




The Legal Basis of Waqf in the Indonesian Legal System: Perspectives of Islamic Law and National Law

Ria Sukmawidari^{1*}, Meli Kamelia¹, Andi Mutmainnah Assyahrah¹, Kurniati¹
¹Universitas Islam Negeri Alauddin Makassar, Indonesia

*Corresponding Author: 10100123063@uin-alauddin.ac.id

Abstract: Waqf in Indonesia makes a significant contribution to social development and the improvement of public welfare, both through the management of productive assets and community-based economic empowerment. In terms of regulation, waqf is governed by two legal systems, namely Islamic law and national law, which complement one another within the framework of legal certainty. A compelling issue to examine is the extent to which the national legal provisions on waqf currently practiced align with the principles of Sharia as articulated by classical Islamic scholars. To address this issue, the present study focuses on analyzing the legal foundations of waqf from the perspective of Islamic law and national law. The research adopts a normative approach combined with a qualitative descriptive method by reviewing statutory regulations, legal articles, and relevant literature related to waqf. The findings indicate that Islamic law serves as the primary reference in the formulation of national waqf regulations, particularly Law Number 41 of 2004, which substantively accommodates Sharia values in the legal framework of waqf. These results demonstrate that the harmonization between Sharia and national law has been established in a constructive manner. Strengthening waqf governance in Indonesia in the future requires improving public literacy, optimizing the role of nazhir, and implementing continuous supervision so that the benefits of waqf can be maximized for the welfare of society.

Keywords: Islamic Law, Legal Integration, National Law, Waqf

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Abstrak: Wakaf di Indonesia berkontribusi signifikan terhadap pembangunan sosial dan peningkatan kesejahteraan umat, baik melalui pengelolaan aset produktif maupun pemberdayaan ekonomi berbasis masyarakat. Dalam konteks regulasi, wakaf diatur melalui dua sistem hukum, yaitu hukum Islam dan hukum nasional yang saling melengkapi dalam kerangka perlindungan kepastian hukum. Permasalahan yang menarik untuk dikaji adalah sejauh mana ketentuan hukum wakaf dalam sistem hukum nasional yang dipraktikkan saat ini telah sejalan dengan nilai-nilai hukum syariah yang diajarkan oleh para ulama terdahulu. Untuk menjawab persoalan tersebut, penelitian ini difokuskan pada analisis dasar-dasar hukum wakaf menurut pandangan hukum Islam dan ketentuan hukum nasional. Pendekatan penelitian yang digunakan adalah normatif dengan metode deskriptif kualitatif melalui kajian peraturan perundang-undangan, artikel-artikel hukum, serta literatur yang relevan terkait wakaf. Hasil penelitian menunjukkan bahwa hukum Islam menjadi rujukan utama dalam penyusunan peraturan wakaf nasional, khususnya Undang-Undang Nomor 41 Tahun 2004 yang secara substantif mengakomodasi nilai-nilai syariah dalam pengaturan perwakafan. Temuan ini memperlihatkan bahwa harmonisasi antara syariah dan hukum nasional telah berjalan secara konstruktif. Ke depan, penguatan tata kelola wakaf di Indonesia perlu dilakukan melalui peningkatan literasi masyarakat, optimalisasi peran nadzir, dan pengawasan yang berkelanjutan agar manfaat wakaf dapat lebih maksimal bagi kesejahteraan umat.

Kata kunci: Hukum Islam, Hukum Nasional, Integrasi Hukum, Wakaf

Introduction

According to a 2022 report by the Royal Islamic Studies Center (RISSC), Indonesia is one of the countries with the largest Muslim populations in the world, with nearly 87% of its population identifying as Muslim.¹ As a country with a Muslim majority, Indonesia accommodates Islamic legal principles into its national legal system. This integration is evident in several areas, one of which is the regulation of waqf.² Although Islamic law has been integrated into Indonesia's national legal system, the degree to which Sharia principles have

¹ Widya Sartika Hasibuan and Irsad Lubis, 'Halal Value Chain Integration in Food Court Establishment through Cash Waqf Linked Sukuk: Evidence from Indonesia', *Cogent Business & Management*, 11.1 (2024), 1-18 <<https://doi.org/10.1080/23311975.2024.2385075>>.

² Aristan, Kurniati, and Qadir Gassing, 'Hukum Islam Dalam Dinamika Legislasi Nasional di Indonesia', *Jurnal Tana Mana*, 4.3 (2024), 451-59 <<https://doi.org/10.33648/jtm.v5i3.762>>.

been internalized remains a matter of debate, particularly in the context of waqf regulations.

