

## The Implementation of Waqf Law within the Framework of Indonesia's Legal State: An Analysis of Pancasila Values

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### *Abstract*

This study aims to explore the preservation of waqf in Indonesia, which plays a crucial role in supporting social welfare and community development, while considering Pancasila as the state ideology. The research seeks to analyze how Islamic legal principles are integrated into waqf preservation in relation to Pancasila values and to understand the interaction between these two value systems within the national legal framework. The study employs a qualitative analysis method with a literature review approach. Data is gathered through an examination of relevant laws and government regulations, as well as fatwas and guidelines concerning waqf and Pancasila. The analysis focuses on evaluating the connection between Islamic principles related to waqf preservation and the implementation of Pancasila values within the Indonesian legal system. The research aims to identify and explain the relationship between Islamic legal principles regarding waqf and Pancasila values and to assess how Pancasila values support and enhance the preservation of waqf in Indonesia. The findings reveal that Pancasila values, particularly the principles of social justice and humanity, align with Islamic principles in the preservation of waqf. Pancasila serves as an ethical framework that supports fair and transparent waqf implementation, ensuring that waqf not only complies with Islamic law but also contributes to sustainable social welfare. The study also identifies that integrating Islamic principles with Pancasila values in waqf management can improve the effectiveness of waqf preservation and strengthen the legal and social foundation in Indonesia.

**Keywords:** *Waqf Implementation, Islamic Law, Pancasila Values*

### **Abstrak**

Penelitian ini bertujuan untuk menjelajahi pelestarian wakaf di Indonesia, yang memiliki peran penting dalam mendukung kesejahteraan sosial dan pembangunan masyarakat, dengan mempertimbangkan Pancasila sebagai ideologi negara. Penelitian ini berusaha menganalisis bagaimana prinsip-prinsip hukum Islam diintegrasikan dalam pelestarian wakaf terkait dengan nilai-nilai Pancasila dan untuk memahami interaksi antara kedua sistem nilai ini dalam kerangka hukum nasional. Metode analisis yang digunakan adalah analisis kualitatif dengan pendekatan tinjauan pustaka. Data dikumpulkan melalui

pemeriksaan undang-undang dan peraturan pemerintah yang relevan, serta fatwa dan pedoman mengenai wakaf dan Pancasila. Analisis difokuskan pada evaluasi hubungan antara prinsip-prinsip Islam terkait pelestarian wakaf dan penerapan nilai-nilai Pancasila dalam sistem hukum Indonesia. Penelitian ini bertujuan untuk mengidentifikasi dan menjelaskan hubungan antara prinsip-prinsip hukum Islam mengenai wakaf dan nilai-nilai Pancasila serta menilai bagaimana nilai-nilai Pancasila mendukung dan meningkatkan pelestarian wakaf di Indonesia. Temuan menunjukkan bahwa nilai-nilai Pancasila, terutama prinsip keadilan sosial dan kemanusiaan, sejalan dengan prinsip-prinsip Islam dalam pelestarian wakaf. Pancasila berfungsi sebagai kerangka etika yang mendukung pelaksanaan wakaf yang adil dan transparan, memastikan bahwa wakaf tidak hanya mematuhi hukum Islam tetapi juga berkontribusi pada kesejahteraan sosial yang berkelanjutan. Penelitian ini juga mengidentifikasi bahwa mengintegrasikan prinsip-prinsip Islam dengan nilai-nilai Pancasila dalam pengelolaan wakaf dapat meningkatkan efektivitas pelestarian wakaf dan memperkuat dasar hukum dan sosial di Indonesia.

**Kata kunci:** Implementasi Wakaf, Hukum Islam, Nilai-Nilai Pancasila

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## Introduction

Waqf is one of the Islamic economic instruments that plays a vital role in the development of social and economic welfare in society. In Indonesia, the concept of waqf aligns with the spirit found in Pancasila, particularly the 5th principle, which emphasizes the principle of social justice for all Indonesians, as well as Article 33 of the 1945 Constitution, which asserts that the economy is structured as a joint endeavor based on the principles of kinship.

Indonesia is a country founded on Pancasila as the basis for national life, with one of its principles, belief in the One and Only God, serving as the fundamental principle. In the 1945 Constitution, Article 29, paragraph 1, states that "The State is based upon the belief in the One and Only God," signifying Indonesia's recognition of the existence of God and its implications. In the context of managing natural resources, Article 33, paragraph 3, of the 1945 Constitution mentions that the earth, water, and natural resources contained therein

are controlled by the state and used for the greatest possible benefit of the people. The Basic Agrarian Law Number 5 of 1960, as an implementation of this article, reinforces that the earth, water, and outer space are blessings from the One and Only God. Article 1, paragraph 2, of this law states that all natural resources within the territory of Indonesia are gifts from God.<sup>1</sup>

In this context, waqf is a form of asset management that can contribute to efforts aimed at creating collective welfare and a more equitable distribution of wealth.

However, despite its great potential in reducing social and economic disparities, the utilization of waqf in Indonesia still faces various challenges, both in terms of regulation, management, and public understanding. Therefore, this research aims to examine how waqf can be optimized in accordance with the values contained in Pancasila and Article 33 of the 1945 Constitution, as well as how the existing challenges can be addressed through improvements in waqf regulations and management.<sup>2</sup>

This research aims to identify the alignment of the waqf principles with the values of Pancasila and Article 33 of the 1945 Constitution. Within the values of Pancasila, there is the potential for waqf to support the national economy and promote equitable welfare distribution. This study employs a qualitative approach using literature review and document analysis methods. The primary data sources come from scientific literature, legislation related to waqf, and official documents governing the national economy and waqf in Indonesia. Data analysis is conducted using a descriptive approach to explore the relationship between waqf, Pancasila, and Article 33 of the 1945 Constitution.<sup>3</sup>

Based on this principle, Islamic law in Indonesia has developed rapidly, including the implementation of waqf, one form of worship in Islam. Waqf in Indonesia has a historical connection with the arrival of Islam several centuries ago. Abdurrahman (1979) It emphasizes that when discussing waqf, we cannot ignore the origins of this concept in Islamic law. Before the arrival of Islam, Indonesian society was already familiar with social institutions similar to waqf, such as *tadah Pariaman* in Lombok and *tanah pusaka tinggi* in Minangkabau, as explained by Daud Ali (1988). Therefore, the understanding of waqf among Indonesian Muslims is not only based on the Qur'an, hadith, and fiqh books, particularly the

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<sup>1</sup> Abdurrahman., *Pernakafan Di Indonesia* (Jakarta: Bulan Bintang., n.d.).

