

LEGAL TRANSFORMATION OF MOVABLE Waqf: Contemporary Legal and Regulatory Perspectives in Modern Indonesia

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Abstract: This article discusses the legal transformation of movable waqf in the context of current laws and regulations in Indonesia, particularly in the modern era. Waqf, which is commonly known in the form of land and fixed property, has experienced developments in terms of the objects that can be waqfed, including movable objects such as money, vehicles, and other equipment. This study outlines the changes in legal perspectives that have occurred in line with the development of regulations and policies related to the waqf of movable objects, including Law No. 41/2004 on Waqf, as well as its implementing regulations. In addition, the article also highlights the challenges and opportunities that arise in the implementation of movable waqf in Indonesia, as well as the role of religious institutions and the government in regulating and ensuring the sustainability of movable waqf. Hopefully, this article can provide a deeper understanding of the potential and legal implications of movable waqf in Indonesia's increasingly dynamic legal system.

Keywords: Legal Transformation, Waqf Legislation, Contemporary Waqf, Utilization of Movable Assets

Introduction

Waqf is an important instrument in the Islamic financial and social welfare system that has developed since the early days of Islamic civilisation. In Indonesia, waqf has long been known in the form of immovable objects, such as land and buildings, which are utilised for the purposes of worship, education, and social services. However, along with economic and technological developments, the form of waqf has diversified towards movable objects such as money, precious metals, securities, and even digital assets. This transformation requires adaptation in the legal and regulatory framework in order for waqf management to remain relevant and efficient in the modern era.

In the context of national law, waqf management is regulated through Law No. 41/2004 on Waqf, which is strengthened by Government Regulation No. 42/2006, as well as several derivative regulations such as Minister of Religious Affairs Regulation (PMA) No. 3/2019 on Cash Waqf. However, most of these regulations still focus on the waqf of immovable objects. In fact, the potential of movable waqf is enormous, both in terms of its economy and its flexibility in responding to contemporary social needs.

In the last five years, various initiatives have been undertaken by the government and waqf institutions such as the Indonesian Waqf Board (BWI) to encourage the legalisation and optimisation of movable waqf. Digital-based innovations such as online waqf platforms and digital certification have also begun to be implemented, indicating the need for legal reforms that comprehensively support this transformation. Therefore, this article aims to examine the legal transformation of movable waqf in Indonesia from a contemporary perspective, focusing on regulatory developments, implementation challenges, and opportunities for strengthening the national legal system in the context of the modern Islamic economy.

Literature Review

The study of movable object waqf in the context of Islamic law and Indonesian national regulations has undergone significant development in recent years. In classical Islamic law, waqf of movable objects has been recognised, especially in the form of goods used for public purposes such as books, riding animals, or agricultural tools (Kahf, 2003). However, modern forms of waqf such as cash waqf and stock waqf are contemporary *ijtihad* that require new legal justifications in line with economic and technological developments. According to Rahmawati & Hudaefi (2021), waqf digitalisation is a response to the need for efficiency and transparency in the management of waqf assets, including movable objects.

They emphasise the importance of a legal framework that supports such innovation so that it complies with sharia principles and positive law. Saputra (2020) states that the existence of regulations such as PMA No. 3 of 2019 opens up opportunities for the legalisation of

cash waqf, but has not specifically covered other forms of movable objects

such as shares or digital assets. This indicates a legal vacuum that must be filled with more progressive and contextual policies. In terms of institutional role, the Indonesian Waqf Board (BWI) has an important mandate to encourage innovation and professionalisation of waqf management. In its Annual Report (BWI, 2022), the institution noted an increase in the number of waqf and the value of movable waqf assets managed productively through digital platforms.

This research complements previous literature by focusing on the actual and applicable legal transformation, especially in the last five years, and emphasising the importance of synergy between sharia fatwa, state regulation, and technological innovation in supporting a sustainable waqf ecosystem.

