

Islamic Legal Review of Waqf Land Ownership Transfer under Indonesian Law

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ABSTRACT

This study aims to analyse the Islamic legal position on the transfer of ownership of waqf land and evaluate its conformity with the Indonesian waqf regulatory framework. Using a normative-juridical method, the research examines classical and contemporary fiqh references, Law No. 41 of 2004, Government Regulation No. 42 of 2006, and relevant legal documents to construct a systematic interpretation of the rules governing waqf property. The analysis identifies the legal basis for the prohibition of transferring waqf assets and assesses the coherence between sharia norms and national regulation. The results reveal that Islamic jurisprudence categorically upholds the permanence of waqf property, while practices at the administrative level remain vulnerable to irregularities, particularly in certification and oversight procedures. Weak institutional verification allows waqf assets to be at risk of being transferred or re-registered contrary to their legal status. This study contributes an evaluative framework for aligning Islamic legal principles with positive law and proposes policy improvements, including stronger cross-institutional verification and enhanced supervisory mechanisms to prevent unauthorised transfers of waqf assets.

Keywords: Waqf Land; Transfer of Ownership; Indonesian Waqf Law; Nadzir Authority; Sharia Positive Law Harmonisation

A. INTRODUCTION

Waqf occupies a central position in the Islamic legal and economic tradition because it preserves assets for perpetual public benefit¹. In contemporary Indonesia, however, the governance of waqf land faces increasing administrative and legal complexities, particularly regarding registration, certification, and ownership status.² Recent studies highlight persistent vulnerabilities, such as inconsistent land data integration, weak managerial capacity of nadzir, and gaps between sharia norms and administrative procedures.³ These issues demonstrate that the sustainability of waqf assets is not merely a theological concern but a regulatory challenge requiring systematic evaluation.

Although Law No. 41 of 2004 and Government Regulation No. 42 of 2006 strictly prohibit the transfer of waqf assets except under specific conditions, empirical research indicates that land certification and verification mechanisms remain fragmented.⁴ Several Scopus-indexed studies report recurring irregularities, including mismatches between waqf pledge deeds and BPN records, inadequate waqf documentation, and administrative loopholes that open space for unlawful conversion of waqf land.⁵ These structural weaknesses reflect a systemic gap between Islamic jurisprudence, which emphasises asset perpetuity (*ta'bid al-waqf*), and the practical implementation of national land administration.⁶

The case involving the Baitul Hikmah Al Ma'muni Foundation in Garut exemplifies these regulatory failures.⁷ The alleged conversion of waqf land into a Freehold Certificate (SHM) despite legal prohibitions illustrates problems identified in recent literature, such as nadzir competence deficiencies (Raditya Sukmana, 2020), low legal literacy among waqf managers (Azniza Hartini et al., 2015), and the absence of a

¹ Awwaluddin Marza, M Adli, & Fatimah Zuhra, "The Role Of The Indonesian Waqf Agency In The Implementation Of Nazir Supervision Of Land Waqf (Study At Badan Wakaf Indonesia Of Lhokseumawe City)," *Syariah : Jurnal Hukum Dan Pemikiran* 22, no. 2 (2023).

² Abd Shomad et al., "Waqf Land as an Alternative for Implementing the Land Reform Program in Indonesia," *Jurnal Bina Mulia Hukum* 9, no. 1 (2024): 13–24.

³ Agha Karnys et al., "Anteseden Tata Kelola," *Veteran Economics, Management, & Accounting Review* 4, no. 1 (2021): 71–80.

⁴ Onny Medaline, Iqbal Maulana, & Azzam Hasan, "Analisis Yuridis Wakaf Tanah Negara Dalam Perspektif Hukum Agraria Dan Hukum Wakaf," *Peradaban Journal of Law and Society* 4, no. 1 (2025): 70–88.

⁵ Amal Hayati Ishak et al., "Social Sciences & Humanities Open The Critical Success Factors of Waqf Land Development for Sustainable Agriculture," *Social Sciences & Humanities Open* 11, no. December 2024 (2025): 101244.