<sup>2</sup> Daud. Ali, *Hukum Islam Dan Peradilan Agama* (Jakarta: RajaGrafindo Persada., 1988).

<sup>3</sup> Undang-undang, *Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria* (Jakarta: Pemerintah, 1960).

Shafi'i school of thought, but is also influenced by local customs that have assimilated with Islamic teachings. Conversely, Islamic religious institutions have also been influenced by customary values, especially in resolving disputes based on principles of lineage, appropriateness, and balance.<sup>4</sup>

This research is expected to provide a deeper understanding of the role of waqf within the context of the Pancasila economy, as well as to offer practical contributions in the form of recommendations to improve the management of waqf in Indonesia. Through the optimization of waqf, it is hoped that equitable welfare can be created in line with the spirit of togetherness and social justice as mandated by Pancasila and the 1945 Constitution. Thus, the title of this article is "Preservation of Waqf in a Pancasila State (An Analytical Study of Islamic Legal Values within Pancasila Values)".

## Method

The approach used in this research is a qualitative approach. A qualitative approach is chosen because this study aims to gain a deeper understanding of the concept of waqf and the management of natural resources in the context of the national economy in Indonesia. Through this approach, the researcher can explore the meanings, contexts, and values contained in the data sources being analyzed. The research method employs literature review and document analysis as the main techniques for data collection and analysis.<sup>5</sup>

The researcher collects various data sources from scientific literature, including books, journals, and academic articles related to waqf, the economy, and public policy. This literature is selected based on its relevance and contribution to the understanding of the implementation of waqf and the management of natural resources in Indonesia.<sup>6</sup> Analysis is conducted on relevant official documents, such as legislation related to waqf and the management of natural resources, including the 1945 Constitution, the Basic Agrarian Law Number 5 of 1960, and other laws governing waqf and the national economy. These documents are analyzed to uncover how the state manages natural resources and applies the principles of waqf within the national economy.

The primary data sources for this research include scientific literature: books, journals, and academic articles that examine waqf, the economy, and Islamic law in

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<sup>4</sup> Ali, *Hukum Islam Dan Peradilan Agama*.

<sup>5</sup> Sugiyono, , *Memahami Penelitian Kualitatif* (Bandung, Alfabeta : 2005 (Bandung: Alfabeta, 2005).

<sup>6</sup> Sugiyono, (*Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: Alfabeta, 2017).

Indonesia. Legislative documents: official documents such as the 1945 Constitution, the Basic Agrarian Law Number 5 of 1960, and other regulations related to the management of natural resources and waqf. Other official documents: decisions, instructions, and government policies related to waqf and the national economy.<sup>7</sup> The data collected through the literature review and document analysis is analyzed using content analysis techniques. This technique is used to identify key themes, relationships between concepts, and interpretations of regulations and policies governing waqf and the management of natural resources in Indonesia. The researcher will categorize and filter the data to find patterns relevant to the research objectives.<sup>8</sup>

## Discussion

### Definition of Waqf

The term waqf comes from the Arabic word "waqf," which means to hold or to stop. In its plural form, "wakaf" is "auqâf," derived from an abstract noun (masdar) or a verb (fi'il), which can function as either a transitive or intransitive verb, meaning to hold back, to stop something, or to remain in place. In Indonesian, the word "wakaf" is derived from the Arabic "waqafa–yaqifu–waqfan," which means to stop, to hold back, to declare, to show, or to pay attention. The term "*al-waqf*" has the same meaning as "*al-habs*," which comes from "*habasa–yabbisu–habsan*," meaning to stop or to hold back.<sup>9</sup>

Terminologically, waqf means to hold back wealth so that its benefits can be used for good in order to draw closer to Allah. Muhammad Jawad Mughniyah describes waqf as a type of donation that retains the original ownership while allowing its benefits to serve the public interest. Amir Syarifuddin defines waqf as the cessation of the transfer of rights over property and its utilization for the public good as a form of worship. According to As Shan'ani, waqf means holding back property whose benefits can be derived without damaging the object, and using it for good.<sup>10</sup>

Waqf also signifies holding property whose benefits are used for public or specific interests without diminishing or transferring ownership of the property to others. The

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<sup>7</sup> Undang-undang, *Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria*.

<sup>8</sup> J. W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. Thousand Oaks (Thousand Oaks, CA: SAGE Publications, 2014).

<sup>9</sup> (Yenni Samri Juliati Nasution, 2021)

<sup>10</sup> Departemen Agama RI, *Pedoman Pengelolaan Wakaf Di Indonesia* (Jakarta: Direktorat Pemberdayaan Wakaf, Departemen Agama RI., 2006).

endowed property remains intact, while its benefits are redirected for charitable purposes in accordance with Islamic law.<sup>11</sup> Scholars have varying views on the definition of waqf; however, they generally agree that waqf is the act of donating property for the benefit of society or religion with the aim of drawing closer to Allah SWT.

