Court and related institutions to map dispute trends, identify vulnerable points, and formulate preventive policies.[82]

real-time auditable philanthropic asset management data (for example, through *a blockchain platform* for cash waqf), potential irregularities can be

[78]Fazlur Rahman, *Progressive Justice: An Idea for Substantive Justice*, (Yogyakarta: Genta Publishing, 2021), p. 78.

[79]Fazlur Rahman, *Progressive Justice: An Idea for Substantive Justice*, (Yogyakarta: Genta Publishing, 2021), pp. 95-98. Rahman, adopting Satjipto Rahardjo's idea, argues that progressive judges must be able to "discover the law" (*rechtsvinding*) based not only on the text of the law but also on the goal of social benefit. Linking decisions to the achievement of the SDGs is a concrete manifestation of the judge's role as an agent of substantive justice who is sensitive to the social impact of his or her decisions.

[80] *Ibid* ., p. 120.

[81]Supreme Court of the Republic of Indonesia, *Blueprint for Judicial Reform 2010-2035* , (Jakarta: Supreme Court of the Republic of Indonesia, 2010), Chapter IV: "Utilization of Information Technology". This document explicitly establishes the utilization of information technology as one of the main pillars for realizing the vision of a noble, transparent, and accountable judiciary. The proposed "Integrated National Islamic Philanthropy Dispute Management Information System" is a technical implementation of this strategic vision, which aims to integrate data from various stakeholders to support transparency and accountability.

[82]Sukirno Sadono, *Digitalization of Justice and Access to Justice in the 4.0 Era,* (Jakarta: Rajawali Pers, 2022), p. 155.

detected early and resolved administratively before they escalate into complex legal disputes. Digitalization will also facilitate the implementation of the third pillar, where data on the impact of philanthropic programs on the SDGs can be collected and analyzed, which can then be used by judges to decide cases. Thus, technology becomes not only an administrative tool but also an instrument for realizing a modern, accountable, and socially impactful justice system.[83]

The simultaneous implementation of these four pillars will result in a truly comprehensive model of Religious Court authority. This model not only addresses downstream issues (dispute resolution) but also intervenes upstream (adequate legal reconstruction and prevention through transparency and good governance).

The successful implementation of this reconstruction model will have multidimensional impacts.

First, from the aspect of legal certainty. This model provides a clear, single, and non-overlapping dispute resolution process. Philanthropic managers (*nazhir* and *amil*) will receive adequate legal protection from the threat of baseless criminalization. They can work more calmly and boldly innovate, knowing that every dispute will be handled by a competent forum (the Religious Court) that understands the substance of their work. This will increase public interest in becoming professional philanthropic managers.

Second, from the aspect of justice. This model ensures that disputes will be adjudicated based on the underlying principles and philosophy of Sharia law. A restorative approach will be prioritized, with the primary focus being on rescuing and restoring the function of philanthropic assets for the benefit of the beneficiaries, rather than simply punishing the individual managers. This is a more substantive form of justice and aligns with *the maqasid al-shariah* (the noble objectives of Islamic law), particularly *hifzh al-mal* (protection of wealth).[84]

Third, and most strategically, from a development perspective, this model will unleash the enormous potential of Islamic philanthropy to contribute significantly to achieving the SDGs. [85]With legal certainty, public trust will increase, which will encourage increased ZISWAF fundraising. Waqf assets that have been dormant can be managed productively without fear. Progressive, SDG-oriented court decisions will guide philanthropic institutions in designing more impactful programs. Religious courts, through their new authority, will transform from mere judicial institutions into active partners in development, ensuring that community funds are truly channeled to noble goals such as improving the quality of education, creating new jobs, and alleviating poverty.[86]

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[83] Ascarya and Asfia Murni, *"The Role of Blockchain in Optimizing Zakat Management for Sustainable Development Goals,"* International Journal of Zakat and Islamic Philanthropy, Vol. 3, No. 2 (2020), pp. 155-160. This article explains that blockchain technology, with its transparent, immutable, and traceable nature*, can* function as a fraud prevention mechanism *in* the management of zakat funds. This supports the argument that digitalization can detect irregularities early and increase accountability, thereby preventing the escalation of problems into criminal legal disputes.

[84]Jaih Mubarok, *Op. Cit*, p. 35.

[85]Jaih Mubarok, *Op. Cit*, p. 35.

[86]United Nations Development Programme (UNDP) and the National Zakat Collection Agency (BAZNAS), *Mapping the Role of Zakat in Achieving the SDGs in Indonesia*, (Jakarta: UNDP Indonesia, 2019), pp. 35-40. This report comprehensively maps the contribution of zakat funds to 10 of the 17 Sustainable Development Goals in Indonesia,

In conclusion, the reconstruction of the authority of the Religious Courts through the four proposed pillars of legislative reform, institutional strengthening, innovation in procedural law, and digitalization represents a comprehensive and in-depth response to the problem of jurisdictional conflicts and criminalization in Islamic philanthropy disputes in Indonesia. This model is not only curative in addressing the chronic ailments of the current legal system, but also promotive and preventive in building a healthy, accountable, and highly competitive Islamic philanthropy ecosystem. Its implementation requires strong political will from the government and the House of Representatives, as well as full commitment from the Supreme Court, the Police, and the Attorney General's Office. However, investment in this reform is an investment in Indonesia's future, where the law is enforced to serve substantive justice and Islamic philanthropy can optimally play its strategic role in realizing a just, prosperous, and sustainable society.

Conclusion

1. Based on the analysis, it was concluded that the main trigger for jurisdictional conflicts and the rampant criminalization of Islamic philanthropy managers (amil and nazhir) is fundamental and systemic regulatory weaknesses. These weaknesses are manifested in three crucial aspects: first, the overlapping sanction norms between sectoral laws such as the Waqf Law and the Zakat Law and the Criminal Code (KUHP); second, the absence of a *gatekeeping mechanism* (legal filter) that expressly grants supremacy to Religious Courts to examine civil or administrative aspects first before a case can be processed criminally; and third, the sharp paradigm disparity between general law enforcement officers who are punitively oriented and judges in Religious Courts who are restorative-sharia oriented. This absence of clear jurisdictional demarcation creates legal uncertainty, opening up space for *forum* shopping (the practice where disputing parties choose the judicial forum deemed most beneficial to their interests). and makes well-intentioned philanthropic managers vulnerable to criminalization, which ultimately hinders productivity and innovation in managing community assets.
2. To address these challenges, a comprehensive and visionary model for reconstructing the authority of the Religious Courts is needed. This model is formulated through four interconnected pillars. The first pillar is legislative reform by embedding the principle of the supremacy of the jurisdiction of the Religious Courts as a prerequisite (*prejudicieel geschil*) in the law. The second pillar is institutional strengthening and coordination through increasing the capacity of judges and establishing a binding joint working mechanism between the Supreme Court, the Police, and the Prosecutor's Office. The third pillar is innovation in procedural law that is restorative in nature and progressively integrates consideration of the impact of decisions on achieving the Sustainable Development Goals

including poverty alleviation (SDG 1), quality education (SDG 4), and decent work (SDG 8). The report also emphasizes that optimizing this potential is highly dependent on improving governance, transparency, and public trust in zakat management institutions.

(SDGs). The fourth pillar is digitalization and transparency through the development of an integrated information system for dispute management and monitoring. The simultaneous implementation of this model is believed to not only provide legal certainty and protection for philanthropic administrators but also transform the Religious Courts into proactive judicial institutions supporting the role of Islamic philanthropy as a strategic partner in national development.

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