⁶ Yuliani Dwi et al., "Heliyon The Development of National Waqf Index in Indonesia : A Fuzzy AHP Approach," *Heliyon* 9, no. 5 (2023): e15783.

⁷ Raditya Sukmana, "Heliyon Critical Assessment of Islamic Endowment Funds (Waqf) Literature : Lesson for Government and Future Directions," *Heliyon* 6, no. 10 (2020): e05074.

synchronised digital verification system across institutions.⁸ These findings underscore the need for an integrative legal analysis that situates the case within broader national governance challenges.⁹

Research gaps remain evident in existing studies. Prior research has discussed waqf regulation, certification, and nadzir performance, but few works combine: (1) a doctrinal Islamic jurisprudence analysis, (2) a critical assessment of Indonesian waqf legislation, and (3) an empirical case of alleged unlawful transfer at the local level. Most studies evaluate waqf management normatively or economically, yet insufficient attention is given to the legal consequences of administrative failures that enable the conversion of waqf land status. This gap necessitates a study that bridges fiqh principles, statutory norms, and real-world administrative practice.

The novelty of this study lies in its integrated analytical framework, which brings together classical and contemporary waqf jurisprudence, Indonesia's positive legal structure, and a grounded case study from Garut. This combination enables a multidimensional evaluation of waqf land transfers, highlighting how doctrinal principles, administrative procedures, and institutional coordination interact in practice. The objective of this study is to examine the Islamic legal basis governing the transfer of waqf land ownership and evaluate its alignment with Indonesian national law by analysing the regulatory gaps and administrative failures highlighted by the Garut case.

The urgency of this research is supported by recurring national waqf disputes, incomplete certification of more than half of Indonesia's registered waqf lands, inconsistent verification between BWI-KUA-BPN databases, and the limited capacity of many nadzir to safeguard assets. Scopus-indexed studies between 2020 and 2024¹⁰ repeatedly warn that inadequate oversight, poor documentation, and fragmented legal enforcement threaten the permanence of waqf property¹¹ and create fertile ground for unlawful transfer, as seen in several regions.¹² In this context, examining the Garut case is academically relevant and practically significant, as it reflects broader systemic issues rather than isolated local misconduct. Therefore, a comprehensive legal analysis is

⁸ Azniza Hartini et al., "The Possible Role of Waqf in Ensuring A Sustainable Malaysian Federal Government Debt," *Procedia Economics and Finance* 31, no. 15 (2015): 333–45.

⁹ Mohd Amran et al., "Potential of Micro-Waqf as an Inclusive Strategy for Development of a Nation," *Procedia Economics and Finance* 31, no. 15 (2015): 294–302.

¹⁰ Sri Fadilah, "Going Concern: An Implementation InWaqf Institutions (Religious Charitable Endowment)," *Procedia - Social and Behavioral Sciences* 211, no. 09 (2015): 356–63.

¹¹ Muhamad Nafik et al., "Social Sciences & Humanities Open Overcoming Barriers to Optimizing Cash Waqf Linked Sukuk: A DEMATEL-ANP Approach," *Social Sciences & Humanities Open* 11, no. February (2025): 101588.

¹² Siska Lis Sulistiani & Agi Sukma Gumilar, "Corporate Waqf in Indonesia : Development , Governance Challenges , and Sustainable Prospects," *JEKSYAH: Islamic Economics Journal* 05, no. 02 (2025): 142–51.

essential not only to contextualise the case but also to formulate regulatory and administrative recommendations that can strengthen waqf governance and prevent similar violations across Indonesia.

B. RESEARCH METHODS

This study employs a normative–juridical research design, which is appropriate for examining waqf land ownership within the framework of Islamic jurisprudence and Indonesian statutory regulation. The normative orientation is justified because the research focuses on legal norms, doctrinal principles, and regulatory structures rather than empirical behaviours or field conditions. Accordingly, no fieldwork or respondent-based data collection is included, as the object of analysis consists solely of texts, legal documents, and written regulations.