### **Waqf According to the Salaf Scholars**

According to Imam Shafi'i, waqf is "to hold back property and use its benefits for good while preserving the integrity of that property." In Shafi'i's view, waqf is binding after the pronouncement of *ijab kabul* (offer and acceptance) by the wakif (the one who endows). In the Hanafi school of thought, waqf is defined as "holding back the property of the wakif and allocating its benefits for public or specific interests, while the ownership status of the property remains with the wakif." The difference in the Hanafi school lies in the flexibility of waqf, which can be revoked by the wakif in certain situations.<sup>12</sup>

Imam Malik states that waqf is "to give property in full ownership to Allah SWT forever, and its benefits are used for the welfare of the community." According to Imam Malik, waqf cannot be revoked or taken back once it has been validly established. In the Maliki view, waqf does not eliminate the wakif's ownership over the endowed property. However, it limits the wakif from taking actions that would transfer ownership of the property to others. The wakif must provide benefits from the property to the entitled parties and is not allowed to retract the property, even if the benefits include wages or other proceeds, such as the income from the waqf.<sup>13</sup>

Waqf is performed by stating the waqf declaration for a specified period according to the owner's wishes. Thus, the property remains owned by the wakif, but its proceeds are utilized for charitable purposes. The endowed property continues to belong to the wakif, and the waqf cannot be stipulated to last forever.<sup>14</sup> Imam Ahmad bin Hanbal views waqf as "property that is held back so that its benefits can be utilized for the interests of religion and humanity." In this school of thought, waqf is also considered permanent and cannot be revoked.

### **Waqf According to Contemporary Scholars**

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<sup>11</sup> A Suma, *Fikih Wakaf Produktif: Studi Fikih Dan Implementasinya Di Indonesia* (Jakarta: Rajawali Press, 2012).

<sup>12</sup> Abu Hanifah, *Kitab Fiqh Al-Waqf* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1999).

<sup>13</sup> Malik ibn Anas, *Al-Muwatta'*. Trans. Aisha Abdurrahman Bewley (London: Madinah Press, 2001).

<sup>14</sup> Ali Amin Isfandiar, "Tinjauan Fiqh Muamalat Dan Hukum Nasional Tentang Wakaf Di Indonesia," *La-Riba II*, no. 1 (2008): 51.

In the contemporary era, waqf is not only understood as immovable property such as land and buildings but also includes movable assets like money, stocks, or digital properties aimed at social purposes. The perspectives of contemporary scholars and Indonesian scholars on waqf continue to evolve in line with changing times and the needs of the community. Yusuf al-Qaradawi, as a representative of contemporary scholars, explains and expands the concept of waqf by emphasizing that it should not be limited to physical assets. He states that cash waqf is one form of innovation in waqf. Cash waqf involves the allocation of money whose returns are managed for public or social benefit. According to him, good management of cash waqf can enhance community welfare, particularly in education and healthcare services.<sup>15</sup>

In the view of Monzer Kahf, an expert in Islamic economics who pioneers thoughts on waqf in a modern context, waqf should be seen as an economic instrument with great potential for improving community welfare. He emphasizes the importance of productive waqf, which is waqf that is economically invested to generate income that is then allocated for charitable purposes. This is highly relevant in the context of sustainable development and economic empowerment.<sup>16</sup>

Muhammad Taqi Usmani, who represents contemporary fiqh scholars from Pakistan, emphasizes that waqf can involve movable assets such as stocks or bonds, the proceeds of which are used for the benefit of the community. According to Usmani, waqf must be managed with high levels of transparency and accountability, considering that waqf assets are a public trust that must be used for religious purposes or social welfare.<sup>17</sup>

### **Waqf According to Indonesian Scholars**

KH. Ma'ruf Amin, a prominent scholar in Indonesia who also serves as the Chairman of the Indonesian Ulema Council (MUI) and currently as the Vice President of Indonesia, states that waqf is not only in the form of land or buildings but can also include productive waqf and cash waqf. According to him, innovative and productive management of waqf can serve as an instrument for the economic empowerment of the community. This is realized

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<sup>15</sup> Yusuf Qardhawi, *Fatwa Antara Ketelitian Dan Kecerobohan* (Jakarta: Gema Insani Press, 1997).

<sup>16</sup> M. Kahf, *The Role of Waqf in Improving the Ummah's Welfare* (Jedah: Islamic Research and Training Institute, 2003).

<sup>17</sup> M.T. Usmani, *An Introduction to Islamic Finance* (Karachi: Idaratul Ma'arif, 1998).

through productive waqf programs managed by the Indonesian Waqf Board (BWI), where cash waqf funds are invested to generate economic benefits for the wider community.<sup>18</sup>

According to Prof. Dr. Amin Suma, waqf in Indonesia has great potential for development through a professional management approach. He argues that waqf should be managed by competent, transparent, and accountable institutions so that its benefits can be widely felt by the community. In Indonesia, regulations regarding waqf, including cash waqf, are governed by Law Number 41 of 2004 on Waqf and other related regulations.<sup>19</sup>

In the view of Indonesian scholar KH. Sahal Mahfudz, he emphasizes that waqf in Indonesia should be utilized to address issues of poverty and social inequality. Waqf should not be limited to the construction of mosques or graves, but can also take the form of productive waqf whose proceeds are used for education, healthcare, and the economy of the people. He also advocates for the collective management of waqf, involving multiple parties including the government, to ensure that its benefits are more widely disseminated.<sup>20</sup>

### **Elements of Waqf**

Waqf is considered valid if it meets several elements established by scholars. According to fiqh law, there are four main elements in waqf: (1) waqif (the person making the waqf), (2) mauquf 'alaih (the party receiving the benefits of the waqf), (3) mauquf (the property being endowed), and (4) shighat or iqrar (the official statement from the waqif as a sign of their intention to endow their property). Wakif is the person who donates their property for waqf. In this context, the wakif must meet legal requirements or possess "kamalul ahliyah" (legal competency) in managing property, which includes four criteria: 1) Free (not enslaved), 2) Of sound mind, 3) Mature (pubescent), and 4) Not under guardianship.<sup>21</sup>

Regarding the ownership of property that has been endowed, there are various perspectives. Abu Hanifah argues that the endowed property still belongs to the wakif, allowing them to retain the rights to manage, gift, sell, or bequeath it. According to Abu Hanifah, there are three conditions under which waqf has legal certainty: 1) Waqf for

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<sup>18</sup> M Amin, *Wakaf Tunai: Solusi Pengentasan Kemiskinan* (Jakarta: MUI Press, 2011).

