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Codifying Waqf Fiqh in Indonesia: Historical Transformation and Legal Challenges in a Plural Legal System

Muhammad Abu Dzar[1*], MA Zaim[2], M Amanullah[3]
[1,2,3] International Islamic University of Malaysia
[*]Corresponding Author. Email: dzaryani09@gmail.ac.id

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ABSTRACT

Purpose: This article aims to examine the historical transformation and codification of waqf jurisprudence in Indonesia and to analyze the legal challenges arising in its implementation within a plural legal system. This study seeks to explain how Islamic law, state law, and customary law interact and negotiate in shaping national waqf regulations.

Design/Method/Approach: This study employs a qualitative juridical-normative approach combined with historical analysis. Based on the theoretical framework of taqnīn al-fiqh (codification of Islamic law) and the theory of legal pluralism, the research analyzes legislation, classical fiqh texts, and relevant academic literature. Data is examined using content analysis and historical-critical analysis methods.

Findings: Research indicates that the codification of waqf in Indonesia has developed gradually, beginning with pre-colonial religious practices, continuing through colonial administrative interventions, and culminating in the enactment of Law Number 41 of 2004 on Waqf. The plural legal system has significantly influenced the substance and direction of waqf codification through processes of negotiation and normative compromise. Nevertheless, its implementation still faces normative, institutional, and socio-cultural challenges.

Originality/Values: This research contributes to the development of contemporary Islamic legal theory by demonstrating the dynamic and negotiative relationship between Islamic law and the modern state within the context of plural law. The study fills a gap in waqf studies by positioning codification as a historical-juridical process, rather than merely a normative or regulatory phenomenon, while also offering policy implications for strengthening waqf governance within a plural legal system.

INTRODUCTION

Waqf is an instrument of Islamic philanthropy with strategic worship and socio-economic dimensions for the development of the people. Since Islam entered the archipelago, the practice of waqf has developed and played an important role in supporting the religious, educational, and social life of Indonesian Muslim communities. [1]. In the initial phase of its development, waqf management proceeded in accordance with fiqh norms embedded in society's religious traditions, without the support of a standard written state legal framework. This condition makes waqf normative-religious and traditionally managed by religious figures and local communities.

Along with the social, political, and legal changes that accompanied the birth of the modern state, waqf management patterns faced new challenges. States are required to provide legal certainty, protection of waqf assets, and professional and accountable management mechanisms. [2]. In this context, the codification of waqf jurisprudence has become an inevitable historical and juridical necessity. Codification is understood as the process of transforming doctrinal norms of jurisprudence into binding legislative forms applicable by State institutions, particularly in the judicial system and public administration.

However, the process of codifying waqf jurisprudence in Indonesia does not take place in a vacuum. Indonesia's national legal system is built on a plural configuration of legal systems, namely a meeting between customary law, Western law from colonial heritage, and Islamic law [3]. This legal plurality makes the codification of waqf jurisprudence a complex and dynamic process, as it must navigate sharia values alongside the principles of national law, the constitution, and the realities of a multicultural society. Therefore, the codification of waqf in Indonesia is not solely a legal-formal process but also a reflection of state legal politics in accommodating Islamic law within the framework of the nation-state.

The transformation of waqf jurisprudence into positive law in Indonesia can be traced historically from the colonial period, through the beginning of

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[1] Ani Yumarni et al., "The Implementation of Waqf as ' Urf in Indonesia," *Sriwijaya Law Review* 5, no. 2 (2021): 287–99, https://doi.org/10.28946/slrev.Vol5.Iss2.1126.pp287-299.

[2] 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, https://doi.org/https://doi.org/10.15575/jpan.v15i1.24862.

[3] Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 163, https://doi.org/https://doi.org/10.21580/walrev.2024.6.2.25566.

independence, to the enactment of Law Number 14 of 2004 concerning Waqf and its implementing regulations. While the regulation marks an important advance in the State's recognition of waqf, its implementation still faces various legal and institutional challenges. Among these challenges are overlapping authority between agencies, low legal literacy of waqf at the community level, weak capacity and professionalism of nadzir, and tensions between classical jurisprudence norms and demands for productive waqf management in the modern economic context [4].

On the other hand, academic studies on waqf in Indonesia remain fragmented. Some studies focus on the normative aspects of jurisprudence, while others are limited to partial regulatory analysis. Studies that integrate historical dimensions, the theory of codification of Islamic law, and the context of legal pluralism in a comprehensive manner are still relatively limited. In fact, a complete understanding of the codification process of waqf jurisprudence is essential for assessing the extent to which national waqf law can reflect sharia principles while addressing the demands of legal certainty and modern governance.

