

Islam as a Condition for Waqf: Dialectics of Classical Fiqh and Indonesian Waqf Law in a Pluralistic Society

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Abstract

Waqf plays a strategic role in strengthening the Islamic economy and promoting social welfare. However, scholarly debate persists regarding whether being Muslim constitutes a substantive legal requirement for a waqif, particularly within Indonesia's pluralistic socio-legal context. Existing studies largely focus on administrative or economic aspects of waqf, while the normative tension between classical Islamic jurisprudence and Indonesian positive law on the religious status of the waqif remains underexplored. This study aims to address this gap by critically examining the requirement of Islamic faith for waqif from the perspectives of Islamic jurisprudence and Indonesian waqf law. Employing a qualitative normative-juridical method, the research analyzes classical and contemporary fiqh sources from the four Sunni schools (Hanafi, Mālikī, Syāfi'i, and Hanbali), alongside national regulations, particularly Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006. The findings demonstrate that, within Islamic jurisprudence, being Muslim is not an absolute prerequisite for the validity of waqf, except when the object of waqf is directly related to ritual worship, such as mosques. The Hanafi, Syāfi'i, and Hanbali schools emphasize legal capacity (ahliyyah al-taṣarruf), ownership, and lawful objectives as determining factors of validity. Similarly, Indonesian waqf law does not impose religious restrictions on waqif, provided that the waqf serves public benefit and does not contradict sharia principles. This study contributes to the discourse on waqf law by demonstrating that the requirement of Islam for waqif functions as a contextual moral and spiritual value rather than a rigid juridical condition, thereby highlighting a normative convergence between classical fiqh and national law in prioritizing social justice and public welfare.

Keywords: Wakif; Legal Pluralism; Fiqh Waqf; Indonesian Positive Law.

Abstrak

Wakaf memainkan peran strategis dalam memperkuat ekonomi Islam dan mendorong kesejahteraan sosial. Namun, perdebatan akademik masih berlangsung mengenai apakah keislaman merupakan syarat hukum substantif bagi wakif, khususnya dalam konteks sosial-hukum Indonesia yang bersifat pluralistik. Kajian sebelumnya umumnya lebih menitikberatkan pada aspek administratif atau ekonomi wakaf, sementara ketegangan normatif antara fikih Islam klasik dan hukum positif Indonesia terkait status keagamaan wakif masih relatif kurang mendapat perhatian. Penelitian ini bertujuan mengisi kesenjangan tersebut dengan mengkaji secara kritis persyaratan keislaman bagi wakif dari perspektif fikih Islam dan hukum wakaf di Indonesia. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif-yuridis melalui analisis sumber fikih klasik dan kontemporer dari empat mazhab Sunni (Hanafi, Maliki, Syafi'i, dan Hanbali), serta peraturan perundang-undangan nasional, khususnya Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dan Peraturan Pemerintah Nomor 42 Tahun 2006. Hasil penelitian menunjukkan bahwa dalam fikih Islam, keislaman tidak selalu menjadi syarat mutlak sahnya



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wakaf, kecuali apabila objek wakaf berkaitan langsung dengan ibadah ritual, seperti masjid. Mazhab Hanafi, Syafi'i, dan Hanbali menekankan kecakapan hukum (*ahliyyah al-tasarruf*), kepemilikan, serta tujuan yang dibenarkan sebagai faktor penentu keabsahan wakaf. Sejalan dengan itu, hukum wakaf di Indonesia tidak membatasi wakif berdasarkan agama selama tujuan wakaf tidak bertentangan dengan prinsip syariah dan kemaslahatan umum. Penelitian ini berkontribusi pada diskursus hukum wakaf dengan menunjukkan bahwa persyaratan keislaman bagi wakif berfungsi sebagai nilai moral dan spiritual kontekstual, bukan sebagai ketentuan yuridis yang kaku, sekaligus menegaskan konvergensi normatif antara fikih klasik dan hukum nasional dalam menempatkan keadilan sosial dan kemaslahatan publik sebagai orientasi utama

Kata Kunci: Wakif; Pluralisme Hukum; Fikih Wakaf; Hukum Positif Indonesia.

INTRODUCTION

Waqf as one of the instruments of Islamic economics has a strategic role in supporting sustainable development and equitable distribution of social welfare in various Muslim countries. Fauzan Ulwan Fadhlurrahman et al. emphasized that optimal waqf management has the potential to be an important pillar in realizing the *Sustainable Development Goals (SDGs)*, especially in poverty alleviation and community economic empowerment.¹ Furthermore, they explained that the use of waqf globally still faces serious challenges due to differences in regulations and legal approaches between countries, so that the potential of waqf has not been fully managed effectively and sustainably.

In the realm of Islamic economics, waqf plays a strategic role in strengthening the economic foundation of the community. Through good management of cash waqf and productive waqf, the potential of people's funds can be optimized to encourage equitable economic growth. However, in order for the management to run transparently and trustably, the clarity of the identity of the wakif is very important. This aspect does not only touch on religious issues, but also becomes part of the sharia economic governance system that demands accountability, honesty, and sustainability.

Theoretically, the concept of waqf is rooted in the teachings of muamalah jurisprudence which emphasizes the eternity of benefits and the permanent surrender of property rights to Allah. Abu Zahrah and contemporary scholars emphasize that the main requirement for a waqif is Islam and legal ability (*ahliyyah al-tasarruf*), This is because waqf is a form of charity that requires the intention to get closer to Allah.² However, positive legal developments in various countries show the dynamics of interpretation of this requirement.