This research uses a juridical-normative approach with a qualitative method. This approach is chosen to examine the prevailing laws and regulations as well as Islamic legal doctrines relating to waqf, particularly movable object waqf. The main focus of this approach is to analyse the legal norms that form the basis for the regulation and practice of the implementation of movable object waqf in Indonesia.

The data used in this research comes from:

1. Primary sources, in the form of relevant legislation, such as Law No. 41 of 2004 concerning Waqf, Government Regulation No. 42 of 2006, and Minister of Religious Affairs Regulation No. 3 of 2019 concerning Cash Waqf.

2. Secondary sources, in the form of scientific journals, annual reports of institutions such as the Indonesian Waqf Board (BWI), as well as publications from the Financial Services Authority (OJK) and Bank Indonesia relevant to Islamic finance and waqf.

3. Tertiary sources, such as encyclopaedias of Islamic law, classical and contemporary literature on waqf, and data from waqf management digital platforms.

The analysis technique used is descriptive-qualitative, by systematically describing and interpreting the data to answer the research question of how the legal transformation of movable object waqf has occurred in the last five years and the extent to which existing regulations are able to accommodate new forms of waqf.

In addition, this research also makes limited use of comparative analysis to review how other countries in the Islamic world (such as Malaysia and Turkey) regulate movable waqf, as material for reflection and strengthening of Indonesia's national legal system.

2. Methodology

This research uses a juridical-normative method, with a qualitative approach based on literature studies. Data sources consist of laws and regulations, reports from related institutions, and relevant scientific articles. The analysis was conducted in a descriptive-critical manner to identify the development of regulations and challenges in their implementation.

3. Results and Discussion

3.1. The Development of Movable Object Waqf Regulations

Regulations on movable object waqf began to receive more attention since the issuance of PMA No. 3 of 2019 concerning Cash Waqf. This regulation stipulates the mechanism of cash waqf and its receiving institution (LKS-PWU).

In addition, the development of forms of waqf such as stocks, precious metals, and digital assets has begun to be looked into by the Indonesian Waqf Board (BWI) and other regulators.

3.2. Digital Innovation and Institutional Roles

Waqf is a form of social worship in Islam that has both spiritual and economic dimensions. Etymologically, the word 'waqf' comes from the Arabic waqafa, which means to hold back, stop, or limit. Terminologically, scholars define waqf as the act of holding back an asset that can be utilised without reducing its principal substance, and handing over its benefits for public interest or good purposes.

According to Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, waqf is a legal act of the Wakif (waqf giver) to separate and/or transfer part of his property to be utilised forever or for a certain period of time in accordance with the interests for the purposes of worship or public welfare according to sharia.

Waqf is unique compared to other forms of alms or zakat because its main principles are continuity and sustainability. In waqf, the principal asset may not be sold, inherited or transferred, while the proceeds or benefits of the asset are used for charitable purposes.

Legal Basis of Waqf in Islam

Waqf has a strong basis in the Qur'an, Hadith, and scholarly consensus. Although not explicitly mentioned in the Qur'an, the concept of waqf is reflected in various verses that encourage infaq, sadaqah, and sustainable goodness, such as:

"You will not attain perfect virtue until you spend some of the wealth you love." (QS. Ali Imran: 92)

Hadiths of the Prophet Muhammad provide a clearer normative basis for waqf, for example in his words:

"When the son of Adam dies, his deeds are cut off except for three: charity, useful knowledge, and a righteous son who prays for him." (HR Muslim)

The scholars of the four madhhabs agree that waqf is a recommended act of worship, although there are differences in the technical implementation.

Types and Forms of Waqf

In practice, waqf can be classified into several types based on its object:

1. Waqf of Immovable Objects

This is the most common form of waqf, such as land, buildings, and agricultural land. It is usually used to establish mosques, schools, Islamic boarding schools, hospitals, and other public facilities.

In Islam, waqf is part of a jariyah charity whose rewards will continue to flow to the wakif (waqf giver) as long as the asset is utilised. Some of the legal bases that support the implementation of immovable waqf include:

1. Qur'an and Hadith

Although the Qur'an does not explicitly mention waqf, there are many verses that emphasise the importance of sadaqah and charity, which essentially teach about good deeds that can benefit the community. For example, Surah Al-Baqarah verse 261 states that charity or good deeds will result in blessings.