Waqf, as an Islamic social and economic institution, has been practiced since the time of the Prophet Muhammad SAW and continues to develop in various forms such as mosques, educational institutions, Islamic boarding schools, and waqf land that has not been utilized productively.³ Waqf plays a strategic role in socio-economic empowerment, public service provision, and poverty alleviation.⁴ Based on data from the Indonesian Waqf Board (2025), the national waqf potential is estimated to reach nearly Rp400 trillion per year, with Rp181 trillion coming from cash waqf. There are approximately 451,000 registered waqf assets throughout Indonesia, with a cumulative area exceeding that of Singapore. These assets have grown by an average of 4-5% per year, but only about 10% are being managed productively.⁵ This data emphasizes the need for effective and sustainable waqf management in order to maximize social and economic benefits.

From a fiqh perspective, waqf is considered a sunnah (*mandhub*) act of worship, which is an act that is recommended as a form of drawing closer to Allah through good deeds that are not obligatory.⁶ In national law, the codification of waqf law from Islamic legal thought has been realized through the enactment of Law No. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006 as its implementing regulation. These regulations not only regulate waqf in terms of worship, but also emphasize productive management to achieve public benefit.⁷

³ Nurodin Usman, 'Studi Hadis-Hadis Wakaf Dalam Kitab Sahih Al-Bukhari Dan Fath Al-Bari', *Cakrawala*, 10.2 (2015), 175-93 <<https://share.google/1mCbMBJaiVXyCpt1%0A>>.

⁴ Dwi Dasa Suryantoro, 'Wakaf dalam Pemikiran Hukum Islam yang Dikodifikasi dalam Peraturan Perundang-Undangan di Indonesia', *Legal Studies Journal*, 2.1 (2022), 30-42 <<https://doi.org/10.33650/lj.v2i1.3414>>.

⁵ Badan Wakaf Indonesia, 'Ketua Badan Wakaf Indonesia Ungkap Potensi Wakaf Rp400 Triliun', *BWI.Go.Id*, 2025 <<https://share.google/BdhSxa2uP5YUCh4cS>>.

⁶ Munawir Nurum, Mukhtar Lutfi, and Asni, 'Urgensi Kesadaran Hukum Masyarakat Dalam Praktek Wakaf Produktif Di Kecamatan Tompobolu Kabupaten Gowa', *Al-Qadhu*, 8.1 (2021), 117-29 <<https://doi.org/10.24252/al-qadhu.v8i1.18963>>.

⁷ Dwi Dasa Suryantoro, 'Wakaf dalam Pemikiran Hukum Islam yang Dikodifikasi dalam Peraturan Perundang-Undangan di Indonesia', *Legal Studies Journal*, 2.1 (2022), 30-42 <<https://doi.org/10.33650/lj.v2i1.3414>>.

However, there has been criticism of the waqf legislation process in Indonesia, which is considered to be rife with political interests. Satjipto Rahardjo stated that in the relationship between law and politics, political power is often more dominant, placing the law in a subordinate position.⁸ This situation raises questions about the extent to which national waqf regulations truly reflect Islamic legal principles as taught by the fuqaha.

Several previous studies have examined the aspect of waqf in Indonesia. Juliati and HRP (2024) emphasize the need for productive waqf management to increase economic benefits for the community.⁹ Purkon (2022) examined the development of waqf regulations from the colonial period to the reform era and found that the drafting of regulations did not originate from a single school of jurisprudence.¹⁰ Hasibuan and Lubis (2024) examined the integration of cash waqf with Islamic financial instruments through Cash Waqf Linked Sukuk, which can accelerate the development of a halal food court ecosystem while maintaining sharia compliance.¹¹ Soemitra et al. (2022) highlight the role of Micro Waqf Banks in empowering women microentrepreneurs, finding that mentoring, financing, and mutual accountability systems have a positive impact on business growth.¹² Meanwhile, Rudiarto et al. (2025) studied the management of waqf land in informal urban settlements, showing that good

⁸ Solikhul Hadi, 'Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)', *Jurnal Penelitian*, 8.2 (2014), 319–38 <<https://doi.org/10.21043/jupe.v8i2.840>>.

⁹ Yenni Samri Juliati and Maftah Rizki Addin HRP, 'Wakaf dan Dasar Hukum Wakaf Yenni Samri Juliati', *Jurnal Manajemen Dan Bisnis Ekonomi*, 2.2 (2024), 63–76 <<https://doi.org/10.54066/jmbe-itb.v2i2.1431>>.

¹⁰ Arip Purkon, 'Regulations of Waqf Management in Contemporary Indonesia', *JIEI: Jurnal Ilmiah Ekonomi Islam*, 8.02 (2022), 1237–46 <<https://doi.org/10.29040/jiei.v8i2.5326>>.

¹¹ Widya Sartika Hasibuan and Irsad Lubis, 'Halal Value Chain Integration in Food Court Establishment through Cash Waqf Linked Sukuk: Evidence from Indonesia', *Cogent Business & Management*, 11.1 (2024), 1–18 <<https://doi.org/10.1080/23311975.2024.2385075>>.