In a global context, the debate over whether non-Muslims can become waqifs is still ongoing. Some countries such as Egypt and Turkey are beginning to open up space for non-Muslim waqf in social and humanitarian contexts, while countries such as Indonesia have maintained a conservative approach by emphasizing Islam as a substantive requirement. According to Obaidullah, the different legal frameworks of waqf reflect the state's efforts to balance sharia values and national legal needs.³ This

¹ Fauzan Ulwan Fadhlurrahman dkk., "Managing Islamic Endowments (Waqf): Legal Challenges and Strategic Approaches for Sustainable Development," *Journal of Islamic Law and Legal Studies* 2, no. 1 (2025): 16–25, <https://doi.org/10.70063/-v2i1.65>.

² Ani Yumarni dkk., *The Implementation of Waqf as μ8UI in Indonesia*, t.t.

³ Mohammed Obaidullah, *A Framework for Analysis of Islamic Endowment (Waqf) Laws*, Working Paper (Islamic Research and Training Institute (IRTI), Islamic Development Bank, n.d.).

phenomenon shows that there is a conceptual gap between classical fiqh law and modern implementation.

The Indonesian context shows its own complexity, due to the plurality of laws and cultures. Islamy and Setiadi (2020) emphasized that in a positive legal framework, the Islamic status of wakif has not been strictly regulated, opening up room for interpretation that has the potential to weaken legal certainty.⁴ This condition raises the urgent need to formulate legal guidelines that are more adaptive but still based on sharia principles.

Al-Baiti and Khoirudin (2025) through a comparative study of Indonesian and Yemeni laws found that differences in interpretations of the Islamic status of waqif are influenced by differences in the national legal system and the level of acceptance of certain schools of fiqh.⁵ This approach is important in understanding the evolution of theoretical thinking related to the integration of Islamic law in the legal framework of the state.

In a comparative perspective, there are two main views on the Islamic status of the wakif. Some classical scholars require that the wakif must be Muslim because waqf is understood as worship oriented to taqarrub to Allah. On the other hand, other views, including in the framework of positive law in Indonesia, do not explicitly require the Islamic of waqf. Law Number 41 of 2004 concerning Waqf only states that a waqf is a party who endows his property without providing restrictions on religion. This provision opens up the interpretation space that waqf can be understood as a social instrument that is inclusive across religions. Based on this, the research question arises: Is Islam a substantive requirement for the validity of waqf, or can it be interpreted more broadly in accordance with the principles of social justice and the development of modern law?

In line with this debate, research by Intihani and Fahrany (2024) highlights the administrative challenges in the implementation of waqf law in Indonesia, especially in verifying the Islamic status of waqf and the validity of contracts. They highlighted the central role of the Waqf Pledge Deed Making Officer (PPAIW) in ensuring the conformity of each waqf pledge with Islamic sharia principles before the deed legalization process.⁶ Indecisiveness in the application of Islamic requirements can result in legal disputes that threaten the validity of waqf assets in the future.

This research aims to explain the view of Islamic jurisprudence regarding Islam as a condition for waqf and describe how the provisions of waqf law in Indonesia regulate it. The focus of the research is directed at the aspect of who is entitled to be a waqf, not on the form or management of waqf assets.

This study also considers the findings of previous studies. *First*, Multazam (2022), through a study entitled "Non-Muslim Waqf According to the View of Fiqh and Legislation in Indonesia" with a case study of land grants by non-Muslims for the construction of the Manunggal Mosque in Cibiru, concluded that the act did not meet the criteria for waqf according to Law No. 41 of 2004 and was more appropriately categorized as a grant, in line with the views of the Shafi'i and Hanbali schools which require the

⁴ Athoillah Islamy dan Doni Setiadi, "TRACKING THE VALIDITY OF PROFESSION WAQF IN A POSITIVE LEGAL PERSPECTIVE IN INDONESIA," *Al-'Adl* 13, no. 1 (2020): 1, <https://doi.org/10.31332/aladl.v13i1.1681>.

⁵ Mohsen Farid Abdulrahman Al-Baiti dan Ahmad Khoirudin, *Time-Limited Waqf in Indonesian and Yemeni Law: A Comparative Study Based on National Legislation and Fiqh Approaches*, t.t.

⁶ Sofia Fahrany dan Siti Nur Intihani, "THE POSITION OF WAKAF IN ISLAMIC LAW AND ITS IMPLEMENTATION IN INDONESIA," *Al-Risalah* 15, no. 2 (2024): 583–605, <https://doi.org/10.34005/alrisalah.v15i2.3791>.

Islamic waqf in waqf worship.⁷ This analysis shows that there is consistency between classical jurisprudence and national regulations in the context of mosque waqf, as well as showing that community practices follow positive legal provisions. Multazam's research has similarities with this research in that it focuses on the study of Islam as a condition of waqf and the relationship between fiqh and national law, but it differs in terms of approach because Multazam's research is an empirical case study and only highlights two schools, while this research is normative-conceptual with a broader scope of fiqh analysis and examines the position of Islamic requirements in the construction of Indonesian waqf law more comprehensive.