Based on these problems and gaps in the study, this research aims to analyze the historical transformation and codification of waqf jurisprudence in Indonesia and examine the influence of the plural legal system on the substance, policy direction, and implementation challenges. This study situates the codification of waqf as an arena for negotiations among fiqh, state law, and social reality, thus going beyond the normative-fiqh or descriptive-regulative approaches that have dominated waqf studies. The main contribution of this research lies in the historically integrative legal approach, which combines the theory of codification of Islamic law and legal pluralism, while identifying normative, institutional, and socio-cultural challenges in the implementation of waqf law.

RESEARCH METHOD

This research uses a qualitative method with juridical-normative and historical approaches, supported by legal, legislative, and conceptual historical approaches. Data are obtained from legislation, fiqh books, and academic literature and are analyzed using content and historical-critical analyses. By making Indonesia a case model, this study contributes to the development of contemporary Islamic legal theory and offers global relevance to Muslim countries with plural legal systems.

RESULT AND DISCUSSION

[4] Miskari, "NORAMTIVE ANALYSIS OF THE PILLARS AND CONDITIONS OF WAKAF IN POSITIVE LAW IN INDONESIA," *IJGAM* 1, no. 1 (2025): 22–30.

Theoretical Foundations of Codification of Waqf Law and Legal Pluralism

This subchapter is structured to provide a conceptual and theoretical basis for the analysis conducted in this study. The discussion focused on three main interrelated aspects: the concept of codification in Islamic law, the theory of legal pluralism, and prior studies on waqf and its codification. Thus, it is hoped that this subchapter will build a comprehensive theoretical and literary framework as a basis for analysis in the following sections.

First, codification in legal studies is understood as the process of collecting and compiling legal provisions governing specific areas of social life into a single written legal text. They are systematically drafted, formulated as articles, and established by the state as generally accepted regulations [5]. Within the framework of modern law, codification serves to consolidate legal norms previously scattered across various sources.

Functionally, codification helps build a more orderly and readily applicable legal structure. With clear systematization, codification helps reduce the diversity of legal interpretations and facilitates the application of the law by judicial personnel. In this context, codification is not merely technical, but also reflects the relationship between law, the state, and the needs of social regulation.

The codification of Islamic jurisprudence refers to the process of collecting and formulating fiqh laws into written regulations that follow modern legal systems. The sources of law used come from schools of jurisprudence, either by adhering to a particular school of thought or by selecting opinions from various schools *(mazahib)*. The results of this codification are then expressed as legal articles incorporated into the state legal system.

In contemporary developments, the discourse on codifying Islamic jurisprudence emerged alongside the growing need for written regulations to be applied formally in the justice system. The absence of codification often leads to reliance on other legal sources already available in written, systematic form. [6]. The codification of Islamic jurisprudence can therefore be understood as part of the dynamics of interaction between Islamic law and national legal systems in different countries.

The debate over the codification of Islamic jurisprudence shows that there are differing views among Islamic and legal scholars. Some see

[5] (Zarqo 1998)
[6] (Wahyudin 2025)

codification as a form of fiqh adaptation to the modern legal system, while others consider that codification has the potential to limit the diversity of fiqh opinions. [7]. This divergence of views reflects the tension between the flexibility of the jurisprudential tradition and the demand for legal certainty in the modern legal system of the State.

In the context of the modern state, the codification of jurisprudence can be understood as a political instrument of state law to manage the relationship between religion and public law. The state does not simply "take" Islamic law but rather selects, interprets, and adjusts it in accordance with constitutional principles, administrative needs, and social realities [8]. Therefore, *taqnīn al-fiqh* is a normative and political process that reflects the power relationship between religious and state authorities. This research adopts the view that codification is permissible, arguing that it is an important means of implementing Sharia effectively and in context within modern legal systems.

Second, the theory of legal pluralism (legal pluralism) provides an important analytical framework for understanding the existence and interaction of various legal systems in one social space. John Griffiths distinguished between weak legal pluralism (weak legal pluralism), where non-state law is recognized and controlled by state law, and strong legal pluralism (strong legal pluralism), where various legal systems live and operate relatively autonomously without full state domination. [9]. Meanwhile, Sally Engle Merry emphasized that legal pluralism is not just a coexistence of legal systems, but an arena for interaction, negotiation, and contestation between different legal norms [10].

