



Waqf Perspective of Islamic Law and Law in Indonesia

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Abstract

This research aims to examine the concept and implementation of waqf according to the perspective of Islamic law and how it is regulated in the positive legal system in Indonesia. In Islam, waqf is seen as a charity whose rewards continue to flow as long as the benefits of waqf assets are still felt by the recipient. Meanwhile, in Indonesia, waqf is legally regulated through Law Number 41 of 2004 concerning Waqf and other implementing regulations. This research uses a qualitative method with a normative-juridical approach, namely examining the sources of Islamic law such as the Qur'an and Hadith as well as applicable laws and regulations. The results of the study show that the principles of waqf in Islamic law and laws in Indonesia have harmony, especially in terms of the eternity of waqf assets and their designation for the public good. However, there are some differences in terms of technical implementation and administration.

Keywords: *Waqf; Islamic Law; Indonesian Laws*

Abstrak

Penelitian ini bertujuan untuk mengkaji konsep dan pelaksanaan wakaf menurut perspektif hukum Islam serta bagaimana pengaturannya dalam sistem hukum positif di Indonesia. Dalam Islam, wakaf dipandang sebagai amal jariyah yang pahalanya terus mengalir selama manfaat harta wakaf masih dirasakan oleh penerima. Sementara itu, di Indonesia, wakaf diatur secara legal melalui Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dan peraturan pelaksana lainnya. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif-yuridis, yaitu menelaah sumber-sumber hukum Islam seperti Al-Qur'an dan Hadis serta peraturan perundang-undangan yang berlaku. Hasil kajian menunjukkan bahwa prinsip-prinsip wakaf dalam hukum Islam dan Undang-Undang di Indonesia memiliki keselarasan, terutama dalam hal keabadian harta wakaf dan peruntukannya untuk kemaslahatan umum. Namun, terdapat beberapa perbedaan dalam hal teknis pelaksanaan dan administratif.

Kata Kunci: *Wakaf; Hukum Islam; Undang-Undang Indonesia*

Introduction

The implementation of waqf in Indonesia still faces various complex problems even though it has been regulated in Islamic law and strengthened by national laws and regulations.¹ One of the main problems is the low public understanding of the concept and

¹ Ismail Jalili dkk., "The Role of Qawā'id Fiqhiyyah in Strengthening Waqf Law: A Review of Challenges and Solutions in Indonesia," *Al-Qadhafi: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 226–50.

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law of waqf, both in terms of sharia and state regulations.² Many people still consider waqf to be limited to giving land for the construction of mosques or tombs, even though the scope of waqf is much wider, including productive waqf and money waqf.³ In addition, there are still cases of waqf that are not officially registered, causing legal disputes between heirs and waqf recipients due to the absence of formal legal evidence.⁴ On the other hand, the role of nadzir (*waqf* managers) is also often not optimal, both due to lack of competence and weak supervision and guidance from related institutions.⁵ As a result, many waqf assets are abandoned or not used productively. This shows that there is a gap between the legal theory of waqf according to Islam and laws and regulations and the reality of implementation in Indonesian society.

The Indonesian Islamic community has long known waqf as a legal act in the field of material law.⁶ Indonesian Muslims who have social and religious concerns have implemented many waqf teachings, this is proven by the establishment of many places of worship such as prayer rooms, mosques, educational places of Islamic boarding schools spread throughout the territory of the Republic of Indonesia, religious schools such as Madrasah Ibtidaiyah, Tsanawiyah, Aliyah and Higher Education which come from waqf assets.⁷ This phenomenon shows how high the enthusiasm of the previous Muslims in this country was to practice Islamic teachings and advance the religious and socio-economic knowledge of Muslims as the largest population of the Republic of Indonesia. The benefits of waqf are widely felt by the community, therefore the government has an interest in regulating the implementation of waqf so that it is carried out in accordance with Islamic law, for this purpose the government issues regulations in the field of waqf, including

² Ibrahim Adeniyi Abdur-Rauf dan Engku Muhammad Tajuddin Engku Ali, "Waqf as a Poverty-Alleviating Instrument: Leveraging Shariah Governance Principles for Effective Implementation in Nigeria," *TWIST* 19, no. 2 (2024): 628–38.

