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GRANT DISPUTES UNDER HAND REVIEWED FROM SHARIA ECONOMIC LAW (CASE STUDIES AT THE MTI SA FOUNDATION AND THE GM WAQF FOUNDATION)

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Abstrak: This study examines a land grant (*hibah*) dispute between the MTI SA Foundation and the GM Waqf Foundation in Agam Regency, West Sumatra, Indonesia. The dispute arose from the existence of two separate grant documents concerning the same parcel of land, resulting in overlapping claims of ownership and management rights over educational facilities established on the property. This research aims to analyze the legal status of undocumented land grants, identify the factors contributing to the dispute, and evaluate the dispute resolution mechanism from the perspective of Islamic Economic Law. The study employs an empirical juridical approach through field research, utilizing interviews, observations, and documentary analysis. Data were analyzed qualitatively through data reduction, categorization, interpretation, and legal analysis based on Islamic legal principles and Indonesian positive law. The findings reveal that the dispute was primarily caused by administrative deficiencies in the grant process, the absence of formal land registration, ambiguities concerning the legal status of the transferred property, and conflicting interpretations regarding conditional grants. From the perspective of Islamic Economic Law, the validity of a grant transaction requires the fulfillment of legal pillars and conditions, including certainty of ownership transfer, legal capacity of the parties, and clarity of the object granted. The mediation and *tahkim* processes facilitated by the Ministry of Religious Affairs constituted an important initial effort toward reconciliation; however, they have not yet provided definitive legal certainty for the parties involved. Consequently, formal judicial mechanisms remain necessary to establish legal certainty, protect property rights, and ensure the continuity of educational activities in accordance with the objectives of Islamic law (*maqāṣid al-sharīʿah*), particularly the protection of property (*ḥifẓ al-māl*)

Keyworsd: *Contract; Sharia Economic Law; Dispute Resolution*

INTRODUCTION

Land grant disputes are one of the legal issues that often arise due to weak land administration, lack of formal registration, and non-fulfillment of legality aspects in the process of transferring land rights. Such conditions can cause legal uncertainty regarding the status of asset ownership and management, especially if the grant land is used for social and educational purposes. From the perspective of Sharia Economic Law, a grant is a tabarru' contract that aims to transfer the ownership rights of a property to another party voluntarily without any compensation, while still fulfilling the applicable legal principles, conditions, and procedures in order to create legal certainty for the parties (Az-Zuhaili, 2011; KHES, Pasal 685–727).

From the perspective of Sharia Economic Law, a grant is a tabarru' contract that aims to transfer the ownership rights of a property from the grantor (wahib) to the grantee (mauhub lahu) voluntarily without compensation. The validity of the hibah is not only determined by the fulfillment of the pillars and conditions of the hibah, but also requires certainty about the object of the hibah, the agreement of the parties, as well as the control or handover of the object of hibah (qabḍh) to the recipient of the hibah (Az-Zuhaili, 2011; Haroen, 2007). In addition, in the context of positive Indonesian law, the transfer of land rights through grants needs to be supported by adequate administration, such as authentic deeds and registration with the competent institutions, in order to provide legal protection and prevent future disputes (Government Regulation No. 24 of 1997; KHES Articles 685–727). Therefore, the existence of grant documents that do not have perfect evidentiary strength has the potential to cause differences in interpretation regarding the status of ownership and utilization of grant objects, especially if the same object is transferred to more than one party.

Grant disputes not only raise legal problems regarding the status of land ownership, but also have quite wide social implications for the sustainability of educational institutions. The unclear legal status of land used as a means of education has the potential to hinder the management of institutions, disrupt teaching and learning activities, and reduce the level of public trust in grantee institutions. In the context of Islamic educational institutions, the sustainability of the social function of grant assets needs to be maintained so that the purpose of granting grants as an instrument for the benefit of the people can still be realized optimally (Chapra, 2000; Haroen, 2007).

