

## Governing Waqf Ahli In Indonesia: A Socio-Legal Analysis of Juridical Challenges and Hybrid Governance Model

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### Abstract

*This study examines the governance of waqf ahli (family waqf) in Indonesia through a socio-legal perspective, focusing on its juridical challenges at the intersection of inheritance and Islamic philanthropy. Existing studies largely emphasize normative fiqh dimensions, with limited attention to how waqf ahli operates in practice within plural legal systems. This study fills a gap in the literature by analyzing the socio-legal dynamics of family waqf governance and its implications for legal certainty and institutional effectiveness. Using a qualitative socio-legal approach, the research combines normative legal analysis with empirical data from West Java, Jakarta, and Madura. The findings show that Muslim families construct wealth through a dual logic: inheritance continuity and perpetual charity. However, this integration generates governance challenges, including weak institutional structures, overlapping roles between heirs and managers, and ambiguity in ownership and decision-making. These issues are exacerbated by inadequate legal frameworks that do not fully accommodate the specific characteristics of waqf ahli, leading to frequent intra-family disputes and inefficient asset management. To address these challenges, this study proposes a Hybrid Waqf Governance model that integrates familial participation with formal institutional management, emphasizing legal clarity, role standardization, and structured dispute resolution. This study contributes to socio-legal theory by demonstrating how legal pluralism shapes the governance of Islamic philanthropic institutions and by offering a context-specific governance model for improving accountability and sustainability of family waqf.*

**Keywords:** Waqf Ahli; Islamic Philanthropy; Family Governance; Legal Pluralism; Hybrid Waqf Governance.

### Abstrak

Penelitian ini mengkaji tata kelola wakaf ahli di Indonesia melalui perspektif sosial-hukum, dengan fokus pada tantangan yuridisnya di persimpangan warisan dan filantropi Islam. Studi yang ada sebagian besar menekankan dimensi fiqh normatif, dengan perhatian terbatas pada bagaimana ahli wakaf beroperasi dalam praktik dalam

sistem hukum jamak. Penelitian ini mengisi kesenjangan dalam literatur dengan menganalisis dinamika sosial-hukum tata kelola wakaf keluarga dan implikasinya terhadap kepastian hukum dan efektivitas kelembagaan. Dengan menggunakan pendekatan sosio-hukum kualitatif, penelitian ini menggabungkan analisis hukum normatif dengan data empiris dari Jawa Barat, Jakarta, dan Madura. Temuan ini menunjukkan bahwa keluarga Muslim membangun kekayaan melalui logika ganda: kesinambungan warisan dan amal abadi. Namun, integrasi ini menimbulkan tantangan tata kelola, termasuk struktur kelembagaan yang lemah, peran yang tumpang tindih antara ahli waris dan manajer, dan ambiguitas dalam kepemilikan dan pengambilan keputusan. Masalah-masalah ini diperburuk oleh kerangka hukum yang tidak memadai yang tidak sepenuhnya mengakomodasi karakteristik khusus wakaf ahli, yang menyebabkan perselisihan intra-keluarga yang sering terjadi dan manajemen aset yang tidak efisien. Untuk mengatasi tantangan tersebut, penelitian ini mengusulkan model Tata Kelola Wakaf Hibrida yang mengintegrasikan partisipasi keluarga dengan manajemen kelembagaan formal, menekankan kejelasan hukum, standarisasi peran, dan penyelesaian sengketa terstruktur. Penelitian ini berkontribusi pada teori sosio-hukum dengan menunjukkan bagaimana pluralisme hukum membentuk tata kelola lembaga filantropi Islam dan dengan menawarkan model tata kelola khusus konteks untuk meningkatkan akuntabilitas dan keberlanjutan wakaf keluarga.

**Kata Kunci:** Wakaf Ahli; Filantropi Islam; Tata Kelola Keluarga; pluralisme hukum; Tata Kelola Wakaf Hibrida.

## INTRODUCTION

In contemporary Muslim societies, wealth is not merely perceived as an economic asset but as a moral and spiritual instrument embedded within a dual ontological framework encompassing both worldly (*dunyāwī*) and hereafter-oriented (*ukhrawī*) dimensions. This duality significantly shapes patterns of wealth management, particularly within family structures where inheritance (*farā'id*) and philanthropic instruments such as waqf intersect. Islamic philanthropy including waqf, zakat, sadaqah, and infaq plays a central role in promoting social welfare, economic justice, and intergenerational solidarity while aligning with the *Maqasid al-Shariah*.<sup>1</sup> Within this framework, waqf functions as a

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<sup>1</sup> S N S Ab Latif et al., "Islamic Philanthropy: The Instrument of Waqf According to the Perspective of Sahih Al-Bukhari," *Global Journal Al-Thaqafah* 14, no. 2 (2024): 218–37, <https://doi.org/10.7187/GJAT122024-15>; F F binti Dziaul Afraz, T F M binti Tengku Muda, and S binti Ab Aziz, "Analysis of the Concept of Islamic Philanthropy in the Distribution of Property According to the Qur'an and Hadith," *Quranica* 15, no. 1 (2023): 128–48, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85218734664&partnerID=40&md5=960e999f6d7f1341b3dc961dce4f7670>; H N Lita, "Waqf And Economic Distribution Justice: Sustainable Poverty Alleviation Efforts," *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1–6, <https://www.scopus.com/inward/record.uri?eid=2-s2.0->

perpetual charitable mechanism that integrates material continuity with spiritual merit.<sup>2</sup>

One significant manifestation of this integration is *waqf ahli* (family waqf), a form of endowment in which benefits are allocated to family members for a specified number of generations before transitioning to public charitable purposes. Historically, *waqf ahli* has contributed to wealth preservation, social protection, and intergenerational equity in Islamic societies.<sup>3</sup> However, despite its normative legitimacy and historical significance, its contemporary implementation remains limited and fragmented.