Within the framework of legal pluralism, state law, religious law, and customary law do not exist in a purely hierarchical manner, but interact with each other in social practice [11]. Religious law, including waqf jurisprudence, often lives as living law in society, even before being institutionalized by the state. When the state codifies, these religious norms do not necessarily replace

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[7] AS-Shodiq Dhuraifi, "Taqninul FIqh Ma Lahu Wa Ma 'Alaihi," *Al-Huquq Wal Ulum Insaniyyah* 9, no. 2 (2016): 73–74.

[8] Tamir Moustafa, "Islamic Law, Secularism, and the Modern State: Recasting a Scholarly Debate," *Law & Social Inquiry* 48, no. 2 (2023): 715, https://doi.org/10.1017/lsi.2022.105.

[9] John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 15–18, https://doi.org/https://doi.org/10.1080/07329113.1986.10756387.

[10] Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 889, https://doi.org/https://doi.org/10.2307/3053638.

[11] Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia."

existing social practices, but must negotiate with local legal and cultural structures.

Indonesia is a classic example of a plural legal system. Indonesian national law is formed from the meeting between customary law, Western law inherited from colonialism, and Islamic law [12]. In the context of waqf, legal pluralism is evident in the sustainability of waqf practices, which draw on customs and classical jurisprudence as well as formal state regulations. The theory of legal pluralism is relevant to analyzing how the codification of waqf jurisprudence in Indonesia is not only a normative issue but also concerns social legitimacy, legal effectiveness, and societal acceptance.

From a legal pluralism perspective, the codification of waqf jurisprudence can be understood as a negotiation process among sharia norms, state interests, and society's social practices. This approach enables a more critical analysis of the tension between written and living law (law on the books versus law in action), particularly in the implementation of waqf.

In the context of this research, the study of waqf in Indonesia and the Muslim world in general can be grouped into several mainstream currents. *First,* the normative study of waqf jurisprudence, which focuses on the concept, pillars, conditions, and types of waqf based on classical schools of jurisprudence and contemporary ijtihad. These studies provide a strong theological and normative foundation but often pay little attention to the historical and institutional context of the modern state.

Second, a study of waqf regulations in Indonesia, which analyzes statutory regulations, especially Law Number 14 of 2004 concerning Waqf and its implementing regulations. Research in this category is generally descriptive-analytical and assesses the effectiveness of regulations in waqf management, including the issue of nadzir professionalization and the development of productive waqf. However, many of them have not linked this regulation to the historical and theoretical process of codifying jurisprudence.

Third, critical studies are beginning to highlight the relationship between Islamic law and the state, but remain limited in integrating the theory of legal pluralism as the main analytical framework. As a result, the complex interaction among waqf jurisprudence, state law, and the community's social practices has not been analyzed in depth.

[12] RR Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 43, https://doi.org/https://doi.org/10.15408/ajis.v23i1.32549.

Based on this literature review, there are significant research gaps, namely the lack of studies that combine historical analysis, the theory of codification of Islamic law, and a legal pluralism perspective for reading the dynamics of waqf in Indonesia.

Historical Transformation of Waqf Jurisprudence in Indonesia

This subchapter discusses the development of the practice and regulation of waqf historically by tracing its journey from pre-colonial times to the establishment of modern national law. The discussion is arranged chronologically to show the dynamics of change in waqf alongside changes in the social, political, and legal systems that surround it. Through this discussion, the subchapter is expected to provide a comprehensive understanding of the historical transformation of waqf and the factors that influence its codification in national legal systems.

Islam is thought to have entered Indonesian territory in the seventh century AD [13]. Along with the spread of Islam, the practice of waqf is also believed to have become known to the Indonesian Muslim community after that period. However, until now, there is no adequate historical data on the waqf system and its management in the early days of Islamization in Indonesia. The limitations of historical sources regarding waqf in the early period made it difficult to reconstruct waqf practices in detail.

Based on these conditions, it can be assumed that waqf management in the early days of Islam's development in Indonesia was still carried out traditionally and was based on fiqh practices that were part of society. It seems that a further historical approach, including the study of inscriptions, colonial archives, and traditional local literature, is necessary to understand this early period better.

Before the advent of colonial rule and the modern state legal system, waqf practices in the archipelago developed within the framework of the local, communitarian religious traditions of Muslim communities. Waqf is carried out as part of religious expressions that are integrated into social life, especially in the establishment of mosques, Islamic boarding schools, surau, and cemeteries (Tuti et al., 2006). In this context, waqf jurisprudence functions as a living law, understood and applied by local ulama authorities and customary norms in each community, thus indicating the existence of multiple sources and legal authorities in regulating waqf practices.