³ Muhammad Ayub dkk., *Waqf in Islamic economics and finance: An instrument for socioeconomic welfare* (Routledge, 2024), <https://www.taylorfrancis.com/books/mono/10.4324/9781003477549/waqf-islamic-economics-finance-muhammad-ayub-muhammad-ismail-khurram-khan>.

⁴ K. N. Alfina dkk., "Examining Legal Certainty in Online Cash Waqf: The Role of Witnesses in Indonesian Islamic Philanthropy," *Теоретическая и прикладная юриспруденция* 24, no. 2 (2025): 9–23.

⁵ Leny Nofianti dkk., "Cash waqf innovation in Islamic financial institutions and its governance issues, case studies: Indonesia, Malaysia, Türkiye," *Journal of Islamic Accounting and Business Research*, Emerald Publishing Limited, 2024, <https://www.emerald.com/insight/content/doi/10.1108/jiabr-12-2023-0420/full/html>.

⁶ Rindang Dwi Putri Nirmala dkk., "Legal Status of Profession Waqf from a Positive legal Perspective in Indonesia," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 1085–91.

⁷ Ahmad Faisal dkk., "Unveiling Waqf's Role and Impact on Society Welfare: Deep Study from Indonesia," *International Journal of Islamic Finance* 2, no. 1 (2024): 19–47.

through Government Regulation Number: 28 of 1997 concerning the Implementation of Waqf of Land Ownership and Law Number 41 of 2004 concerning "Waqf".⁸ Given the importance of waqf in socio-economic and religious life, the author through this article will examine "waqf" in Islamic law.

Several previous studies have discussed waqf from the perspective of Islamic law and positive law in Indonesia. For example, a study by Wali Saputra. This study highlights the compatibility of principles between Islamic law and the Waqf Law, but also finds differences in procedural aspects, such as the recording and management of waqf that are not fully in accordance with traditional waqf practices in the community.⁹ Another research by Muhamad Nafik Hadi Ryandono et. al., shows that even though cash waqf has been legally recognized, its implementation is still constrained by public understanding, institutional infrastructure, and the lack of socialization from waqf institutions.¹⁰ Furthermore, Agis Muksin examined the effectiveness of the role of nadzir in managing productive waqf assets. He found that there are still many nadzir who do not have adequate managerial and financial skills, so that it has an impact on the low productivity of waqf assets.¹¹

This research has a novelty in its approach that not only compares the perspective of Islamic law and Law Number 41 of 2004 concerning Waqf normatively, but also emphasizes the implementation gap that occurs in society. In contrast to previous research that tended to focus on formal theoretical or legal aspects separately, this study examines the integration between sharia norms and state regulations and evaluates their effectiveness in practice in the field. In addition, this research raises contemporary issues related to the challenges of implementing productive waqf and cash waqf, and highlights the strategic role of nadzir in the context of modern management in accordance with sharia principles and national law. Thus, this research makes a new contribution in strengthening the synchronization between Islamic law and positive law in Indonesia in the development of waqf as an instrument of social and economic development.

⁸ Qaid Qushayyi Yusran dan Andri Nirwana, "The Practice of Changing the Status of Change of Waqf Property in the Islamic Social Economic View," *Journal of Ecohumanism* 3, no. 6 (2024): 229–38.

⁹ Wali Saputra, "Productive Waqf Accounting: A Systematic Literature Review of Financial Recording and Reporting Models," *Jurnal Ilmiah Literasi Indonesia* 1, no. 2 (2025): 226–41.

¹⁰ Muhamad Nafik Hadi Ryandono dkk., "Overcoming barriers to optimizing cash waqf linked sukuk: A DEMA^{TEL}-ANP approach," *Social Sciences & Humanities Open* 11 (2025): 101588.

¹¹ Agis Muksin, "Productive Waqf Management in Improving the Quality of Education in Rural Areas.," *Global Business & Management Research* 16, no. 2 (2024), <http://gbmrjournal.com/pdf/v16n2s/V16N2s-70.pdf>.