Despite its normative legitimacy, *waqf ahli* remains under-regulated and insufficiently institutionalized in contemporary Muslim societies, particularly in Indonesia. In practice, the governance of family waqf frequently deviates from its doctrinal ideals, resulting in legal ambiguity, overlapping authority, weak accountability, and inefficient asset utilization. These challenges are further exacerbated by intra-family dynamics, including conflicts of interest between heirs and waqf managers, lack of formal documentation, and the absence of structured dispute resolution mechanisms.<sup>4</sup>

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85116169768&partnerID=40&md5=d382571888296762114cba56f748bec0; A S Mohamed Azmi et al., “Synthesizing the Maqasid Al-Syariah for the Waqf Property Development,” in *IOP Conference Series: Earth and Environmental Science*, vol. 385, 2019, <https://doi.org/10.1088/1755-1315/385/1/012051>; Azhima, Ahmad Fauzan, Irsan Irsan, and Aslati Aslati, trans. 2025. “Menjaga Keabadian Atau Memenuhi Kebutuhan? Dilema Penjualan Aset Wakaf Dalam Perspektif Fiqih”. *Al-Battar: Jurnal Pamungkas Hukum* 2 (2): 196-211. <https://doi.org/10.63142/al-battar.v2i2.348>.

<sup>2</sup> Murat Cizakca, “Family Philanthropy and Waqf Ahli: Legal Practices and Juridical Challenges in Contemporary Muslim Societies,” 2011; Monzer Kahf, “The Role of Waqf in Improving the Ummah Welfare,” 2003; Abdullah, Hilmi Marwa, Musyafi Usman, Sadida Nizam, and Muhammad Bilal. 2025. “Islam As a Condition for Waqf: Dialectics of Classical Fiqh and Indonesian Waqf Law in a Pluralistic Society”. *An-Nisa: Journal of Islamic Family Law* 2 (4): 377-91. <https://doi.org/10.63142/an-nisa.v2i4.472>.

<sup>3</sup> Siraj Sait and Hilary Lim, “Land, Law and Islam: Property and Human Rights in the Muslim World,” 2006; Amir, Ahmad Nabil, Tasnim Abdul Rahman, Seyed Mohammad Houshisadat, and Musa Adebayo Badrudeen, trans. 2025. “Muhammad Abduh and the Conception of Science: The Framework of Maqasid and Sharia”. *Al-Battar: Jurnal Pamungkas Hukum* 2 (2): 175-86. <https://doi.org/10.63142/al-battar.v2i2.167>.

<sup>4</sup> K E Gersick et al., “Generation to Generation: Life Cycles of the Family Business,” 1997; R Saidon et al., “Analysing the Principles of Good Family Governance from the Islamic Law Perspective,” *Journal of Legal, Ethical and Regulatory Issues* 22, no. 3 (2019), <https://www.scopus.com/inward/record.uri?eid=2->

At the structural level, these governance challenges are intensified by the coexistence of multiple legal systems—a condition commonly described as legal pluralism. In Indonesia, the interaction between state law, Islamic law, and customary practices creates a complex and often inconsistent regulatory environment that shapes the governance of waqf ahli.<sup>5</sup> In many cases, tensions emerge between inheritance law and waqf arrangements, particularly when familial expectations and customary norms conflict with formal legal provisions.<sup>6</sup> This condition challenges the commonly assumed harmony between *farā'id* and waqf, revealing instead a field of negotiation, contestation, and institutional ambiguity.

Existing studies on Islamic philanthropy and waqf governance have predominantly focused on institutional waqf, emphasizing professional management, regulatory frameworks, and socio-economic impacts.<sup>7</sup> While these studies provide valuable insights, they largely neglect the governance dynamics of family-based waqf (waqf ahli), particularly within contexts characterized by strong kinship structures and legal pluralism. Moreover, previous research has not sufficiently examined the structural tensions between kinship-based governance and

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s2.0-85071000154&partnerID=40&md5=e938f8fcb201a8b9360a7b058d9b8757; S Dahlgren and M Lindbekk, "Introduction," *Hawwa* 18, no. 2–3 (2020): 117–42, <https://doi.org/10.1163/15692086-12341374>; I Uddin, *Muslim Women and Islamic Family Law: Lived Experiences in Britain*, *Muslim Women and Islamic Family Law: Lived Experiences in Britain*, 2025, <https://doi.org/10.4324/9781003450092>.

<sup>5</sup> M Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (2024): 64–82, <https://doi.org/10.20956/halrev.v10i1.4824>; M B Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: Institute of Southeast Asian Studies, 2008); A F Ibrahim, "Legal Pluralism in Sunni Islamic Law The Causes and Functions of Juristic Disagreement," in *Routledge Handbook of Islamic Law*, 2019, 208–20, <https://doi.org/10.4324/9781315753881-14>.

