

Assessing the Implication of Law 41/2004 on Waqf Practice: A Systematic Literature Review

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Abstract:

The enactment of Law No. 41 of 2004 in Indonesia significantly impacts the country's socio-economic landscape, particularly concerning the management of waqf assets. With Indonesia hosting the world's largest Muslim population, waqf emerges as a critical avenue for advancing societal welfare, yet its realization often faces challenges. This study aims to discern Law No. 41 of 2004 on waqf practices by examining its positive and negative impact after long years of its enactment. The study employs the Systematic Literature Review (SLR) method, involving the identification, analysis, evaluation, and interpretation of previously obtained research data. SLR aims to discover relevant articles, gather necessary information, evaluate, and synthesize them to gain a broader understanding. The study found that in the positive parts, the Law gave a more broadened scope of waqf, ensuring more potential. It also gives better contribution to the enhancement of socio-economics welfare of its recipient. Meanwhile, we also found the lack of nazir professionalism and many lands remains uncertified. The findings rise awareness of all stakeholders that the current regulation while boosting the waqf development, it has several points need to be improved.

Keywords: waqf; regulation; economic.

Introduction

The enactment of legislation governing waqf in Indonesia holds significant implications for the country's socio-economic landscape. With Indonesia boasting a population of approximately 229.62 million Muslims on 2020 or roughly an 87.2% of the nation's total population, the management of waqf assets emerges as a critical avenue for advancing societal welfare. The regulatory framework established by the government plays a pivotal role in shaping the trajectory of waqf practices, reflecting a focused effort to balance state interests with the broader welfare concerns of the Muslim community. As it is known, the strategic formulation of policies not only guides the utilization of waqf resources but also underscores their potential to foster communal prosperity and educational advancement.¹ Waqf, as a longstanding tradition of Islamic philanthropy, holds immense promise for uplifting community

¹ Solikhul Hadi, "Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)," *Jurnal Penelitian* 8, no. 2 (2014).

economies, given Indonesia's status as home to the world's largest Muslim population. Associated with various social endeavors such as education, mosque construction, and healthcare facilities waqf emerges as a cornerstone of socio-economic development. Number of waqf innovations have been initiated to ensure this socio-financial instrument contributes well for society, from waqf logo², waqf micro bank³, waqf linked sukuk⁴, and many others.

However, despite its vast potential, the realization of waqf's benefits often faces challenges. To optimize waqf performance, number of efforts are required to enhance awareness, secure governmental support, expedite waqf land certification, improve trustee management, embrace digitalization, and integrate waqf data into comprehensive systems. Waqf Information System from Ministry of Religious Affairs in 2022 underscores the extensive scope of waqf assets in Indonesia, encompassing 440.5 thousand points of land totaling 57.2 hectares. Moreover, the country's waqf sector, particularly cash endowments, exhibits substantial annual potential, estimated at 180 trillion Indonesian rupiah. Notably, the Indonesian Waqf Board reported a cash waqf income of 1.4 trillion rupiah as of March 2022, reflecting a significant increase from the 855 billion rupiah collected between 2018 and 2021.

The evolution of waqf governance in Indonesia has been marked by legislative milestones, notably with the enactment of Law No. 41 of 2004 on Waqf. This legislation, alongside Government Regulation No. 42 of 2006 and BWI Regulation No. 1 of 2021, delineates the legal framework governing waqf practices. Unlike previous regulations, Law No. 41 of 2004 represents a seminal moment in waqf history, as it provides comprehensive legal provisions dedicated solely to waqf matters. Historically, waqf regulations were dispersed among various statutes, including those concerning land tenure, reflecting a fragmented legal landscape. Moreover, the period following Indonesia's independence witnessed significant shifts in waqf legislation. The promulgation of Law No. 5 of 1960 on Basic Agrarian Principles marked the first official declaration aimed at safeguarding waqf assets during the Old Order era. Subsequently, during the New Order era, Government Regulation No. 28 of 1977 laid out substantive and technical aspects of waqf regulation, supplemented by additional legal provisions found in Law No. 7 of 1989 on Religious Courts. Law No. 41 of 2004 on Waqf represents a hallmark of regulatory reform, positioned to enhance the socio-economic significance of waqf in the Reform Era (Hadi, 2014).

While the regulation of UU 41/2004 was effective 5 years after its enactment, it already brought significant change from the time of enactment. Therefore, the regulation has been active in providing rule for two decades. This is a long period and therefore must have provided changes in Indonesian waqf landscape. Based on what described above, this study aims to assess the effects of Law No. 41/2004 on waqf

² Mochamad Firdaus Fajar Baharsyah et al., "Waqf Logo as a Productive Waqf of the Digital Age in the Perspective of Maqashid Sharia," in *International Conference on Islamic and Muhammadiyah Studies (ICIMS 2022)* (Atlantis Press, 2022), 354–60.

³ Fauzul Hanif Noor Athief, Darlin Rizki, and Arum Pratwindya, "Performa Bank Wakaf Mikro Selama 2017-2021: Sebuah Studi Literatur Sistematis (Systematic Literature Review)," *IQTISHADIA Jurnal Ekonomi & Perbankan Syariah* 9, no. 2 (2022): 204–21.

⁴ Afief El Ashfahany and Novita Lestari, "Optimizing Cash Waqf and Cash Waqf Linked Sukuk: The Role of Nazhir and The Strategies," *Iqtishadia* 15, no. 2 (2023): 171–90.

landscape in Indonesia. This legislation, alongside subsequent governmental regulations, has significantly influenced the landscape of Islamic philanthropy and socio-economic development in the country. Particularly, this research seeks to find the impact of Law No. 41/2004, focusing on both its positive and negative implications.