One of the cases that reflects this problem occurred between the MTI SA Foundation and the GM Waqf Foundation in Agam Regency, West Sumatra. Both foundations claim to have the right to a piece of land used as a location for education. The MTI SA Foundation stated that the land has been donated to their foundation since 2010 and has been used for the construction of educational facilities. On the other hand, the GM Waqf Foundation also filed a claim for the same land based on the grant documents it owned. The difference in claims raises disputes regarding the status of ownership and land management rights which ultimately have an impact on the sustainability of educational activities that have been running on the grant object (PP No. 24 Tahun 1997; Subekti & Tjitrosudibio, 2009).

The dispute between the two foundations is rooted in the existence of grant documents that are used as the basis for land ownership by each party. The document is in the form of a grant certificate that is made by hand and not registered according to the applicable legal mechanism. In addition, the document is not equipped with a deed made by the Land Deed Making Officer (PPAT), a notary deed, or proof of registration with the National Land Agency (BPN). In fact, adequate administration and legal recording are important instruments in providing legal certainty for the transfer of land rights and minimizing the occurrence of disputes in the future. (Interview with DE, Foundation Administrator, Koto Alam, February 16, 2025).

Based on the results of field research, it is known that in 2010 a land grant was made by a grantor to an educational institution under the auspices of the MTI SA Foundation for the construction of learning buildings, dormitories, offices, and other educational facilities. However, in 2018 the same grantor again made a grant for the same land object to an educational institution under the auspices of the GM Waqf Foundation. This condition gives rise to dualism of claims for the same grant object, thus giving rise to a dispute between the two foundations. The dispute is increasingly complex because each party has documents that are used as the basis for the claim, while the grant process is not supported by adequate land administration. As a result, there is legal uncertainty regarding the status of land ownership and utilization located in Padang Gadih, Jorong Koto Alam, Nagari Salareh Aia Timur, Palembayan District, Agam Regency.

Several previous studies have examined grants from normative aspects, both related to concepts, harmony, conditions, and their position in Islamic law and positive law in Indonesia. Jamaludin's (2015) research focuses on the juridical aspect of grants from the perspective of Islamic law, while Sitepu (2015) emphasizes more on the implementation of grants according to the provisions of the Compilation of Islamic Law. Another study conducted by Ansori (2021) discussed the settlement of land disputes through Islamic law and customary law approaches, while Vahlevi (2021) analyzed the tahkim mechanism as an alternative to resolving sharia economic disputes. However, these studies have not specifically addressed grant disputes over the same land objects that are conducted more than once to different grantees, particularly those conducted through an under-handed grant mechanism without adequate land administration support. In addition, studies on the validity of grants under hand and the effectiveness of their settlement through non-litigation mechanisms in the perspective of Sharia Economic Law are still relatively limited. Therefore, this study seeks to fill this gap by analyzing grant disputes between the MTI SA Foundation and the GM Waqf Foundation, especially related to the validity of grants, legal certainty on the disputed grant objects, and dispute resolution through the Sharia Economic Law approach (Jamaludin, 2015; Stephens, 2015; Ansori, 2021; Vahlevi, 2021).

METHOD

This research is a field research with an empirical juridical approach. This approach is used to examine the legal provisions governing grants and relate them to the empirical facts found in the field related to grant disputes between the MTI SA Foundation and the GM Waqf Foundation. The empirical juridical approach was chosen because the research not only examines normative aspects sourced from Sharia Economic Law and laws and regulations, but also examines the implementation and practice of resolving grant disputes that occur in society (Soekanto, 2014; Fajar & Achmad, 2015).

The research was conducted in Padang Gadih, Jorong Koto Alam, Nagari Salareh Aia Timur, Palembayan District, Agam Regency, West Sumatra. This location was chosen because it was the place where the land grant dispute occurred between the MTI SA Foundation and the GM Waqf Foundation which was used as the object of research. The object of the research is focused on the validity of the grant under hand, the dualism of the claim of ownership over the object of the grant, and the dispute resolution mechanism in the perspective of Sharia Economic Law.