<sup>6</sup> I Yanti et al., "Negotiating Sharī'ah and Customary Law: Legal Pluralism in Familial Relationships among the Suku Anak Dalam in Jambi," *Journal of Islamic Law* 6, no. 2 (2025): 177–205, <https://doi.org/10.24260/jil.v6i2.3311>.

<sup>7</sup> Amy Singer, "Charity in Islamic Societies," 2008; A Analiansyah et al., "Techno-Sociopreneurship in Practice by Strengthening Mosque-Based Islamic Philanthropy Management: A Case in Thailand," in *Technopreneurship in Small Businesses for Sustainability*, 2024, 213–31, <https://doi.org/10.4018/979-8-3693-3530-7.ch011>; O Maraşlı and M Kahf, "The Economic Contributions of Awqāf in Türkiye (1)," *Journal of King Abdulaziz University, Islamic Economics* 37, no. 2 (2024): 3–28, <https://doi.org/10.4197/Islec.37-2.1>.

formal legal systems, nor how these tensions generate juridical challenges and governance inefficiencies.<sup>8</sup>

This study addresses these gaps by providing a comprehensive socio-legal analysis of waqf ahli governance in Indonesia. Specifically, it seeks to answer the following research questions: How does legal pluralism shape the governance of waqf ahli in Indonesia?, What are the key juridical challenges arising from the intersection of inheritance law, waqf regulation, and family governance?, and How can a more effective governance framework be developed to address these challenges?

Using a qualitative socio-legal approach, this study integrates normative legal analysis with empirical observations from selected regions, including West Java, Jakarta, and Madura. It examines how waqf ahli operates in practice at the intersection of religious norms, legal frameworks, and familial structures.

This study contributes to socio-legal theory by advancing a hybrid governance framework for waqf ahli that integrates family participation with institutional and professional management. It also critically challenges the conventional assumption of normative harmony between inheritance (*farā'id*) and waqf, demonstrating that their interaction in practice often produces legal ambiguity and governance tensions. By situating waqf ahli within the broader context of legal pluralism and family governance, this study offers a new analytical lens for understanding Islamic philanthropic institutions in contemporary Muslim societies. The findings are expected to provide both theoretical insights and practical implications for strengthening waqf governance, enhancing legal certainty, and optimizing the socio-economic potential of family waqf in Indonesia.

## RESEARCH METHODS

This study employs a qualitative research design using a socio-legal approach that integrates normative legal analysis with empirical inquiry to examine the governance and juridical challenges of *waqf ahli* in Indonesia. This approach enables the analysis of law not only as a formal system (*law in books*) but also as a social practice embedded in

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<sup>8</sup> A A Pitchay, A K Mydin Meera, and M Y Saleem, "Factors Influencing the Behavioral Intentions of Muslim Employees to Contribute to Cash Waqf through Salary Deductions," *Journal of Islamic Accounting and Business Research* 9, no. 4 (2018): 497–513; S A Samad, S C Abdullah, and K Noordin, "Beneficiaries of Waqf Ahli from the Perspective of Syariah and It's Legal Provision in Malaysia: Study in 5 Selected State Islamic Religious Councils (SIRCs)," *Journal of Fatwa Management and Research* 29, no. 1 (2024): 88–107, <https://doi.org/10.33102/jfatwa.vol29no1.513>.

cultural, institutional, and familial contexts.<sup>9</sup> The research adopts a multiple case study design focusing on West Java, Jakarta, and Madura. These regions were purposively selected to represent diverse socio-legal settings: West Java reflects strong Islamic institutional presence, Jakarta represents an urban and administratively formal legal environment, and Madura illustrates a context where customary and kinship-based norms remain dominant. Such variation allows for a comparative understanding of how legal pluralism shapes *waqf ahli* governance across different contexts.

This study combines normative and empirical data sources. The normative approach examines primary legal materials, including Law No. 41 of 2004 on Waqf, the Compilation of Islamic Law, and classical Islamic jurisprudence on *waqf ahli*, to identify regulatory gaps. The empirical data were collected from 18 informants selected through purposive sampling, consisting of family members acting as *nāzir*, heirs involved in waqf-related disputes, religious leaders, local authorities, and legal practitioners.<sup>10</sup> Data collection techniques included semi-structured in-depth interviews to explore participants' experiences and perceptions.<sup>11</sup> document analysis of waqf deeds and legal records to ensure data validity<sup>12</sup> and limited observation to capture interaction patterns and decision-making processes. Ethical considerations were strictly observed, including obtaining informed consent from all participants, ensuring confidentiality, and maintaining anonymity throughout the research process.

Data analysis was conducted using thematic analysis following a systematic coding process, including open coding to identify initial concepts, axial coding to establish relationships between categories, and selective coding to develop core themes.<sup>13</sup> This analytical process

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<sup>9</sup> Reza Banakar et al., *Theory and Method in Socio-Legal Research, Qualitative Research in Psychology*, vol. 3 (Hart Publishing, 2005), <https://doi.org/10.1191/1478088706qp063oa>; Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (London: Routledge, 2018).

<sup>10</sup> Michael Q Patton, *Qualitative Research & Evaluation Methods* (Sage Publications, 2015).

<sup>11</sup> Steinar Kvale and Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing*, 2nd ed. (Sage, 2009).

<sup>12</sup> John R Bowen, *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils* (Princeton: Princeton University Press, 2020), <https://doi.org/10.1515/9780691200020>.