<sup>19</sup> Suma, *Fikih Wakaf Produktif: Studi Fikih Dan Implementasinya Di Indonesia*.

<sup>20</sup> K.H Sahal, *Pesantren Dan Pengembangan Wakaf Produktif* (Jakarta: Pustaka Pesantren, 2013).

<sup>21</sup> Undang-undang Wakaf, *Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf*. (Jakarta: Pemerintah, 2004).



mosques, 2) Waqf decreed by a judge, and 3) Waqf related to the death of the wakif, which is known as waqf wasiat.<sup>22</sup>

Imam Malik also agrees that waqf property still belongs to the wakif, especially in the context of muaqqat waqf, where ownership remains with the wakif, while in muabbad waqf, ownership is severed. Based on a hadith from Umar, Imam Malik argues that there is no obligation for waqf to be permanent.<sup>23</sup> However, most scholars state that once the property is endowed, ownership shifts from the wakif and becomes the property of Allah. This view aligns with Imam Shafi'i's perspective, which equates waqf with the emancipation of a slave, where after being freed, the slave becomes the property of Allah.<sup>24</sup>

### **Muaquf 'Alaih**

In fiqh literature, the term 'mauquf 'alaih' is sometimes interpreted as the individual responsible for managing the waqf property, referred to as nadzir. However, this term can also refer to the purpose or allocation of the waqf property. If 'mauquf 'alaih' is understood as nadzir, its discussion in fiqh is not particularly detailed. What is more important is that 'mauquf 'alaih' must be capable of ensuring that the allocation of waqf property is implemented effectively, which in another context also means the purpose of the waqf itself. This is influenced by the concept of 'tabarru' (charitable giving), which includes allocations for religious and social activities, as long as they do not contradict Islamic teachings or involve sinful actions. Since waqf is considered a unilateral contract that does not require 'qabul' (acceptance), some scholars also permit waqf to oneself.<sup>25</sup>

Regarding the belief in nadzir, Imam Nawawi opines that waqf to non-Muslim dhimmi is permissible under two conditions: 1) The allocation of the waqf property entrusted to the nadzir must not be related to specific acts of worship for Muslims, such as waqf of the Qur'an to a non-Muslim dhimmi nadzir, and 2) The benefits derived from the waqf property managed by the nadzir must not be used to support the beliefs or interests of the dhimmi religion, such as waqf for the construction of a church facilitated by a non-Muslim dhimmi nadzir.<sup>26</sup>

### **Mauquf**

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<sup>22</sup> Hanifah, *Kitab Fiqh Al-Waqf*.

<sup>23</sup> Anas, *Al-Muwatta'*. Trans. Aisha Abdurrahman Bewley.

<sup>24</sup> Muhammad ibn Idris Syafii, *Al-Umm* (Beirut: Dar al-Ma'rifah, 1973).

<sup>25</sup> Ahmad bin Yahya bin Jabir. Al-Baladzuri, *Futuh Al-Buldan*. (Cairo: Daar Hadits, 1987).

<sup>26</sup> Yahya ibn Sharaf Nawawi, *Al-Majmu' Syarh Al-Muhadzdzab* (Beirut: Dar al-Fikr, 1997).

The fiqh debate about waqf property begins with the types of property that can be endowed, whether movable or immovable property, or both. The Shafi'i and Hanbali schools tend to be more conservative, permitting only immovable objects as waqf. In contrast, the Hanafi and Maliki schools allow for the waqf of movable property. This difference in opinion arises from how one interprets whether what is endowed is the essence of the property itself or the benefits derived from that property. If the endowed item is understood as the essence of the property, it is typically immovable property that is endowed, although the types are limited. However, if what is endowed is the benefit of the property, then movable items are more commonly chosen due to their greater variety.<sup>27</sup>

This perspective is also related to the status of the wakif's ownership of the property after it has been endowed, which affects the wakif's rights over that property. In a hadith narrated by Umar, it is mentioned that there are three actions that can be taken regarding waqf property: selling, gifting, and bequeathing it. According to Abu Hanifah, the waqf property still belongs to the wakif, allowing the wakif to treat it accordingly, including selling, gifting, bequeathing, and even mortgaging it.<sup>28</sup> In contrast to the Hanafi view, the Maliki school argues that although the waqf property still belongs to the wakif, the wakif is not allowed to use it for personal benefit (Anas, 2001). Meanwhile, the Shafi'i and Hanbali schools maintain that the wakif's ownership of the waqf property is severed, meaning the wakif no longer has rights over that property.<sup>29</sup>

Furthermore, the debate also relates to the permanence of waqf objects, particularly movable items. For this reason, the waqf of movable property is often linked to immovable property, such as the waqf of agricultural tools associated with farmland or rice fields.

### **Shighat**

Shighat or declaration is a form of statement made by the wakif (donor) to hand over waqf (endowment) property to the mauquf 'alaih (beneficiary or trustee). There are differing views on how this declaration should be made, whether it must be verbal, in the form of kinayah (figurative expression), or through actions. Regarding the waqf contract, all Islamic schools of thought agree that waqf is a unilateral (tabarru') contract, which is valid without requiring qabul (acceptance) from the recipient party.<sup>30</sup>

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<sup>27</sup> Anas, *Al-Muwatta'*. Trans. Aisha Abdurrahman Bewley.