¹² Andri Soemitra, Kusmilawaty, and Tri Inda Fadhila Rahma, 'The Role of Micro Waqf Bank in Women's Micro-Business Empowerment through Islamic Social Finance: Mixed-Method Evidence from Mawaridussalam Indonesia', *Economies*, 10.157 (2022), 1–19 <<https://doi.org/10.3390/economies10070157>>.

management improves tenure security and strengthens community social relations, although aspects of reflexivity and traceability are still limited.¹³

Although these studies make important contributions, most of them only highlight certain aspects of waqf, such as the development of cash waqf, economic empowerment, or land management. There has not been much research that explicitly examines the extent to which Islamic legal values (sharia) are substantially integrated into national law. This indicates a research gap regarding the harmonization and normative integration between Islamic law and national law in Indonesia in the context of waqf.

This study aims to fill this gap by analyzing the legal basis of waqf from the perspective of Islamic law and national law, as well as evaluating the level of internalization of sharia principles within the framework of positive law in Indonesia. The results of this study are expected to contribute academically to the development of waqf law studies, particularly in strengthening the harmonization of waqf law between the sharia paradigm and national regulations.

Method

This study is a normative legal research aimed at analyzing the integration of Islamic legal principles into national law concerning waqf. Normative legal research is a process of examining law as norms, rules, principles, doctrines, and related literature to address the legal issues under study.¹⁴

The approach used in this research combines normative-theological and normative-juridical approaches. The normative-theological approach is applied to study the legal values of waqf derived from the Qur'an, Hadith, and the ijthad of fuqaha. Meanwhile, the normative-juridical approach is employed to examine national regulations, including Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006, to assess the extent to which Islamic legal principles have been internalized into positive law. The combination of these

¹³ Iwan Rudiarto and others, 'Tenure Security and Responsible Land Management of Urban Informal Settlements on Waqf Land in Semarang City, Indonesia', *Land*, 14.1369 (2025), 1-21 <<https://doi.org/10.3390/land14071365>>.

¹⁴ Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum* (Yogyakarta: Publika Global Media, 2024) <<https://share.google/1Tke1PH2owAFMIOIK>>.

approaches allows for a comprehensive analysis of the integration between Islamic law and national law.

Data analysis is conducted qualitatively through interpretation of legal materials, particularly primary legal materials, to identify legal gaps, antinomies, or unclear norms.¹⁵ This process is systematic and in-depth, consistent with the definition of qualitative analysis as the effort to process, examine, and interpret data to obtain comprehensive meaning.¹⁶

The data sources in this study include primary, secondary, and tertiary data. Primary data consist of laws and regulations related to waqf, including Law No. 41 of 2004, Government Regulation No. 42 of 2006, other relevant regulations, and the Compilation of Islamic Law (KHI). Primary data also include Qur'anic verses, Hadith, and the opinions of fiqh scholars. Secondary data comprise books, scientific articles, journals, and previous relevant studies. Tertiary data include supporting publications from MDPI, Tanfonline, and Google Scholar that reinforce the analysis. Literature selection is based on relevance, credibility, and timeliness.

Data validity is ensured through source and material triangulation, by comparing information from primary, secondary, tertiary sources, as well as official sources such as the Indonesian Waqf Board (BWI) website. This ensures the accuracy of interpretation and the alignment between Islamic legal principles and national law, making the research findings academically reliable.

Result and Discussion

Legal Basis of Waqf in Islam and National Law

Waqf is a field that brings together the principles of Islamic law and the national legal system. In Islamic law, waqf is positioned as a form of worship with pillars and conditions that determine the validity of a waqf act.¹⁷ Meanwhile, under national law, waqf is regulated through administrative mechanisms and

¹⁵ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020) <<https://share.google/rxqB5tCWIF6CnrJNB>>.

¹⁶ Qomaruddin and Halimah Sa'diyah, 'Kajian Teoritis Tentang Teknik Analisis Data Dalam Penelitian Kualitatif: Perspektif Spradley, Miles Dan Huberman', *Journal of Management, Accounting and Administration*, 1.2 (2024), 77-84 <<https://doi.org/10.52620/jomaa.v1i2.93>>.

¹⁷ Yudi Permana and Meirani Rahayu Rukmanda, 'Wakaf: Tinjauan Fiqh, Dasar Hukum Dan Implementasinya Di Indonesia', *Al-Kharaj: Jurnal Ekonomi, Keuangan Dan Bisnis Syariah*, 3.2 (2021), 154-68 <<https://doi.org/10.47467/alkharaj.v3i1.307>>.

regulations that serve to ensure the governance, accountability, and sustainable development of waqf assets.¹⁸ The integration of these two legal frameworks ensures that the implementation of waqf is not only valid according to Islamic law, but also in accordance with state law, so that its benefits can be felt more widely and sustainably.