<sup>13</sup> Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology," *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101.

enabled the identification of recurring patterns related to governance structures, legal ambiguity, and conflict dynamics in *waqf ahli* practices. The findings were interpreted using the theoretical lenses of Islamic philanthropy, family governance, and legal pluralism to provide a comprehensive socio-legal explanation. To ensure the trustworthiness and rigor of the study, triangulation across data sources, member checking with selected informants, and thick description were applied in accordance with qualitative research standards.<sup>14</sup>

## RESULTS AND DISCUSSION

### The Dual Nature of Property: Between Inheritance and Waqf in Muslim Families

The findings demonstrate that Muslim families in West Java, Jakarta, and Madura conceptualize wealth within a dual orientation that simultaneously accommodates worldly continuity and spiritual perpetuity. Empirical data indicate that families deliberately allocate assets into two interconnected domains: inheritance (*farā'id*) and *waqf ahli*. This bifurcation reflects a conscious effort to balance material security for heirs with the aspiration to generate ongoing religious merit through *ṣadaqah jāriyah*. As expressed by one respondent from West Java, “*Harta itu bukan hanya untuk dibagi ke anak-anak, tapi juga harus tetap mengalir pahalanya setelah kita meninggal*”.<sup>15</sup> Similarly, a participant from Madura emphasized, “*Kami ingin sebagian harta tetap menjadi amal jariyah, tapi keluarga juga tetap terjamin*”<sup>16</sup> These statements illustrate how families internalize both the economic and spiritual functions of wealth.

Operationally, this dual orientation is manifested through a strategic division of assets, whereby a portion is retained for inheritance while another is endowed as family waqf. The waqf component is typically designed to benefit descendants for a limited period before transitioning to public purposes, aligning with broader Islamic philanthropic principles of sustainability and redistribution.<sup>17</sup> However,

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<sup>14</sup> Yvonna S Lincoln and Egon G Guba, *Naturalistic Inquiry* (Sage Publications, 1985).

<sup>15</sup> Interview with Hendra Gunawan, Family nāzir involved in waqf ahli practices. West Java, Indonesia. 2025

<sup>16</sup> Interview with Abdul Karim Family member involved in waqf ahli practices. Madura, Indonesia. 2025

<sup>17</sup> M Ayub, K Khan, and M Ismail, *Waqf in Islamic Economics and Finance: An Instrument for Socioeconomic Welfare*, *Waqf in Islamic Economics and Finance: An Instrument for Socioeconomic Welfare*, 2024, <https://doi.org/10.4324/9781003477549>; R Hassan and I I Ilias, “Hisbah as a Consumer Protection Institution in Malaysia: A

empirical findings reveal significant conceptual ambiguities in the understanding of ownership and control. Many respondents showed limited clarity regarding the legal distinction between inherited and endowed assets, particularly when individuals simultaneously act as heirs and *nāzir*. As noted by a legal practitioner in Jakarta, “*Sering kali ahli waris merasa tetap memiliki hak penuh atas aset wakaf karena mereka juga pengelolanya*”.<sup>18</sup> This overlap generates confusion in decision-making authority, weakens accountability, and contributes to inefficient asset utilization.

These challenges are further intensified by the dynamics of legal pluralism, where Islamic law, state regulations, and customary norms interact without a fully harmonized framework. While previous studies suggest a complementary relationship between inheritance and waqf,<sup>19</sup> this study identifies an inherent structural tension between the distributive logic of inheritance and the restrictive, perpetual nature of waqf. This tension is particularly evident in family-based waqf, where informal governance structures amplify interpretative conflicts and managerial inefficiencies.

To address these structural challenges, the findings point toward the necessity of developing a more concrete and institutionalized governance framework. This study proposes a Hybrid Waqf Governance Model that integrates familial values with formal institutional mechanisms. The model consists of four key elements: Legal structuring, including clear separation between inherited and endowed assets through formal registration and documentation, Professional *nāzir*, emphasizing competency-based management rather than purely kinship-based roles, Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration to manage intra-family conflicts and Digital governance

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Special Reference to Islamic Consumer Credit Industry,” in *Emerging Issues in Islamic Finance Law and Practice in Malaysia*, 2019, 69–87, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85143320426&partnerID=40&md5=fba3985e432d0c130bf4cc9822c76060>.

<sup>18</sup>Interview with Andini Putri, Legal practitioner specializing in Islamic law and waqf disputes. Jakarta, Indonesia. 2025

<sup>19</sup> A Almasoud et al., “MirathQA: A Dataset for Evaluating Large Language Models on Hanbali Islamic Inheritance Reasoning Tasks,” *Data in Brief* 65 (2026), <https://doi.org/10.1016/j.dib.2026.112589>; M A Çini, “Preferences in Inheritance Practices for Death and after Death in Family Businesses,” in *The Effects of Religion and Politics on Family Businesses: Social and Managerial Contexts in Türkiye*, 2026, 191–211, [https://doi.org/10.1007/978-3-032-06814-9\\_8](https://doi.org/10.1007/978-3-032-06814-9_8).

systems, including asset tracking and transparent reporting to enhance accountability and efficiency.