Method

This study uses a qualitative method with a normative-juridical approach. This approach was chosen because the focus of the research lies in the analysis of the legal norms that govern waqf, both in Islamic law and in the Indonesian national legal system. The main data used is secondary data in the form of literary literature, which includes Islamic legal sources such as the Qur'an, Hadith, and fiqh books, as well as relevant national laws and regulations, such as Law Number 41 of 2004 concerning Waqf and its implementing regulations.¹² In addition, this study also examines documents, journals, scientific articles, and previous research results related to the implementation of waqf in Indonesia. Data analysis is carried out in a descriptive-analytical manner, namely by describing and comparing the content of Islamic legal norms and positive laws, then assessing their alignment and differences, and evaluating the challenges of waqf implementation in the current practice of Indonesian society.¹³

Results and Discussion

Definition of Waqf

The word "*waqf*" in Indonesian comes from the Arabic word وقف, which means to hold or stop. Another word that is often used synonyms for waqf is حبس which means something that is held or stopped, meaning that it is held in the main and the results are used in the way of Allah. Meanwhile, according to the term, it is defined variously according to the differences in the sect adhered to. When defining *waqf*, scholars refer to madhhab imams, such as Abu Hanifah, Maliki, Shafi'i and other imams. According to Abu Hanifah, waqf is holding an object that, according to the law, remains the property of the wâqif in order to use its benefits for virtue.¹⁴ According to the Maliki madhhab, it is argued that the waqf

¹² John W. Creswell dan Cheryl N. Poth, *Qualitative inquiry and research design: Choosing among five approaches* (Sage publications, 2016), <https://books.google.com/books?hl=id&lr=&id=DLbBDQAAQBAJ&oi=fnd&pg=PP1&dq=creswell&ots=ir918MRVx&sig=tNz5z8VXFzdz5f4cdDUX4UCWYqQ>.

¹³ Jennifer Anuchiracheeva-Zamarripa, "A Qualitative Phenomenological Study of Adult School Counselors' Importance and Influence in Supporting Adult Learners" (PhD Thesis, University of La Verne, 2024), <https://search.proquest.com/openview/913fc8067ba7e13e88640ee4f52be306/1?pq-origsite=gscholar&cbl=18750&diss=y>.

¹⁴ Monzer Kahf, "The role of waqf in improving the ummah welfare," *International Seminar on Waqf as a Private Legal Body* 6, no. 1 (2003): 1–26,

does not release the waqf property from the ownership of the wâqif, but the waqf prevents the waqf from taking actions that can relinquish its ownership of the property to others and the wâqif is obliged to give away the benefits and must not withdraw the waqf.¹⁵

Madhhab Shafi'i and Ahmad bin Hambal argue that waqf is the release of the waqf property from the owner of the waqf, after the completion of the waqf procedure.¹⁶ Wâqif may not do anything to the property that is waqf, such as: the owner's treatment by way of his ownership to others, whether in exchange or not. According to Anderson, waqf is holding an object that has eternal substance, which can be taken advantage of to be given in the path of goodness.¹⁷ Another simpler definition given by the Compilation of Islamic Law (KHI), waqf is the legal bargaining of a person or group of people or legal entities that separates part of their property and institutionalizes it forever for the benefit of worship or other public interests in accordance with Islamic teachings.

In article 1 paragraph 1 of Law No. 41 of 2004 concerning Waqf, it is stated that waqf is a legal act of wâqif to separate and/or hand over part of one's property to be used forever or for a certain period of time in accordance with its interests for the purposes of worship and/or general welfare according to shari'a.

Legal Basis of *Waqf*

Islamic jurists cite the foundations of waqf law which include verses of the Qur'an, Hadith, Ijma', and also the ijtiḥad of Islamic jurists.¹⁸ The Qur'an as the first source of law provides general instructions on the practice of waqf, because the practice of waqf is one of those classified as charity, as Allah says: Meaning: "You will not obtain virtue, until you give away some of the wealth you love. And whatever you say, Allah is All-Knowing. (Q.S. Ali Imran: 92). In this verse there is an encouragement to do infak in general on part of what a person has, and included in the general sense of infak is waqf.

