



Legal Protection of *Waqf* Land Status Against Civil Acts of Individual *Nazhir* in Lease and Loan Agreements

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Abstract

This article examines the legal protection mechanisms governing the status of *waqf* land when individual *nazhir* (trustees) enter into lease (*ijarah*) and loan-for-use (*ariyah*) agreements. Although Indonesian Law No. 41 of 2004 on *Waqf* expressly prohibits the transfer of *waqf* property rights, the practice of leasing and lending *waqf* land gives rise to significant legal ambiguities regarding the transfer of management and usufruct rights.

This research employs a normative legal methodology using qualitative analysis of statutory regulations, Islamic jurisprudence, and comparative legal frameworks. The findings reveal a complex legal dichotomy: while ownership of *waqf* land remains perpetual and legally unchanged, the transfer of management and usage rights to lessees and borrowers may constitute a form of rights alienation that potentially conflicts with national regulations concerning *waqf* protection. Nevertheless, classical Islamic jurisprudence demonstrates greater flexibility by permitting such arrangements, provided that the resulting benefits are directed toward public welfare (*maslahah*) rather than private interests.

This study proposes a comprehensive legal framework that harmonises Indonesian positive law with Islamic legal principles through the establishment of clear standards for *nazhir* accountability, transparent documentation procedures, and robust oversight mechanisms. By bridging the gap between rigid statutory restrictions and the practical flexibility recognised in Islamic jurisprudence, the proposed framework seeks to ensure that lease and loan agreements function as effective instruments for optimising underutilised *waqf* assets while fully preserving their perpetual status and original philanthropic purpose.

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INTRODUCTION

Waqf, as an enduring philanthropic institution, possesses a profound ideological foundation within Islamic legal thought, fundamentally asserting that accumulated wealth must transcend mere individual possession to embody substantial humanistic and social value. The core principle of property ownership in Islam vehemently opposes the monopolisation of resources by an exclusive elite, instead mandating that the acquisition and retention of wealth be inextricably linked to moral responsibility and societal welfare (Faiz, 2024). This conceptual paradigm establishes *waqf* not merely as a charitable act, but as a critical mechanism for equitable wealth distribution and sustainable socioeconomic development. In the Indonesian legal context, *waqf* is formally defined as a definitive legal act by a *wakif* (endower) to permanently separate and surrender a portion of their property to be utilised perpetually or for a specified term, strictly in accordance with Islamic

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principles (*Shariah*) for the purposes of worship and the advancement of general public welfare (Government Regulation No 42/2006 Concerning the Implementation of Law Number 41 of 2004 Concerning *Waqf*, 2006).

Historically, the administration of *waqf* in Indonesia was characterised by profound informality, predominantly relying on mutual trust between the wakif and the *nazhir* (trustee), frequently occurring without formal registration or robust legal documentation (Lase et al., 2025; Pratama et al., 2025). This traditional approach, while culturally significant, invariably generated severe legal uncertainties, particularly concerning the preservation and protection of *waqf* assets against encroachment, misappropriation, or unauthorised alienation. Recognising these critical vulnerabilities, the Indonesian government enacted comprehensive legislative frameworks, most notably Law No. 41 of 2004 concerning *Waqf* (hereinafter referred to as the *Waqf* Law) and Government Regulation No. 42 of 2006 on the Implementation of the *Waqf* Law. These statutes systematically regulate the essential pillars of *waqf*, defining the precise legal status of the wakif, the *nazhir*, the designated beneficiaries (*mauquf 'alaih*), and the diverse categories of eligible *waqf* properties (Mohsin et al., 2016).