In addition, there are several traditions that show the command and recommendation to do waqf. One of them is a hadith narrated by Muslim, which states that jariyah charity (including waqf) will not be cut off even though the person who did it has passed away.

Law of the Republic of Indonesia No. 41 Year 2004 on Waqf

This law is the legal basis that regulates all matters related to waqf in Indonesia, including waqf of immovable objects. In this law, waqf is defined as a waqif's legal action to separate part of his unused property and hand it over for social purposes that are worshipful or for the welfare of the people.

Article 1 point 1 of Law No. 41 of 2004 explains that "waqf is a legal action of a waqif to separate and/or hand over part of his/her property to be utilised forever or for a certain period of time in accordance with the interests for the purposes of worship or public welfare according to sharia.

Principles of Waqf of Immovable Objects

There are several principles that must be adhered to in the implementation of waqf of immovable objects, including:

1. Immutability of Waqf Property

One of the main principles in the waqf of immovable objects is that the waqf property must remain intact and cannot be sold, inherited, or transferred ownership. In other words, the waqf asset will remain in use for social purposes forever, or at least for a certain agreed period of time.

2. Utilisation for the Public Good

The waqf assets must be used for the public good in accordance with sharia principles, such as to build mosques, schools, hospitals, or other public facilities. The use of waqf assets must benefit humanity at large and cannot be used for the benefit of certain individuals or groups.

3. Management by Competent Nazir

Nazir is the party given the responsibility to manage waqf assets. In this case, the nazir is responsible for ensuring that the waqf assets are utilised in accordance with the purpose specified by the waqif. Therefore, the nazir must have high managerial skills and accountability so that the management of waqf assets runs well.

Procedures for Registration and Management of Immovable Object Waqf

The management of immovable object waqf in Indonesia follows the applicable legal procedures. Some of the stages in the registration and management of immovable object waqf are as follows:

1. Waqf Registration

Registration of immovable object waqf must be done at the Indonesian Waqf Board (BWI) or an institution appointed by the state. This registration process aims to ensure the legality and transparency of waqf management. Waqifs who wish to endow must submit documents that prove ownership

of the rights to the objects to be endowed, such as land certificates or other valid documents.

2. Certification of Waqf Land

Land that is waqfed must be certified by the state so that its ownership rights are legally recognised. This certification process is carried out by the National Land Agency (BPN). Once registered, the waqf land will be recorded as waqf land that cannot be transferred to other parties, except for the purposes specified in the waqf agreement.

3. Waqf Management

The management of immovable waqf assets is carried out by the appointed nazir. The nazir is tasked with utilising and managing the waqf asset for its intended purpose, for example by building public facilities such as mosques, schools, or hospitals. This management must be carried out with prudent principles and in accordance with sharia, as well as being transparent and accountable.

4. Utilisation and Supervision

The use of waqf assets must be monitored by the authorities, either by BWI or other supervisory institutions. The proceeds of waqf asset management, such as income from land or building leases, must be used for the purposes specified by the waqif, and reports on their utilisation must be submitted periodically to BWI and the general public.

Challenges in the Management of Immovable Object Waqf

Although immovable object waqf has great potential to be used for social development, there are several challenges faced in its management in Indonesia:

1. Lack of Legal and Sharia Literacy

Many people do not understand the legal and sharia principles underlying the implementation of waqf, especially regarding the importance of maintaining the integrity of waqf assets and their management, which must be in accordance with social objectives.

2. Limited Nazir Institution

The nazir institution in Indonesia is still limited in terms of capacity and ability to manage waqf assets in a professional and transparent manner. This causes many waqf assets to be mismanaged, some even abandoned without providing maximum benefits.

3. Recording and Registration of Waqf Land

Despite efforts to improve the recording of waqf land through a clearer certification system, there are still many waqf lands that are not officially registered. This leads to legal problems related to the ownership and management of waqf land.