<sup>28</sup> Hanifah, *Kitab Fiqh Al-Waqf*.

<sup>29</sup> Syafii, *Al-Umm*.

<sup>30</sup> Sayyid Sabiq, *Fiqhu As-Sunnah* (lebanon: Dar al-'Arabi, 1977).

The offer (*ijab*) made by the *wakif* (donor) is sufficient to legitimize the *waqf* contract. In this context, the contract is not a primary requirement in *waqf*, because what is meant by a contract here is a legal act (*tasharruf*) that creates an obligation to fulfill what is stated in the declaration, even though the declaration comes from only one party. This concept of contract differs from contracts involving two parties, such as in buying and selling or leasing, which require both an offer (*ijab*) and acceptance (*qabul*). Therefore, this kind of contract concept is not applied in *waqf*.<sup>31</sup>

On the other hand, al-Kabisi questions whether *waqf* falls into the category of a contract that creates *tasharruf* (legal action) resulting in agreed-upon legal consequences, or whether it is *al-iqa'* (delegation), which does not produce legal consequences but merely transfers responsibility, carrying a trust (*amanah*) to be fulfilled. Al-Kabisi tends to view *waqf* as an *al-iqa'* contract, as the focus of *waqf* is the utilization of property for social purposes, not as a contract binding both parties.<sup>32</sup>

### **The History of Waqf in Indonesia**

Before the arrival of Islam in Indonesia, the Nusantara society had already known social institutions with functions similar to the concept of *waqf* in Islam. These systems existed in various forms, depending on the traditions and customs of different regions. One example is "*Tadah Pariaman*" in Lombok and "*Tanah Pusaka Tinggi*" in Minangkabau. These systems allowed communities to manage land or property collectively for the public good, with the benefits being used for the welfare of specific groups, such as extended families or *adat* (traditional) communities.

In the "*Tanah Pusaka Tinggi*" system in Minangkabau, for instance, land is inherited through the maternal line and cannot be sold. This land is used to support the economic and social needs of members of the clan or tribe, with the aim of preserving collective welfare. This is similar to the purpose of *waqf* in Islam, which is to provide long-term benefits for the community. Likewise, "*Tadah Pariaman*" in Lombok refers to an institution that manages resources for the public interest.<sup>33</sup>

After the arrival of Islam in Indonesia around the 13th century, the concept of *waqf*, as known in Islamic law, began to be adopted by local communities. *Waqf* became a form of worship in Islam that was well-received because its function was similar to the pre-existing

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<sup>31</sup> Mohammad Ali, *Hukum Wakaf Di Indonesia* (Jakarta: Rajawali Pers, 2011).

<sup>32</sup> Ala' al-Din Al-Kasani, *Bada'i Al-Sana'i Fi Tartib Al-Shara'i* (Beirut: Dar al-Kutub al-Ilmiyyah, 1982).

<sup>33</sup> Dadang Kahmad, *Sosiologi Agama* (Bandung: Remaja Rosdakarya, 2000).

social institutions. In Islam, waqf is more formally defined as the dedication of property for public or religious benefit, with the intention of earning rewards from Allah SWT.

As Islam spread across Indonesia, particularly in Islamic kingdoms such as the Sultanates of Aceh, Demak, and Mataram, waqf developed in a more systematic manner. Waqf assets, typically in the form of land, buildings, or other resources like mosques, Islamic boarding schools (pesantren), and madrasahs, were managed for religious purposes and the welfare of the community. For example, many mosques, pesantren, and educational facilities were built on waqf land, which continues to play an integral role in the lives of Muslims in Indonesia today.<sup>34</sup>

Waqf is also regulated in Islamic law, influenced by the Shafi'i school of jurisprudence, which is widely followed by Muslims in Indonesia. The management of waqf is based on sharia principles, where the endowed property cannot be sold, inherited, or transferred, and its benefits must be used in accordance with the intentions of the wakif (the person who makes the waqf).

The development of waqf continued into the modern era. In 2004, the Indonesian government passed Law No. 41 of 2004 concerning Waqf, which provides official guidelines for managing waqf, including the management of productive waqf aimed at boosting the economic welfare of the Muslim community.<sup>35</sup>

### **Waqf in the Values of Pancasila**

Wakaf Waqf is a form of charitable endowment in Islam that focuses on social, economic, and religious interests. In Indonesia, as a Pancasila-based nation, waqf aligns closely with the values embedded in the five principles of Pancasila. Below is an explanation of how the values of waqf in Islamic law relate to Pancasila:

*a. First Principle: Belief in the One and Only God*

In Islam, waqf is an act of devotion to Allah SWT, where a person dedicates part of their wealth for the benefit of the community. The divine aspect of waqf is closely tied to spiritual beliefs and the understanding that acts done for the public good are a form of worship. This aligns with Pancasila's first principle, which emphasizes the importance of faith and religious devotion.

*b. Second Principle: A Just and Civilized Humanity*

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<sup>34</sup> Kahmad.

<sup>35</sup> Wakaf, *Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf*.

Waqf in Islamic law is aimed at benefiting humanity. It reflects the principle of justice and civility toward others, especially those in need. This is in harmony with Pancasila's second principle, which promotes fairness and civility. Waqf can manifest in the form of educational institutions, healthcare services, or public facilities, providing essential services to the wider community.

*c. Third Principle: The Unity of Indonesia*

Waqf fosters unity because the endowed property is typically used for public welfare without discrimination based on ethnicity, religion, or class. This supports the unity promoted by the third principle of Pancasila, where all Indonesian citizens are encouraged to come together for the common good.