Another legal basis is the hadith of the Prophet PBUH, which reads as follows: "If a

https://www.monzer.kahf.com/papers/english/ROLE_OF_WAQF_IN_THE_WELFARE_OF_THE_UMMAH.pdf.

¹⁵ Sidali Ghebrid, "Waqf (Endowment) in the Maliki School and Algerian Law: Its Concept, Provisions, and Means of Preservation," 27 *الصرط*, no. 1 (2025): 355–74.

¹⁶ Yulia Qamariyanti dan Muhammad Fikri Aufa, "Fuqaha and Positive Law Opinions on the Permanent Nature of Waqf Object Submission," *Notary Law Journal* 3, no. 1 (2024): 48–65.

¹⁷ J. N. D. Anderson, "The Religious Element in Waqf Endowments," *Journal of The Royal Central Asian Society* 38, no. 4 (1951): 292–99, <https://doi.org/10.1080/03068375108731420>.

¹⁸ Siti Mashitoh Mahamood, "The legal principles of waqf: An analysis," *Jurnal Syariah* 9, no. 2 (2001): 1–12.

human being dies, then his deeds are cut off, except for three, namely alms jariyah, or knowledge that is taken advantage of, or pious children who pray for him". (HR Muslim) The giving of alms mentioned in the hadith of Abu Huraira is none other than waqf, where most of the objects remain, while the benefits of the waqf objects remain so that the waqif (*waqf* actor) continues to receive the reward of his goodness even after his death.

The scholars classify waqf worship as a charity of charity whose benefits remain even though the person who practices it has passed away. Of course, in the simplest view, the continuity of the reward in question is related to the aspect of benefit that can be taken continuously by the benevolent party (the interests of many people). The principle of usefulness is the foundation that is most relevant to the existence of the object itself.

In performing waqf, one should pay attention to the principles contained in the law of muamalah, the principle in question is basically all forms of muamalah are mubah, except those stipulated by the Qur'an and the Sunnah of the Prophet. Muamalah is carried out on a voluntary basis, without containing elements of coercion. Muamalah is carried out on the basis of consideration of bringing benefits and avoiding madharat in people's lives. Muamalah is carried out by maintaining the value of justice, avoiding elements of persecution, elements of taking advantage of narrowness.

Islamic jurists have believed in the existence and validity of waqf and Muslims have practiced it from centuries to the present day.¹⁹ The detailed provisions regarding waqf are based on the ijtiḥad of Islamic legal experts. From the time of Khulafâ' ar-Râsyidîn until now, they have discussed and developed the law of waqf through ijtiḥad. Therefore, most of the waqf laws in Islam are determined as a result of ijtiḥad using various ijtiḥad methods such as qiyas, maslahah mursalah. The interpretation that is often rolled out by scholars is that this waqf is very synonymous with sadaqah jāriyah, which is a deed of worship that has rewards that continue to flow as long as it can still be used by human life.

In Indonesian law, the sources of waqf regulation include Government Regulation No. 28 of 1977 concerning Waqf of Owned Land, Permendagri No. 6 of 1977 concerning Land Registration regarding *Waqf* of Owned Land, Permenag No. 1 of 1978 concerning the Regulation on the Implementation of Government Regulation No. 28 of 1977 concerning Waqf of Owned Land, and various decrees of the Minister of Religion and the Compilation of Islamic Law (KHI). More important above all is Law Number 41 of 2004 concerning Waqf

¹⁹ Muhammad Zubair Abbasi, "The classical Islamic law of Waqf: A concise introduction," *Arab Law Quarterly* 26, no. 2 (2012): 121–53.

and Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf. Article 70 of the Waqf Law Number 41 of 2004 affirms that all provisions of laws and regulations related to waqf remain valid until they are not adjusted and/or replaced by new provisions based on this Law.