1. Legal Basis of Waqf in Islamic Law

In Islam, the legal basis for waqf is found in the Qur'an, hadith, and ijma (consensus) of the scholars. The term waqf is not explicitly mentioned in the Qur'an and hadith, but its existence is inspired by certain verses of the Qur'an and various hadiths of the Prophet Muhammad SAW.¹⁹ Some verses that are used as references by scholars as sources of waqf law include:

Al-Baqārah/2: 261

“The parable of those who spend their wealth in the way of Allah is like (those who sow) a grain (seed) which grows seven stalks, on each stalk there are a hundred seeds. Allah multiplies (rewards) for whom He wills. Allah is All-Encompassing, All-Knowing.”²⁰

This verse shows that anyone who spends his wealth in the way of Allah will receive a reward that is multiplied up to seven hundred times, and one form of donation in the way of Allah is waqf.²¹

Al-Baqārah/2: 267

“O you who believe, spend from the good things you have earned and from what We have brought forth for you from the earth. Do not choose to spend what is evil, while you are unwilling to take it, except with aversion to it. Know that Allah is Rich, Praiseworthy.”²²

¹⁸ Marjudi, 'Pelaksanaan Wakaf Menurut Fuqaha Dan Perundang-Undangan Di Indonesia', *Al-Qanun*, 17.1 (2014), 130-59 <<https://doi.org/10.15642/alqanun.2014.17.1.130-159>>.

¹⁹ Zuhri Arif, 'Analisis Hukum Atas Wakaf Benda Bergerak Di Indonesia: Tinjauan Perundang-Undangan Dan Implementasinya', *PEMA: Jurnal Pendidikan Dan Pengabdian Kepada Masyarakat*, 5.1 (2025), 128-36 <<https://doi.org/10.56832/pema.v5i1.749>>.

²⁰ Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahnya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, Badan Litbang dan Diklat, Kementerian Agama RI, 2019) <<https://share.google/7SlncgWN15zkQCc6z>>.

²¹ Miftahul Huda, *Hukum Wakaf Kontemporer Konsepsi, Kontekstualisasi, Dan Implementasi* (Yogyakarta: Trussmedia Grafika, 2023), IV.

²² Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahnya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, Badan Litbang dan Diklat, Kementerian Agama RI, 2019) <<https://share.google/7SlncgWN15zkQCc6z>>.

This verse contains a recommendation to generally give alms from a portion of one's wealth. According to the majority of scholars, waqf is included within the scope of this meaning of alms.²³

Āli 'Imrān/3: 92

"You will never attain (perfect) virtue until you invest some of the wealth you love. Whatever you spend, Allah is All-Knowing about it."²⁴

The argument from this verse is that goodness can be achieved through waqf. This is based on the story of Abu Talhah, who, upon hearing this verse, immediately donated his most beloved property, the Beiruha garden.²⁵

This story is in accordance with the hadith of the Prophet, narrated by Bukhari number 2562. Abu Talhah was an Ansar who possessed great wealth, including a date palm orchard named Bairuha' that he cherished most, located near the mosque and frequently visited by the Messenger of Allah. When the verse of the Qur'an, Surah Ali 'Imran: 92, about spending beloved wealth was revealed, Abu Talhah came to the Prophet and declared that he was donating the Bairuha' orchard as charity in the hope of reward from Allah. The Prophet praised the endowment as wealth that brings benefits and continuous rewards, then recommended that the garden be given in charity to relatives. Abu Talhah did so and distributed the garden to his family and relatives.²⁶

Another hadith regarding waqf is as follows:

Al-Nasa'i No. 3546

"...Umar said to the Prophet ﷺ, 'Truly, I have never obtained a treasure that I love more than the hundred shares that I got in Khaibar. And I desire to give charity with it.' So the Prophet ﷺ said, 'Hold on to the tree and make fruit from it in the way of Allah.'²⁷

²³ Siska Lis Sulistiani, *Pembaruan Hukum Wakaf Di Indonesia* (Bandung: PT Revika Aditama, 2017).

²⁴ Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahnya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, Badan Litbang dan Diklat, Kementerian Agama RI, 2019) <<https://share.google/7SlncgWN15zkQCc6z>>.

²⁵ Miftahul Huda, *Hukum Wakaf Kontemporer Konsep, Kontekstualisasi, Dan Implementasi* (Yogyakarta: Trussmedia Grafika, 2023), IV.

²⁶ Ensiklopedi Hadits, Muhammad bin Isma'il Abi Abdillah al-Bukhari al-Ju'fi, *Shahih Bukhari* (Dar Tuq Am-Najah, 1422 H).

²⁷ Ensiklopedi Hadits, Abu Abdurrahman Ahmad Bin Syu'aib Bin Ali Al-Khurasani An-Nasa'I, *Sunan Nasa'i* (Alepo: Maktab Al-Mathbu'at Al-Islamiyah).