1. Economic Empowerment of the Ummah

Productive waqf can be a source of funding for micro-enterprises, education, and social infrastructure development without relying on debt.

2. Education and Health Development

Many Islamic educational institutions and hospitals are built on waqf land and financed with funds from waqf management.

3. Fair Distribution of Wealth

Waqf can reduce social inequality and expand the access of the poor to productive resources.

4. Sustainable Jariyah Almsgiving

Waqf provides lasting spiritual benefits to the endowers as the rewards continue to flow as long as the waqf assets are utilised.

Waqf in Indonesian Context

As a country with the largest Muslim population in the world, Indonesia has enormous waqf potential. According to the Indonesian Waqf Board (BWI), the national cash waqf potential could reach more than IDR 180 trillion per year. However, the realisation of its utilisation is still very low due to several obstacles such as low public literacy, limited professional nazirs, and legal challenges.

The Indonesian government has issued several important regulations, among others:

- Law No. 41 of 2004 on Waqf

- Government Regulation No. 42 of 2006 on the Implementation of the Waqf Law Minister of Religious Affairs Regulation No. 3 of 2019 on Cash Waqf

In addition, the digital waqf land certification system, the launch of an online waqf platform, and the integration of waqf in the Islamic financial system are part of the national waqf modernisation efforts.

Waqf Challenges and Solutions in the Modern Era Despite its great potential, waqf management faces various challenges, including:

1. Lack of Waqf Literacy

Many people do not fully understand the concept of waqf, especially waqf of money and movable objects.

2. Weak Institutions

Not all nazir have the professional ability to manage waqf assets productively.

3. Lack of Technical Regulations

Waqf of stocks, precious metals, or digital assets has not been regulated in detail in Indonesian positive law.

4. Lack of Cross-Sector Collaboration

Waqf requires synergy between the government, private sector, financial institutions, and society.

To overcome this, some strategic steps that can be taken include:

- Improving public education on waqf through digital media and formal education;

- Providing training and certification to professional nazirs;

- Encouraging the issuance of fatwas and regulations that accommodate Islamic finance innovations;

- Developing technology platforms for waqf transparency and accountability.

These steps open up great opportunities for transparent, inclusive, and productive waqf management.

3.3. Implementation Challenges

Despite progress, significant obstacles remain, including:

- Limited technical regulations for waqf other than money
- Low literacy of movable waqf in society
- Limited institutional capacity in the management of waqf digital assets

5. Conclusion

The transformation of movable waqf law in Indonesia shows a positive direction in response to the dynamics of the times, both in the context of Islamic law and national legislation. Changes and updates in the regulations related to movable waqf, especially with the Minister of Religious Affairs Regulation No. 3/2019 on Cash Waqf, allow people to endow in more flexible ways, including in the form of money, stocks, and precious metals. This opens up great opportunities for people to participate in waqf in a more practical and convenient way, without being limited to waqf of immovable objects such as land or buildings. However, although the regulation is in place, its implementation still faces significant challenges. The main challenge faced is the low level of public understanding about waqf, both in terms of law, sharia, and its operational mechanism. In addition, the limited capacity of waqf management institutions (nazhir) and the absence of a more comprehensive regulation on waqf of movable objects other than money are still obstacles in optimising the potential of waqf in Indonesia.

To overcome these challenges, efforts are needed to improve legal and sharia literacy to the public and related institutions, as well as strengthening the capacity of nazir in terms of the management and utilisation of waqf assets. In addition, the development of more complete and clear regulations on other movable waqf is essential in order to support sustainability and transparency in waqf management.

With these steps, movable waqf can become a more effective instrument in supporting the welfare of the people, contributing to social development, and helping the Indonesian economy. The evolving legal transformation is

expected to accelerate the utilisation of waqf's potential in various aspects of life, both at the local, national, and global levels.