Second, Yadi Paisal who researched the "Opinion of BWI (Indonesian Waqf Agency) Central on the Position of Non-Muslim Waqf in Waqf Law in Indonesia" in 2009. This study uses a *content analysis* method by examining the background of non-Muslims being allowed to become waqf and linking it to the regulations that apply in Indonesia and various other relevant sources, especially the views of the Indonesian Waqf Board (BWI). The results of the analysis show that Law Number 41 of 2004 concerning Waqf and the provisions issued by the Indonesian Waqf Agency provide the possibility for non-Muslims to become waqf, as long as the purpose of waqf does not conflict with sharia principles.

This is acceptable because the benefits arising from the practice of waqf by non-Muslims are considered to be greater than the potential harms. Some scholars, such as in the view of the Mālikī madhhab, also allow non-Muslims to become waqif as long as the provision of waqf is not related to religious or worship activities, but is social. Thus, it can be concluded that the status of non-Muslim waqf in Indonesia is considered valid according to positive laws and regulations, because its implementation is aimed at social interests and improving the welfare of the community.⁸ The similarity of this research lies in the focus of the discussion on the position of waqf in waqf law in Indonesia. As for the differences, this study specifically examines Islam as a requirement for wakif and analyzes the factors that cause the difference between the view of Islamic jurisprudence and positive Indonesian law in determining the requirements of Islam.

Third, Sulistiani's research (2021) entitled "*The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia*" discusses the position of non-Muslim waqf by emphasizing an analysis of national regulations, institutional practices, and opportunities to increase waqf assets through the involvement of non-Muslim citizens. The study uses a normative approach by examining Law No. 41 of 2004, its implementing regulations, and relevant institutional views, and concludes that Indonesia's positive law does not require Islam as a condition for waqf so that non-Muslim waqf is considered valid as long as it is intended for social interests and is within the framework of regulations that do not distinguish the waqf religion. In this context, Sulistiani's research confirms that the involvement of non-Muslims in waqf can expand national waqf assets and is in line with the spirit of social empowerment.⁹

⁷ Muhammad Faiz Amin Multazam, "Non-Muslim waqf according to the view of fiqh and legislation in Indonesia: A case study of waqf of the Manunggal Mosque of the Vijayakusumah Cibatu Complex, Bandung City" (UIN Sunan Gunung Djati Bandung, 2022), <https://digilib.uinsgd.ac.id/57135/>.

⁸ Yadi Paisal, "The Opinion of the Central BWI (Indonesian Waqf Agency) on the Position of Non-Muslim Waqf in Waqf Law in Indonesia" (Undergraduate Thesis, UIN Sunan Gunung Djati Bandung, 2009), <https://digilib.uinsgd.ac.id/81055/>.

⁹ Siska Lis Sulistiani dan others, "The legal position of Waqf for non-muslims in efforts to increase Waqf assets in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021): 357–71.

The similarity between the study and this research lies in the focus of the same study, which is to examine the position of waqf in the perspective of Indonesian waqf law and the dynamics of the relationship between fiqh and modern regulations. However, the difference is also the novelty of this research, which is to place Islam as the main issue by examining whether the wakif must be Muslim according to classical jurisprudence and how this provision has undergone a shift in Indonesia's positive law. This study also explores the factors that cause the differences between Islamic jurisprudence and modern regulations, such as the consideration of maslahah, the approach of inclusivity in national law, and social needs so as to make a more critical and comparative contribution to the debate on Islamic requirements for waqif in Indonesia.

The research gap in this study lies in the lack of a comprehensive study that integrates the analysis of Islamic jurisprudence and positive Indonesian law in determining the Islamic status of waqf. Previous research has generally focused on the administrative and economic aspects of waqf, while the normative-theological dimension has received less attention. Therefore, this study aims to fill this gap by examining the Islamic waqf as a substantive requirement through a comparative analysis of fiqh postulates and national legal provisions. The novelty of this research lies in the emphasis on the Islamic waqf as a substantive requirement of waqf law, so that it is expected to enrich academic understanding and encourage synchronization of sharia values with the national legal system.

RESEARCH METHODS

This study uses a qualitative method with the type of library research to examine in depth Islamic issues as a substantive requirement for waqf in the perspective of Islamic jurisprudence and waqf law in Indonesia. The approach used is normative-juridical, which is to examine the norms, principles, and legal principles contained in Islamic law sources and national laws and regulations. This approach was chosen because the research focuses on conceptual and normative analysis of the legal provisions of waqf, not on empirical aspects or social practices.

Primary data sources include classical and contemporary fiqh books from the four Sunni schools (Hanafi, Maliki, Shafi'i, and Hanbali), works by contemporary scholars such as Abu Zahrah and Yusuf al-Qaradawi, as well as laws and regulations governing waqf in Indonesia, especially Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006. The secondary data was obtained from scientific journal articles, academic books, results of previous research, theses, and other scientific publications relevant to the study of waqf law, both from the perspective of fiqh and positive law. The data collection technique is carried out through documentation studies by searching, identifying, and inventorying written sources that are relevant to the focus of the research.

The data that has been collected is analyzed using a comparative-normative and interpretive approach. The analysis was carried out by comparing the classical fiqh doctrine of each school with the provisions of waqf law in Indonesian laws and regulations to identify points of convergence and normative divergence related to Islamic requirements for waqf. The analysis process includes the systematic interpretation of legal texts and fiqh, the grouping of normative themes, and the drawing of deductive conclusions in order to formulate a comprehensive and contextual legal construction. Thus, this analysis allows a complete understanding of the Islamic position of waqf within the legal framework of waqf oriented towards social justice and public benefit.