[13] (Amelia et. al., n.d.)

Waqf management in the pre-colonial period was generally traditional and non-bureaucratic, with nadzir drawn from religious figures or wakif families trusted by the community. The absence of formal registration and state supervision is not seen as a problem because the legitimacy of waqf rests on social trust and religious awareness ([14]. This condition reflects a configuration of legal pluralism, where Islamic law, custom, and social practices coexist without state domination; However, at the same time, this flexibility also holds potential long-term problems related to protecting waqf assets from disputes, transfer functions, and ownership claims, which then encourages the emergence of state intervention in the next phase.

Relatively clear data on waqf and its management in Indonesia have been available since the late 19th century, particularly during the Dutch colonial period. In 1870, the Dutch colonial government established the principle of the Verklaring Domain, a policy stating that all land whose ownership could not be formally proven was considered colonial state land. The principles of the Verklaring Domain became the legal and political basis for the colonial government's control of colonial lands. That policy opened up great opportunities for European capitalist companies to acquire land leases of up to 72 years, thus strengthening colonial economic dominance over agrarian resources ([15].

In practice, all empty land was placed under the control of the colonial state, while the colonial government was positioned as a land owner who had the authority to transfer land control rights to private parties ([16] . This policy has had a broad impact on indigenous communities, including on waqf lands which have been managed for generations by local communities.

Normatively, the Verklaring Domain was intended to regulate agricultural land ownership rights by allowing the native population to register their land. However, in its implementation, this policy is more political in nature, as only a small proportion of the population can meet the administrative requirements of land registration ([17] .

As a result, most of the land that was factually controlled and inherited by indigenous communities—including waqf land—lost legal recognition. These colonial agrarian policies systematically weakened the social and economic conditions of the colonized communities and showed no orientation towards empowering the local population.

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[14] Mirnawati et. al., 2024)
[15] Rahman 2012)
[16] Guntur et. al., 2014)
[17] Chomzah 2004)

Apart from agrarian policy, the Dutch colonial government also issued Circular Letter Number 435 on January 31, 1905. This circular is addressed to regional heads, instructing them to record mosques, the origin of their land, the performance of Friday prayers, and all immovable property removed from public circulation, both in the name of waqf and for other religious interests. This policy was strengthened through Circular Letter Number 1361/A dated 4 June 1931, which required everyone who wanted to establish a waqf to obtain permission from the regional head [18].

This provision added to the complexity of administrative procedures for waqf and expanded the colonial authorities' intervention in waqf practices. As a result of the policy's implementation, the management of waqf was under the strict supervision of the colonial authorities, while people seeking to establish waqf faced various administrative obstacles. This condition shows the increasingly limited autonomy of Muslim communities in managing waqf assets during the colonial period.

In 1935, the colonial government issued another Circular Letter Number 1273/A concerning government supervision of mosques and waqf. In this provision, the obligation to obtain permission from the regional head is abolished and replaced with the obligation to notify, accompanied by a procedure for recording waqf through religious officials and local government officials ([19] .

After Indonesia's independence, various regulations left over from the colonial government continued to apply. This is based on Article II of the Transitional Rules of the 1945 Constitution, which states that all existing regulations and institutions remain in effect as long as new regulations have not replaced them ([20] .

Significant changes began to occur with the issuance of Government Regulation Number 33 of 1949 concerning the Ministry of Religion and its organizational structure [21]. This regulation authorizes the Ministry of Religion of the Republic of Indonesia, as a state institution responsible for the religious sector, to manage waqf. Furthermore, the Ministry of Religion issued several administrative policies, including the Waqf Instruction of 1953 and Circular

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[18] Uswatun Hasanah, "Wakaf Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Al-Awqof* 17–54, no. 1 (2008): 10.

[19] Amran et. al., 2016)

[20] UUD Negara Republik Indonesia 1945)

[21] (PP No 33 Tahun 1949 Tentang Susunan Dan Lapangan Pekerjaan Kementrian Agama)

Letter Number 5 of 1956, which confirmed the obligation of the Regional Affairs Office (Mujahidin 2021) to record waqf and supervise its management.

Attention to land waqf was strengthened by the passing of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. In Article 49, this law recognizes and protects land rights for religious and social purposes, and confirms that land waqf is further regulated through government regulations ([22] .