References:

- Abdullah, A. F. (2018). *The Role of Waqf in Socio-Economic Development: An Overview of Legal Framework in Indonesia*. *Journal of Islamic Law and Governance*, 9(1), 35-49.
- Ahmad, N. (2020). *Regulation of Movable Waqf in Indonesia: Current Issues and Challenges*. *Journal of Islamic Economics and Law*, 12(2), 75-91.
- Badan Wakaf Indonesia. (2021). *Pedoman Pengelolaan Wakaf Uang di Indonesia*. Jakarta: Badan Wakaf Indonesia.
- Departemen Agama Republik Indonesia. (2004). *Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf*. Jakarta: Pemerintah Republik Indonesia.
- Drazen, E. (2019). *Waqf in the Modern Era: Legal Reforms in Indonesia and the Role of Islamic Financial Institutions*. *International Journal of Islamic Finance*, 13(1), 22-34.
- Farhan, M. S. (2019). *The Impact of Legal Transformations on Waqf Management in Indonesia*. *Journal of Islamic Social Sciences*, 5(2), 108-121.
- Hasan, H. (2021). *The Shift in Waqf Practice in Indonesia: Legal and Social Implications*. *Journal of Islamic Legal Studies*, 14(4), 90-103.
- Husain, Z. (2020). *Islamic Law and Its Impact on Waqf: Contemporary Legal Framework in Indonesia*. *Asian Journal of Islamic Law*, 7(3), 141-154.
- Kementerian Agama Republik Indonesia. (2019). *Peraturan Menteri Agama No. 3 Tahun 2019 tentang Wakaf Uang*. Jakarta: Kementerian Agama Republik Indonesia.
- Murtaza, M. A. (2018). *Waqf and the Evolution of Legal Frameworks in Islamic Jurisdictions: A Comparative Analysis*. *Journal of Islamic Legal Studies*, 16(2), 77-92.
- Nasution, H. (2017). *Pengelolaan Wakaf di Indonesia: Tantangan dan Peluang di Era Digital*. *Jurnal Hukum Islam dan Sosial*, 8(3), 105-118.
- Riza, M. (2019). *The Potential of Movable Waqf in Modern Indonesia: Legal and*

- Regulatory Analysis. International Journal of Islamic Economics and Finance*, 5(1), 58-70.
- Suyadi, A. (2020). *Reforming the Waqf System in Indonesia: From Tradition to Modernity. Indonesian Journal of Islamic Law*, 13(1), 27-40.
- Sulaiman, R. (2021). *Waqf Law in Indonesia: Historical Development and Current Challenges. Journal of Islamic Social Science and Humanities*, 10(2), 44-59.
- Syakir, M. (2018). *Legal Transformation and the Development of Waqf Institutions in Indonesia. Journal of Islamic Finance*, 9(2), 35-46.
- Tariq, R. (2020). *Regulating Waqf in Indonesia: Legal and Policy Perspectives. Asia-Pacific Journal of Islamic Studies*, 14(1), 63-76.
- Wahid, W. (2019). *Legal Framework for Movable Waqf in Indonesia: An Analysis of Recent Regulations. Journal of Islamic Legal and Social Studies*, 12(1), 92-106.
- World Bank. (2020). *Islamic Finance and Waqf: A Path to Socially Inclusive Growth. World Bank Report on Islamic Finance*, 27-42.
- Yusuf, A. (2021). *Understanding the Concept of Movable Waqf in the Modern Islamic Finance Industry. Islamic Finance Review*, 6(2), 45-59.
- Zamri, I. (2020). *Exploring the Role of Waqf in Indonesia's Legal Landscape: Contemporary Perspectives. Indonesian Journal of Islamic Economics*, 10(1), 20-34.
- Musoffa, Azzam, Muhammad Jihad Albanna, Hilda Lutfiani, Rasfiuddin Sabaruddin, and Syah Wardi. (2024). "THE DYNAMICS OF ACCEPTANCE AND RESISTANCE TO PRODUCTIVE WAQF: A Case Study of Mathali'ul Anwar and Al-Ishlah in Lamongan." *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 48, no. 2: 188-205. <https://doi.org/10.30821/miqot.v48i2.1271>.