RESULTS AND DISCUSSION

The Conception of Waqf in Fiqh and Its Implications for the Islamic Requirements of Waqf

The discussion of Islam as a condition for waqf cannot be separated from the conceptual understanding of waqf itself, because the definition of waqf in classical fiqh directly determines who is considered worthy to be a subject of law (waqf). Waqf in classical jurisprudence is defined as holding property that can be used without losing its object, as well as making its benefits for good in the way of Allah. Imam al-Nawawi in *al-Majmū' Syarh al-Muhadzdzab* explained that waqf is to hold the origin (principal) of property and release its benefits to be used in the path of virtue (*habs al-asl wa tasbīl al-manfa'ah*),¹⁰ which means that waqf property should not be sold, inherited, or granted, because ownership of the property passes from the individual owner to the property of Allah for the common good. In the context of Islamic law, this concept emphasizes the role of waqf as a socio-economic instrument that is oriented towards the sustainability of benefits and empowerment of the ummah, by emphasizing the principle of perpetuity (sustainability of benefits) of the assets that are endowed. The character of waqf as a worship and legal institution then raises a crucial question: whether the waqf perpetrators must come from the Muslim community for the purpose of worship to be valid according to sharia.

In addition, the scholars of Madzhab Hanafiyyah define waqf with an emphasis on the aspect of *ta'bīd al-habs* (permanent detention). In *Badā'i' al-Šanā'i' fī Tartīb al-Syarā'i'*, *al-Kāsānī* explains that waqf is "holding property that remains in substance and providing its benefits as alms continuously" (*habs al-'ayn wa tasbīl al-manfa'ah*),¹¹ which shows that waqf is not just a temporary benefit, but a form of handing over ownership to Allah جل جلاله forever. This definition emphasizes that the social function of waqf lies in the continuity of its benefits aimed at the public interest such as education, welfare, and da'wah. This emphasis on the continuity and purpose of worship reinforces the normative assumption that waqf should ideally be performed by a Muslim, although this does not necessarily imply an absolute legal requirement. Thus, the view of the classical fuqahā' shows that waqf has interrelated spiritual and social dimensions, namely as a form of *taqarrub ilā Allāh* (self-approach to Allah) as well as as a mechanism for the fair distribution of wealth in Islamic society.

From the definition of waqf, the scholars then formulated the main elements (rukun) that determine the validity of waqf, including the determination of conditions for the subject of the perpetrator (waqf). In classical and contemporary fiqh literature, waqf is built on a number of pillars which generally include: wakif (waqf giver), waqf property (*mawqūf bihi*), *mauqūf 'alaih* (beneficiary), and *shighah* (formulation of waqf pledge). The requirements for waqif are not only related to administrative aspects, but also related to the eligibility of a person to take legal action (*ahliyyah al-tasarruf*). Therefore, some scholars require independence, common sense, maturity (*puberty*), and the ability to act legally as the basic foundation of waqf validity.¹² Interestingly, in the formulation of these conditions, the Islamic waqf is not always explicitly mentioned as an absolute prerequisite.

In a recent study, Sulistiani et al. emphasized that the construction of waqf requirements cannot be separated from the socio-legal dynamics of Indonesian society,

¹⁰ Yahya ibn Sharaf al-Nawawi, *al-Majmū' Sharh al-Muhadzdzab*, vol. 9 (Dār al-Fikr, 1996).

¹¹ 'Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'i' al-Šanā'i' fī Tartīb al-Syarā'i'*, vol. 6 (Dār al-Kutub al-'Ilmiyyah, 1986).

¹² 'Abd Allāh ibn Ahmad ibn Qudāmah Qudāmah, *Al-Mughnī*, vol. 6 (Dār al-Fikr, t.t.).

especially when questions arise about the possibility of non-Muslim involvement as waqif in the context of the development of national waqf assets.¹³ This analysis shows that the discussion of waqf requirements is no longer only normative-theological in dimension, but is also closely related to the need for waqf law reform to respond to the reality of a pluralistic society. Thus, the issue of Islamic waqf has shifted from a purely theological problem to a juridical problem that demands normative adjustment.

In terms of value and purpose, waqf is not only understood as an economic or social transaction but is a noble charity and a form of continuity of alms (*ṣadaqah jāriyah*) that emphasizes the dimension of worship in the act of endowment of property. Therefore, the intention (*niyyah*) of the waqf plays a central role: a waqf is only considered valid if it is based on a sincere intention as worship and not as a mere commercial transaction. This makes waqf have a different moral and legal character than ordinary buying and selling or grants.¹⁴ At this point, the issue of Islamic waqf becomes relevant again, because the intention of worship is often understood as something that ideally comes from the religious beliefs of the perpetrator. In the context of discussing Islam as a requirement for waqf, this perspective is important because it places waqf as a deed of worship that has a special value system, thus raising a debate about whether the value of worship can be realized by someone outside the Muslim community.

From the perspective of muamalah fiqh, Islam and the moral-religious status of waqf are often seen as an ideal context in the implementation of waqf worship, considering that waqf has a dimension of worship and charity that is strongly inherent in Islamic teachings. However, classical jurisprudence literature emphasizes that the main requirements for waqf have more to do with legal capacity and moral integrity, such as independence, maturity (*puberty*), and common sense, rather than explicit provisions regarding Islam.¹⁵ This shows that there is a space for ijtihad in understanding the relationship between the nature of waqf worship and the religious status of the perpetrator.