*d. Fourth Principle: Democracy Guided by the Inner Wisdom in the Unanimity Arising Out of Deliberations Amongst Representatives*

The process of distributing and managing waqf in Islam often involves deliberation, either within families or waqf institutions. This reflects the value of consultation and consensus, which is central to the fourth principle of Pancasila, where important decisions are made based on collective agreement.

*e. Fifth Principle: Social Justice for All of the People of Indonesia*

Waqf is an instrument to achieve social justice. In Islam, waqf is encouraged to balance wealth distribution, ensuring that resources are used for the common good. The fifth principle of Pancasila mandates social justice, and waqf plays a role in achieving this by providing equitable benefits to society without discrimination.<sup>36</sup>

Through these principles, waqf not only aligns with Islamic teachings but also contributes to the values of Pancasila, promoting unity, justice, and the welfare of the Indonesian people.

### **Waqf: A New Institution in Practice**

In efforts to preserve waqf in Indonesia, several new institutions have begun to emerge. Here are some of the new institutions involved in the practice of waqf:<sup>37</sup>

a. Indonesian Waqf Board (BWI)

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<sup>36</sup> N. Hidayat, *Prinsip-Prinsip Syariah Dalam Pengelolaan Wakaf* (Jakarta: Gramedia, 2018).

<sup>37</sup> Peraturan Pemerintah Republik Indonesia, *Peraturan Pemerintah Republik Indonesia Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Lembaran Negara Republik Indonesia Tahun 2006 Nomor 96*. (Jakarta: Lembaran Negara Republik Indonesia Tahun 2006 Nomor 96., 2006).

Badan Wakaf Indonesia (BWI) is an institution established by the government to manage and oversee nadzir (waqf managers) as well as the administration of waqf assets. Some of the challenges faced include the lack of accountability from nadzir, both individuals and institutions, in managing waqf property, as well as changes in the function of waqf assets due to urban zoning changes, which can lead to the relocation or demolition of assets. BWI functions similarly to the National Amil Zakat Agency (BAZNAS) in managing zakat. However, the status of BWI remains a subject of debate, whether it is structural, coordinative, or consultative.<sup>38</sup>

Here are some key aspects regarding BWI (Badan Wakaf Indonesia):

#### 1) Tasks and Functions

**Waqf Management:** BWI is responsible for managing and overseeing waqf assets in Indonesia, ensuring that these assets are managed properly and in accordance with the intentions of the wakif (donor).

*First, Registration:* BWI regulates the registration of waqf to ensure all waqf is officially registered, which is important for tracking and monitoring waqf assets.

*Second, Supervision:* BWI supervises nadzir (waqf managers) to ensure that the management and utilization of waqf are conducted transparently and in accordance with applicable laws (KMA, 2014).

*Third, Education and Outreach:* BWI plays a role in educating the public about waqf, including the correct ways to make waqf and its benefits.

*Fourth, Policy Development:* BWI is also responsible for formulating policies and guidelines regarding waqf and proposing regulations related to waqf.

#### 2) Organizational Structure

The Board of Directors in BWI consists of professionals competent in their fields, responsible for policy and strategic decision-making.

*First, Secretariat:* Manages day-to-day administration, including registration and reporting of waqf.

*Second, Supervision Unit:* Monitors and evaluates the performance of nadzir and the management of waqf assets.

#### 3) Regulations and Legality

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<sup>38</sup> Hidayat, *Prinsip-Prinsip Syariah Dalam Pengelolaan Wakaf*.

BWI was established based on Law No. 41 of 2004 concerning Waqf, which grants BWI the authority to manage and develop waqf in Indonesia. This law serves as the legal foundation for BWI to carry out its duties and ensure compliance with sharia principles and national laws.

#### 4) Goals and Benefits

**Maximizing Waqf Benefits:** BWI aims to ensure that waqf assets provide maximum benefits, especially in the fields of education, health, and social welfare.

*First, Enhancing Social Welfare:* Through effective management, BWI contributes to social welfare and poverty alleviation.

*Second, Ensuring Sharia Compliance:* BWI ensures adherence to sharia principles, allowing waqf to provide benefits according to the intentions of the wakif.

#### 5) Challenges and Efforts

**Resource Limitations:** BWI faces challenges regarding resources and funding to effectively carry out its tasks.

**Public Education:** BWI strives to enhance public understanding and awareness of the importance of waqf and the correct methods of making waqf.

Overall, BWI plays a key role in the waqf system in Indonesia, ensuring that waqf serves not only as a charitable instrument but also as a tool for sustainable social and economic empowerment.

#### b. Lembaga Keuangan Syariah (LKS)

The recognition of waqf in the form of movable assets and the increasing interest in cash waqf have sparked significant discussions and actions in Indonesia. However, the laws of the Republic of Indonesia stipulate that only Islamic financial institutions (LKS) can manage cash waqf. This raises two main issues. First, because LKS are profit-oriented entities, there is a high likelihood that waqf funds will be used to enhance liquidity or for investments in the real sector, potentially neglecting the primary goal of cash waqf for the welfare of the community. Second, this diminishes the potential for community empowerment, especially if other institutions, such as Dompot Dhuafa Republika, have better and more accountable financial management than LKS.<sup>39</sup>

Here are some important aspects related to Islamic Financial Institutions (LKS) in Indonesia:

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<sup>39</sup> Hidayat.

### 1) Sharia Principles in LKS

LKS operates by adhering to sharia principles, which include:

#### a) Prohibition of Riba

Riba, or interest, is forbidden in Islam. Therefore, LKS does not charge interest in its transactions. Instead, LKS applies a profit-sharing principle.

#### b) Prohibition of Gharar

Gharar refers to uncertainty or excessive speculation. LKS must avoid transactions that involve excessive uncertainty.