The fundamental architecture of a valid *waqf* requires the fulfilment of specific indispensable elements (*rukun*): the presence of an endower, the dedicated property, the designated beneficiaries or purpose, the appointed trustee, and the formal declaration of endowment (*ikrar waqf*) (Arif, 2023). Central to this operational framework is the *nazhir*, the designated custodian legally mandated to administer, manage, and systematically develop the *waqf* property strictly in alignment with its designated philanthropic purpose (Hasanah et al., 2021). When a *nazhir* operates as an individual entity, Indonesian law stipulates rigorous requirements, mandating a minimum collective of three persons residing within the specific sub-district (*kecamatan*) where the immovable *waqf* property is located (Mirzal et al., 2025). Their statutory obligations are extensive, encompassing meticulous administrative oversight, proactive asset development, rigorous protection of the property corpus, and comprehensive periodic reporting to the Indonesian *Waqf* Board (*Badan Wakaf Indonesia* or BWI) (Himmawan et al., 2025).

Despite the existence of this protective legislative umbrella, significant operational challenges persist, particularly concerning immovable *waqf* assets such as land. Article 16, paragraph (2) of the *Waqf* Law explicitly recognises land rights, whether registered or unregistered, as valid *waqf* property. Furthermore, Article 40 imposes a stringent protective prohibition, categorically forbidding the use of *waqf* property as collateral, its confiscation, gifting, sale, inheritance, or any other form of rights alienation (UU Wakaf, 2004). However, empirical reality often contradicts these protective aspirations. Data from the Ministry of Religious Affairs indicates that among the hundreds of thousands of *waqf* land parcels across Indonesia, a substantial proportion remains economically dormant, geographically isolated, or severely underutilised (Kementerian Agama RI, 2013). This stagnation is frequently exacerbated by the limited professional capacity and inadequate managerial acumen of individual *nazhir*, who often lack the requisite expertise to transform dormant assets into productive, socially beneficial resources (Alam et al., 2024; Ascarya et al., 2022).

Faced with the imperative to optimise these dormant assets, some *nazhir* have resorted to engaging in civil contractual arrangements, specifically lease (*ijarah*) and loan-for-use (*ariyah*) agreements, aiming to render the *waqf* land productive (Horii, 2011). In the context of agrarian law, a lease agreement involves the temporary transfer of land usage rights to a lessee in exchange for monetary compensation, with the explicit understanding that the land will revert to the lessor upon the expiration of the stipulated term (Mohd Thas Thaker, 2018). Conversely, a loan-for-use agreement entails the gratuitous provision of the land to a borrower, under the strict condition that the corpus of the property remains intact and is returned after the agreed period or usage (Dudás et al., 2022; Roziqin & Adjie, 2022). While these mechanisms theoretically enhance asset productivity, they introduce profound legal complexities regarding the interpretation of 'rights alienation' as prohibited by Article 40 of the *Waqf* Law.

The core legal dilemma emerges from the tension between the strict statutory prohibition against the transfer of *waqf* rights and the practical necessity of delegating usufructuary management to third parties through lease and loan contracts. While ownership (*raqabah*) unequivocally remains vested in the *waqf*, the transfer of operational control and usage rights to lessees or borrowers arguably constitutes a form of rights alienation that challenges the boundaries of national positive

law (Kamal, 2025). Furthermore, the accountability of the *nazhir* in executing these contracts often lacks the necessary transparency and rigorous oversight required to ensure that the generated benefits genuinely serve the public interest rather than facilitating private exploitation (Sukmana, 2020). The scholarship of Abbasi (2012) on classical Islamic *waqf* law further illuminates this tension, demonstrating that the jurisprudential tradition has long grappled with the permissibility of temporary usufruct transfers, ultimately arriving at nuanced positions that prioritise asset productivity over rigid formalism.