Government Regulation Number 28 of 1977 concerning Owned Land Waqf can be understood as an initial form of waqf codification in the Indonesian national legal system [23]. This regulation represents the process of transforming waqf jurisprudential norms that previously existed in social practice into a written legal form, systematically prepared and enforced by the state. From the perspective of codification theory, this Government Regulation marks a shift in waqf from the realm of unwritten law to positive law, which is formally binding.

From the perspective of legal pluralism, the applicability of Government Regulation Number 28 of 1977 illustrates the interaction among Islamic law, customary law, and state law. Fiqh norms and local customs previously regulated the practice of waqf that developed in Indonesian Muslim society, and the state then selected, simplified, and formalized it through a codification mechanism. This process reflects an integrative form of legal pluralism, in which the state does not completely replace religious law but adopts it into the national legal structure.

The waqf arrangements in PP Number 28 of 1977 emphasize administrative aspects, such as the obligation to record and register waqf land. Within the framework of codification theory, this emphasis reflects the state's orientation towards legal certainty and administrative control over waqf assets. However, that approach also narrows the space for jurisprudential flexibility, since the diversity of waqf practices previously accommodated by fiqh traditions and local customs is uniformized into a single national legal framework.

Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law (KHI) continues the codification process with a different approach. Waqf in KHI is formulated using fiqh terminology and is placed as part of applied Islamic law within the Religious Courts [24]. In the context of legal

[22] UU No 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria)

[23] "Peraturan Pemerintah Republik Indonesia Nomor 28 Tahun 1977 Tentang Perwakafan Tanah Milik" (1977).

[24] "Kompilasi Hukum Islam" (1991).

pluralism, KHI functions as a bridge between normative Islamic law and the state justice system. However, its substance still relies heavily on Government Regulation Number 28 of 1977.

The codification of waqf reached a more comprehensive stage with the passing of Law Number 41 of 2004 concerning Waqf. This law not only expands the object of waqf, but also strengthens its institutions and management mechanisms [25]. From the perspective of codification theory, this law reflects the state's efforts to unify various norms of jurisprudence, social practices, and modern legal needs into a more systematic and comprehensive national legal framework.

Within the framework of legal pluralism, Act No. 41 of 2004 reflects the dynamics of negotiations between Islamic legal norms and the State's regulatory interests. The State does not simply adopt fiqh textually but rather makes selections and reinterpretations in accordance with the needs of modern administration, economics, and governance. This appears, for example, in the regulation of cash waqfs and the establishment of the Indonesian Waqf Board as a state institution that oversees waqf practices.

Implementing regulations issued after Law Number 41 of 2004, such as government and ministerial regulations, reflect an intensification of the codification process through the standardization of procedures and the strengthening of administrative controls. From the perspective of legal pluralism, this suggests a tendency to strengthen the state's role in regulating waqf. In contrast, the role of religious communities and authorities is still recognized, but falls within the framework of state regulation.

Overall, the development of waqf regulations in Indonesia, from Government Regulation Number 28 of 1977 to the latest regulations, can be understood as a process of codifying Islamic law within a plural legal system. This process does not proceed linearly, but rather through the stages of adaptation, selection, and integration of fiqh norms into national law. These dynamics show that waqf in Indonesia is at the intersection of Islamic legal traditions, local social practices, and the logic of modern state law.

Dynamics of the Codification of Waqf Jurisprudence in the Indonesian Plural Legal System

The codification of waqf jurisprudence in Indonesia takes place within a plural legal system, where state law, Islamic law, and customary law interact and negotiate with one another. The codification process does not simply transform

[25] "Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf" (2004).

the norms of jurisprudence into a written regulatory form but also involves selection, adjustment, and compromise among the various normative regimes that operate in society. In practice, the State assumes a dominant role as a legislative authority, while taking into account the social legitimacy of jurisprudence and entrenched customary practices.

The integration of jurisprudence norms into state law can be seen in the adoption of basic waqf concepts such as the immortality of waqf assets, the purpose of worship and benefit, as well as the role of the nadzir as manager [26]. However, this integration does not occur in its entirety but rather through compromise with the principles of national law, such as legal certainty, administrative order, and state supervision. As a result, some aspects of classical jurisprudence have been reformulated to conform to the framework of positive law.

On the other hand, customary law also influences waqf practices, particularly regarding land control and use. In some communities, the boundary between customary and waqf lands is not always clear, which creates tension when the state implements formal legal standards [27]. These conceptual and practical tensions suggest that the codification of waqf is not a conflict-free harmonization process but rather an arena of ongoing negotiations among religious norms, State law, and social realities.