The research uses three types of legal sources. *First*, primary sources, including Law No. 41 of 2004, Government Regulation No. 42 of 2006, waqf pledge deeds, relevant court decisions, and formal regulatory documents. *Second*, secondary sources, such as classical fiqh treatises, contemporary scholarly works, national guidelines on waqf governance, and academic articles related to waqf administration, nadzir competence, and land certification. *Third*, tertiary sources, including legal news coverage, institutional reports, and publicly accessible documentation that contextualise the Garut case.

Data were grouped into three analytical clusters: (1) Islamic jurisprudence norms governing waqf permanence and asset transfer, (2) Indonesian positive law provisions regulating waqf ownership and certification, and (3) administrative practices reflected in official documents and reported cases. The collected materials were examined using document analysis, which includes text identification, classification, extraction of legal principles, and verification of normative consistency.

To interpret the normative content, the study applies a hermeneutic method, enabling systematic interpretation of fiqh texts and statutory provisions by considering linguistic meaning, legal intention, and doctrinal context. In addition, a comparative legal technique is used to juxtapose fiqh principles with state regulations in order to identify normative alignments, tensions, and regulatory gaps. The descriptive–analytical model is employed to synthesise legal findings and to formulate arguments regarding the legality of waqf transfers and the weaknesses of current administrative mechanisms. Through this methodological structure, the study produces a coherent normative evaluation supported by doctrinal interpretation and comparative reasoning, allowing for the development of grounded recommendations for strengthening waqf governance in Indonesia.

C. RESULTS AND DISCUSSION

1. Legality of the Transfer of Waqf Land from the Perspective of Islamic Law and Indonesian Positive Law

The findings of this study show that, from the standpoint of Islamic law, waqf is characterised by ta‘bīd al-waqf, which requires the permanent preservation of the endowed property. Classical jurists such as al-Syirazi and Ibn Qudāmah emphasise the principle of ḥabs al-‘ayn wa tasbīl al-manfa‘ah, meaning that the waqf corpus must remain intact while its benefits flow continually to society. Recent Scopus-indexed research (Mohammad Ridwan, 2023; Anwar Fatoni, 2021) affirms that any transfer of ownership, whether by sale, grant, exchange, or conversion of legal status, disrupts the maqāṣid of waqf, particularly ḥifẓ al-māl (protection of assets) and its function as *ṣadaqah jāriyah*. For this reason, unauthorised transfer is regarded in Islamic jurisprudence as an act of fasād, as also explained by modern scholars such as Wahbah al-Zuhaylī.¹³

In line with these doctrinal foundations, Indonesian positive law adopts a similar protective stance. Article 40 of Law No. 41 of 2004 and Article 49 of Government Regulation No. 42 of 2006 firmly prohibit the transfer of waqf assets except under limited circumstances, and only upon written approval of the Minister of Religious Affairs based on BWI’s recommendation.¹⁴ Comparative policy research (Abdul Mubaraq, 2018; Mohd Arif et al, 2021) demonstrates that this regulatory framework is consistent with the principle of waqf permanence and the fiqh concept of *istibdāl*, the replacement of waqf assets with those of equal value and benefit. Thus, at the normative level, both Islamic jurisprudence and national legislation converge in maintaining stringent restrictions on waqf ownership transfer.¹⁵

However, document analysis indicates that these legal safeguards were not effectively implemented in the Garut case involving the Baitul Hikmah Al Ma’muni Foundation. The alleged conversion of waqf land into a Freehold Certificate (SHM) occurred without approval from the legitimate nadzir, BWI, or the Ministry of Religious Affairs.¹⁶ This finding aligns with Scopus-based assessments (Rofah Setyowati & Ahmad Rofiq, 2023; Siti Rochmiyatun & Yusida Fitriyati, 2019), which

¹³ Mohammad Ridwan, “Waqf Regulation in Indonesia: Implementation of The Waqf Phenomenon in Indonesia Viewed from Legal, Tax, and Supervision Aspects,” *Publica: Jurnal Pemikiran Administrasi Negara* 15, no. 1 (2023): 217–30.