The existing literature on *waqf* management in Indonesia has largely focused on the general principles of *nazhir* accountability (Bin Mohd Sharif et al., 2023; Yumarni & Suhartini, 2019), the challenges of *waqf*land registration (Ghazali et al., 2021), and the broader landscape of Islamic social finance (Çizakça, 2011; Mohsin et al., 2016). Comparative studies, such as those by Sait and Lim (2006) on Islamic land law and by Shatzmiller (2001) on Islamic institutions and property rights, provide a valuable historical and cross-jurisdictional context. However, there remains a distinct paucity of rigorous legal analysis concerning the specific intersection of Indonesian positive law prohibitions on rights alienation and the jurisprudential permissibility of temporary usufruct transfers. This gap is particularly significant given the substantial volume of *waqf* land in Indonesia and the increasing prevalence of lease and loan arrangements as pragmatic management tools.

This article addresses this critical gap by providing a comprehensive, comparative analysis of the legal protection mechanisms for *waqf*land status when subjected to lease and loan agreements by individual *nazhir*. The study is grounded in the recognition that effective legal protection of *waqf* assets requires not merely the articulation of prohibitions, but the development of a nuanced framework that can accommodate the operational realities of *waqf* management while preserving the inviolable nature of the *waqf* corpus. The primary purpose of this study is to critically examine the legal implications of these civil acts, evaluate the adequacy of current *nazhir* accountability frameworks, and propose a harmonised legal paradigm that reconciles the protective rigidity of Indonesian statutory law with the pragmatic flexibility of Islamic jurisprudence, ultimately ensuring the perpetual integrity and optimal societal benefit of *waqf* lands.

METHOD

This research employs a normative legal methodology, fundamentally structured as a doctrinal study that meticulously examines the internal coherence, consistency, and application of legal principles concerning the protection of *waqf*land status. Normative legal research, by its inherent design, focuses on the systematic analysis of positive law, legal doctrines, and jurisprudential texts to resolve specific legal ambiguities—in this instance, the tension between statutory prohibitions on rights alienation and the practical implementation of lease and loan agreements by individual *nazhir* (Makaarim et al., 2025; Marbun et al., 2024). The research adopts a descriptive-analytical approach, aiming to systematically delineate the existing legal frameworks, evaluate the practical phenomena of *waqf*land management, and subsequently analyse these conditions through the lens of established legal theories and statutory provisions to generate comprehensive and applicable solutions (Himmawan et al., 2025).

The primary data utilised in this study consists entirely of secondary data, which, within the context of legal research, is categorised into primary, secondary, and tertiary legal materials. The primary legal materials constitute the authoritative statutory and regulatory frameworks governing *waqf* in Indonesia, most notably Law No. 41 of 2004 concerning *Waqf*, Government Regulation No. 42 of 2006, the Indonesian Civil Code (KUHPerdata), and the Basic Agrarian Law (Law No. 5 of 1960). Secondary legal materials include an extensive array of scholarly literature, encompassing over thirty peer-reviewed articles from reputable, Scopus/WoS-indexed international journals, specialised academic books on Islamic property law, and documented fatwas or jurisprudential rulings regarding *ijarah* (lease) and *ariyah* (loan) contracts (Abdullah, 2018; Rudiarto et al., 2025). Tertiary legal materials, such as authoritative legal dictionaries and encyclopaedias of Islamic jurisprudence, are employed to ensure precise terminological accuracy and conceptual clarity.

Data collection was executed through rigorous document study and comprehensive literature review. This process involved the systematic retrieval, categorisation, and critical evaluation of legislative texts, jurisprudential treatises, and contemporary academic discourse related to *waqf*

governance, *nazhir* accountability, and Islamic contract law. The analytical framework relies on qualitative data analysis, wherein the collected legal materials are not subjected to statistical quantification but are instead interpreted through logical deduction, legal syllogism, and comparative jurisprudential assessment. The analysis proceeds by first establishing the normative baseline of Indonesian positive law regarding *waqf* protection, contrasting it with the operational realities of lease and loan agreements, and finally evaluating these practices against the broader, more flexible paradigms of classical and contemporary Islamic legal thought (Kamal, 2025). This methodical progression ensures that the resulting conclusions are not only legally sound and academically rigorous but also pragmatically applicable to the enhancement of *waqf* land administration.