This affirmation shows that although the nature of waqf worship normatively leads to Muslim actors, classical fiqh texts do not expressly require Islam, but emphasize legal capacity (*ahliyyah*), property ownership, and the validity of intentions.

The Islam of the Wakif in the Study of the Fiqh of the Four Madhhabs

The Hanafi School's view of the Islamic status of waqf departs from the conception of waqf as the holding of property (*habs al-'ayn*) while retaining ownership of the waqf, while the benefits are given to the public interest, as explained in Hanafiyah turats such as *al-Kāsānī's Badā'i' al-Šanā'i'* and *al-Sarakhsī's al-Mabsūt*.¹⁶ In this framework, waqf is understood as a legal act as long as the waqf has the capacity to act legally (*ahliyyah al-taṣarruf*), legal ownership of the waqf property, and a sincere intention of *tabarru'*, without requiring the absolute Islamic of the waqf. This approach emphasizes the distinction between the legal aspects of waqf and the religious identity of the perpetrator, so that the validity of waqf does not automatically fall just because of differences in waqf religion. This normative understanding is strengthened by the historical study put forward by Laila Afni Rambe and Sitta'Ala Arkham, which shows that the Hanafi school develops

¹³ Sulistiani dan others, "The legal position of Waqf for non-muslims in efforts to increase Waqf assets in Indonesia."

¹⁴ Jaenudin Jaenudin, "CONSTRUCTION OF WAQF BY FIQH," *Ash-Sharia* 21, no. 1 (2019): 17–30, <https://doi.org/10.15575/as.v21i1.4303>.

¹⁵ Nurodin Usman, *SUBJECTS OF WAQF: A FIQH STUDY ON WAKIF AND NAZHIR*, T.T.

¹⁶ *al-Kāsānī, Badā'i' al-Šanā'i' fī Tartīb al-Syarā'i'*, vol. 6; *al-Sarakhsī, al-Mabsūt*, vol. 12 (Dār al-Ma'rifah, 1993).

the concept of waqf flexibly according to social needs, including the recognition of variations in the form of waqf as long as it is in line with sharia goals.¹⁷ In line with that, the research of Zahrotul Ainiyah and Muhammad Syarofi emphasizes that the flexibility of the Hanafi School is also reflected in the receipt of *cash waqf*, as long as it meets the legal requirements and *maqāṣid waqf*, so that the Hanafi perspective is relevant as a normative alternative in reviewing the Islamic waqf in the context of contemporary waqf law.¹⁸

According to the Maliki Madhhab, the Islamic status of waqf is a valid condition for waqf when the waqf is intended for the benefit of Islamic teachings, such as the construction of mosques and religious institutions. Waqf for this purpose is invalid if it is carried out by non-Muslims.¹⁹ One of the studies at UIN Alauddin Makassar (2015) concluded that non-Muslims whose waqf cannot be considered valid, if waqf is intended for Islamic teaching, because according to the Maliki School of non-Muslims should not be *waqif* or *mauquf 'alaīh* in the context of Islamic teaching.²⁰ Other studies, such as *Waqf in the Perspective of Waqf Rules in Indonesia*, also show that although positive laws in Indonesia (e.g. the Waqf Law) do not require that the waqf must be Muslim, in practice and fiqh review many Maliki scholars reject the validity of waqf from non-Muslims if the waqf is intended for Islamic worship activities.²¹

On the other hand, the Maliki school allows other forms of waqf such as productive waqf, term waqf, or money waqf as long as the conditions of ownership and benefits are met, but in all the literature found, the condition of "Muslim waqf" is still considered important, especially when it concerns Islamic teachings.²² Thus, although there is room for tolerance for the flexibility of waqf objects (money, productive waqf, temporary waqf), the waqf's identity as a Muslim remains a key requirement in many Maliki interpretations when waqf is intended for the benefit of Islam.

The Shafi'i Madhhab does not require Islam as a valid condition for wakif. In the literature of the Shafi'iyyah turats it is emphasized that waqf is valid to be carried out by non-Muslims (*dzimmi*), even if the waqf is intended for mosques, as long as the waqf has the ability to perform *tabarru'* and the object of waqf does not contradict the sharia. Ibn Ḥajar al-Haytamī in *Tuhfat al-Muhtāj* states that waqf is valid for disbelievers, including for mosques.²³ This affirmation is in line with *Zakariyyā al-Anṣārī in Fath al-Wahhāb bi Syarḥ Manhaj al-Ṭullāb* which states that non-Muslim waqf is considered valid if it is

¹⁷ Laila Afni Rambe and Sitta'Ala Arkham, "A Historical Approach in the Waqf Law of Imam Hanafi," *El-Faqih: Journal of Islamic Thought and Law* 7, no. 1 (2021): 38–58.

¹⁸ Zahrotul Ainiyah and Muhammad Syarofi, "WAQF MONEY ACCORDING TO THE LAW AND MADZHAB HANAFIYAH," *Al-tsaman: Journal of Islamic Economics and Finance* 7, no. 01 (2025): 1–8, <https://doi.org/10.62097/al-tsaman.v7i01.1992>.

¹⁹ Muḥammad ibn ‘Abd al-Bāqī al-Zurqānī, *Sharḥ al-Zurqānī ‘alā Mukhtaṣar Khalīl* (Dar al-Kutub al-‘Ilmiyyah, t.t.); Aḥmad ibn Muḥammad al-Dardīr dan Muḥammad ibn Aḥmad al-Dasūqī, *al-Sharḥ al-Kabīr ‘alā Mukhtaṣar Khalīl*, vol. 4 (Dar al-Fikr, t.t.).