Conditions of *Waqf* (Nazîr) manager

Nazîr waqf is a person, organization or legal entity that holds the mandate to maintain and manage waqf property as best as possible in accordance with its form and purpose.²⁰ If the nazîr is an individual, there are several conditions that must be met, namely: Indonesian citizens, Muslims, adults, trustworthy, physically and spiritually capable, not hindered from committing legal acts. For nazîr, organizations must meet the requirements of individual nazîr and organizations engaged in the social, educational, social and/or religious fields of Islam. The requirements of the legal entity nazîr, in addition to meeting the requirements of the individual nazîr, the Indonesian legal entity formed in accordance with the applicable laws and regulations and the legal entity concerned is engaged in the social, educational, social and/or religious fields of Islam.

The first opinion states that waqf must be permanent, is an opinion supported by the majority of scholars. The majority of scholars from the Shafi'iyah, Hanafiyah, Hanabilah (except Abu Yusuf in one narration), Zaidiyah, Ja'fariyah and Zahriyah are of the opinion that waqf should be given forever (permanently) and a clear statement should be included for it. The second opinion states that waqf can be temporary is supported by fuqaha from the Hanabilah, some from the Ja'fariyah and ibn Suraij from the Shafi'iyah. According to them, the temporary waqf is valid both in the long and short term.

The Essence of *Waqf* Property

One of the important elements in waqf is the object that is waqf. Without waqf objects, waqf objects cannot be realized. According to fiqh and positive law, waqf objects have similarities in many ways, namely: the waqf object must be useful and have economic value in the sense that it can be traded; eternal, both object and profit; and the benefits can be used by waqf recipients. One of the conditions for the property that can be waqf is eternal or eternal. Based on this condition, all assets to be waqf must be in the form of eternal assets,

²⁰ Ade Salamah, "Optimizing Nazhir's Role in Managing Waqf to Realize Economic and Social Development in Bekasi City," *Proceeding International Conference on Law, Economy, Social and Sharia (ICLESS)* 2 (2024): 882–94, <https://proceeding.icless.net/index.php/icless22/article/view/130>.

so that the waqf can be enshrined. Therefore, Hanafiyah scholars determined that the basis of waqf property is immovable property, both natural and artificial. If the property is in the form of movable property, the waqf is invalid. In the Hanafi madhhab, the rule is known: "In principle, what is valid for waqf is immovable objects". The source of this rule is the most influential principle of waqf, namely ta'bid (durable).

The Hanafi madhhab allows things to move as an exception to the principle of waqf, as long as the conditions are met.²¹ First, a moving object must always be accompanied by a stationary object. There are two things like this, namely because it is very closely related to fixed objects, such as buildings and trees and something that is specifically provided for the benefit of fixed objects, such as tools for plowing rice fields. Second, it is permissible to endow movable objects based on the *aṣar* (behavior) of the companions who allow the endowment of weapons, armor used for war. Third, it is permissible to bring knowledge and is something that can be done based on *'Urf* (tradition), such as endowment of books and mushaf al-Quran. The replacement of waqf objects that are feared to be impermanent is so that the benefits can be permanent. They also allow you to donate items that have been used before.

The scholars who follow Imam Shafi, i are of the opinion that in waqf their property is seen from the permanence of the function or benefit of the property, both immovable goods, movable goods and shared goods (common property). According to madhhab Maliki, it is also permissible to waqf movable objects, whether they are attached to others, whether there is a *nash* that allows it or not, because this madhhab does not require ta'bid (must be forever) on waqf, even this madhhab waqf is valid even if it is temporary. According to the opinion of the Hambali madhhab, it is permissible to endow property, both moving and immovable, such as waqf vehicles, weapons for war, livestock and books that are useful even for movable objects such as soil, plants and other objects.

Waqf Problems in Indonesia

In Indonesia, many educational institutions have been established and developed with waqf assets, including: Pondok Modern Gontor, al-Khairat Education Foundation, Islamic University of Indonesia (UII), and Sultan Agung University (Unisula). These educational institutions have successfully utilized their waqf resources for the development

²¹ Mustafa Kamal dkk., "Method of Instinbāth Law of Money Waqf Abu Hanifah Immediate Perspective," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 2, no. 1 (2019): 304–13.

of educational institutions. These educational institutions have succeeded in financing educational activities by providing good educational facilities and infrastructure through the proceeds of waqf assets. But it should be noted that these educational institutions fail to provide free education to children who cannot afford or need it.