This hadith explains that by retaining the principal assets and giving the proceeds or benefits in charity, these assets can provide benefits to other people. Meanwhile, the owner of the property continues to receive rewards until the afterlife as long as the property is used properly and according to its intended purpose.²⁸

Ibnu Majah No. 2387

“...Umar bin Al Khattab acquired a piece of land in Khaibar, then he came to the Prophet ﷺ to ask for a solution. He then said, "O Messenger of Allah, I have acquired a piece of land in Khaibar, and I do not have any property that I like more than that, so what do you order me to do?" He said, "If you wish, you can keep the land and give charity from it." Ibn Umar said, "Then Umar did that, he did not sell, did not give it as a gift, and did not inherit it. He gave it in charity to the poor, relatives, fi sabilillah, Ibn Sabil, and guests. And as for those who take care of it, he can eat it with ma'ruf, or entertain his friends without commercializing it.”²⁹

In addition to being sourced from the Quran and Hadith, the legitimacy of waqf is also strengthened by the consensus of Islamic scholars, who agree that it is a sharia-compliant act. Waqf has been a religious tradition that has been continuously maintained from the time of the Companions to the present generation of Muslims.³⁰ Ibnu Qudamah said, “None of the Prophet's companions had the ability and abundance of sustenance, except they had certainly donated it.”³¹

2. Legal Basis of Waqf in the National Legal System

In Indonesia, the implementation of waqf has a strong and structured legal basis through several regulations that have developed gradually. The regulation of waqf was first formalized through the Compilation of Islamic Law (KHI) Book III, which regulates the basic provisions regarding waqf, such as the definition of waqf, waqif, nadzir, pillars and requirements of waqf, as well as

²⁸ Supardin, Muhammad Saleh, and Muhammad Ikhlas Supardin, *Fikih Wakaf* (Sukabumi: CV. Haura Utama, 2023).

²⁹ Ensiklopedi Hadits, Ibnu Majah Abu Abdillah Muhammad bin Yazid al-Qazwaini, *Sunan Ibnu Majah* (Dar Ihya' Al-Kutub Al-'Arabiyah -Faishal 'Isa al-Babi al-Halabi).

³⁰ Sunuwati, *Hukum Perwakafan* (Pare-Pare: IAIN Parepare Nusantara Press, 2022).

³¹ Abdullah bin Ahmad bin Mahmud Ibn Qudamah, *Al-Mughni Jilid 8* (Mesir: Dar al-Manar, 1348).

the mechanism for the transfer and supervision of waqf assets. KHI affirms waqf as an integral part of Islamic family law in Indonesia.³²

Subsequent developments were marked by the enactment of Government Regulation No. 28 of 1977 concerning Land Endowments, which for the first time regulated the administrative procedures for land endowments, including the preparation of endowment deeds, registration of endowed land, changes in status, supervision, and sanctions.³³ The technical provisions of this Government Regulation are further elaborated in Minister of Religious Affairs Regulation No. 1 of 1978, which details the procedures for waqf pledges, the authority of officials who draw up deeds, and the position of nadzir.³⁴

Efforts to strengthen the legality of waqf land were made through Joint Decree of the Minister of Religious Affairs and the Head of the National Land Agency No. 4 of 1990, which regulates the certification of waqf land as an administrative instrument to ensure legal certainty and protection of waqf assets.³⁵

A major reform in Indonesian waqf law was only realized through the enactment of Law No. 41 of 2004 on Waqf, which became a milestone in the modernization of waqf management. This law expands the scope of waqf objects, including cash waqf, establishes the Indonesian Waqf Board (BWI) as an independent institution that supervises and develops waqf assets, and affirms the principle of productive waqf management for the public good. This law also covers regulations regarding nadzir, registration of waqf assets, changes in the status of waqf property, dispute resolution, administrative and criminal sanctions, and state oversight mechanisms.³⁶

As an implementing regulation, Government Regulation No. 42 of 2006 stipulates technical provisions related to cash waqf, procedures for

³² Kementerian Agama RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam, Direktorat Bina KUA Dan Keluarga Sakinah, 2018).

³³ Republik Indonesia, 'Peraturan Pemerintah Republik Indonesia Nomor 28 Tahun 1977 Tentang Perwakafan Tanah Milik'.

³⁴ Republik Indonesia, 'Peraturan Menteri Agama Nomor 1 Tahun 1978 Tentang Peraturan Pelaksanaan Peraturan Pemerintah Nomor 28 Tahun 1977 Tata Cara Perwakafan Tanah Milik'.

³⁵ Republik Indonesia, 'Keputusan Bersama Menti Agama Republik Indonesia Dan Kepala Badan Pertahanan Nasional Nomor 4 Tahun 1990 Tentang Sertifikasi Tanah Wakaf'.