The source of research data consists of primary data and secondary data. Primary data was obtained through interviews with parties involved in the dispute, namely the management of the MTI SA Foundation, the management of the GM Waqf Foundation, grantors, community leaders, and other related parties who understand the chronology of the dispute. Informants were selected using the purposive sampling technique, which is the selection of informants based on the consideration that they have information relevant to the focus of the research. Meanwhile, secondary data was obtained from grant documents, the Compilation of Sharia Economic Law, the Compilation of Islamic Law, laws and regulations, and literature related to grants and dispute resolution.

The data collection technique was carried out through observation, in-depth interviews, and documentation studies. The interview was conducted in a semi-structured manner to obtain information about the chronology of the grant, the basis of the parties' claims, and the dispute resolution process that has been taken. Documentation is carried out on grant letters, foundation documents, minutes of deliberations, and other documents related to the object of research.

To ensure the validity of the data, this study uses the source triangulation technique, which is to compare information obtained from various informants with available documents. In addition, triangulation of methods is carried out through the combination of interviews, observations, and documentation to obtain more comprehensive and scientifically accountable data (Moleong, 2018). The data was analyzed qualitatively using the Miles, Huberman, and Saldaña interactive analysis model which included data reduction, data presentation, and conclusion drawn. The analysis was carried out by linking empirical findings in the field with the provisions of Sharia Economic Law, Compilation of Sharia Economic Law, as well as Islamic law principles related to grants and dispute resolution (Miles et al., 2014).

The legal analysis in this study uses the perspective of Sharia Economic Law by focusing on the fulfillment of the principles and conditions of grants, the validity of the grant object, legal certainty in the transfer of rights, and dispute resolution mechanisms through the ṣulḥ and taḥkīm approaches. The analysis was used to assess the suitability of grant practices that occurred with sharia principles and positive legal provisions in Indonesia.

RESULTS AND DISCUSSION

Result

The Status of Grant Land in the Perspective of the Disputing Parties

One of the findings of the study shows that there is a difference in perception regarding the legal status of land that is the object of dispute between the MTI SA Foundation and the GM Waqf Foundation. In the social practice of the community, the land is better known as waqf land. The mention develops in the community and the managers of educational institutions, even though based on the available transaction documents, the status of the land is a grant. This difference in perception shows that there is a discrepancy between the community's understanding and the legal document that is the basis for the transfer of land rights.

Based on the results of an interview with one of the administrators of the GM Waqf Foundation who took office after the amendment of the foundation deed, information was obtained that the land received in 2018 had the status of a grant and not a waqf. The informant explained that the mention of land as waqf was more due to the lack of understanding of some parties to the content of the transaction documents that had been made.

The land we received in 2018 has the status of grant land, not waqf land. Those who declare the land as waqf are parties who do not directly see the existing transaction documents. Based on the letter we have, the land is a conditional grant.' (DE, Management of the GM Waqf Foundation, interview in Koto Alam, March 17, 2025).

These findings show that the difference in perception regarding the status of the object of dispute is not only influenced by the existence of the grant document, but also by the parties' understanding of the substance of the transaction that has been carried out. From the perspective of Sharia Economic Law, grants and waqf have different legal characteristics. Waqf is permanent (ta'bid al-manfa'ah) so that the property that has been waqf cannot be transferred, inherited, or traded. On the other hand, a grant is a transfer of ownership rights that is carried out voluntarily and results in the transfer of ownership rights to the grantee after the fulfillment of the principles, conditions, and handover of the grant object (qabḍh) (Az-Zuhaili, 2011; Haroen, 2007).

The results of the study also show that the perception of land as waqf is growing because the information circulating in the community is not based on direct examination of transaction documents. As a result, the term waqf land has become a widely used term even though it is not in accordance with the legal status listed in the grant document. This condition shows that weak documentation and lack of legal understanding can cause differences in interpretation regarding the status of an asset that has been transferred through a grant contract.

Similar information was also conveyed by one of the old administrators of the MTI SA Foundation who was directly involved in the grant process in 2010. The informant emphasized that the transaction carried out was a conditional grant and not a waqf as understood by some people.

'The transaction made in 2010 was a conditional land grant. This can be seen in the letter that has been signed by both parties. Thus, the information that states that the land is a waqf is not in accordance with the existing documents. During the grant process, I was also directly involved in the management of the land.' (ES, Deputy Head of Madrasah MTI SA, interview at Kp. Tangah, May 26, 2025).