Previous Studies

There are numerous studies examining previous waqf legislation; the first study discussed here was conducted by Sudirman. This research primarily scrutinized waqf law in Indonesia post-independence. The approach used in this study was mandatory in nature. Primary legal sources cited included Law No. 51 of 2004 and Law No. 5 of 1960. This research utilized three concepts: *Lex Superior Derogat Legi Inferiori*, *Lex Specialis Derogat Legi Generali*, and *Lex Posterior Derogat*. The conclusion of this research indicates that there is a significant demand for unique waqf laws in Indonesia post-independence, as well as responses to advancements in modern waqf laws. These demands form the basis for diverse waqf regulations.⁵ Another research by Hadi examined the interconnectedness of various socio-political, socio-economic, and socio-religious contexts with Law No. 41 of 2004, which regulates Waqf. Socio-historical studies were used in conjunction with qualitative techniques and a legal-political perspective to examine these issues. Basic theory approaches were utilized. Data analysis approaches used comparative analysis, meaning that each time a group or category of data emerged, it was always examined based on related data. Legal-political analysis states that Law No. 41 of 2004 regarding Waqf is a political step by the government to ensure the implementation of PROPENAS (National Development Program) in the field of national legal development. The purpose of Law No. 41 of 2004 regarding Waqf is to empower waqf in order to enhance welfare and social benefits, according to economic studies. From a theological perspective, Law No. 41 of 2004 regarding Waqf is a new advancement in waqf science towards a dynamic and contextual paradigm.⁶

Apart from it, there was a research examined the development of waqf law in Indonesia, particularly related to the growth of cash waqf. In addressing field demands and global challenges, Indonesian waqf laws have progressed significantly. The evolution of waqf legislation from pre-independence to post-reformasi demonstrates progress in waqf law in Indonesia. Regarding monetary waqf, there is fundamental legal progress. The enactment of Law No. 41 of 2004 regarding Waqf signifies this. The governance system of waqf in Indonesia needs to adopt a new paradigm offered by this law. As the waqf sector in Indonesia develops, this law now allows the handling of cash waqf. This law has clearly advanced the use of waqf assets in other ways. Moving and non-moving assets considered by the community are included in the definition of waqf assets according to Law No. 41 of 2004. Additionally, the institutional aspect of cash waqf governance and waqf law is influenced by its progressive nature. This evolution, at the very least, demonstrates

⁵ Sudirman Sudirman, "Regulasi Wakaf Di Indonesia Pasca Kemerdekaan Ditinjau Dari Statute Approach," *De Jure: Jurnal Hukum Dan Syar'iah* 6, no. 2 (2014).

⁶ Hadi, "Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)."

societal awareness of the strategic importance of waqf in Indonesia.⁷

According to Masdar (2018), cash waqf has existed in Indonesia for a long time, established based on government regulations and the Indonesian Waqf Board (BWI). This study examines how Indonesia applies the law of cash waqf from the perspective of the Friedman legal system theory. According to Friedman's legal system theory, legal substance covering legislation and MUI fatwas is examined first, followed by the legal structure consisting of legal institutions and authorized law enforcement agencies such as judges, prosecutors, police, and legal advisors to the police. Furthermore, considering legal culture, especially regarding community responses. There are limitations on the third aspect, especially the lack of full public trust, while there are no issues with the other two aspects. From a legal cultural perspective, society perceives the government's difficulty in enforcing cash waqf laws under BWI.⁸

Another research noted that in Indonesia, the government's role is quite significant in the development and management of cash waqf. Several regulations have been made with the aim of organizing monetary waqf and functioning as social funds. Therefore, this article covers the professional management of cash waqf, the role of Nazirs in cash waqf management, cash waqf procedures, and the benefits of cash waqf. It also covers cash waqf management and financial institutions involved in cash waqf, such as the Ministry of Religion, BWI, LKS PWU, and others. The research findings show that cash waqf regulations have a significant influence on how cash waqf is generated and managed, and that governments in these countries need to be more careful in monitoring and controlling cash waqf management.⁹

Another study by Faishal (2021) elaborates the historical evolution of waqf, encompassing its legal aspects delineated by governmental regulations. Employing a literature research technique, it delineates the legal framework concerning waqf and legal norms. The study presents normative juridical facts descriptively using qualitative data analysis methods. The spirit of waqf regulations established by the Dutch colonial government was to manage waqf land under the supervision of regents or authorized officials. Republic of Indonesia Law Number 5 of 1960 concerning Agrarian, issued after Indonesia's independence, mandated land ownership to be safeguarded and regulated by law. Government Regulation Number 28 of 1977, which regulates Owned Land Waqf, is the fulfillment of this task. With the issuance of Presidential Instruction Number 1 of 1999 concerning the Socialization of the Compilation of Islamic Law, the legal positivization of waqf progressed. The purpose of waqf has shifted from land ownership to tangible assets due to the legality of both items. The Fatwa of the National Sharia Board of the Indonesian Ulema Council (DSN MUI), which also provides support, and the societal dynamics emerging concurrently with the enactment of Law Number 41 of 2004 regulating waqf. One significant sign of the government's attention and hope for the future of waqf is the legal establishment of cash waqf.¹⁰ Based on the

⁷ Mansur Efendi and others, "Menakar Progresivitas Hukum Wakaf Dalam Pengembangan Wakaf Uang Di Indonesia," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 2 (2018): 191–204.

⁸ Masdar Masdar, "Penerapan Hukum Wakaf Uang Di Indonesia Perspektif Legal System Theory," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 79–92.