³⁶ Republik Indonesia, 'Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf'.

registering and announcing waqf, management and development of waqf assets, and procedures for exchanging waqf assets.³⁷ Further developments occurred through the enactment of Government Regulation No. 25 of 2018 concerning Amendments to Government Regulation No. 42 of 2006. This regulation was issued to improve the security, effectiveness, efficiency, and accountability of waqf property management, as well as to align waqf governance with regulations on land acquisition for public interests.³⁸ The regulation of waqf was then strengthened through Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2017, which regulates the procedures for registering waqf land in the national land system as part of improving administrative order and legal certainty over waqf assets.³⁹

From this overall legal framework, it is clear that the state not only recognizes waqf as a religious teaching, but also places it within a structured legal system oriented towards accountability, transparency, and social empowerment. Thus, waqf regulations in Indonesia are the result of a dialectic between the requirements of sharia and the demands of a modern legal system.

3. Positif Conceptual Synthesis between Sharia Principles and Positive Norms

In principle, waqf regulations in national law did not arise in a vacuum, but were a legal-formal effort to formalize the principles of Sharia into the modern legal system. Sharia arguments have confirmed the basic concept of waqf as *tahbīs al-aṣl wa tasbīl al-manfa'ah* (retaining the principal and distributing

³⁷ Republik Indonesia, 'Peraturan Pemerintah Republik Indonesia Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf'.

³⁸ Republik Indonesia, 'Peraturan Pemerintah Nomor 5 Tahun 2018 Tentang Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf', 2018.

³⁹ Republik Indonesia, 'Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional No. 2 Tahun 2017 Tentang Tata Cara Pendaftaran Tanah Wakaf Di Kementerian Agraria Dan Tata Ruang/Badan Pertanahan Nasional'.

the benefits),⁴⁰ as indicated in the hadith about Umar bin Khattab's endowment of the land of Khaibar.⁴¹

This principle is explicitly reflected in Law No. 41 of 2004, which stipulates that waqf property cannot be used as collateral, seized, sold, exchanged, gifted, or inherited, and must be used for worship and public welfare.⁴² Thus, the concept of *taḥbīs al-aṣl wa tasbīl al-manfa'ah* in Islamic law finds its equivalent in the prohibition of transferring waqf assets in positive law.

The relationship between the two becomes more apparent in modern provisions regarding the exchange and development of waqf assets. Government Regulation No. 25 of 2018 demonstrates the state's legal *ijtihad* to manage waqf as a more productive and adaptive instrument of Islamic philanthropy in response to socio-economic developments. Provisions such as the requirement for equivalent or better replacement assets, assessment by public appraisers, and restrictions on exchange authorization reflect the harmony between positive law and *maqāṣid al-syarī'ah*, namely the protection of public interest (*ḥifẓ al-māl*) without eliminating the value of worship in waqf.⁴³

Similarly, the legalization of cash waqf in Article 28 of Law No. 41 of 2004 can be seen as an application of the concept of *maṣlaḥah mursalah* within the constitutional framework. Although cash waqf was not recognized by some classical scholars, this regulation is a reinterpretation of Islamic law to respond to modern economic needs without deviating from the basic principles of waqf.⁴⁴

Thus, the relationship between Sharia and national law is not a dichotomous one, but rather an integrative-adaptive one. Sharia principles

⁴⁰ Slamet Hartanto and Devid Frastiawan Amir Sub, 'Konsep Wakaf Uang Dalam Perspektif Hukum Islam Di Indonesia', *Syari'ah: Journal of Indonesia Comparative of Syari'ah Law*, 4.1 (2021), 39–62 <<https://doi.org/10.21111/jicl.v4i1.6410>>.

⁴¹ Ensiklopedi Hadits, Ibnu Majah Abu Abdillah Muhammad bin Yazid al-Qazwaini, *Sunan Ibnu Majah* (Dar Ihya' Al-Kutub Al-'Arabiyah -Faishal 'Isa al-Babi al-Halabi).

⁴² Republik Indonesia, 'Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf'.

⁴³ Republik Indonesia, 'Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf'.

⁴⁴ Miftah Farid, 'Pembaruan Wakaf dalam Undang-Undang No. 41 Tahun 2004 Tentang Wakaf dan Relevansinya dengan Pembaruan Wakaf di Negara-Negara Muslim', *ABHATS: Jurnal Islam Ulil Albab*, 6.2 (2025), 113–30 <<https://doi.org/10.20885/abhats.vol6.iss2.art2>>.

provide theological and moral legitimacy for the practice of waqf, while positive norms provide the legal and administrative tools that enable Sharia principles to be effectively applied within the state legal system. Through this integration, waqf remains a form of worship with value in the hereafter as well as an instrument of socio-economic development that is relevant in the contemporary context.