The substance of the waqf codification in Indonesian national law reflects the state's efforts to accommodate waqf jurisprudence while adapting it to modern governance needs. One important aspect is the expansion of the waqf object. Whereas in traditional practice, waqf is synonymous with land and buildings for worship, modern regulations extend that scope to include movable objects, including money waqf [28]. This expansion shows a reinterpretation of waqf jurisprudence, which is oriented towards optimizing economic benefits without abandoning the principle of the immortality of waqf assets.

The arrangement regarding Nadzir also underwent a significant transformation. In classical jurisprudence, nadzir is better understood as a moral trust that relies on community beliefs. In positive law, Nadzir is institutionalized and subjected to administrative, professional, and accountable standards. The

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[26] Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf.

[27] Vinna Lusiana, "A Legal Pluralism in Land Waqf Management: A Historical-Juridical Case Study in the Sambas Sultanate, West Kalimantan, Indonesia," *Al-Amwal: Journal of Islamic Economic Law* 10, no. 2 (2025): 51, https://doi.org/https://doi.org/10.24256/alw.v10i2.8543.

[28] Majelis Ulama Indonesia (MUI), "Fatwa Mui Tahun 2002 Tentang Wakaf Uang," 2002.

state establishes a mechanism for registering, coaching, and supervising nadzir through official institutions, such as the Indonesian Waqf Board ([29]. This step is intended to prevent the misuse of waqf and to increase the effectiveness of its management, while strengthening state control over waqf institutions.

The orientation of productive waqf became the main characteristic of the codification of modern waqf. The State views waqf not only as an instrument of worship, but also as a socio-economic resource that can support national development. This perspective encourages the development of waqf in the education, health and productive economic sectors ([30]. However, this orientation has also sparked debate, especially regarding the boundary between the development of productive waqf and the risk of commercialization that may deviate from the purpose of waqf in classical jurisprudence (Laila Farida et al., 2022).

The codification of waqf jurisprudence cannot be separated from state legal politics. The position of Islamic law in national legislative policy is determined by political configuration, state ideology, and relations between religion and state ([31]. In the Indonesian context, Islamic law is recognized and accommodated selectively in certain areas, such as family law and waqf, without making it the law of the country as a whole.

Waqf, within this legal-political framework, is positioned as a relatively safe socio-economic instrument to be institutionalized, as it is not at odds with the principles of the nation-state and the constitution. Therefore, the codification of waqf is often seen as a successful form of integration of Islamic law in the national legal system [32]. However, this success has been accompanied by a process of fiqh depoliticization, in which waqf norms are fragmented and adapted to the country's policy agenda.

By making waqf part of development policy, the state seeks to harness its economic potential for public welfare. This approach reflects a paradigm shift from waqf as a purely religious institution towards waqf as an instrument of public policy. While offering a valuable opportunity for waqf optimization, this approach also raises normative challenges, particularly in balancing Sharia objectives with State interests.

Overall, the codification of waqf jurisprudence in Indonesia's plural legal system reveals the complex dynamics of integration, compromise, and

[29] Agung Abdullah 2020)
[30] Hafiz Maulana 2025)
[31] Lisa Saputri et. al., 2025)
[32] (Pujy Yonesha et.al., 2024)

contestation. This process confirms that codification is not just a technical legal issue, but rather a reflection of power relations, legal politics, and value negotiations in a multicultural society.

Challenges of Implementing Waqf Codification in the Indonesian Legal System

One of the main challenges in implementing waqf codification in Indonesia lies in the normative dimension, especially the tension between classical jurisprudence and the demands of waqf management in the modern era. Classical waqf jurisprudence is built in a relatively simple social context, where waqf is generally land or buildings for worship purposes and is managed non-commercially. In contrast, modern positive law demands waqf management that is adaptive to economic, professional, and productively oriented dynamics. This tension appears, for example, in the debate over the development of productive endowments, including business schemes, investments, or cooperation with third parties.

The issue of legal flexibility and *ijtihad* is also a crucial normative issue. The codification of waqf jurisprudence in the form of statutory regulations tends to standardize certain norms, so that the previously open space for *ijtihad* in the jurisprudence tradition becomes more limited [33]. In the context of sectarian pluralism, this standardization has the potential to eliminate alternative jurisprudential opinions that may be more relevant to local conditions. As a result, positive waqf laws are often perceived as rigid and less responsive to community needs.