RESULTS AND DISCUSSION

Legal Status of *Waqf* Land Under Lease and Loan Agreements

The fundamental architecture of *waqf*, particularly concerning immovable assets such as land, is predicated on the principle of perpetuity and the absolute retention of ownership (*raqabah*) by the *waqf* entity itself, conceptually representing ownership by the Divine (Abbasi, 2012). In the Indonesian legal context, this principle is robustly protected by Article 49 paragraph (3) of the Basic Agrarian Law (UUPA), which explicitly mandates the protection of *waqf* land, and is further operationalised by the *Waqf* Law. The primary objective of these protective mechanisms is to ensure that the designated property perpetually serves its intended religious or social function. Consequently, the role of the *nazhir* is strictly limited to administration, management, and development; they act as fiduciaries rather than proprietors (Shatzmiller, 2001). The critical imperative of effective management cannot be overstated, as the ultimate utility and societal benefit of the *waqf* land are entirely contingent upon the *nazhir*'s capacity to optimise the asset (Sukmana, 2020).

Despite the explicit prohibition against the alienation of *waqf* property articulated in Article 40 of the *Waqf* Law, the statute lacks comprehensive granularity regarding the specific classification of temporary usufructuary transfers, such as lease and loan agreements. According to Article 1548 of the Indonesian Civil Code (KUHPerdata), a lease agreement is defined as a contractual consensus wherein one party binds themselves to provide another party with the enjoyment of a specific asset for a predetermined period, in exchange for an agreed-upon financial remuneration. In practice, individual *nazhir* frequently employ this mechanism to monetise otherwise dormant *waqf* land, channelling the generated rental income toward the designated beneficiaries or institutional maintenance, such as mosque operations (Mohsin et al., 2016). This practice fundamentally aligns with the essential characteristics of a lease, as it solely transfers the right of use and enjoyment, meticulously preserving the underlying ownership structure.

As illustrated in Table 1, the comparative analysis of *waqf* land status across different contractual arrangements reveals a nuanced picture of rights distribution. While ownership remains consistently vested in the *waqf* across all arrangements, the critical distinction lies in the temporary transfer of management and usufruct rights. This distinction is pivotal for understanding the legal implications of *nazhir*-initiated lease and loan agreements, as it delineates the boundary between permissible administrative delegation and prohibited corpus alienation.

Table 1. Comparison of *Waqf* Land Status in Different Contractual Arrangements

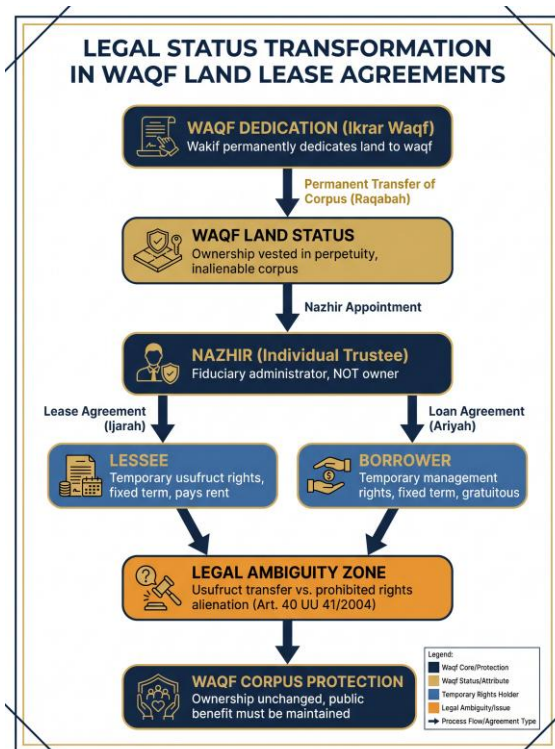
Aspect	<i>Waqf</i> Status	Lease Agreement (<i>Ijarah</i>)	Loan Agreement (<i>Ariyah</i>)
Ownership (<i>Raqabah</i>)	Permanently vested in <i>waqf</i>	Unchanged — remains with <i>waqf</i>	Unchanged — remains with <i>waqf</i>
Management Rights	Exclusively held by <i>nazhir</i>	Transferred to lessee for term	Transferred to borrower for term
Duration	Perpetual and irrevocable	Temporary (fixed contractual term)	Temporary (fixed contractual term)
Usufruct Rights	<i>Nazhir</i> /designated beneficiaries	Lessee (in exchange for rent)	Borrower (gratuitous use)
Legal Status	Inalienable and inviolable	Conditional usufruct transfer	Conditional management transfer
Compensation	N/A (charitable purpose)	Monetary rent to <i>nazhir/waqf</i>	None (gratuitous arrangement)
Regulatory Basis	UU 41/2004, Art. 40	KUHPerdata Art. 1548	KUHPerdata Art. 1744
Risk of Alienation	Absolute prohibition	Low (if corpus preserved)	Moderate (if oversight lacking)