²⁰ Muhamad Gufran, *VIEWS OF THE HANAFI AND MALIKI SCHOOLS ON THE LAW OF WAQF FOR NON-MUSLIMS IN RELATION TO CONTEMPORARY FIQH*. n.d., t.t., <http://repository.uin-alauddin.ac.id/id/eprint/1651>.

²¹ Selamet Hartanto dkk., "Waqf in the Perspective of Waqf Rules in Indonesia," *Al-Iktisab: Journal of Islamic Economic Law* 5, no. 1 (2021): 37, <https://doi.org/10.21111/al-ikhtisab.v5i1.6203>.

²² Risky Ananda Rachman et al., "The Views of the Mālikī and Shafi'i Madhhab on Productive Waqf: Views of the Mālikī and Shafi'i Schools of Productive Waqf," *AL-FIKRAH: Journal of Islamic Studies* 2, no. 2 (2025): 568–92, <https://doi.org/10.36701/fikrah.v2i2.2474>.

²³ Zakariyyā ibn Muḥammad ibn Aḥmad al-Anṣārī, *Fath al-Wahhāb bi Syarḥ Manhaj al-Ṭullāb*, vol. 2 (Dar al-Fikr, n.d.).

done voluntarily (mukhtār) and by those who have the capacity of tabarru' (*ahl al-tabarru'*),²⁴ thus showing that Islam is not a substantive requirement of waqf in the view of the Shafi'i School.

Thus, in the framework of this view, the Islamic status of waqf is not placed as a provision that absolutely determines the validity or not of a waqf; The main focus is that the waqf really has full rights to the assets that are waqf and that the distribution of waqf is directed to the goal of being clean from the elements of vice, so that as long as these two aspects are fulfilled, the waqf contract can still be considered valid according to the principles discussed by the scholars.

In the Hanbali School, the Islamic waqf is not absolutely required. This is affirmed in *Mansūr ibn Yūnus al-Buhūtī's Kashshāf al-Qinā' Kashshāf 'an Matn al-Iqnā'*, which states that "wa yaṣiḥḥu al-waqf min kāfir",²⁵ i.e. waqf is valid performed by non-Muslims, as long as the wakif has the ability to perform tabarru' (*ahliyyah al-tabarru'*), act voluntarily (*ikhtiyār*), and the object and purpose of waqf are not directed to disobedience or things that are contrary to sharia principles. This emphasis shows that the validity of waqf in the Hanbali School is more determined by the validity of the contract, the permanence of the waqf object, and the orientation of its use, not by the religion of the waqf giver. This normative view is further in line with contemporary research that explains that the Hanbali School places the value of social welfare as the main aspect in waqf, so that non-Muslim waqf can be accepted as long as it is intended for the public interest and is not an exclusive worship ritual for Muslims.²⁶ The view of the Hambali School shows an adaptive and benefit-oriented style of fiqh thinking, by placing the social value of waqf as the most prioritized aspect. This attitude also confirms that the Hambali school does not rule out the possibility of non-Muslim participation in social philanthropic activities through waqf, as long as it does not violate the basic principles of sharia.

However, this leniency still requires a strict supervisory mechanism to ensure that the use of waqf remains within the sharia corridor and does not cause normative conflicts. Overall, Hambali's view provides a space for inclusivity for waqf as a social instrument, but still requires prudence in its implementation.

Based on the presentation of the four madhhabs above, it appears that the difference in views on the Islamic status of waqf is not normative-qat'ī, but is the result of the construction of ijtihādiyyah which is influenced by the basic orientation of each madhhab towards the function of waqf. The Hanafi and Hanbali schools tend to emphasize the dimension of social benefits and the validity of the contract, so they do not require the absolute Islamic of the waqf. The Shafi'i school even explicitly recognizes the validity of non-Muslim waqf, including for mosques, as long as the requirements of tabarru' proficiency and goals that do not conflict with the sharia are met. On the other hand, Madhab Maliki places the aspect of worship and Islamic teachings as the main consideration, thus requiring the Islamization of the wakif when the waqf is directed to Islamic religious interests. Thus, the difference in views between mahzab shows that the Islamic status of waqf cannot be understood singularly, but must be placed within the framework of the relationship between the purpose of waqf, the character of the waqf

²⁴ al-Anṣārī, *Fatḥ al-Wahhāb bi Syarḥ Manhaj al-Tullāb*, vol. 2.

²⁵ Mansūr ibn Yūnus al-Buhūtī, *Kashshāf al-Qinā' 'an Matn al-Iqnā'*, 1st ed., vol. 4 (Dār al-Kutub al-‘Ilmiyyah, 1997).

²⁶ Mala Rizka Ramadhana, "A Comparative Study of Waqf Law from Non-Muslims According to Four Schools" (Undergraduate Thesis, UIN Antasari Banjarmasin, 2022).

object, and the orientation of the benefits that are the basis of the legal *istinbāt* of each madhhab.

