



## The Existence of Waqf in the Perspective of Classical Fiqh and National Law

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**Abstract.** *Waqf is one of the instruments of Islamic philanthropy that plays a strategic role in improving the welfare of the people. In classical fiqh perspective, waqf is defined as the holding of property whose benefits are used for the public interest while maintaining its principal (tahbis al'ashl wa tasbil al-manfa'ah). Each school of thought has different views on the ownership and management of waqf, but it is generally agreed that waqf is a charitable act that has spiritual and social value. In the context of Indonesian national law, the existence of waqf is formally regulated through Law Number 41 of 2004 concerning Waqf, which aims to provide legal certainty, asset protection, and encourage productive waqf management. However, the implementation of waqf in Indonesia still faces various problems, such as a lack of socialization, weak nadzir management, limited development funds, and minimal legal supervision. Therefore, it is necessary to professionalize waqf management, certify waqf assets, and optimize productive waqf, including cash waqf, so that waqf can become a pillar of sustainable economic development for the community. This study shows that there has been an important transformation process from the concept of waqf in classical fiqh to modern regulations that emphasize legality and sharia-based economic empowerment.*

**Keywords:** Waqf, Classical Fiqh, Law No. 41 of 2004, Productive Waqf

### 1. Introduction

Waqf is one of the instruments of Islamic philanthropy that plays a strategic role in the social and economic development of the Muslim community. Throughout Islamic history, waqf has served as a source of funding for education, health, and public infrastructure, making it one of the main pillars of Muslim welfare (Azimah *et al.*, 2024). The concept of waqf has been discussed in depth in classical fiqh, where scholars emphasize the principle of tahbis al-'ashl wa tasbil al-manfa'ah retaining the principal of the asset and distributing its benefits for the good of the community (Bashori, 2022).

Although the basic principles of waqf are universal and transcendent, their implementation in a modern context faces various challenges. In the Indonesian legal system, efforts to adapt the concept of waqf to the national legal framework are realized through Law Number 41 of 2004 concerning Waqf, which provides a formal legal basis for the professional management and empowerment of waqf (Arifin and Ramadhan, 2024). This law is an important milestone in the modernization of waqf, particularly in integrating sharia values with the secular positive legal system (Farisi, 2022).

However, the existence of these regulations has not been able to fully overcome the various problems faced by waqf management in Indonesia. Some of the obstacles that are still found include weak management and competence of nazhir, lack of socialization to the community, and limited funds to develop waqf assets productively (Rahmatullah, 2023). In

addition, legal issues such as waqf land certification and legal protection of waqf assets are also important issues that require serious attention from the government and related institutions (Saprida *et al.*, 2022).

In this context, waqf is not only understood as an individual act of worship, but also as a socio-economic instrument that can promote sustainable development. The modernization of waqf through institutional strengthening, management digitalization, and the development of cash waqf is expected to make waqf a major driver of community welfare in the era of contemporary sharia economics (Lubis *et al.*, 2022)

## 2. Methods

This research is a literature study, which means that all of the information was obtained from various sources such as books, encyclopedias, magazines, journals, and newspapers. This type of research is descriptive, analytical, and critical, allowing the author to comprehensively describe the understanding of the existence of waqf in the perspective of classical fiqh and national law. In its implementation, the author utilizes two types of data sources, namely primary data sources and secondary data sources. Primary data sources come from books and scientific journals that directly discuss the concept of waqf in classical fiqh. Meanwhile, secondary data sources are obtained from various other scientific works related to legislation on waqf in Indonesia.

## 3. Results and Discussion

### 3.1 The Concept and Position of Waqf in Classical Fiqh

Waqf is one of the socio-economic instruments in Islamic teachings that plays an important role in strengthening the welfare of the people. In the history of Islamic civilization, waqf has played a major role in supporting the education, health, social services, and public infrastructure development sectors. Etymologically, the word waqf comes from the Arabic waqafa-yaqifu-waqfan, which means "to hold" or "to stop" (Juliati and Addin, 2024). Terminologically, waqf means to hold an asset so that its principal remains intact and its benefits are used for the public interest in accordance with the waqif's objectives.