⁹ Nanda Suryadi and Arie Yusnelly, "Pengelolaan Wakaf Uang Di Indonesia," *Syarikat: Jurnal Rumpun Ekonomi Syariah* 2, no. 1 (2019): 27–36.

¹⁰ Ahmad Faisal, "Perkembangan Wakaf Di Indonesia (Postivisasi Hukum Wakaf)," *EKSYA: Jurnal*

aforementioned literature, it is evident that each study seeks to explore waqf legal regulations, although concentrating on waqf itself. However, this research takes a different approach by treating existing research literature as the subject of investigation and aim to identify the strengths and weaknesses of the implementation of Law Number 41 of 2004 concerning Waqf.

Method

The authors employ one of 14 types of review methodologies which is systematic review under the umbrella of literature review.¹¹ Particularly, this study uses Systematic Literature Review (SLR) method. SLR involves identifying, analyzing, evaluating, and interpreting all previously obtained research data. The researcher systematically identifies and reviews selected research articles to explore the findings further. In this paper, the Systematic Literature Review (SLR) approach is applied to examine, analyze, and interpret. The aim of SLR is to discover relevant articles, gather necessary information, evaluate, and synthesize them to gain a broader understanding for the primary article review.¹² Systematic Literature Review plays several vital roles, including synthesizing knowledge in a field, identifying future research priorities, addressing unanswered questions from individual studies, identifying issues in the main research for future improvement or further investigation, and evaluating theories in response to real phenomena.¹³

SLR has been regarded by researchers as a more appropriate, transparent, and explicit method in terms of structure and systematicity. Therefore, by using this method, researchers can obtain more systematic results and find accurate synthesis among various research papers written. To achieve precise SLR results, this study adopts the PRISMA (Preferred Reporting Items for Systematic Review and Meta-Analyses) protocol introduced by Liberati et al¹⁴ and has been used widely by researchers in the field of Islamic finance such as in the insurance field¹⁵ or microfinance¹⁶. First step of SLR is defining the source of data. Here, Google scholar is used instead of Scopus or any other indexing machine since it holds the biggest database for Indonesian scholarly article.¹⁷ This study targets Indonesian scholarly article because it talks about specific legislation within Indonesia. Second step is data

Ekonomi Syariah 2, no. 1 (2021): 76–93.

¹¹ Maria J Grant and Andrew Booth, "A Typology of Reviews: An Analysis of 14 Review Types and Associated Methodologies," *Health Information & Libraries Journal* 26, no. 2 (2009): 91–108.

¹² Hannah Snyder, "Literature Review as a Research Methodology: An Overview and Guidelines," *Journal of Business Research* 104 (2019): 333–39.

¹³ Stefan Korber and Rod B McNaughton, "Resilience and Entrepreneurship: A Systematic Literature Review," *International Journal of Entrepreneurial Behavior & Research* 24, no. 7 (2017): 1129–54.

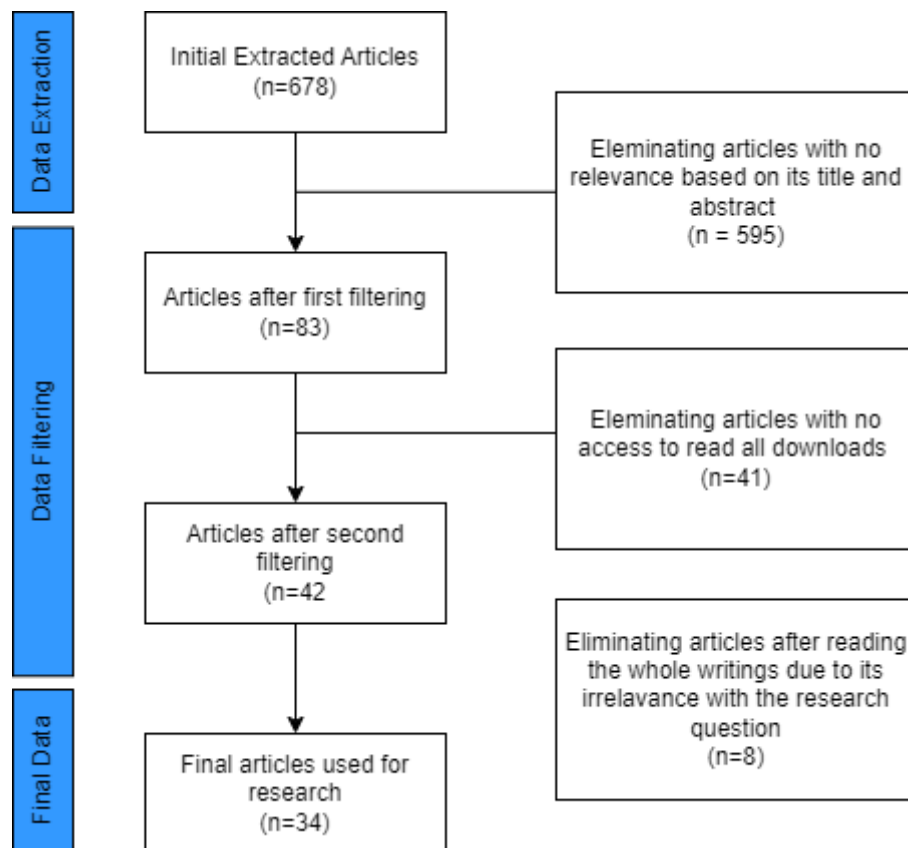
¹⁴ Alessandro Liberati et al., "The PRISMA Statement for Reporting Systematic Reviews and Meta-Analyses of Studies That Evaluate Health Care Interventions: Explanation and Elaboration," *Annals of Internal Medicine* 151, no. 4 (2009): W-65.