Integration of Islamic Waqf Legal Values into National Law

The integration of Islamic waqf values into the national legal system is a form of harmonization between sharia principles and the legal-formal needs of a modern state. From a sharia perspective, waqf is positioned as a form of ongoing charity that not only fulfills a religious function but also has a significant socio-economic dimension.⁴⁵ This principle is embodied in the concept of *taḥbīs al-aṣl wa tasbīl al-manfa‘ah*, which is to preserve the principal asset (*al-aṣl*) and channel its benefits (*al-manfa‘ah*) for the public good.⁴⁶

These values are incorporated into national law through legislation, such as Law No. 41 of 2004 on Waqf,⁴⁷ Government Regulation No. 42 of 2006, and provisions in the Compilation of Islamic Law.⁴⁸ Provisions regarding wakif, mauquf bih (waqf property), and mauquf ‘alaih (beneficiaries) in Article 1 of Law No. 41 of 2004⁴⁹ is a form of codification of waqf fiqh terminology into national legal language. The value of trustworthiness, which is a moral principle in Islam, is translated into the concept of nadzir as a legal entity or individual who is administratively and legally responsible.⁵⁰ At this level, the state does not merely copy fiqh doctrine, but also carries out positivization for the purposes of legal certainty and accountability.

⁴⁵ Luthfiah Nazmi and Yenni Samri Julianti, ‘Sejarah Dan Perkembangan Wakaf Dalam Islam’, *MENAWAN: Jurnal Riset Dan Publikasi Ilmu Ekonomi*, 2.2 (2024), 1-14 <<https://doi.org/10.61132/menawan.v2i2.227>>.

⁴⁶ Slamet Hartanto and Devid Frastiawan Amir Sub, ‘Konsep Wakaf Uang Dalam Perspektif Hukum Islam Di Indonesia’, *Syari’ah: Journal of Indonesia Comparative of Syari’ah Law*, 4.1 (2021), 39-62 <<https://doi.org/10.21111/jicl.v4i1.6410>>.

⁴⁷ Republik Indonesia, ‘Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf’.

⁴⁸ Kementerian Agama RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam, Direktorat Bina KUA Dan Keluarga Sakinah, 2018).

⁴⁹ Republik Indonesia, ‘Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf’.

⁵⁰ Nurodin Usman, ‘Subjek-Subjek Wakaf: Kajian Fiqh Mengenai Wakif Dan Nazhir’, *Cakrawala: Jurnal Studi Islam*, 11.2 (2016), 145-66.

Conceptually, the function of waqf as stipulated in Article 5 of Law No. 41 of 2004⁵¹ is in line with the principles of sharia, which places waqf as a means of worship and public benefit.⁵² This shows that national regulations do not change the substance of waqf, but rather reorganize the framework for its implementation in accordance with the needs of the modern legal system.

Within this framework, differences arise not in the purpose of waqf, but in methodological and administrative aspects. While in Islamic law the validity of waqf is determined by the fulfillment of the pillars and conditions of waqf, without depending on formal registration, in positive law, the registration and certification of waqf are prerequisites for obtaining legal recognition.⁵³ This difference does not indicate a contradiction, but rather a methodological adjustment by the state in responding to potential disputes and modern administrative needs. To maintain legal order and protect waqf assets, each waqf must be registered and officially announced, and must follow the procedures stipulated in the legislation.⁵⁴

Technological developments, urbanization, and modern economic pressures have led to increasingly frequent disputes over waqf, particularly because many waqf are established verbally, without a deed of waqf or adequate asset records. These disputes are detrimental to the nadzir, wakif, and beneficiaries.⁵⁵ Therefore, the existence of positive legal instruments as a legal protection effort to guarantee the security of waqf assets and ensure long-term benefits.⁵⁶ Ayat al-Qur'an Surah al-Baqarah (2):282, "If you engage in

⁵¹ Republik Indonesia, 'Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf'.

⁵² Anwar Sadat and Yenni Yulianti Samri, 'Wakaf Produktif Dalam Meningkatkan Ekonomi Ummat', *Santri: Jurnal Ekonomi Dan Keuangan Islam*, 1.5 (2023), 249-60 <<https://doi.org/10.61132/santri.v1i5.300>>.

⁵³ Zafran Nuridha, Moh. Khamim, and Nuridin, 'Tinjauan Hukum Tanah Wakaf Yang Belum Tercatat Di PPAIW (Pejabat Pembuat Akta Ikrar Wakaf), KUA Kecamatan Margadana Kota Tegal', *Jurnal Studi Islam Indonesia (JSII)*, 2.1 (2024), 113-26 <<https://doi.org/10.61930/jsii.v2i1.599>>.

⁵⁴ Achmad Ridwan Hamzani, *Perkembangan Wakaf Di Indonesia* (Brebek: Diya Media Group, 2015), hlm. 107.