Based on these findings, it can be understood that the object of dispute is basically the grant land that was granted with certain conditions. According to the informant's statement, the grant is intended for the development of Islamic educational institutions, must not be traded, and must be immediately utilized within a certain period of time. Although these conditions are not listed in detail in the grant document, the parties believe that the terms were agreed orally at the time the grant contract was made.

In the perspective of Sharia Economic Law, the existence of conditional grants (al-hibah al-muqayyadah) is allowed as long as the conditions set do not conflict with sharia principles, do not eliminate the ownership rights of the grantees, and provide benefits for the parties (KHES Article 685–727; Az-Zuhaili, 2011). However, conditions that are only agreed orally without being explicitly stated in a written document have the potential to cause differences in interpretation and legal uncertainty, especially when there is a change in the management of the foundation or claims from other parties for the same grant object appear. This condition then becomes one of the factors that trigger a dispute between the MTI SA Foundation and the GM Waqf Foundation.

Dispute Resolution between GM Waqf Foundation and MTI SA Foundation

The MTI SA Foundation does not accept the ownership claims submitted by the GM Waqf Foundation against the disputed grant land object. The MTI SA Foundation is of the opinion that the land was first donated to their institution in 2010 for the benefit of the development of educational institutions. Therefore, the claim submitted by the GM Waqf Foundation is seen as contrary to the management rights that have been previously owned. The dispute then developed into a dispute involving various parties, including security forces and government agencies.

Efforts to resolve disputes at an early stage were carried out through mediation facilitated by the Palembayan Sector Police (Polsek). The two foundations and the grantees were called to deliberate to find a peaceful solution. However, the mediation process has not resulted in an agreement that is acceptable to both parties so that the dispute continues. This condition shows that the deliberation based dispute resolution mechanism has not been able to accommodate the differences in interests of the parties to the dispute.

The development of the dispute was further marked by the submission of an application for an operational permit by the Jama'atul Muslimin Integrated Islamic Boarding School under the auspices of the GM Waqf Foundation to the Ministry of Religion of Agam Regency. The application is supported by the recommendation of the Palembayan District Religious Affairs Office (KUA) Number 54/Kua.03.6.7/KP.02.3/01/2023 regarding recommendations for operational permits for Islamic boarding schools. Furthermore, the Ministry of Religion of Agam Regency forwarded the application to the Regional Office of the Ministry of Religion of West Sumatra Province for follow-up.

In response to the request, the Regional Office of the Ministry of Religion of West Sumatra Province initiated a deliberation involving the Head of the Office of the Ministry of Religion of Agam Regency, the management of the MTI SA Foundation, and the management of the GM Waqf Foundation. The deliberations held on August 10, 2023 resulted in several important agreements, namely: (1) the land located in Padang Gadih was declared to belong to the MTI SA Foundation based on the grant given by the grantor; (2) the assets that have been built on the land are recognized as belonging to the MTI SA Foundation; and (3) the Ministry of Religion will not issue an operational permit to the GM Waqf Foundation before obtaining approval from the MTI SA Foundation as the party declared to have the right to manage the land.

The results of the deliberations were then followed up by the MTI SA Foundation through the issuance of a warning letter Number 167/MTs.S.TI/VII/SA-2023 addressed to the trustees, administrators, and supervisors of the GM Waqf Foundation. The letter in principle contains a request that the GM Waqf Foundation stop institutional activities in the disputed location, lower the identity of the foundation installed in the MTI SA area, and not carry out educational activities without the approval of the MTI SA Foundation. After the issuance of the letter, the operational activities of the GM Waqf Foundation at the dispute location were stopped and the learning process was no longer carried out at that place.

However, in 2025 the GM Waqf Foundation will make management changes through Notary Deed Number 02 dated January 6, 2025 and seek to reactivate educational activities by opening admissions for new students. However, the effort was again rejected by the MTI SA Foundation on the grounds that the ownership status and land management rights had been decided through previous deliberations. As a result, the Ministry of Religion of Agam Regency did not issue an operational permit for the GM Waqf Foundation because it had not received approval from the MTI SA Foundation as the party considered to have the rights to the location.