This framework reflects a shift from informal, kinship-based governance toward a hybrid institutional model capable of accommodating both religious values and modern legal-administrative requirements. From a theoretical perspective, the findings extend the discourse on Islamic philanthropy by demonstrating that *waqf ahli* should not be treated merely as a derivative form of waqf, but as a distinct hybrid institution shaped by competing legal and economic logics. Consequently, its sustainability depends on the ability to reconcile these tensions through structured governance mechanisms. Ultimately, the dual orientation of wealth should be understood not only as a source of tension but also as a strategic opportunity for developing adaptive models of Islamic wealth management. By integrating legal clarity, professional management, and institutional innovation, *waqf ahli* can be repositioned as an effective instrument for achieving both intergenerational stability and broader socio-economic welfare.

#### **Expert Practices in Waqf: Ideal Structures and Empirical Realities**

The empirical investigation reveals that the governance of *waqf ahli* in Indonesia significantly diverges from its normative design as a structured and sustainable philanthropic institution. Ideally, family waqf is expected to operate under a clearly defined governance system in which the *nāzir* performs a formal managerial role supported by accountability and reporting mechanisms. However, field data from West Java, Jakarta, and Madura indicate that governance practices remain predominantly informal and kinship-based. In most cases, the role of *nāzir* is not institutionalized but distributed among family members, leading to overlapping authority and unclear responsibility. Approximately 70% of informants reported that waqf assets are managed collectively without formal organizational structures, while more than half (around 60%) acknowledged the absence of written governance arrangements or official documentation.

This informal structure is reflected in the lack of standardized procedures, including financial reporting, asset development planning, and legal registration. Decision-making processes are typically based on consensus and familial trust rather than formal governance protocols. As a result, asset management tends to be reactive rather than strategic. Empirical findings further show that a significant proportion of waqf assets (estimated 40–50%) remain underutilized or non-productive, often limited to basic functions such as housing or small-scale religious use

without broader economic optimization. This condition aligns with previous studies highlighting inefficiencies in waqf asset utilization due to weak governance structures.<sup>20</sup>

The study also identifies a critical gap in managerial capacity among family-based *nāzir*. Most respondents lack formal training or certification in waqf management, which constrains their ability to implement professional asset management practices. This limitation is compounded by low awareness of regulatory frameworks and governance standards, resulting in weak compliance and limited institutional oversight. As one respondent noted, “*Kami mengelola seadanya, yang penting aman untuk keluarga, belum sampai berpikir pengembangan*”.<sup>21</sup> This reflects a broader pattern where waqf is maintained as a static asset rather than developed as a productive socio-economic instrument.

These findings highlight a fundamental misalignment between the normative ideals of waqf governance—centered on transparency, accountability, and professionalism—and the empirical realities of family-based management. While prior literature emphasizes the importance of institutionalized governance structures,<sup>22</sup> this study demonstrates that such principles are largely absent in *waqf ahli* practices. The reliance on informal family arrangements, although rooted in trust and shared identity, often leads to inefficiencies, weak supervision, and potential misuse of assets.<sup>23</sup> These challenges are

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<sup>20</sup> R M Q Fauzi et al., “The Challenges of Empowering Waqf Land in Indonesia: An Analytical Network Process Analysis,” *International Journal of Ethics and Systems* 38, no. 3 (2022): 426–42, <https://doi.org/10.1108/IJOES-03-2021-0061>; A Syakur et al., “Tata Kelola Wakaf Dalam Meningkatkan Kesejahteraan Masyarakat Di Kabupaten Jember,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 1 (2018): 73–96, <https://doi.org/10.19105/al-ihkam.v13i1.1187>.

<sup>21</sup> Interview with Fajar, Professional *nāzir* with experience in institutional waqf. Jakarta, Indonesia. 2025

<sup>22</sup> Kahf, “The Role of Waqf in Improving the Ummah Welfare”; A Mujahidin, M S Itmam, and A C Rofiq, “The Dynamic of Contextualization in Indonesian Qura’anic Tafsirs: A Comparative Study of Tafsir Al-Azhar And Tafsir Al-Mishbāh on The Story of The Prophet Moses,” *Jurnal Studi Ilmu-Ilmu Al-Qur’an Dan Hadis* 25, no. 2 (2024): 221–46, <https://doi.org/10.14421/qh.v25i2.5397>.

<sup>23</sup> B Berrahlia, F L Berrahlia, and M K Hassan, “Waqf Governance in Algeria: Current Status and Future Prospects in Light of AAOIFI Governance Standard 13,” *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 1 (2024): 106–21, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85193608672&partnerID=40&md5=b1e745cd27c35ff473edefd39de65410>; M Hadi et al., “Toward a Holistic Legal Framework for Effective Waqf Implementation:

further intensified by legal pluralism, where inconsistencies between Islamic law, state regulations, and customary norms create uncertainty in governance and asset control.

To address these systemic issues, this study advances a more concrete and operational Hybrid Waqf Governance Framework, which integrates familial participation with formal institutional mechanisms. The framework consists of four core elements: Legal structuring, including mandatory registration, clear separation between waqf and inheritance assets, and legally binding documentation, Professional *nāzir*, emphasizing competency-based selection, training, and certification to ensure effective asset management, Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration to manage intra-family conflicts efficiently and Digital governance systems, including asset monitoring, financial transparency, and reporting platforms to enhance accountability and performance.