¹⁵ Azhar Alam et al., "Efficiency Studies of the Sharia Insurance Industry: A Systematic Literature Review," *Insurance Markets and Companies* 13, no. 1 (2022): 90–101.

¹⁶ Fauzul Hanif Noor Athief, Aminudin Ma'ruf, and Faris Shalahuddin Zakiy, "Surviving amidst Pandemic: Indonesian Islamic Microfinance Experience," *International Journal of Advanced and Applied Sciences* 10, no. 3 (2022): 119–29.

¹⁷ Fauzul Hanif Noor Athief et al., "Ending the Debate of Islamic Law Permissibility of Digital Wallet Through the Lens of Fiqh Adaptation," *Manchester Journal of Transnational Islamic Law and Practice* 19, no. 3 (n.d.): 194–211.

extraction. We use Publish or Perish to help scrapping numerous data for its competitive advantage in compiling Google Scholar articles. In scrapping the data, we use the keyword “wakaf 2004” for its close meaning with the UU 41/2004 on Waqf. Third step is data filtering which involves three things: removing articles with no correlation with the topic of interest based on its title and abstract, removing articles with no accessibility, and finally removing article which substance deviated from our research question. Figure 1 gives details on these steps.



Results and Discussion

Informants

The data extraction and filtering resulting on 34 articles that has the answers towards our main research question. Table 1 shows the academic writings published in journal used as the data.

Table 1. Data from journals

| No | Author and Year | Type | Title |
|----|-----------------|---------|--|
| 1 | Amirah (2023) | Journal | Implementation of Law 41/2004 on Waqf Management |

| | | | |
|----|------------------------------|---------|--|
| 2 | Shofi (2016) | Journal | Analysis of Waqf Management Practice based on Law 41/2004 |
| 3 | Choeri (2022) | Journal | Optimalization of Law 41/2004 at Jepara City |
| 4 | Sumarlan (2018) | Journal | Implementation of Law 41/2004 on the Legagility of Waqf Land |
| 5 | Wahyuningsih (2018) | Journal | Management Implementation of Law 41/2004 |
| 6 | Insani & Fathurrohman (2016) | Journal | Productive Cash Waqf Management from the Perspective of Islamic Law and Law 41/2004 |
| 7 | Nisa et al., (2022) | Journal | Implementation of Law 41/2004 in South Palu |
| 8 | Taufik et al., (2021) | Journal | Implementation of Waqf Management in Kediri City from the Perspective of Law 41/2004 |
| 9 | Yuslem et al., (2019) | Journal | Implementation of Nazhir and Waqf Deeds from the Perspective of KHI and Law 41/2004 |
| 10 | Nawawi (2013) | Journal | Waqf Implementation on Productive in Indonesia after the Enactment of Law 41/2004 |
| 11 | Fatimah (2015) | Journal | Implementation of Cash Waqf in Bank Muamalat East Lampung |
| 12 | Harahap et al., (2021) | Journal | Implementation of Cash Waqf on HalalMart MUI Sumatera Management from the Perspective of Law 41/2004 |
| 13 | Farisi (2022) | Journal | The implementation of Term-Waqf Based on Law 41/2004 and Government Regulation PP 42/2006 |
| 14 | Hendrik & Mufidah (2019) | Journal | The Role of the Indonesian Waqf Board After the issuance of Law Number 41 of 2004 concerning Waqf |
| 15 | Hidayat (2016) | Journal | Productive Waqf (Implementation of Law 41/2004) |
| 16 | Fikri (2016) | Journal | Implementation of Oral Waqf Based on 41/2004 |
| 17 | Kamarudin (2014) | Journal | Implementation of 41/2004 and Government Regulation 42/2006 Concerning Waqf in Kendari |
| 18 | Fatoni (2010) | Journal | Implementation of Waqf in Kanigoro Blitar |
| 19 | Al Ansori (2016) | Journal | Changes of Function on Waqf Land from Its Original Purpose in Purwakarta from the Perspective of Islamic Law and Law 41/2004 |

| | | | |
|----|------------------------------|---------|---|
| 20 | Dewi & Effendy (2016) | Journal | Waqf Land with No Certificate of Owner from Islamic Perspective and Law 41/2004 |
| 21 | Aditya et al., (2015) | Journal | The influence of the implementation of waqf law no. 41 of 2004 regarding reporting and supervision of going concern waqf institutions |
| 22 | Nisa et al., (2022) | Journal | Implementation of Law 41/2004 in South Palu |
| 23 | Maksum & Hidayatullah (2022) | Journal | Revitalization of Nazhir in Waqf Management Based on Law 41/2004 |
| 24 | Yolandra & Teuku (2023) | Journal | Implementation of Nazhir and Waqf Deedd in Mandailing Natal from the Perspective of Law 41/2004 |
| 25 | Hak et al., (2019) | Journal | Revitalization of Maslahah Theory Through Isbat Waqf in Overcoming the Problem of Waqf Land Certification Post Law 41/2004 |

There are also data extracted in the form of thesis. In this regard, thesis means either bachelor thesis or master thesis.