In classical fiqh, scholars of different schools of thought have varying views on the definition and ownership status of waqf assets. The Hanafi school of thought argues that waqf does not eliminate the waqif's ownership of their assets, but only withholds their use for social purposes. Therefore, the waqif still has legal rights to these assets and can withdraw them under certain conditions. In contrast, the Shafi'i and Hanbali schools of thought assert that ownership of waqf is transferred entirely to Allah SWT; humans only play a role in managing its benefits for the benefit of the people (Bashori, 2022).

The Maliki school of thought takes a position between the two. According to this view, waqf does not immediately transfer ownership of the property from the waqif, but the waqif no longer has the right to transfer or use the property for personal gain. Waqf is carried out by retaining the principal of the property (tahbis al-'ashl) and distributing the proceeds or benefits (tasbil al-manfa'ah) to the entitled parties (mauquf 'alaih) (Hasanah, 2023). This principle is the essence of the teaching of waqf: preserving the permanence of assets while ensuring the continuity of their benefits.

In a social context, the waqf system, which has developed since the time of the Prophet Muhammad, has become a pillar of the community's economy that is capable of maintaining

a balance between spiritual and material aspects. Waqf is not only an individual act of worship that has spiritual value, but also an economic instrument that has a broad impact on the welfare of society (Bashori, 2022). History records that many educational institutions, hospitals, and public facilities in the Islamic world were established and continue to operate through the support of waqf funds.

### 3.2 The Legal Bases of Waqf in the Qur'an and Hadith

Textually, the Qur'an does not explicitly mention the word "waqf." However, the conceptual and spiritual basis of waqf can be found in various verses that emphasize the importance of spending, charity, and sacrificing wealth for the common good. Among them is QS. Ali Imran:92

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

*"You will never attain righteousness until you spend of that which you love."*

This verse shows that the perfection of a person's faith is reflected in their willingness to give some of their wealth for the public interest.

Another verse that forms the basis of waqf is QS. Al-Baqarah verse 267, which describes the parable of those who give charity in the way of Allah as planting a seed that grows into seven ears, and each ear contains a hundred seeds. This parable emphasizes the value of blessings and the multiplication of rewards from wealth that is spent for the benefit of the people. The spirit of this verse is the foundation for the concept of productive waqf, which continues to generate sustainable benefits for the community.

In addition to the Qur'an, the hadith of the Prophet Muhammad SAW is also an important source of law in waqf sharia. A hadith narrated by Muslim states that "When the son of Adam dies, his deeds come to an end except for three things: ongoing charity, beneficial knowledge, and a righteous child who prays for him." Scholars interpret "ongoing charity" in this hadith as the basis for the legitimacy of the law of waqf (Sari *et al.*, 2024). In another account, Umar bin Khattab RA is said to have endowed his land in Khaibar after receiving direct instructions from the Prophet Muhammad SAW to retain the principal and donate the proceeds for public benefit.

Thus, both the Qur'an and the hadith provide a strong moral and spiritual foundation for the existence of waqf as an instrument of social worship in Islam. Waqf reflects the principle of sustainability in Islam, where the property donated through waqf continues to provide benefits even after the death of the donor.

### 3.3 The Waqf in National Legislation

In the modern context, the regulation of waqf in Indonesia has undergone significant developments with the enactment of Law No. 41 of 2004 on Waqf. This law is an important milestone in the government's efforts to provide legal certainty, asset protection, and optimization of waqf management so that it can be used productively (Arifin and Ramadhan, 2024).

Prior to the enactment of this law, the practice of waqf in Indonesia was still largely traditional and did not have adequate legal force. This often led to problems, such as disputes over ownership of waqf land, misuse of assets, and weak accountability in the management of waqf by the nadzir (Rahmatullah, 2023). Law No. 41 of 2004 was enacted

to address these issues by expanding the scope of waqf, not only to land and buildings, but also to include cash waqf, which has great potential to strengthen the economy of the Muslim community (Lubis *et al.*, 2022).