Convergence of Indonesian Waqf Law and Waqf Religious Requirements

Law Number 41 of 2004 concerning Waqf is the main juridical basis in regulating the implementation of waqf in Indonesia. Article 1 paragraph (3) of the law states that a waqf is a party who endows part of his property for the benefit of worship or public welfare in accordance with sharia provisions.²⁷ This formulation emphasizes two important aspects: first, the existence of the purpose of worship and general welfare as the orientation of waqf; and second, the applicability of sharia provisions as a moral and legal basis in the implementation of waqf. However, this law does not explicitly require that the wakif must be Muslim. Thus, legally positive, the wakif can come from anyone who meets the administrative requirements such as legal ability, legal ownership of the property, and free will in endowment of the property. This shows the character of waqf law in Indonesia which is inclusive and non-discriminatory against a person's religion, as long as the purpose of waqf does not conflict with sharia principles.

The academic view shows that there is a dialectic between a positive legal approach and a normative-theological approach. According to Muthawalli, et al., the legal essence of waqf in Law Number 41 of 2004 is still based on sharia principles even though it is applied in the modern national legal system. Waqf in this context is not only a civil legal act, but also a deed of worship that reflects the moral responsibility of a Muslim for the benefit of the ummah.²⁸ This view emphasizes that although the law does not explicitly mention the religion of waqf, the essence of the act of waqf is still closely related to Islamic values. Therefore, in practice, non-Muslim waqf may be waqf, but the form and purpose must remain in accordance with the sharia provisions recognized by the state.

Sulistiani's study on the validity of waqf pledge deeds also shows the importance of sharia principles in ensuring the validity of waqf law. According to him, although the national legal system provides a wide administrative space, the implementation of waqf must still consider aspects of spirituality and conformity with Islamic law so as not to cause conflicts between positive law and religious law.²⁹ In this context, the status of waqf religion becomes relevant when the determination of the intention and purpose of waqf is tested based on Islamic law, because intention is a substantial element in determining whether or not an act of waqf is legal. Thus, the religious aspect of waqf is not explicitly stated in the law, but has an important role in the moral and spiritual validity of a waqf.

The research of Assril, Hidayatullah, and Saiin shows that the dynamics of waqf law in Indonesia require harmonization between Islamic law and national law, especially in the face of modern social and economic changes. They emphasized that the waqf legal system must be adaptive to the needs of the community, including opening up a wider space for participation without eliminating basic sharia principles.³⁰ This view

²⁷ Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, Legis. No. 41 of 2004, Statute Book of the Republic of Indonesia (2004), <https://peraturan.bpk.go.id/Details/40788/uu-no-41-tahun-2004>.

²⁸ Muthawalli dkk., "WAQF MANAGEMENT ACCORDING TO LAW NUMBER 41 OF 2004 ON WAQFIN: A case study at the Al Muslim University Foundation Indonesia," *JURISTA: Jurnal Hukum dan Keadilan* 9, no. 2 (2025): 426–53, <https://doi.org/10.22373/jurista.v9i2.275>.

²⁹ Muhammad Aji Saka Haelani and Siska Lis Sulistiani, "The Validity of the Double Waqf Pledge Deed from the Perspective of the Waqf Law and Islamic Law," *Islamic Family Law Research Journal*, July 23, 2024, 53–58, <https://doi.org/10.29313/jrhki.v4i1.3871>.

³⁰ Rahmat Hidayatullah and Asrizal Saiin, *Dynamics of Waqf Law in Indonesia Challenges and Solutions in Productive Waqf Asset Management*, 2025.

strengthens the position of national law that accommodates Islamic values while upholding the principle of inclusivity. Thus, the status of waqf religion should be understood not as an administrative requirement, but as a moral element that ensures harmony between the intentions, goals, and mechanisms of waqf.

Meanwhile, the results of Loso Judijanto's research and his colleagues underline the need for effectiveness in the implementation of the Waqf Law so that sharia values can be applied consistently in institutional practices. They argue that although positive law has provided a strong foundation for the implementation of waqf, there are still challenges in synchronizing the implementation of productive waqf in the field, especially related to aspects of conformity with Islamic principles and supervision by *nazhir*.³¹ In relation to the religious status of waqf, this study emphasizes that the validity of waqf does not only depend on the religious status of the waqf giver, but also emphasizes that the procedures for the implementation and use of waqf assets must always be in harmony with sharia values and principles. This thinking strengthens the argument that the essence of waqf in Indonesia relies on the universal values of Islam, not solely on the religious identity of the waqf giver.

The Convergence of Islamic Law and Indonesian Positive Law on Wakif Islam

The relationship between Law No. 41 of 2004 and the views of the four schools shows that there is a process of harmonization between classical fiqh norms and the needs of modern national law. The regulation does not explicitly require that the waqf must be Muslim, but emphasizes that the act of waqf must be in accordance with sharia principles. This approach is in line with the views of the Hanafi and Hanbali madhhab which considers Islam not an absolute requirement as long as the purpose of waqf does not conflict with Islamic values.³² This model of inclusivity reflects the pattern of *istislāhī* (benefit-oriented), where social goals and welfare are the main cornerstones of law-making. Thus, Indonesia's positive law focuses more on the substance of social benefits than on the religious identity of the waqf, as reflected in the formulation of Article 1 and Article 22 of Law Number 41 of 2004 which emphasizes the purpose of worship and general welfare without explicitly mentioning the Islamic requirements of waqf.³³

As a normative illustration, interfaith social waqf can be understood through the possibility of land waqf or cash waqf carried out by non-Muslim residents for the benefit of public facilities such as hospitals, educational institutions, or social facilities, as long as the management is carried out in accordance with sharia principles. This pattern is in line with the provisions of Government Regulation Number 42 of 2006 which emphasizes that the implementation of waqf is oriented towards worship and general welfare without explicit restrictions on waqf religion.³⁴ In this framework, waqf is understood as a social instrument that focuses on the usefulness and purpose of benefit, so that the religious identity of the waqf does not become a determining factor as long as its substance and management are in line with sharia principles.