Table 2. Data from Thesis

| No | Author and Year | Type | Title |
|----|-----------------------------|--------|--|
| 26 | Rosid (2019) | Thesis | Implementation of Law No 41/2004 and Compilation of Islamic Law Concerning Nazhir and Waqf Deeds |
| 27 | Erika & Ulfah (2021) | Thesis | Implementation of Law 41/2004 in Boarding School |
| 28 | Wahyudi (2004) | Thesis | The Effectiveness of Law 41/2004 on Cash Waqf |
| 29 | Fatimah (2012) | Thesis | Implementation of Cash Waqf Based on Law 41/2004 |
| 30 | Habiburrohman (2017) | Thesis | Implementation of Law 41/2004 In Majelis Waqf |
| 31 | Maharani (2017) | Thesis | Intensification and Extensification of Waqf Based on Law 41/2004 in Yogyakarta |
| 32 | Wijaya (2019) | Thesis | Community Views on The Position Of Waqf Land After The Implementation Of Law 41/2004 |
| 33 | Suhaimi (2018) | Thesis | The Implementation of Cash Waqf in Central Lampung from the Perspective of Law 41/2004 |
| 34 | Hendrik & Hidayahnto (2023) | Thesis | Implementation of Law 41/2004 in the Organization of National Waqf Movement in Banjarmasin |

Positive Aspects

New Waqf Potential

The enactment of Law Number 41 of 2004 has instilled confidence in society, provided clear legal guidance, and protected waqf assets. Ratifying this law was a calculated step towards enhancing the well-being of all individuals. With the passage of the Waqf Law Number 41 of 2004, the definition of waqf has been expanded to include both movable assets such as money and immovable.¹⁸ The division of waqf assets is delineated into two categories: immovable and movable assets.¹⁹ In Law Number 41 of 2004, waqf can be established for a specified period by allocating a portion of one's assets for perpetual or temporary use, according to its relevance to worship or public welfare under Shariah law.²⁰ One of the significant activities under Law Number 41 of 2004 encompasses two noteworthy contracts: the first involves charitable programs that do not burden anyone, while the second pertains to agreements made during transactions, envisaged to contribute to the ongoing development of waqf in society.²¹

Waqf as a means to enhance the socio-economic welfare

Law 41/2004 gives legal standing to many organizations that function as nazhir or trustee. Apart from adhering to Law Number 41 of 2004, which prohibits the use of mosques and Islamic boarding schools as venues for religious activities, trustees also carry out waqf duties in asset development and management.²² Law Number 41 of 2004 states that Shariah concepts such as mudharabah, musyarakah, murabahah, and ijarah financing have been utilized in the establishment and management of waqf assets, particularly waqf funds.²³ A case study of waqf management organizations examining the impact of implementing Law Number 41 of 2004 on the operational sustainability of waqf institutions. The findings of this examination provide empirical evidence that the ability of waqf institutions to continue operating will improve with the enhancement of Law Number 41 of 2004 implementation.²⁴

¹⁸ Mohamad Hendrik and Mufidah Mufidah, "Peran Badan Wakaf Indonesia Pasca Terbitnya Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *SALAM J. Sos. Dan Budaya Syar-i* 6, no. 5 (2019): 417–46.

¹⁹ Muhammad Shofi, "Analisis Praktik Dan Pengelolaan Wakaf Uang Menurut Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *Jurnal Syarikah: Jurnal Ekonomi Islam* 2, no. 2 (2016).

²⁰ Salman Al Farisi, "Implementasi Wakaf Berjangka Menurut Undang-Undang Nomor 41 Tahun 2004 Dan Peraturan Pemerintah No. 42 Tahun 2006," *Pena: Jurnal Ilmu Pengetahuan Dan Teknologi* 36 (2022): 8–15.

²¹ Ammar Zaki Siregar, Ramadhan Syahmedi Siregar, and Mhd Yadhi Harahap, "Implementasi Wakaf Uang Dalam Pengelolaan Halalmart Majelis Ulama Indonesia Provinsi Sumatera Utara Perspektif UU No. 41 Tahun 2004 Tentang Wakaf Uang," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 02 (2021).

²² Diaz Ayu Erika, "Implementasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Yayasan Pondok Pesantren Miftahu Nurul Huda 3 Desa Banjarejo Kabupaten Magetan" (Bachelor Thesis, IAIN Ponorogo, 2021).

²³ Achmad Suhaimi, "Pelaksanaan Wakaf Uang Dalam Tinjauan Undang-Undang No. 41 Tahun 2004 Tentang Wakaf (Studi Pengelolaan Wakaf Uang Di Kecamatan Gunung Sugih Kabupaten Lampung Tengah)" (Bachelor Thesis, IAIN Metro, 2018).

²⁴ Gilland Aditya, Sri Fadilah, and Helliana Helliana, "Pengaruh Penerapan Undang-Undang Wakaf No. 41 Tahun 2004 Mengenai Pelaporan Dan Pengawasan Terhadap Going Concern Lembaga

Following the enactment of Law Number 41 of 2004 in an effort to actualize society's involvement in waqf collection and utilization, the government has begun to maximize the potential of community-owned waqf assets.²⁵

Negative Aspects

The Lack of Professionalism among Nazirs

In general, waqf affairs are still handled by Nazirs who lack the necessary competencies in managing the waqf assets under their responsibility. Many Nazirs exhibit a lack of professionalism, including a limited awareness of their rights and duties.²⁶ Numerous waqf assets in Indonesia remain economically unproductive due to the low level of professionalism among waqf Nazirs.²⁷ Despite being granted authority, Nazirs often fail to effectively manage and administer waqf assets according to their intended purposes and functions.²⁸ The deficiency in status, duties, and responsibilities can significantly impact the implementation, management, and development of waqf in Indonesia.²⁹ Only a small fraction of Nazirs possess professional qualifications and specialized experience in waqf management.³⁰

Challenges in waqf land certification post the enactment of Law Number 41 of 2004

Many waqf lands remain uncertified and are sometimes sold by the overseeing organizations.³¹ Due to the lack of support in waqf data, many waqf lands remain uncertified, resulting in prolonged certification procedures.³² Public unawareness of waqf practices in accordance with Law Number 41 of 2004 stems from insufficient socialization and education on waqf matters in rural areas.³³ Despite socialization

Wakaf (Nazhir) Di Bandung," *Prosiding Akuntansi*, 2015, 140–45.