¹⁴ Anwar Fatoni, “Strategy for Improving the Quality Of,” *Al-Iktiisab: Journal of Islamic Economic Law* 5, no. 1 (2021).

¹⁵ Abdul Mubaraq, “Waqf Law in Indonesia” *Journal of Finance and Islamic Banking* 1, no. 2 (2018): 121–32.

¹⁶ Mohd Arif et al., “Waqf Land Development Approaches And Practices In The State Islamic Religious Councils,” *Planning Malaysia: Journal of the Malaysian Institute of Planners* 19, no. 3 (2021): 317–25.

highlight persistent vulnerabilities in Indonesia's waqf administration, including inadequate verification procedures, the absence of synchronised databases between BPN and KUA, and inconsistent recognition of waqf pledge deeds (AIW).¹⁷ A comparison of certification documents in this case revealed discrepancies between the AIW and BPN's land database, indicating procedural irregularities that undermine legal certainty.¹⁸

The theoretical implications of these findings support the arguments of scholars such as al-Zarkasyi and al-Zuḥaylī, who maintain that any violation of the waqf's perpetual status constitutes harm to public assets. This perspective is further reinforced by the Prophet ﷺ in the hadith:

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ مِنْ صَدَقَةٍ جَارِيَةٍ وَعِلْمٍ يُنْتَفَعُ بِهِ وَوَلَدٍ صَالِحٍ يَدْعُو لَهُ

"When a person dies, his deeds are cut off except for three things: charity, useful knowledge, and pious children who pray for him." (HR. Muslim)

The continuity of waqf rewards depends on safeguarding its principal asset; thus, administrative manipulation that alters ownership status threatens both its legal integrity and its spiritual purpose.

These findings highlight several normative and structural gaps: limited institutional coordination, weak nadzir competence (Aam Slamet Rusydiana, 2019), absence of real-time verification mechanisms at BPN, and inadequate enforcement of administrative sanctions.¹⁹ Such gaps undermine the maqāṣid mandate of *ḥifẓ al-māl* and create opportunities for unauthorised transfers, as observed in the Garut case.

To address these issues, harmonisation between Islamic jurisprudence and positive law must be strengthened by aligning regulatory procedures with maqāṣid-oriented principles and enhancing institutional synchronisation among BWI, the Ministry of Religious Affairs, and BPN.²⁰ Scopus-based comparative studies on global waqf governance (Nursyahida Zulkifli et al., 2022; Dzuliyati Kadji & Dynda Fadhlillah Aulia, 2025) demonstrate that integrated digital registries,

¹⁷ Rofah Setyowati & Ahmad Rofiq, "Pembaharuan Hukum Pengelolaan Tanah Wakaf Di Wilayah Pesisir Utara Jawa Tengah Islamiyati,1" *Jurnal Suara Hukum* 5, no. 1 (2023): 158–78.

¹⁸ Siti Rochmiyatun and Yusida Fitriyati, "Implementation of Waqf Pledge Act (AIW) Arrangements in the Indonesian Waqf Law (Case in Palembang City)," *AL-ADALAH* 16, no. 1 (2019): 135–54.

¹⁹ Aam Slamet Rusydiana, "Bibliometric Analysis of Scopus-Indexed Waqf Studies," *Ekonomi Islam Indonesia* 1, no. 1 (2019).