This is as expressed by one of the administrators of the GM Waqf Foundation as follows:

'We from the foundation management have tried to re-run the school, but it has not been allowed. The Ministry of Religion of Agam Regency has also not issued an operational permit because there is no approval from the MTI SA Foundation as a foundation that has the right to manage the school in accordance with the previous agreement.'(DE,

Management of the GM Waqf Foundation, interview in Koto Alam, June 19, 2025).

The rejection of the re-operation of the GM Waqf Foundation is also outlined in the letter of the MTI SA Foundation Number 68/MTs.S.TI/SA/IV/2025 addressed to the Head of the Office of the Ministry of Religion of Agam Regency. In the letter, it is stated that all assets located on the disputed land object, including learning buildings, dormitories, sanitation facilities, and other supporting buildings are part of the assets of the MTI SA Foundation obtained based on a grant dated April 12, 2010 and have obtained an operational permit from the Regional Office of the Ministry of Religion of West Sumatra Province since 2018.

This information was strengthened by the results of an interview with the Head of MTs S TI SA who stated:

'We submitted a letter of rejection to the Head of the Office of the Ministry of Religion of Agam Regency based on administrative evidence and grant documents that we have.' (BY, Head of MTs S TI SA, interview in Kampung Tangah, July 03, 2025).

Based on the findings of the research, the dispute resolution mechanism taken by the parties prioritizes a deliberation approach (ṣulḥ) with facilitation from government institutions, especially the Ministry of Religion of West Sumatra Province. However, the results of the deliberation have not been able to resolve the dispute comprehensively because there are still parties who maintain claims of ownership of the grant object. From the perspective of Sharia Economic Law, dispute resolution through ṣulḥ and taḥkīm can be done as long as there is agreement between the parties to accept the results of the deliberations as a binding decision. However, if the agreement cannot be accepted by either party, settlement through litigation is still required to provide legal certainty on the ownership status and management of the disputed grant object (KHES Article 1021–1038; Az-Zuhaili, 2011).

Discussion

Dispute Resolution Analysis

The dispute resolution between the GM Waqf Foundation and the MTI SA Foundation shows that the parties initially prioritized a non-litigation settlement mechanism through deliberation and mediation.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَاۦإِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا

'If you are afraid of a quarrel between the two, then send a peacemaker from the male family and a female peace man. If both of them intend to make improvements, surely Allah will give taufik to them.' (QS. An-Nisā': 35)

This effort was carried out as a form of implementation of the principle of ṣulḥ in Islamic law which prioritizes peace and the benefit of the parties to the dispute. In practice, the dispute resolution process involves various parties, ranging from the police officers, the Ministry of Religion of Agam Regency, to the Regional Office of the Ministry of Religion of West Sumatra Province.

From the perspective of Sharia Economic Law, dispute resolution through deliberation is a recommended mechanism before taking the litigation route. This principle is in line with the words of Allah SWT. in QS. An-Nisā' verse 35 which emphasizes the importance of presenting a third party who has the capacity to mediate the parties to the dispute in order to reach a peaceful agreement. Although this verse is specifically related to domestic conflicts, scholars use it as a normative basis for dispute resolution through the mechanism of ṣulḥ and taḥkīm in various fields of muamalah (Az-Zuhaili, 2011).

In the initial stage, dispute resolution was carried out through mediation facilitated by the Palembayan Sector Police. However, the process has not resulted in an agreement that is acceptable to both parties. The failure of the mediation shows that the conflict that occurred was not only related to differences in perceptions regarding the status of the grant land, but also influenced by the existence of different grant documents, claims on the same object, and the absence of a definitive explanation from the grantor regarding the party who legally received the grant.