²⁵ Lubab Habiburrohman and others, "Penerapan Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf Di Majelis Wakaf Dan Kehartabendaan Pimpinan Daerah Muhammadiyah Kabupaten Banyumas Lubab Habiburrohman NIM. 1423401023" (Bachelor Thesis, IAIN, 2017).

²⁶ Paridatul Amriah, "Implementasi Undang-Undang Wakaf No. 41 Tahun 2004 Dan Peraturan Pemerintah No. 42 Tahun 2006 Terhadap Pengelolaan Harta Wakaf," *Journal of Comprehensive Islamic Studies* 2, no. 1 (2023): 17–32.

²⁷ Nawawi Nawawi, "Implementasi Wakaf Produktif Di Indonesia Pasca Berlakunya UU No. 41 Tahun 2004 Tentang Wakaf," *Al-Tahrir: Jurnal Pemikiran Islam* 13, no. 2 (2013): 393–415.

²⁸ Yolandra Yolandra and Teuku Muttaqin Mansur, "Penerapan Pasal 42 Dan Pasal 43 Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kecamatan Cot Girek Kabupaten Aceh Utara," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 7, no. 2 (2023): 223–31.

²⁹ Maksun and Hidayatullah Hidayatullah, "Revitalisasi Nazhir Dalam Pengelolaan Wakaf Di Indonesia (Studi Yuridis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf)," *Prosiding Penelitian Dosen UNISKA MAB*, no. 1 (2022).

³⁰ Hendrik Hidayahnto, "Implementasi Pasal 28, 29, 30 Undang-Undang No. 41 Tahun 2004 Tentang Wakaf Dalam Penyelenggaraan Gerakan Nasional Wakaf Uang (GNWU) Di Kota Banjarmasin" (Bachelor Thesis, Syariah, 2023).

³¹ Imron Choeri, "Optimalisasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kabupaten Jepara," *El-Usrah: Jurnal Hukum Keluarga* 5, no. 1 (2022): 23–40.

³² Nurul Hak, Desi Isnaini, and Miti Yarmunida, "Revitalisasi Teori Masalah Melalui Isbat Wakaf Dalam Mengatasi Problem Sertifikasi Tanah Wakaf Pasca Undang-Undang Nomor 41 Tahun 2004" (Bachelor Thesis, IAIN Bengkulu, 2019).

³³ Nawir Yuslem, Ramadhan Sahmedi Siregar, and Ahmad Rosidi, "Implementasi Nazhir Dan Akta

efforts aligned with Law Number 41 of 2004, some waqf lands remain unregistered. Registering waqf lands is crucial to obtain certificates.³⁴ Due to lack of awareness, Law Number 41 of 2004 concerning waqf, particularly regarding movable assets, has had little impact.³⁵ The implementation of Law Number 41 of 2004 is influenced by several factors, including content, organization, and legal knowledge.³⁶

Conclusion

After conducting research, it can be concluded that the impact of the implementation of Law Number 41 of 2004 has both positive and negative effects. Positively, the enactment of Law Number 41 of 2004 has expanded the potential of waqf objects, as it now encompasses movable assets such as money, not just immovable assets. However, there are negative impacts observed. Generally, waqf affairs are still handled by Nazirs who lack the necessary competence in managing waqf assets under their responsibility. Many Nazirs exhibit unprofessional behavior, including a lack of awareness of their rights and obligations. The process of waqf land certification is lengthy, with a significant portion of waqf lands remaining uncertified due to insufficient evidence of waqf ownership. Furthermore, the lack of public awareness regarding waqf practices in line with Law Number 41 of 2004 is attributed to insufficient socialization or education about waqf matters among the public.

Bibliography

- Aditya, Gilland, Sri Fadilah, and Helliana Helliana. "Pengaruh Penerapan Undang-Undang Wakaf No. 41 Tahun 2004 Mengenai Pelaporan Dan Pengawasan Terhadap Going Concern Lembaga Wakaf (Nazhir) Di Bandung." *Prosiding Akuntansi*, 2015, 140–45.
- Al Farisi, Salman. "Implementasi Wakaf Berjangka Menurut Undang-Undang Nomor 41 Tahun 2004 Dan Peraturan Pemerintah No. 42 Tahun 2006." *Pena: Jurnal Ilmu Pengetahuan Dan Teknologi* 36 (2022): 8–15.
- Alam, Azhar, Ririn Tri Ratnasari, Fikri Ainul Qolbi, and Fauzul Hanif Noor Athief.

Wakaf Pada Kecamatan Huta Bargout Kabupaten Mandailing Natal Ditinjau Dari Kompilasi Hukum Islam Dan UU No 41 Tahun 2004," *AT-TAFAHUM: Journal of Islamic Law* 3, no. 1 (2019); AB Zainul Fikri, "Pelaksanaan Wakaf Lisan Dalam Konteks Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf: Studi Di Kabupaten Blitar, Jawa Timur, Indonesia," *Jurnal Supremasi*, 2016, 5–5; Ahmad Rosidi, "Implementasi UU No 41 Tahun 2004 Dan Kompilasi Hukum Islam Tentang Nazhir Dan Akta Wakaf Pada Kecamatan Huta Bargout Kabupaten Mandailing Natal" (Bachelor Thesis, Universitas Islam Negeri Sumatera Utara, 2019).