²⁰ Nursyahida Zulkifli et al., "A QoL2022Putrajaya An Empirical Investigation on Integrated Waqf Governance in Malaysian Waqf Institutions," *Enviromment Behaviour Proceedings Journal*, 2022, 6–11.

periodic audits, and empowered supervisory bodies are essential for maintaining waqf integrity – mechanisms that Indonesia must adopt systematically.²¹

Table 1. Comparison of Waqf Transfer Principles in Islamic Jurisprudence and National Law

No.	Aspect	Fiqh of Waqf	National Law (Law No. 41/2004 & Government Regulation No. 42/2006)
1.	Nature of Waqf Property	Cannot be transferred, permanent in nature (<i>ta'bid</i>)	Cannot be transferred except with permission from the Minister of Religious Affairs and consideration of the Indonesian Waqf Board (BWI)
2.	Purpose of Use	Social and religious benefits	Social, religious, and public interest benefits in accordance with the <i>ikrar</i> (declaration of waqf)
3.	Authorized Parties	<i>Nadzir</i> and <i>Qadhi</i>	<i>Nadzir</i> , BWI, and the Ministry of Religious Affairs
4.	Supervision	Community and religious institutions	Government, through the Ministry of Religious Affairs and BWI

²¹ Dzuliyati Kadji & Dynda Fadhlillah Aulia, "Mapping Waqf Management and Economic Development in Indonesia: A Quadrant Analysis Based on the National Waqf Index," *REVIEW of Islamic Economics and Finance* 8, no. 2 (2025): 191–208.

5.	Consequences of Violation	Sin (<i>fasād</i>) and deprivation of community rights	Administrative and criminal sanctions in accordance with Articles 67–68 of the Waqf Law
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The table above illustrates that, although Islamic law and Indonesian legislation share similar foundational principles, weaknesses in administrative implementation, particularly in documentation, verification, and data synchronization become the primary factor enabling irregularities. Therefore, regulatory integration, digital alignment of waqf records, and competency reinforcement for nadzir constitute urgent reforms to prevent future misuse of waqf assets in Indonesia.

2. Normative Gaps and Problems of Waqf Supervision in Indonesia

The analysis indicates that the persistence of unlawful waqf land transfers is closely linked to normative gaps within Indonesia’s regulatory framework. Although Law No. 41 of 2004 and Government Regulation No. 42 of 2006 strictly prohibit the transfer of waqf assets, both instruments leave critical supervision mechanisms insufficiently defined.²² Article 49 of the Government Regulation outlines only the procedural steps for waqf exchange, without detailing the structure, scope, or authority of supervising institutions. Scopus-based studies (Lukman Hakim & Kholil Nawawi, 2024; Mimma Maripatul Uula & Siti Fatimah Mohd Kassim, 2023) similarly identify the absence of administrative sanctions, post-permit monitoring, and inter-agency verification protocols as systemic weaknesses that diminish the protective function of waqf law.²³ These shortcomings were evident in the Garut case, where the certification of waqf land proceeded without confirmation of its legal status to the Ministry of Religious Affairs, revealing a structural disconnect between BPN, KUA, and BWI.

From the perspective of Islamic law, such weak oversight contradicts the ethical foundations of waqf governance. Scholars like Ibn Taymiyyah and al-Qarāfi stress that safeguarding endowed assets is an *amānah* requiring transparency and accountability. When supervisory bodies fail to fulfil this responsibility, the lapse constitutes *taḍyī’ al-amānah*, leading to potential *fasād* (harm) against communal

²² Lukman Hakim & Kholil Nawawi, “Finding Solutions to Productive Waqf Management Problems : A Case in Indonesia,” *International Journal of Waqf* 4, no. 1 (2024).

²³ Mimma Maripatul Uula & Siti Fatimah Mohd Kassim, “Accounting for Waqf: A Survey On,” *Accounting and Sustainability* 2, no. 1 (2023).

property.²⁴ Recent governance assessments (Moh. Mahrus et al., 2024; Muh Nashirudin et al., 2025) show that many nadzir lack standardised competence, legal knowledge, and administrative skills, contributing to incomplete documentation, non-certified waqf lands, and vulnerability to manipulation.²⁵ According to the 2023 BWI report, over 60% of registered waqf lands remain uncertified, underscoring the disparity between regulatory ideals and implementation capacity. The Qur'anic foundation of this obligation is reflected in Surah al-Baqarah (2:283):

فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ

“If some of you believe in others, then let those who are trusted carry out their mandate and let them fear Allah, their Lord.”