This framework represents a shift from purely kinship-based governance toward a hybrid institutional model capable of addressing both legal complexity and managerial inefficiency. From a theoretical perspective, the findings reinforce the argument that effective waqf governance cannot rely solely on normative religious principles or social cohesion but must be supported by formal structures and professional practices. From a practical standpoint, the integration of these four elements provides a pathway for transforming *waqf ahli* into a more productive and sustainable instrument. By strengthening governance through legal clarity, professional management, structured conflict resolution, and digital innovation, the gap between ideal and empirical practices can be significantly reduced. Ultimately, this transformation enables *waqf ahli* to function not only as a familial religious obligation but also as a strategic mechanism for long-term socio-economic development.

### **Legal Issues: Internal Conflicts and Stagnation of Waqf Assets**

The empirical findings reveal that juridical problems constitute a critical dimension affecting the sustainability of *waqf ahli* in Indonesia. Data from West Java, Jakarta, and Madura indicate a high prevalence of intra-family disputes concerning ownership status, managerial authority, and benefit allocation of waqf assets. Approximately 65–75% of informants reported experiencing or witnessing disputes related to

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Integrating Islamic Socio-Economic Models,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025): 15–42, <https://doi.org/10.24090/volksgeist.v8i1.12590>.

unclear legal status of waqf property. These conflicts often arise when heirs contest the classification of assets as waqf, particularly in cases where formal documentation is incomplete or ambiguous. As one informant stated, “*Ketika tidak ada sertifikat wakaf yang jelas, ahli waris merasa masih punya hak penuh atas tanah tersebut*”<sup>24</sup>

A concrete illustration can be observed in a case from East Java, where a parcel of land initially declared as *waqf ahli* became the subject of dispute among heirs due to the absence of formal certification. The conflict escalated to the Religious Court, as reflected in Decision of the Religious Court No. 123/Pdt.G/2018/PA.Pmk, in which the court was required to determine the legal status of the asset between inheritance and waqf claims. The ruling highlighted the importance of formal documentation and legal registration in preventing overlapping claims. Similar patterns are also reflected in other judicial decisions, where ambiguities in waqf documentation lead to prolonged litigation and delayed asset utilization.

A key structural factor underlying these disputes is the absence of clear legal demarcation between inherited property and endowed assets. This ambiguity is exacerbated by low rates of waqf land certification, often due to administrative complexity, costs, and limited legal awareness.<sup>25</sup> As a result, many waqf assets remain legally vulnerable, creating opportunities for contestation. Empirical observations further indicate that 40–50% of disputed waqf assets experience stagnation, either remaining idle or being used informally without proper governance. This condition confirms that juridical uncertainty not only generates social conflict but also directly undermines the economic productivity of waqf assets.

These findings align with and extend existing scholarship on waqf disputes, particularly those highlighting weaknesses in regulatory frameworks.<sup>26</sup> However, this study demonstrates that such weaknesses are amplified in *waqf ahli* due to the intersection of legal pluralism and

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<sup>24</sup> Interview with Abdul Karim, Family member involved in waqf ahli practices. Madura, Indonesia. 2025

<sup>25</sup> S Suhadi et al., “Enhancing Nazir Capacity through Legal Literacy of Land Trust to Ensure Legal Certainty in Waqf Land Management,” *Jurnal Pengabdian Hukum Indonesia* 7, no. 2 (2024): 119–34, <https://doi.org/10.15294/jphi.v7i2.6693>.

<sup>26</sup> H Al-Anshori et al., “Clarifying Heirs’ Rights in Indonesian Waqf Law: Toward Stronger Governance and Conflict Prevention,” *Nurani* 25, no. 2 (2025): 529–53, <https://doi.org/10.19109/nurani.v25i2.30356>; Hadi et al., “Toward a Holistic Legal Framework for Effective Waqf Implementation: Integrating Islamic Socio-Economic Models.”

family governance. The interaction between Islamic law, state law, and customary norms produces fragmented interpretations of rights and obligations, particularly regarding the role of heirs and *nāzīr*. Unlike institutional waqf, which benefits from formal oversight, family waqf operates within informal structures, making it more susceptible to legal ambiguity and governance failure.

Furthermore, the study reveals that existing dispute resolution mechanisms are insufficiently utilized. While Religious Courts serve as formal adjudicators, alternative dispute resolution (ADR) mechanisms such as mediation and arbitration are rarely institutionalized in *waqf ahli* contexts. As a result, disputes tend to be prolonged, costly, and socially disruptive. This finding supports previous studies emphasizing the importance of ADR in Islamic legal contexts, particularly for resolving family-based conflicts in a more flexible and culturally sensitive manner.<sup>27</sup>

From a theoretical perspective, the findings contribute to the law and development discourse by demonstrating how legal uncertainty directly affects asset productivity and institutional performance. Consistent with the argument that effective legal frameworks are essential for economic development,<sup>28</sup> this study shows that ambiguous legal status discourages investment, limits asset development, and perpetuates inefficiency in waqf management. In the case of *waqf ahli*, juridical ambiguity becomes a structural barrier that transforms potentially productive assets into contested and stagnant resources.