This law also emphasizes the importance of waqf management institutions through the establishment of the Indonesian Waqf Board (BWI). BWI functions as an independent institution tasked with developing, fostering, and supervising waqf in Indonesia to be more professional, transparent, and oriented towards public benefit (Saprida *et al.*, 2022). Through this institution, the government seeks to change the public's paradigm that waqf is not only synonymous with religious activities but also a means of effective social investment.

The transformation of waqf regulations through Law No. 41 of 2004 shows a process of convergence between classical fiqh teachings and the Indonesian positive law system. Sharia values such as the permanence of assets (ta'bîd al-waqf), the prohibition of selling waqf assets, and the obligation to maintain their benefits remain the moral basis, while national law provides formal legitimacy and legal protection for their implementation (Bashori, 2022).

### 3.4 Problems with the Implementation of Waqf in Indonesia

Despite having a strong legal basis, the implementation of waqf in Indonesia still faces various complex obstacles. One of the fundamental problems is the low level of public literacy regarding waqf. Many people understand waqf only as religious charity, without seeing the economic and social potential behind it. This has resulted in waqf in Indonesia still being dominated by consumptive forms such as the construction of mosques, prayer rooms, and tombs, while its productive functions have not been optimally utilized (Judijanto *et al.*, 2025).

In addition, weak waqf management is a serious problem. Many nazhir (trustees) lack managerial skills, legal knowledge, and adequate financial capacity. This condition has resulted in many waqf assets being underutilized, neglected, and even transferred to other owners due to mismanagement (Rahmatullah, 2023). This problem is further complicated by the fact that most waqf assets in Indonesia, especially land, do not have official certificates from the National Land Agency (BPN), making them prone to disputes and misuse.

Another obstacle is the limited funds available to develop waqf assets into productive assets. In fact, the potential of cash waqf and movable assets in Indonesia is enormous. With professional management, cash waqf can be invested in the form of sharia sukuk, micro businesses, or social projects, the results of which can be used sustainably for the benefit of the community (Lubis *et al.*, 2022). Therefore, strengthening the capacity of nadzir, increasing transparency, and collaboration between waqf institutions, the government, and Islamic financial institutions are key to improving the effectiveness of national waqf management.

### 3.5 Synergy between Classical Fiqh and Positive Law: The Direction of Waqf Strengthening in Indonesia

The synergy between classical fiqh and positive law is an important aspect in strengthening the existence of waqf in Indonesia. The basic principles in classical fiqh, which emphasize the permanence of property and the sustainability of benefits, can be in

harmony with the national legal system that regulates the governance, accountability, and protection of waqf assets. The two complement each other in building a waqf system that is adaptive to the times but still based on sharia values (Bashori, 2022).

With modern regulations such as Law No. 41 of 2004, waqf management is expected to not only be symbolic but also have a real economic impact on society. Strengthening the capacity of nadzir, certifying waqf land, digitizing waqf data, and innovating in the management of productive waqf such as cash waqf linked sukuk are strategic steps to realize waqf as an instrument of sustainable socio-economic development (Saprida *et al.*, 2022).

#### 4. Conclusions

Waqf is an important instrument in the Islamic economic system that plays a major role in realizing social welfare and community development. In classical fiqh perspective, waqf is understood as the act of holding assets so that the principal remains intact, while the benefits are used for the public interest in accordance with the objectives of sharia. This concept emphasizes that waqf is not only an individual act of worship, but also has a socio-economic dimension that can strengthen the community's life in a sustainable manner.

In the context of national law, the existence of Law Number 41 of 2004 concerning Waqf provides a clear and strong legal basis for waqf management in Indonesia. This regulation plays an important role in protecting waqf assets, promoting transparency, and developing productive waqf management so that it can make a real contribution to the economy of the people and national development.

However, the implementation of waqf in Indonesia still faces challenges, such as low public awareness, weak capacity of nadzir, and limited innovation in waqf asset management. Therefore, efforts are needed to strengthen institutions, improve the professionalism of managers, and create synergy between classical fiqh principles and modern legal systems. In this way, waqf can become an effective and sustainable economic instrument that provides broad benefits for the welfare of the community and the achievement of sharia economic goals.

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