³⁴ Ika Putry Wijaya, "Pandangan Masyarakat Terhadap Kedudukan Tanah Wakaf Pasca Diberlakukannya UU No. 41 Tahun 2004 Tentang Wakaf Di Kua Kotagajah" (Bachelor Thesis, IAIN Metro, 2019); Eka Putri Santi Dewi and Deddy Effendy, "Uncertified Wakaf Land Based on Islamic Law and Law Number 41 of 2004 on Wakaf (a Case Study on a Jami Mosque Miftaahussalam in the Jayamukti Village of Leuwisari District of Tasikmalaya Regency)," *Prosiding Ilmu Hukum*, 2016, 59–66.

³⁵ Achmad Fatoni, "Penerapan Wakaf Di Kec. Kanigoro Kab. Blitar: Studi Atas Pelaksanaan PP No. 28 Tahun 1977 Dan UU No. 41 Tahun 2004" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2010).

³⁶ Kamaruddin Kamarudin, "Implementasi Undang-Undang Nomor 41 Tahun 2004 Dan Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Wakaf Di Kota Kendari," *Al-Izzah: Jurnal Hasil-Hasil Penelitian* 9, no. 2 (2014): 39–64.

- “Efficiency Studies of the Sharia Insurance Industry: A Systematic Literature Review.” *Insurance Markets and Companies* 13, no. 1 (2022): 90–101.
- Amriah, Paridatul. “Implementasi Undang-Undang Wakaf No. 41 Tahun 2004 Dan Peraturan Pemerintah No. 42 Tahun 2006 Terhadap Pengelolaan Harta Wakaf.” *Journal of Comprehensive Islamic Studies* 2, no. 1 (2023): 17–32.
- Athief, Fauzul Hanif Noor, Hakim, Lukmanul, Rosyadi, Imron, and Rofiqo, Azidni. “Ending the Debate of Islamic Law Permissibility of Digital Wallet Through the Lens of Fiqh Adaptation.” *Manchester Journal of Transnational Islamic Law and Practice* 19, no. 3 (n.d.): 194–211.
- Athief, Fauzul Hanif Noor, Aminudin Ma’ruf, and Faris Shalahuddin Zakiy. “Surviving amidst Pandemic: Indonesian Islamic Microfinance Experience.” *International Journal of Advanced and Applied Sciences* 10, no. 3 (2022): 119–29.
- Athief, Fauzul Hanif Noor, Darlin Rizki, and Arum Pratwindya. “Performa Bank Wakaf Mikro Selama 2017-2021: Sebuah Studi Literatur Sistematis (Systematic Literature Review).” *IQTISHADIA Jurnal Ekonomi & Perbankan Syariah* 9, no. 2 (2022): 204–21.
- Baharsyah, Mochamad Firdaus Fajar, Yayuli Yayuli, Lukmanul Hakim, and Fauzul Hanif Noor Athief. “Waqf Logo as a Productive Waqf of the Digital Age in the Perspective of Maqashid Sharia.” In *International Conference on Islamic and Muhammadiyah Studies (ICIMS 2022)*, 354–60. Atlantis Press, 2022.
- Choeri, Imron. “Optimalisasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kabupaten Jepara.” *El-Ussrah: Jurnal Hukum Keluarga* 5, no. 1 (2022): 23–40.
- Dewi, Eka Putri Santi, and Deddy Effendy. “Uncertified Wakaf Land Based on Islamic Law and Law Number 41 of 2004 on Wakaf (a Case Study on a Jami Mosque Miftaahussalam in the Jayamukti Village of Leuwisari District of Tasikmalaya Regency).” *Prosiding Ilmu Hukum*, 2016, 59–66.
- Efendi, Mansur and others. “Menakar Progresivitas Hukum Wakaf Dalam Pengembangan Wakaf Uang Di Indonesia.” *Al-Ahkam: Jurnal Ilmu Syari’ah Dan Hukum* 3, no. 2 (2018): 191–204.
- El Ashfahany, Afief, and Novita Lestari. “Optimizing Cash Waqf and Cash Waqf Linked Sukuk: The Role of Nazhir and The Strategies.” *Iqtishadia* 15, no. 2 (2023): 171–90.
- Erika, Diaz Ayu. “Implementasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Yayasan Pondok Pesantren Miftahu Nurul Huda 3 Desa Banjarejo Kabupaten Magetan.” Bachelor Thesis, IAIN Ponorogo, 2021.
- Faisal, Ahmad. “Perkembangan Wakaf Di Indonesia (Postivisasi Hukum Wakaf).” *EKSYA: Jurnal Ekonomi Syariah* 2, no. 1 (2021): 76–93.
- Fatoni, Achmad. “Penerapan Wakaf Di Kec. Kanigoro Kab. Blitar: Studi Atas Pelaksanaan PP No. 28 Tahun 1977 Dan UU No. 41 Tahun 2004.” PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2010.
- Fikri, AB Zainul. “Pelaksanaan Wakaf Lisan Dalam Konteks Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf: Studi Di Kabupaten Blitar, Jawa Timur, Indonesia.” *Jurnal Supremasi*, 2016, 5–5.
- Grant, Maria J, and Andrew Booth. “A Typology of Reviews: An Analysis of 14 Review Types and Associated Methodologies.” *Health Information & Libraries Journal* 26, no. 2 (2009): 91–108.