This verse emphasises that maintaining entrusted property is a moral and religious duty, reinforcing the need for stronger oversight. Integrating sharia values, especially *hifz al-māl* and the principle of *al-hisbah* into state supervision, would enhance the preventive function of governance.²⁶ Comparative studies in waqf administration (Arin Setiyowati & Salma Nadia Salsabilla, 2025; Arip Purkon, 2022) show that countries with effective waqf systems adopt digital audits, centralised databases, and enforcement-capable supervisory bodies.²⁷

Based on these findings, digital audit mechanisms coordinated by BWI, supported by local religious institutions and community monitoring, are essential. Such measures align with *maqāṣid al-syarī'ah* by preventing harm, ensuring asset preservation, and upholding the continuity of social benefit derived from waqf.

Table 2. Identification of Normative Gaps in Waqf Supervision in Indonesia

No.	Regulatory Aspect	Legal Provisions	Gaps or Weaknesses	Impact on Supervision
1.	Law No. 41 of 2004	Prohibits the transfer of waqf assets without permission	Does not regulate administrative sanctions for violations	Weak deterrent effect and inadequate control of <i>nadzir</i>

²⁴ Moh. Mahrus et al., “Waqf and Its Implementation in the Field of Education (Study of Indonesian and Thailand Educational Waqf from the Perspective of Islamic Law),” *Syamil: Journal of Islamic Education* 12, no. 1 (2024).

²⁵ Muh Nashirudin, Ramadhan Razali, & Almira Keumala Ulfah, “Modernizing Zakat and Waqf Management Indonesia : A Legal And Governance Perspective In,” *MAZAHIB: Jurnal Pemikiran Hukum Islam* 24, no. 1 (2025): 198–220.

²⁶ Arin Setiyowati & Salma Nadia Salsabilla, “Comparative Study of Regulations , Governance , Management , and Innovation Models in the Development of Muhammadiyah Waqf with Malaysia and Brunei Darussalam,” *Jurnal AFKARUNA* 21, no. 1 (2025): 1–13.

²⁷ Arip Purkon, “Regulations of Waqf Management in Contemporary Indonesia,” *Jurnal Ilmiah Ekonomi Islam* 8, no. 02 (2022): 1237–46.

2.	Government Regulation No. 42 of 2006	Regulates permission for the exchange of waqf assets	No post-permission evaluation mechanism	Vulnerable to misuse of permits
3.	Role of BWI	Supervises and provides recommendations	Limited authority, lacks legal enforcement power	Ineffective supervision
4.	BPN Certification	Registration of waqf land	No validation system linking AIW (Deed of Waqf Pledge) with the waqf database	Potential for duplicate or manipulative certification
5.	<i>Nadzir</i>	Direct manager of waqf assets	Low and non-standardised competence	Asset mismanagement and loss of legal data

The table above demonstrates that the core issue in waqf supervision does not stem from the absence of law but from incomplete oversight instruments and weak enforcement capacity. The lack of explicit sanctions for negligent nadzir or unauthorised transfer perpetrators reduces regulatory deterrence²⁸. BWI's limited authority results in recommendations that often cannot be operationalised, while fragmented databases between MoRA and BPN open avenues for administrative errors and exploitation. These findings align with the principle of *maslahah mursalah*, which requires closing legal loopholes that may harm the public interest.

Therefore, this study recommends targeted amendments to Government Regulation No. 42 of 2006 to clarify supervisory authority, strengthen administrative sanctions, and institute periodic audits. Professional certification for nadzir under BWI supervision is also crucial to ensure minimum competency standards. With these improvements, Indonesia's waqf supervision system will be better positioned to uphold accountability, preserve asset integrity, and maintain consistency with both sharia principles and national legal objectives.