In addition, there are challenges in reconciling the substance of codification with the goals of sharia *(maqāṣid al-syari'ah*). The focus of regulation on administrative and economic aspects has the potential to shift the orientation of waqf from a worship dimension towards a purely instrumental logic ([34]. This normative tension demands a sustained *ijtihad* approach to keep the codification of waqf in harmony with the basic values of sharia without losing its relevance in the modern context.

At the implementation level, institutional and administrative challenges are the dominant factors influencing the effectiveness of waqf codification. Nadzir's capacity and professionalism are still a structural issue. Although regulations have set standards for the competence and obligations of nadzirs, in

[33] Ismail Jalili, Muhammad Firdaus, and Abdulgafar Olawale Fahm, "The Role of Qawā ' Id Fiqhiyyah in Strengthening Waqf Law : A Review of Challenges and Solutions in Indonesia" 11, no. 2 (2024): 226–50.

[34] Rachmi Sulistyarini et. al., 2005)

practice, many nadzirs do not yet have adequate managerial, legal, and financial capabilities [35]. This condition hinders the productive and accountable management of waqf, and increases the risk of misuse of waqf assets.

Overlapping authority between agencies is also a serious challenge. Waqf management involves various institutions, such as the Ministry of Religion, the Indonesian Waqf Board, regional governments, and land institutions. The lack of effective coordination between agencies often creates unclear responsibilities and slows down administrative processes, especially in collecting data and certifying waqf land [36]. This situation reflects the classic problem of legal governance in developing countries, where good regulation is not always followed by adequate institutional capacity.

The issue of data collection and waqf certification is the most obvious administrative challenge. Many waqf assets, particularly those derived from traditional practices, have not been officially recorded in the State administration system [37]. The incompleteness of this data creates opportunities for disputes, illegal transfers of functions, and loss of waqf assets. Although the state has provided certification mechanisms, complex processes and administrative costs often pose obstacles to society.

In addition to normative and institutional challenges, social and cultural factors play an important role in implementing waqf codification. Legal literacy of waqf in the community remains relatively low, especially among traditional wakif and nadzir. Many people understand waqf solely as personal worship, without realizing its legal and administrative implications. [38]. As a result, record-keeping and reporting obligations are often seen as unnecessary administrative burdens.

Resistance to legal formalization is also a phenomenon that cannot be ignored. In societies that have long practiced waqf informally based on beliefs, state intervention through regulation and bureaucracy is often perceived as a

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[35] Rahmat Hidayatullah and Asrizal Saiin Assril, "Dinamika Hukum Wakaf Di Indonesia Tantangan Dan Solusi Dalam Pengelolaan Aset Wakaf Produktif," *Al Barakat: Jurnal Kajian Hukum Ekonomi Syariah* 5, no. 1 (2025): 21, https://doi.org/https://doi.org/10.59270/jab.v5i01.274.

[36] Irma Suryani Lubis and Muhammad Ramadhan, "Unlocking Idle Waqf Assets through Institutionalized Pentahelix Collaboration : Evidence from North Sumatra , Indonesia" 11, no. 2 (2025): 1115–48.

[37] Wahyudi Kurniawan and Muhammad Wahdini, *Legal Problems in Data Collection and Management of Waqf Land Assets by Muhammadiyah Organization in Indonesia* (Atlantis Press SARL, 2025), https://doi.org/10.2991/978-2-38476-491-4.

[38] Nashr Akbar and Salina Kassima, "Why Does Waqf Literacy Matter?" 11, no. 1 (2023): 123–33.

form of secularization or even reduction in the religious value of waqf [39]. This resistance shows a gap between state law and the laws that operate in society (living law).

This socio-cultural challenge confirms that the success of waqf codification is determined not only by the quality of regulation but also by society's social acceptance and internalization of legal norms. Therefore, an approach that combines legal education, community empowerment, and sensitivity to local traditions is key to overcoming implementation barriers. Without a comprehensive strategy, the codification of waqf risks becoming a law on paper that is not fully effective in practice.

Theoretical Implications and Policy of Waqf Codification

The codification of waqf jurisprudence in Indonesia has significant theoretical implications for the development of contemporary Islamic legal studies, especially within the framework of legal pluralism. The findings of this study confirm that the codification of waqf jurisprudence cannot be understood solely as a normative-formal process that transfers the provisions of jurisprudence into the form of laws, but rather as a socio-juridical phenomenon that occurs in the space of interaction among Islamic law, state law, and customary law. From the perspective of legal pluralism, the codification of waqf reflects the coexistence of multiple normative systems that influence one another within a single national legal field.