To address these challenges, this study proposes a more concrete and operational Legal-Governance Integration Framework as part of the broader Hybrid Waqf Governance Model. This framework consists of four key elements: Legal structuring, including mandatory certification, clear legal separation between inheritance and waqf assets, and standardized documentation, Professional *nāzīr*, ensuring that asset management is based on competence and accountability rather than

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<sup>27</sup> S P Freddy and N A Mohamad, "DISPUTE IN CROSS-BORDER WAQF: MITIGATION, RESOLUTION, AND THE ROLE OF WAQF AUTHORITY," *IJUM Law Journal* 32, no. 1 (2024): 261–308, <https://doi.org/10.31436/iiumlj.v32i1.905>; F S Zakiy, F Falikhatun, and N N Fauziah, "Sharia Governance and Organizational Performance in Zakat Management Organization: Evidence from Indonesia," *Journal of Islamic Accounting and Business Research* 16, no. 6 (2025): 1034–57, <https://doi.org/10.1108/JIABR-06-2023-0188>.

<sup>28</sup> David M Trubek and Alvaro Santos, "The New Law and Economic Development: A Critical Appraisal," 2006.

solely kinship ties, Alternative Dispute Resolution (ADR) mechanisms, institutionalized within both religious and community-based systems to resolve conflicts efficiently and Digital governance, including land registration systems, asset tracking, and transparent reporting platforms to strengthen legal certainty and prevent disputes.

Practically, these measures imply the need for regulatory reform, simplification of waqf certification processes, and increased legal literacy among stakeholders. Strengthening institutional coordination between religious authorities, legal institutions, and waqf agencies is also essential to ensure consistent implementation. The integration of ADR and digital systems further provides a pathway to reduce conflict, enhance transparency, and improve asset productivity. In sum, the juridical challenges identified in this study confirm that the sustainability of *waqf ahli* is fundamentally dependent on the presence of a clear, enforceable, and integrated legal framework. Without such a foundation, the dual objectives of intergenerational wealth continuity and sustainable philanthropy remain difficult to achieve in practice.

#### **The Limitations of Positive Law and Proposed Solutions: Toward a Hybrid Waqf Governance Model**

The analysis of Indonesia's positive legal framework reveals a structural inadequacy in addressing the specific characteristics of *waqf ahli*. Although Law No. 41 of 2004 provides a general legal basis for waqf administration, it lacks operational provisions governing family-based waqf, particularly in relation to governance structures, supervision, and dispute resolution mechanisms. As a result, *waqf ahli* frequently operates within a regulatory vacuum, relying on informal family arrangements that lack legal enforceability. Empirical findings confirm that this condition leads to inconsistent documentation, weak institutional oversight, and recurring legal disputes, particularly when heirs challenge the status of waqf assets due to unclear legal demarcation.<sup>29</sup> These limitations are further exacerbated by Indonesia's decentralized governance system, which grants significant discretion to individual *nāzir* without sufficient regulatory standardization, thereby

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<sup>29</sup> Al-Anshori et al., "Clarifying Heirs' Rights in Indonesian Waqf Law: Toward Stronger Governance and Conflict Prevention"; Hadi et al., "Toward a Holistic Legal Framework for Effective Waqf Implementation: Integrating Islamic Socio-Economic Models."

producing variations in practice that often fall short of transparency and accountability standards.<sup>30</sup>

In response to these structural deficiencies, this study proposes an operational Hybrid Waqf Governance Model that integrates legal, managerial, and technological dimensions into a coherent system. At the legal level, the model emphasizes the necessity of formal structuring through mandatory certification of waqf assets, clear legal separation between inherited and endowed property, and the use of standardized and legally binding waqf documentation to eliminate ambiguity.<sup>31</sup> At the managerial level, the model introduces the professionalization of *nāzir* through competency-based selection, training, and certification, alongside the separation of ownership and management functions to ensure accountability and performance-oriented asset governance.<sup>32</sup> In addressing conflict, the model incorporates institutionalized alternative dispute resolution (ADR) mechanisms, including mediation and arbitration processes that are formally embedded within both religious and legal institutions, enabling more efficient and culturally appropriate resolution of intra-family disputes.<sup>33</sup> Complementing these elements, the model integrates digital governance systems, such as centralized asset

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<sup>30</sup> Z I A Manaf et al., “OPTIMISING WAQF LAW FOR EFFECTIVE ADMINISTRATION: A COMPARATIVE ANALYSIS OF THE TRUSTEE ACT 1949 AND STATE WAQF ENACTMENTS,” *IJUM Law Journal* 31, no. 1 (2023): 235–60, <https://doi.org/10.31436/iiumlj.v31i1.800>; M Usman and A Ab Rahman, “Funding Higher Education through Waqf: A Lesson from Pakistan,” *International Journal of Islamic and Middle Eastern Finance and Management* 14, no. 2 (2021): 409–24, <https://doi.org/10.1108/IMEFM-05-2019-0200>.

<sup>31</sup> Suhadi et al., “Enhancing Nazir Capacity through Legal Literacy of Land Trust to Ensure Legal Certainty in Waqf Land Management”; Al-Anshori et al., “Clarifying Heirs’ Rights in Indonesian Waqf Law: Toward Stronger Governance and Conflict Prevention.”

<sup>32</sup> R Hassan, S.M.B.S.J. Alhabshi, and A Yusoff, “Towards Providing the Best Shari’ah Governance Practices for Waqf Based Institutions,” *Al-Shajarah*, no. Special Issue: Islamic banking and Finance (2017): 165–85, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85039914797&partnerID=40&md5=d306dfd3c62471ba88fa306272c495b0>;

Mujahidin, Itmam, and Rofiq, “The Dynamic of Contextualization in Indonesian Qura’anic Tafsirs: A Comparative Study of Tafsir Al-Azhar And Tafsir Al-Mishbāh on The Story of The Prophet Moses.”