Settlement efforts were then continued through deliberations facilitated by the Regional Office of the Ministry of Religion of West Sumatra Province in 2023. The deliberation resulted in an agreement that the land in Padang Gadih is an asset managed by the MTI SA Foundation, as well as the basis for the Ministry of Religion not to issue an operational permit to the GM Waqf Foundation before obtaining approval from the MTI SA Foundation. These findings show that the role of the Ministry of Religion is more appropriately understood as a mediator or facilitator of dispute resolution than as muhakkim in the sense of sharia arbitration.

Conceptually, taḥkīm is a dispute resolution mechanism that is carried out by appointing a third party (muhakkim) based on the agreement of the parties to give a binding decision. In fiqh muamalah, the decision of muhakkim acquires binding force if both parties voluntarily agree to the arbitration process and accept the result of the decision (Wahbah az-Zuhaili, 2011). However, in the case of a dispute between the GM Waqf Foundation and the MTI SA Foundation, there has been no written agreement that shows that the two foundations formally appointed the Regional Office of the Ministry of Religion as a sharia arbitration institution. Therefore, the mechanism taken is more appropriately categorized as mediation or ṣulḥ than taḥkīm in the technical sense of Islamic law.

The findings of the study show that the results of the 2023 deliberations have not been able to resolve the conflict comprehensively. This is evidenced by the re-emergence of the GM Waqf Foundation's activities in 2025 after changes in the foundation's management. The GM Waqf Foundation is trying to reactivate educational activities and open the admission of new students, but these efforts have not received approval from the MTI SA Foundation or operational permits from the Ministry of Religion of Agam Regency.

From the perspective of Sharia Economic Law, a grant is a tabarru' contract which is a permanent transfer of property rights after the fulfillment of the principles, conditions, and submission of the grant object (qabḍh). Therefore, if the first grant has fulfilled all sharia provisions and the grant object has been controlled by the grantee, then in principle the grantor no longer has the authority to grant the same object to another party without the cancellation or agreement of the previous grantee (KHES Article 685–727; Az-Zuhaili, 2011).

However, this study did not find any documents of the cancellation of the first grant or mutual agreement indicating the end of the legal relationship between the grantor and the MTI SA Foundation. Thus, the main problem in this dispute is more accurately understood as a matter of legal certainty for the object of the grant and weak land administration than as a violation of the principle of the contract above the contract. This is because the concept of the contract above the contract (al-'aqd 'ala al-'aqd) in the fiqh of muamalah has its own characteristics and requires a more in-depth study to be applied in the context of the grant for the same object.

Based on this description, it can be understood that the deliberation and mediation mechanism has provided a space for dialogue for the parties to achieve peace. However, the absence of a final agreement shows that settlement through non-litigation channels still faces limitations in providing legal certainty to the status of disputed land ownership. Therefore, settlement through judicial institutions is an alternative that can be considered to obtain a decision that has permanent legal force so that the status of ownership, management of educational assets, and the sustainability of the social function of the grant land can be guaranteed in accordance with the principle of ḥifẓ al-māl as one of the main goals of maqāṣid al-syarī'ah.

CONCLUTION

The dispute between the MTI SA Foundation and the GM Waqf Foundation stemmed from the dualism of grant documents for the same land object carried out by the grantor to two different educational institutions at different times. The first grant was made to the MTI SA Foundation in 2010 for the purpose of developing educational facilities, while the second grant was made to the GM Waqf Foundation in 2018 for the same land object. This condition is exacerbated by weak land administration, the absence of registration of grants through authentic deeds, and the non-registration of land rights with the authorized institutions, thus causing legal uncertainty regarding the status of ownership and management of grant objects.

In the perspective of Sharia Economic Law, a hibah is a tabarru' contract that transfers ownership rights voluntarily and permanently after the fulfillment of the principles, conditions, and handover of the object of hibah (qabḍh). Therefore, if the first grant has met the provisions of sharia and the object of the grant has been controlled by the grantee, then in principle the object cannot be transferred back to another party without valid cancellation or consent from the previous grantee. However, this study has not found any document of cancellation of the first grant or written affirmation from the grantor regarding the party who legally received the grant for the disputed land, so that the dispute that occurred is more accurately understood as a matter of legal certainty and weak grant administration than a mere violation of the principle of contract..

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