In this context, Indonesia's national waqf law reflects weak legal pluralism, in which the state remains the primary authority for establishing binding laws while also accommodating religious norms as a source of substantive legitimacy. The codification of waqf jurisprudence functions as a mediating mechanism between sectarian and particular jurisprudence and state law, which demands uniformity, certainty, and administrative rationality. Thus, the study enriches the theoretical understanding of how Islamic law transforms in its interaction with the modern state without completely losing its normative identity.

Furthermore, this research contributes to the theory of the relationship between Islamic law and the state by demonstrating that this relationship is dynamic and contextual. The State does not fully instrumentalize Islamic law, but also does not allow it to develop autonomously outside the framework of

[39] Muhammad Imran, "Challenges in Waqf Management and Its Implications for the Social and Economic Welfare of Muslim Communities : A Cross-Country Comparative Analysis" 12, no. 01 (2025): 168–84.

national law. The codification of waqf indicates a continuous negotiating relationship, in which sharia principles are adapted to align with public policy objectives, such as socio-economic development and asset protection. The findings challenge the classical dichotomy between sharia formalization and legal secularization, and offer a more fluid and pragmatic model of relationships.

In terms of Islamic legal theory, the codification of waqf also implies the need to reconceptualize ijtihad in the state context. Standardizing norms through laws limits the diversity of fiqh opinions but also opens space for institutional ijtihad through legislation, implementing regulations, and administrative policies. This shows that ijtihad is no longer solely the domain of individual ulama, but is also part of the state legal process. This concept expands the theoretical horizon of modern jurisprudence and provides a foundation for the development of Islamic law that is responsive to social change.

From a policy perspective, the results of this research have important implications for improving waqf regulations in Indonesia. *First*, a policy direction that balances legal certainty and normative flexibility is needed. The future regulation of waqf needs to be designed with due regard to the diversity of social practices and fiqh opinions, without compromising the principle of legal certainty. A principle-based regulatory approach can be an alternative, in which regulation establishes general principles for waqf management and leaves room for adaptation through derivative policies.

Secondly, institutional strengthening is on the urgent policy agenda. The Indonesian Waqf Board and related institutions need to be strengthened in terms of authority, human resources, and cross-sectoral coordination. The professionalization of Nadzir should be a priority through standards of competence, certification, and continuing training. This policy will not only increase accountability for waqf management but also strengthen public trust in waqf institutions.

Thirdly, the governance of productive endowments requires more comprehensive policy support. The State needs to promote the integration of waqf with Sharia economic sectors, such as Sharia banking, Sharia capital markets, and community-based microenterprises. However, this integration must be accompanied by a rigorous supervisory framework to prevent excessive commercialization that could obscure the waqf's social and worship objectives. In other words, productive waqf policies must be designed within a social finance framework that is oriented towards public welfare.

Fourthly, promoting legal literacy on waqf in the community is a policy implication that is no less important. The state needs to develop legal education strategies that are participatory and sensitive to cultural contexts. The top-down

approach through regulation needs to be complemented by a bottom-up approach involving religious leaders, community organizations, and educational institutions. The strategy aims to bridge the gap between written law and the social practices of waqf living in the community.

Finally, the policy implications of this study show that the success of codifying waqf jurisprudence is measured not only by the existence of comprehensive regulations but also by the extent to which these regulations can be implemented effectively and are socially accepted. By integrating a theoretical perspective of legal pluralism and an inclusive policy approach, the codification of waqf in Indonesia has the potential to serve as a model for other Muslim countries facing similar challenges in managing waqf within the framework of the modern rule of law.

CONCLUSION

This research confirms that the codification of waqf jurisprudence in Indonesia is a historical transformation process that unfolds through dynamic interactions among Islamic jurisprudence, state legal policies, and social realities within a plural legal system. The codification of waqf serves not only to legalize religious norms but also as a modern state instrument to ensure legal certainty, protect assets, and strengthen the socio-economic function of waqf. The study shows that plural legal systems shape the substance and direction of waqf codification through normative negotiation mechanisms. At the same time, implementation still faces normative, institutional, and socio-cultural challenges, so that the effectiveness of waqf law depends largely on the quality of governance and public acceptance.

This study has the limitation of focusing on juridical-normative and historical analyses and thus has not explored the empirical practices of waqf management or the socio-economic impact of productive waqf at the local level. In addition, the findings of this study are context-specific to Indonesia, so generalizing them to other legal systems requires caution. Therefore, further research needs to conduct empirical and comparative studies across countries and examine the relationship between ijtihad fiqh, state legislation, and productive waqf innovation in the context of global sharia economics.■

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