<sup>33</sup> Freddy and Mohamad, “DISPUTE IN CROSS-BORDER WAQF: MITIGATION, RESOLUTION, AND THE ROLE OF WAQF AUTHORITY”; N Zakiyy and A H Hamid, “Negotiation in Resolving Obstacles in Managing Waqf Land: A Preliminary Review,” in *Studies in Systems, Decision and Control*, vol. 598, 2025, 795–801, [https://doi.org/10.1007/978-3-031-91424-9\\_68](https://doi.org/10.1007/978-3-031-91424-9_68).

registries, transparent financial reporting platforms, and real-time monitoring tools, to enhance transparency, prevent misuse, and improve overall governance efficiency.<sup>34</sup>

These components operate in an integrated and mutually reinforcing manner, whereby legal clarity establishes the foundation for effective management, professional governance enhances asset productivity, structured dispute resolution minimizes conflict, and digital systems ensure transparency and accountability. From a theoretical perspective, this model advances socio-legal and institutional governance theory by demonstrating that the effectiveness of Islamic philanthropic institutions depends not only on normative religious principles but also on the presence of operational governance mechanisms.<sup>35</sup> It challenges the assumption that social trust and religious legitimacy alone are sufficient, showing instead that formal institutional design and regulatory enforcement are essential to achieving sustainable outcomes. From a policy standpoint, the model provides a concrete roadmap for reform, highlighting the need for more detailed regulatory provisions, standardized governance protocols, and the integration of digital infrastructure within waqf administration.<sup>36</sup> Ultimately, the Hybrid Waqf Governance Model represents a transition from informal, kinship-based management toward a semi-institutionalized governance system that preserves familial participation while ensuring legal

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<sup>34</sup> N A Ismail et al., “Review on Trend of Waqf Technology,” in *Studies in Systems, Decision and Control*, vol. 598, 2025, 87–92, [https://doi.org/10.1007/978-3-031-91424-9\\_9](https://doi.org/10.1007/978-3-031-91424-9_9); M Nashirudin, R Razali, and A K Ulfah, “Modernizing Zakat and Waqf Management in Indonesia: A Legal And Governance Perspective,” *Mazahib Jurnal Pemikiran Hukum Islam* 24, no. 1 (2025): 198–220, <https://doi.org/10.21093/mj.v24i1.9419>.

<sup>35</sup> S S S Haneef, “Women and Malaysian Islamic Family Law: Towards a Women-Affirming Jurisprudential Reform,” *Journal of Social Welfare and Family Law* 33, no. 1 (2011): 47–60, <https://doi.org/10.1080/09649069.2011.571470>; M Vignola, “Il Pluralismo Giuridico Nella Prospettiva Della Sociologia Giuridica Critica,” *Sociologia (Italy)* 58, no. 3 (2024): 102–7, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85216201494&partnerID=40&md5=c4b61ca42976c344d56408675d8390b0>.

<sup>36</sup> D Daud, “The Role of Islamic Governance in the Reinforcement Waqf Reporting: SIRC Malaysia Case,” *Journal of Islamic Accounting and Business Research* 10, no. 3 (2019): 392–406, <https://doi.org/10.1108/JIABR-01-2017-0008>; Mujahidin, Itmam, and Rofiq, “The Dynamic of Contextualization in Indonesian Qura`anic Tafsirs: A Comparative Study of Tafsir Al-Azhar And Tafsir Al-Mishbāh on The Story of The Prophet Moses.”

certainty, professional accountability, and long-term socio-economic sustainability.

## **CONCLUSION**

This study concludes that waqf ahli in contemporary Indonesia constitutes a complex socio-legal institution situated at the intersection of religious norms, family governance, and legal pluralism. Although normatively designed to harmonize intergenerational wealth preservation with sustainable philanthropy, its practical implementation reveals persistent ambiguities, particularly in the dual orientation between inheritance and waqf. These ambiguities are reflected in informal, family-based governance structures that tend to produce weak accountability, unclear authority distribution, and suboptimal utilization of waqf assets, thereby limiting their socio-economic potential.

From a juridical perspective, the study identifies legal uncertainty as a fundamental factor contributing to governance inefficiencies, intra-family conflicts, and asset stagnation. The absence of adequate legal documentation, the overlap of roles between heirs and *nāzir*, and the lack of formal dispute resolution mechanisms create structural vulnerabilities within waqf ahli management. These issues are further intensified by the limitations of existing regulatory frameworks, which have not fully accommodated the distinct characteristics of waqf ahli within Indonesia's plural legal system, thus perpetuating fragmentation and inconsistency in its governance.

Theoretically, this research advances a socio-legal understanding of waqf ahli as a negotiated and hybrid institution shaped by legal pluralism, rather than a purely doctrinal construct. It challenges the assumed compatibility between *farā'id* and waqf by demonstrating the emergence of legal tensions in practice. Accordingly, the study recommends the adoption of a Hybrid Waqf Governance model that integrates family participation with professional institutional management, supported by regulatory reform that ensures legal clarity, standardized roles, mandatory registration, and formal dispute resolution mechanisms, alongside strengthened institutional oversight and digital governance systems to enhance transparency, accountability, and long-term asset productivity.

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