³¹ Loso Judijanto et al., "The Implementation of the Waqf Law in the Perspective of Islamic Law: A Study on the Effectiveness of Productive Waqf Management," *Al-Mizan Journal* 12, no. 1 (2025): 88–99.

³² Sulistiani dan others, "The legal position of Waqf for non-muslims in efforts to increase Waqf assets in Indonesia."

³³ Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, Legis. No. 41/2004, 159 Statute Book of the Republic of Indonesia (2004), <https://peraturan.bpk.go.id/Details/40788/uu-no-41-tahun-2004>.

³⁴ Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf, Law No. 41 of 2004 42, accessed December 30, 2025, <https://peraturan.bpk.go.id>.

Government Regulation No. 42 of 2006 as the implementer of Law No. 41 of 2004 emphasizes the role of the state in institutionalizing sharia values in national law. This regulation emphasizes that the implementation of waqf must be oriented towards worship and general welfare without explicitly limiting the religion of waqf. This approach describes the application of the superstition method, which is the selection of the best laws from various schools to answer the needs of a pluralistic society, in line with the principle of legal flexibility in the Hanafi and Hanbali schools.³⁵ This principle expands social participation without eliminating the spiritual value of worship as emphasized by the Shafi'i and Maliki schools. The legal framework of waqf in Indonesia emphasizes the balance between sharia norms and social interests through inclusive and contextual regulations.³⁶

The integration between national regulations and the fiqh views of the four schools gave birth to a convergent waqf legal system: recognizing Islamic theological values while being adaptive to social reality. Law No. 41 of 2004 and Government Regulation No. 42 of 2006 can be understood as a form of contextualization of the principle of *maqāṣid al-syarī'ah* in positive law, namely maintaining religion (*hifz al-dīn*) and social welfare (*hifz al-māl*, *hifz al-nafs*), as explained in contemporary Islamic legal literature.³⁷ This approach shows that Indonesia's waqf law functions as a bridge between divine norms and the needs of modern society, balancing aspects of worship and social welfare in one adaptive legal system.³⁸

Based on the above description, it can be understood that the relationship between the fiqh of the four schools and waqf regulations at the national level is not contradictory, but complementary and strengthens in building a comprehensive waqf legal system in Indonesia. The harmonization between sharia norms and positive law reflects the spirit of *maqāṣid al-syarī'ah* which is oriented towards the benefit of the ummah. By adopting an inclusive and contextual approach, waqf law in Indonesia has succeeded in combining Islamic spiritual values with the principles of social justice in a legal system that is adaptive to the reality of a pluralistic society.

CONCLUSION

Based on the results of the research, it can be concluded that the Islamic wakif is an *ijtihādiyyah* issue that does not have a single consensus in the classical fiqh tradition. The variation of views of the four schools shows significant differences: the Hanafi and Hanbali schools do not require absolute Islam, provided that the waqf has legal competence (*ahliyyah al-tasarruf*), legal ownership, and the purpose of waqf in accordance with sharia; The Shafi'i school allows waqf from non-Muslims by emphasizing the voluntary aspect; while the Maliki School requires the Islamic waqf for waqf that is Islamic in nature, although it remains tolerant of non-worship social waqf. These findings confirm that the understanding of wakif Islam must be placed in a functional and teleological perspective, not merely a formal identity.

In the context of positive law in Indonesia, Law No. 41 of 2004 and Government Regulation No. 42 of 2006 emphasize the conformity of the purpose of waqf with sharia principles and the fulfillment of administrative requirements, without requiring a certain

³⁵ Sulistiani dan others, "The legal position of Waqf for non-muslims in efforts to increase Waqf assets in Indonesia."

³⁶ Hartanto dkk., "Waqf in the Perspective of Waqf Rules in Indonesia."

³⁷ Hartanto dkk., "Waqf in the Perspective of Waqf Rules in Indonesia."

³⁸ Multazam, "Non-Muslim waqf according to the view of fiqh and legislation in Indonesia: A case study of waqf of the Manunggal Mosque of the Vijayakusumah Cibiru Complex, Bandung City."

religion for waqf. This legal approach is inclusive and contextual, prioritizing social welfare without neglecting Islamic spiritual values. The harmonization between classical jurisprudence and national law is reflected through the principle of *maqāṣid al-syarī'ah*, where waqif Islam is positioned as a moral and spiritual dimension, rather than an absolute administrative requirement, thus demonstrating normative convergence through *istislāhī* and superstitious approaches.

The theoretical implications of this study reinforce the relevance of *maqāṣid al-syarī'ah* as an integrative analytical framework that combines the values of worship and social justice. Normatively, this study recommends that policymakers, especially the Indonesian Waqf Board, formulate technical guidelines related to interfaith waqf that remain in line with sharia principles. For academics, these findings encourage the development of inclusive fiqh that is responsive to pluralistic societies. Follow-up research suggestions include an empirical study of non-Muslim waqf practices in Indonesia, including the perception of *nazhir* and society, as well as comparative research with other Muslim countries to enrich the perspective and development of national waqf laws.

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