⁵⁵ Ahmad Syafiq, 'Urgensi Pencatatan Wakaf Di Indonesia Setelah Berlakunya UU No. 41 Tahun 2014 Tentang Wakaf', *ZISWAF Jurnal Zakat Dan Wakaf*, 2.1 (2015), 176-98 <<https://doi.org/10.21043/ziswaf.v2i1.1542>>.

⁵⁶ Achmad Irwan Hamzani, *Perkembangan Wakaf Di Indonesia* (Brebek: Diya Media Group, 2015).

transactions that are not paid in full at the specified time, you should write them down.”⁵⁷ This verse mandates the recording of muamalah transactions, providing theological legitimacy for the importance of documentation systems in waqf, so that they do not conflict with sharia principles.

The integration of Islamic waqf values has become more concrete through the establishment of the Indonesian Waqf Board (BWI) as an independent institution tasked with fostering, supervising, and developing waqf assets.⁵⁸ The establishment of BWI through Law No. 41 of 2004⁵⁹ shows that the state not only gives formal recognition to waqf, but also builds institutional authority to ensure the implementation of the principles of trust, professionalism, and sustainability of benefits. Thus, waqf management no longer depends solely on personal trust, but on transparent, accountable, and standardized governance.

In line with this, BWI encourages productive waqf innovation as a transformation from traditional patterns to an investment-based management system and economic empowerment.⁶⁰ BWI data in 2025 states that the national waqf potential is estimated to reach nearly IDR 400 trillion per year, with IDR 181 trillion coming from cash waqf. There are approximately 451,000 registered waqf assets throughout Indonesia, with a cumulative area exceeding that of Singapore. These assets are growing at an average rate of 4-5% per year, but only about 10% are being managed productively.⁶¹ The magnitude of this potential indicates that waqf management can no longer rely on a static model, but rather requires adequate regulation and institutions in order to contribute strategically to national development.

Therefore, the integration of Islamic waqf values into national law can be understood not as a deviation from sharia principles, but as a process of

⁵⁷ ‘Tafsir Surah Al-Baqarah, Ayat 282’, [Ibnukatsironline.com](http://www.ibnukatsironline.com/2015/04/tafsir-surat-al-baqarah-ayat-282.html?m=1), 2015 <http://www.ibnukatsironline.com/2015/04/tafsir-surat-al-baqarah-ayat-282.html?m=1>.

⁵⁸ Achmad Irwan Hamzani, *Perkembangan Wakaf Di Indonesia* (Brebes: Diya Media Group, 2015).

⁵⁹ Republik Indonesia, ‘Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf’.

⁶⁰ Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, ‘Pentingnya Transformasi Wakaf Indonesia Menuju Wakaf Produktif’, *Menpan.Go.Id*, 2021 <<https://share.google/BAB4VFcbfGJ9Jitt5>>.

⁶¹ Badan Wakaf Indonesia, ‘Ketua Badan Wakaf Indonesia Ungkap Potensi Wakaf Rp400 Triliun’, *BWI.Go.Id*, 2025 <<https://share.google/BdhSxa2uP5YUCh4cS>>.

codification and adaptation to the needs of modern governance. Although there has been criticism regarding the potential for political interests to dominate the legislative process, the findings of this study show that the substance of the regulations on waqf in Law No. 41 of 2004 and its derivative regulations still refer to the basic principles formulated by the fuqaha, particularly those related to the preservation of waqf assets, the distribution of benefits, and the prohibition of asset transfers. Differences in administrative aspects, such as the requirement for registration, certification, and institutional supervision, are the state's response to the need for legal certainty and dispute prevention, not a form of neglect of sharia principles. Thus, national law serves as a bridge that reaffirms Sharia values within the positive legal system, while ensuring that its implementation can take place in a transparent, accountable, and sustainable manner in the contemporary socio-economic context.

Conclusion

This study confirms that the legal basis for waqf in Islam is derived from the Qur'an, hadith, and ijma' ulama, which places waqf as a sunnah worship of jariyah value with a focus on the preservation of property and the distribution of benefits for the common good. At the national legal level, waqf regulations have developed through a gradual codification process that institutionalizes the registration, certification, supervision, and development of productive waqf.

Although there are allegations that the legislative process contains political elements that could influence the direction of regulation, the findings of this study show that the regulatory text is, in principle, a codification and reinterpretation of Islamic law. In other words, positive law represents Sharia values substantively, even though the procedures have been modified to meet the administrative and legal certainty needs of a modern state. Thus, the level of internalization of sharia principles into national law can be said to be significant in substantive aspects (the values and objectives of waqf), while procedural differences reflect the state's adaptation to the demands of governance, accountability, and dispute prevention, not a denial of sharia principles.

This study is limited to a normative review and therefore does not evaluate the actual implementation of regulations in the field. Therefore, further research using socio-legal methods or case studies is recommended to examine whether the

normative codification is reflected in the practice of waqf management, as well as to further examine the impact of political dynamics on the formulation and implementation of waqf policies.

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