#### c) Prohibition of Maisir

Maisir refers to gambling or speculation. LKS does not engage in transactions involving elements of gambling or speculation.

#### d) Halal and Haram

LKS only engages in transactions and investments that are considered halal according to Islamic law and avoids sectors that are haram, such as alcohol, gambling, and products that contradict Islamic principles.

### 2) Types of Islamic Financial Institutions

Some types of Islamic Financial Institutions include:

#### a) Islamic Banks

Banks that provide banking services in accordance with sharia principles, such as mudharabah (profit-sharing), murabahah (sales with a profit margin), and ijarah (leasing).<sup>40</sup>

#### b) Islamic Insurance

Also known as takaful, this type of insurance operates based on sharia principles, where participants share risks and benefits.

#### c) Islamic Financing Companies

These provide financing in accordance with sharia principles, such as murabaha financing, ijarah, and musharakah (partnership).

#### d) Sharia Mutual Funds

Investments in mutual funds managed in accordance with sharia principles, avoiding investments in stocks or bonds that do not comply with Islamic law.

### 3) Regulation and Supervision

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<sup>40</sup> Ali, *Hukum Wakaf Di Indonesia*.



In Indonesia, Islamic Financial Institutions are regulated and supervised by the Financial Services Authority (OJK). The OJK ensures that LKS operates according to sharia principles and complies with applicable regulations. Additionally, the National Sharia Council (DSN) issues fatwas and guidelines regarding the application of sharia principles in LKS.

#### 4) Benefits and Challenges

##### Benefits:

Sharia compliance provides financial services that align with Islamic religious principles. Risk management involves shared risk and profit principles, which help manage financial risks more fairly.

##### Challenges:

**Education and Socialization:** There are challenges in raising public understanding of Islamic financial products and services.

Some Islamic financial products and services may not yet be available in all markets.

<sup>41</sup>.

#### 5) Global Development

Islamic Financial Institutions are experiencing rapid growth worldwide, including in non-Muslim countries. This growth reflects a global interest in financial principles that emphasize ethics and fairness.

### **Waqf in the Context of Pancasila (National Law)**

Waqf within the framework of Pancasila and Indonesia's national law can be analyzed from several perspectives, considering Pancasila as the ideological foundation of the state and Law No. 41 of 2004 on Waqf as the primary legal basis.

#### 1) Pancasila and the Principle of Social Justice

Pancasila, as the foundation of the Indonesian state, embodies principles that shape various aspects of national life, including the regulation of waqf. One of the relevant principles is Social Justice for All Indonesian People. This principle emphasizes the importance of equitable distribution of welfare throughout society.

In the context of waqf, Social Justice is reflected in waqf's function as a tool to achieve social welfare by providing economic and social benefits to the community, especially to the underprivileged. Waqf supports various social activities, such as building hospitals,

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<sup>41</sup> Hidayat, *Prinsip-Prinsip Syariah Dalam Pengelolaan Wakaf*.

schools, and other public facilities, in alignment with the social justice principle of Pancasila.<sup>42</sup>

The purpose and intent of waqf are also sustainable and non-competitive. Waqf, as a form of enduring and non-commercial donation, reflects the principles of fair and equitable social justice. It ensures that resources are allocated in a way that benefits society continuously without creating competition, aligning with the core values of fairness and welfare embedded in the social justice principles of Pancasila.

## 2) National Law on Waqf

Law No. 41 of 2004 on Waqf is the main regulation governing the implementation of waqf in Indonesia. This law covers various aspects related to waqf, including its management and utilization. It reflects the state's commitment to ensuring that waqf is implemented in accordance with the principles of Pancasila and national law.

The key points of Law No. 41 of 2004 are registration and management. The law regulates the registration of waqf and its management by the Indonesian Waqf Board (BWI) and nadzir (waqf managers), to ensure that waqf is properly managed and used according to its intended purpose.<sup>43</sup>

The regulation also addresses utilization, specifying how waqf assets can be used for social and public purposes, such as education, healthcare, and infrastructure. In managing waqf, accountability and transparency are crucial. This law emphasizes the importance of accountability and transparency in waqf management to prevent misuse and ensure maximum benefit for the community.<sup>44</sup>

## 3) Waqf and Its Connection to Pancasila Values

Waqf, within the context of Pancasila, is integrated into the national legal system to support and strengthen Pancasila's values. For example, in the principle of "Belief in One God" (Ketuhanan Yang Maha Esa), waqf as a charitable act reflects the divine value where donated assets are viewed as a form of devotion to God and a contribution to the welfare of the community.

Similarly, in "The Unity of Indonesia" (Persatuan Indonesia), expanding the benefits of waqf across various regions helps foster a sense of unity and solidarity throughout Indonesia.

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<sup>42</sup> Z. Ali, *Wakaf Dalam Pembangunan Umat* (Yogyakarta: Gadjah Mada University Press, 2011).

<sup>43</sup> Ali, *Hukum Wakaf Di Indonesia*.

<sup>44</sup> R Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2001).

In the principle of "Just and Civilized Humanity" (Kemanusiaan yang Adil dan Beradab), waqf serves to enhance human life, support social welfare, and advance society in line with just and civilized humanitarian values.

Overall, waqf in Indonesia is regulated by national law and influenced by the principles of Pancasila, encouraging its practice to be fair, transparent, and beneficial to all members of society.<sup>45</sup>

### **Waqf Innovation in Indonesia**

In Indonesia, the concept of Cash Waqf or Waqf Tunai has emerged as a new form of development that is legally regulated. Cash waqf was first formalized through Government Regulation No. 42 of 2006 regarding the Implementation of Cash Waqf. In this context, waqf assets are no longer limited to immovable property but can also include movable assets in the form of money that can be invested.