- Habiburrohman, Lubab and others. “Penerapan Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf Di Majelis Wakaf Dan Kehartabendaan Pimpinan Daerah Muhammadiyah Kabupaten Banyumas Lubab Habiburrohman NIM. 1423401023.” Bachelor Thesis, IAIN, 2017.
- Hadi, Solikhul. “Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial).” *Jurnal Penelitian* 8, no. 2 (2014).
- Hak, Nurul, Desi Isnaini, and Miti Yarmunida. “Revitalisasi Teori Masalah Melalui Isbat Wakaf Dalam Mengatasi Problem Sertifikasi Tanah Wakaf Pasca Undang-Undang Nomor 41 Tahun 2004.” Bachelor Thesis, IAIN Bengkulu, 2019.
- Hendrik, Mohamad, and Mufidah Mufidah. “Peran Badan Wakaf Indonesia Pasca Terbitnya Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf.” *SALAM J. Sos. Dan Budaya Syar-i* 6, no. 5 (2019): 417–46.
- Hidayahnto, Hendrik. “Implementasi Pasal 28, 29, 30 Undang-Undang No. 41 Tahun 2004 Tentang Wakaf Dalam Penyelenggaraan Gerakan Nasional Wakaf Uang (GNWU) Di Kota Banjarmasin.” Bachelor Thesis, Syariah, 2023.
- Kamarudin, Kamaruddin. “Implementasi Undang-Undang Nomor 41 Tahun 2004 Dan Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Wakaf Di Kota Kendari.” *Al-Izzah: Jurnal Hasil-Hasil Penelitian* 9, no. 2 (2014): 39–64.
- Korber, Stefan, and Rod B McNaughton. “Resilience and Entrepreneurship: A Systematic Literature Review.” *International Journal of Entrepreneurial Behavior & Research* 24, no. 7 (2017): 1129–54.
- Liberati, Alessandro, Douglas G Altman, Jennifer Tetzlaff, Cynthia Mulrow, Peter C Gøtzsche, John PA Ioannidis, Mike Clarke, Philip J Devereaux, Jos Kleijnen, and David Moher. “The PRISMA Statement for Reporting Systematic Reviews and Meta-Analyses of Studies That Evaluate Health Care Interventions: Explanation and Elaboration.” *Annals of Internal Medicine* 151, no. 4 (2009): W-65.
- Maksum, and Hidayatullah Hidayatullah. “Revitalisasi Nazhir Dalam Pengelolaan Wakaf Di Indonesia (Studi Yuridis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf).” *Prosiding Penelitian Dosen UNISKA MAB*, no. 1 (2022).
- Masdar, Masdar. “Penerapan Hukum Wakaf Uang Di Indonesia Perspektif Legal System Theory.” *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 79–92.
- Nawawi, Nawawi. “Implementasi Wakaf Produktif Di Indonesia Pasca Berlakunya UU No. 41 Tahun 2004 Tentang Wakaf.” *Al-Tahrir: Jurnal Pemikiran Islam* 13, no. 2 (2013): 393–415.
- Rosidi, Ahmad. “Implementasi UU No 41 Tahun 2004 Dan Kompilasi Hukum Islam Tentang Nazhir Dan Akta Wakaf Pada Kecamatan Huta Bargout Kabupaten Mandailing Natal.” Bachelor Thesis, Universitas Islam Negeri Sumatera Utara, 2019.
- Shofi, Muhammad. “Analisis Praktik Dan Pengelolaan Wakaf Uang Menurut Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf.” *Jurnal Syarikah: Jurnal Ekonomi Islam* 2, no. 2 (2016).
- Siregar, Ammar Zaki, Ramadhan Syahmedi Siregar, and Mhd Yadhi Harahap.

- “Implementasi Wakaf Uang Dalam Pengelolaan Halalmart Majelis Ulama Indonesia Provinsi Sumatera Utara Perspektif UU No. 41 Tahun 2004 Tentang Wakaf Uang.” *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 02 (2021).
- Snyder, Hannah. “Literature Review as a Research Methodology: An Overview and Guidelines.” *Journal of Business Research* 104 (2019): 333–39.
- Sudirman, Sudirman. “Regulasi Wakaf Di Indonesia Pasca Kemerdekaan Ditinjau Dari Statute Approach.” *De Jure: Jurnal Hukum Dan Syar’iah* 6, no. 2 (2014).
- Suhaimi, Achmad. “Pelaksanaan Wakaf Uang Dalam Tinjauan Undang-Undang No. 41 Tahun 2004 Tentang Wakaf (Studi Pengelolaan Wakaf Uang Di Kecamatan Gunung Sugih Kabupaten Lampung Tengah).” Bachelor Thesis, IAIN Metro, 2018.
- Suryadi, Nanda, and Arie Yusnelly. “Pengelolaan Wakaf Uang Di Indonesia.” *Syarikat: Jurnal Rumpun Ekonomi Syariah* 2, no. 1 (2019): 27–36.
- Wijaya, Ika Putry. “Pandangan Masyarakat Terhadap Kedudukan Tanah Wakaf Pasca Diberlakukannya UU No. 41 Tahun 2004 Tentang Wakaf Di Kua Kotagajah.” Bachelor Thesis, IAIN Metro, 2019.
- Yolandara, Yolandra, and Teuku Muttaqin Mansur. “Penerapan Pasal 42 Dan Pasal 43 Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kecamatan Cot Girek Kabupaten Aceh Utara.” *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 7, no. 2 (2023): 223–31.
- Yuslem, Nawir, Ramadhan Sahmedi Siregar, and Ahmad Rosidi. “Implementasi Nazhir Dan Akta Wakaf Pada Kecamatan Huta Bargot Kabupaten Mandailing Natal Ditinjau Dari Kompilasi Hukum Islam Dan Uu No 41 Tahun 2004.” *AT-TAFAHUM: Journal of Islamic Law* 3, no. 1 (2019).