Currently, the management and management of waqf in Indonesia is still concerning. As a result, quite a lot of waqf assets are abandoned in their management, and there are even lost waqf assets. One of the reasons is that Muslims in general only endow land and school buildings, in this case the wakif does not think about the operational costs of the school, and the nazhir is less professional. Therefore, the study of waqf management management is very important. The role of waqf in strengthening Indonesia's national economy does not exist because waqf is not managed productively. To overcome these problems, waqf must be managed productively through modern management. To manage waqf productively, there are several things that need to be done beforehand. In addition to understanding the conception of waqf fiqh and laws and regulations, nazhir must be professional in developing the property he manages.

Usually, the land donated by Muslims in Indonesia is only enough to build mosques or prayer rooms, so it is difficult to develop. There are indeed some waqf lands that are quite large, but the najir (manager) is not professional. In Indonesia, there are still very few people who endow assets other than land (real estate), even though according to Islamic jurisprudence there are a lot of assets that can be granted, including securities and money. In waqf, one of the most important elements is nazhir. The function or not of waqf depends on the ability of the nazhir. In various countries where waqf can develop and function to empower the economy of the people, waqf is managed by professional nazhir. In Indonesia, there are still few professional nazhir, there are even some nazhir who do not understand the law of waqf, including lack of understanding of their rights and obligations. Thus, waqf is expected to provide welfare to the people, but on the contrary, the cost of its management is constantly dependent on zakat, infaq and shadaqah from the community. In addition, in various cases there are some nazhir who do not hold the trust, such as committing irregularities in management, lack of protection of waqf assets, and other frauds, thus allowing the waqf to change hands. To overcome this problem, the prospective waqf should first pay attention to what the community needs, and in choosing nazhir should consider their competence.

Producing waqf lands and socializing money waqf as capital for productive waqf. Indonesia has extensive waqf land assets. Data from the Directorate of Waqf Empowerment

of the Ministry of Religion of the Republic of Indonesia shows that until 2009, the official waqf land area throughout Indonesia was: 2,719,854,759.72 square meters spread across 451.305 locations. The vast assets of waqf land are potential assets to overcome economic, social and educational problems if managed productively and professionally. The number of Indonesians, who are mostly Muslims, is a potential asset to obtain waqf funds through money waqf instruments. Through money waqf, assets in the form of vacant land can be used for the construction of buildings or other more productive facilities for the benefit of the people. Money waqf can be a source of funding for the management of immovable waqf, including the development of property waqf.

Increase productive waqf, which is waqf that is not directly distributed for education, but is invested first in potential and profitable sectors, such as hotels, hospitals, shops, gas stations, or invested in the financial sector, stocks, and bonds. The Egyptian Ministry of Waqf (Wizārat al-Auqāf al-Mishriyyah) empowers vacant waqf lands by establishing economic institutions. Or by investing waqf assets in Islamic banks (if in the form of money) and various companies, such as iron and steel companies in the form of buying shares and bonds from these companies.

Conclusion

Waqf is a philanthropic instrument in Islam that has strategic value in the social and economic development of the ummah. From the perspective of Islamic law, waqf is understood as charity that is eternal and used for the public good. Meanwhile, in the positive legal system in Indonesia, waqf has been formally accommodated through Law Number 41 of 2004 and other implementing regulations. Normatively, there is harmony between the principles of waqf in Islamic law and national law, especially in terms of the purpose, the nature of the eternity of waqf property, and management for the benefit of the people. However, at the implementation level in the field, various obstacles are still found such as low public understanding, weak nadzir capacity, and suboptimal supervision and guidance from related institutions. Therefore, stronger synergy is needed between the government, religious institutions, and the community to increase waqf literacy, strengthen nadzir institutions, and encourage more productive and professional waqf management so that the purpose of waqf as an instrument of empowerment of the people can be achieved optimally.

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