²⁸ Irma Suryani Lubis & Muslim Marpaung, "International Journal of Management Reconstructing the Role of Waqf in Indonesia's Islamic Financial Ecosystem: Institutional and Regulatory Analysis," *International Journal of Management Research and Economics* 3, no. 2 (2025): 175–99.

3. Implications of Islamic Law on the Harmonisation of Waqf Regulations in Indonesia

The findings of this study indicate that the harmonisation of Islamic legal principles with national waqf regulations is increasingly urgent to ensure normative coherence, legal certainty, and the protection of public assets. Law No. 41 of 2004 and Government Regulation No. 42 of 2006 explicitly recognise sharia as a normative foundation for regulating waqf, yet gaps remain between classical jurisprudence and contemporary administrative frameworks. Scopus-indexed studies (Irfan Syauqi Beik et al., 2021) highlight that the principle of *ta'bid al-waqf*, which establishes the absolute perpetuity of endowed assets, is frequently moderated within national law to accommodate public policy objectives.²⁹ This flexible interpretation creates a structural tension between the spiritual aspiration of waqf as *ṣadaqah jāriyah* and the state's orientation toward development, public utility, and land-use efficiency. Therefore, harmonisation must provide clear procedures and boundaries to ensure that the ethical and spiritual underpinnings of waqf remain preserved within the administrative system.

From an Islamic legal standpoint, harmonisation requires aligning regulatory reforms with the objectives of *maqāṣid al-syarī'ah*, particularly *ḥifẓ al-māl*, which mandates the safeguarding of property to maintain its continuous benefit³⁰. Waqf management is also linked to *maslahah*, emphasising the broader social welfare waqf must serve, and to *al-hisbah*, which frames oversight as both a legal and moral imperative. Differences between *fiqh* and national regulations often arise because *fiqh* operates normatively through divine injunctions, while positive law applies an instrumental approach emphasising documentation, valuation, and accountability mechanisms. As Scopus literature on waqf governance (Lubis & Marpaung 2025) suggests, a hybrid approach is essential, one that integrates sharia norms with modern bureaucratic requirements to enhance both compliance and administrative efficiency³¹.

Quranic guidelines reinforce this integrative vision. Allah SWT declares in Surah al-Hadid (57:25):

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ

²⁹ Irfan Syauqi Beik, Aslam Mei, & Nur Widigdo, "Optimizing Strategy For Land-Based Waqf Development In Indonesia," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah (Journal of Islamic Economics)* 13, no. 1 (2021): 67-86.

³⁰ Muchtim Humaidi et al., "The Role Of Cash Waqf Linked Sukuk Based On Mudarabah Contract As Msme Capital Solution Muchtim" *El Barka: Journal of Islamic Economics and Business* 6, no. 1 (2023): 108-31.

³¹ Lubis & Marpaung, "Reconstructing the Role of Waqf in Indonesia's Islamic Financial Ecosystem: Institutional and Regulatory Analysis." Vol.3, (2025): 199-175.

“Indeed, We have sent Our messengers with clear proofs, and We have sent down with them the Book and the scales (of justice) so that people can uphold justice.”

This verse underscores that justice (*al-‘adl*) is the core principle in constructing and implementing law. In the context of waqf, justice requires not only the preservation of endowed assets but also equal access to their benefits, transparent administration, and protection from exploitation.³² Therefore, harmonisation must be substantive rather than symbolic, ensuring that principles of fairness, perpetuity, and social benefit permeate regulatory practice. The findings suggest that this can be achieved through the integration of national waqf data systems, the development of *maqāṣid*-based derivative regulations, and improved institutional capacity, particularly among religious court judges, BWI officers, and land administrators.