The Indonesian Waqf Board (BWI) is the institution authorized to manage waqf professionally in Indonesia, including cash waqf. Its goal is to enhance the benefits of waqf through productive and effective management for the welfare of the community.<sup>46</sup>

### **Conclusion**

The preservation of waqf in Indonesia can effectively align Islamic legal values with the principles of Pancasila, which serves as the ideological foundation of the state. Firstly, there is a notable alignment of values, as the principles of social justice and humanity embedded in Pancasila correspond with the sharia principles that underpin waqf preservation. This synergy indicates that waqf implementation can effectively contribute to the social and economic objectives outlined by Pancasila. Secondly, Pancasila acts as an ethical guide, ensuring that waqf is implemented fairly and transparently, thus guaranteeing compliance with Islamic law while promoting sustainable social welfare. Furthermore, integrating sharia principles with Pancasila values in waqf management can enhance the effectiveness of waqf preservation, strengthening both the legal and social foundations in Indonesia and maximizing the benefits for the community. Finally, the application of Pancasila values in waqf management signifies a strong commitment to improving social welfare and reinforcing Indonesia's social system, in accordance with the principles of justice and humanity.

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<sup>45</sup> Abu Arifin, *Pancasila Dan Implementasinya Dalam Hukum Nasional* (Jakarta: Citra Aditya Bakti, 2009).

<sup>46</sup> Isfandiar, "Tinjauan Fiqh Muamalat Dan Hukum Nasional Tentang Wakaf Di Indonesia."

### Bibliography

- Abdurrahman. *Pervakafan Di Indonesia*. Jakarta: Bulan Bintang., n.d.
- Al-Baladzuri, Ahmad bin Yahya bin Jabir. *Futub Al-Buldan*. Cairo: Daar Hadits, 1987.
- Al-Kasani, Ala' al-Din. *Bada'i Al-Sana'i Fi Tartib Al-Shara'i*. Beirut: Dar al-Kutub al-Ilmiyyah, 1982.
- Ali, Daud. *Hukum Islam Dan Peradilan Agama*. Jakarta: RajaGrafindo Persada., 1988.
- Ali, Mohammad. *Hukum Wakaf Di Indonesia*. Jakarta: Rajawali Pers, 2011.
- Ali, Z. *Wakaf Dalam Pembangunan Umat*. Yogyakarta: Gadjah Mada University Press, 2011.
- Amin, M. *Wakaf Tunai: Solusi Pengentasan Kemiskinan*. Jakarta: MUI Press, 2011.
- Anas, Malik ibn. *Al-Muwatta'*. Trans. Aisha Abdurrahman Bewley. London: Madinah Press, 2001.
- Arifin, Abu. *Pancasila Dan Implementasinya Dalam Hukum Nasional*. Jakarta: Citra Aditya Bakti, 2009.
- Creswell, J. W. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. Thousand Oaks*. Thousand Oaks, CA: SAGE Publications, 2014.
- Hanifah, Abu. *Kitab Fiqh Al-Waqf*. Beirut: Dar al-Kutub al-'Ilmiyyah, 1999.
- Hidayat, N. *Prinsip-Prinsip Syariah Dalam Pengelolaan Wakaf*. Jakarta: Gramedia, 2018.
- Indonesia, Peraturan Pemerintah Republik. *Peraturan Pemerintah Republik Indonesia Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Lembaran Negara Republik Indonesia Tahun 2006 Nomor 96*. Jakarta: Lembaran Negara Republik Indonesia Tahun 2006 Nomor 96., 2006.
- Isfandiar, Ali Amin. "Tinjauan Fiqh Muamalat Dan Hukum Nasional Tentang Wakaf Di Indonesia." *La-Riba II*, no. 1 (2008): 51.
- Kahf, M. *The Role of Waqf in Improving the Ummah's Welfare*. Jedah: Islamic Research and Training Institute, 2003.
- Kahmad, Dadang. *Sosiologi Agama*. Bandung: Remaja Rosdakarya, 2000.
- Nawawi, Yahya ibn Sharaf. *Al-Majmu' Syarb Al-Muhadzdzab*. Beirut: Dar al-Fikr, 1997.
- RI, Departemen Agama. *Pedoman Pengelolaan Wakaf Di Indonesia*. Jakarta: Direktorat Pemberdayaan Wakaf, Departemen Agama RI., 2006.
- Sabiq, Sayyid. *Fiqhu As-Sunnah*. lebanon: Dar al-'Arabi, 1977.
- Sahal, K.H. *Pesantren Dan Pengembangan Wakaf Produktif*. Jakarta: Pustaka Pesantren, 2013.

- Subekti, R. *Hukum Perjanjian*. Jakarta: Intermasa, 2001.
- Sugiyono. , *Memahami Penelitian Kualitatif (Bandung, Alfabeta : 2005*. Bandung: Alfabeta, 2005.
- . *(Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*. Bandung: Alfabeta, 2017.
- Suma, A. *Fikih Wakaf Produktif: Studi Fikih Dan Implementasinya Di Indonesia*. Jakarta: Rajawali Press, 2012.
- Syafii, Muhammad ibn Idris. *Al-Umm*. Beirut: Dar al-Ma'rifah, 1973.
- Undang-undang. *Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria*. Jakarta: Pemerintah, 1960.
- Usmani, M.T. *An Introduction to Islamic Finance*. Karachi: Idaratul Ma'arif, 1998.
- Wakaf, Undang-undang. *Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf*. Jakarta: Pemerintah, 2004.
- Yenni Samri Julianti Nasution, S.HI, MA. *MANAJEMEN ZAKAT DAN WAKAF*. Medan: UIN\_SU Press, 2021.
- Yusuf Qardhawi. *Fatwa Antara Ketelitian Dan Kecerobohan*. Jakarta: Gema Insani Press, 1997.