Table 3. Analysis of the Implications of Islamic Law on the Harmonisation of Waqf Regulations in Indonesia

No.	Aspect	Islamic Law (Fiqh of Waqf)	National Law (Waqf Law & Regulations)	Implications for Harmonisation
1.	Philosophical Basis	Principle of asset perpetuity (<i>ta’bīd al-waqf</i>)	Protection of social assets and public interests	Alignment is needed between the principles of benefit and perpetuity
2.	Normative Objective	Worship and continuous charity (<i>ṣadaqah jāriyah</i>)	Economic and social empowerment	Integration of spiritual and economic values
3.	Supervision Mechanism	<i>Qadhi</i> and the community of believers	BWI and the Ministry of Religious Affairs	Synchronisation of Sharia and administrative supervision systems
4.	Asset Replacement (<i>Istibdāl</i>)	Permitted with conditions of <i>maṣlaḥah</i> (public	Permitted with official authorisation	Adjustment of <i>fiqh</i> mechanisms to modern bureaucracy

³² Alvanto Wibisono, Dian Aries Mujiburohman, & Dian Dewi Khasanah, “Waqf Land Registration and Its Implications for Legal Certainty: A Case Study in Jember Regency,” *Marcapada: Jurnal Kebijakan Pertanahan* 2, no. 4 (2025): 104–18.

		benefit) and equivalent value	and asset valuation	
5.	Justice and Accountability	Based on the intention and honesty of the <i>nadzir</i>	Based on administrative evidence and audit	A combination of moral and legalistic approaches

The table illustrates that harmonisation demands a balanced alignment of spiritual doctrine and administrative realities. Fiqh emphasises intention, honesty, and communal oversight, whereas national law relies on documented evidence, valuation procedures, and formal institutional authority. Both systems share the fundamental objective of ensuring asset sustainability and social benefit. Thus, harmonisation must move beyond merely adopting textual fiqh provisions; it should incorporate the underlying values of *maqāṣid al-syarī'ah* into policy formulation.

The findings of this study show that expanding the authority of the Indonesian Waqf Board (BWI) into a quasi-judicial supervisory body, capable of issuing binding recommendations and conducting mandatory audits, would significantly strengthen asset protection. Equally important is the integration of national waqf digital databases with BPN and the Ministry of Religious Affairs to eliminate discrepancies and prevent certificate duplication. In addition, judicial reform is needed to equip religious court judges with contextual interpretive tools, enabling decisions that reflect both sharia values and administrative realities.

From a jurisprudential perspective, harmonisation is not merely the convergence of two legal frameworks but the deliberate integration of divine ethical principles with state rationality. This approach ensures that waqf governance in Indonesia remains just, effective, and sustainable, protecting both the sanctity of the waqf institution and the public interest it is meant to serve.

D. CONCLUSION

This study concludes that the unauthorized transfer of waqf land, as exemplified in the Garut case, violates the principle of *ta'bīd al-waqf* in Islamic jurisprudence as well as the normative prohibitions set out in Law No. 41 of 2004 and Government Regulation No. 42 of 2006, thereby confirming that the harmonization between sharia and national law remains incomplete and still marked by regulatory and supervisory gaps. The research successfully meets its objective by demonstrating that although Islamic law and Indonesian positive law share a common commitment to the protection and perpetuity of waqf assets, weaknesses in institutional oversight, administrative procedures, and certification mechanisms continue to enable legal

deviations. This study is limited by its reliance on normative and documentary analysis without fieldwork or stakeholder interviews, which restricts its ability to capture practical governance challenges experienced by nadzir, BWI, or land authorities. Accordingly, several recommendations are proposed: refining waqf regulations particularly through revising Government Regulation No. 42 of 2006 to establish clearer sanctions and standardized oversight; integrating digital waqf databases between the Ministry of Religious Affairs and the National Land Agency (BPN); strengthening the institutional authority and quasi-judicial functions of the Indonesian Waqf Board (BWI); and enhancing nadzir competence through mandatory professional certification. These measures are essential for ensuring a more coherent, accountable, and sharia-compliant waqf governance system in Indonesia.

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