Source: Compiled by author from UU No. 41/2004, KUHPerdata, and comparative legal analysis (2024).

However, from a strict jurisprudential interpretation of Indonesian positive law, a profound legal tension emerges. Although civil law categorises lease agreements as conferring only personal rights rather than proprietary real rights (*zakelijk recht*) (Usanti, 2012), the broad prohibition in the *Waqf* Law against “any other form of rights alienation” invites a more restrictive interpretation. When a *nazhir* enters into a lease agreement, the exclusive right to use and manage a specific parcel of *waqf* land is temporarily transferred from the *nazhir* to the lessee. Arguably, this constitutes a transfer of usufruct or usage rights which, under a rigid interpretation of the statute, may conflict with the absolute protective mandate embodied in Article 40 (Jamal, 2016).

A parallel legal dynamic arises in the context of loan-for-use (*ariyah*) agreements. Under Article 1744 of the *KUHPerdata*, a loan-for-use agreement involves the gratuitous transfer of an asset for temporary use, accompanied by the borrower’s obligation to preserve the asset as a “good father of a family” (*als een goed huisvader*) and to return it upon the expiration of the agreed term. Although the *nazhir* formally retains overarching administrative authority, the practical execution of land management and day-to-day operations is effectively delegated to the borrower (Roziqin & Adjie, 2022). Such delegation may be interpreted as a transfer of management rights. Since effective management necessarily entails utilising or modifying the asset to generate value or fulfil a particular need (Hietschold et al., 2023), the borrower’s assumption of these responsibilities reflects a substantive shift in operational control, thereby further complicating the interpretation of prohibited rights alienation under the *Waqf* Law.

The transformation of legal status in *waqf* land lease agreements, as illustrated in Figure 1, provides a systematic visualisation of the sequential process beginning with the initial *waqf* dedication, followed by the appointment of the *nazhir*, and culminating in the contractual delegation of usufruct rights. Figure 1 demonstrates how the permanent transfer of the corpus (*raqabah*) at the moment of *waqf* dedication establishes an inalienable ownership structure, while the subsequent appointment of the *nazhir* creates a fiduciary relationship without transferring ownership rights. The flowchart further delineates two contractual pathways—lease and loan-for-use—both of which converge within a critical “Legal Ambiguity Zone,” where the permissibility of transferring usufruct rights under Article 40 of Law No. 41 of 2004 remains contested. This zone represents the central analytical problem addressed in this study, as it is precisely at this juncture that the protective objectives of Indonesian positive law intersect—and potentially conflict—with the pragmatic demands of *waqf* asset management.



Source: Author's own construction based on UU No. 41/2004 and KUHPerdata analysis

Figure 1. Legal Status Transformation in *Waqf* Land Lease Agreements

Nazhir Accountability and Legal Responsibility

The delegation of management rights through lease and loan agreements necessitates a rigorous examination of *nazhir* accountability. Accountability, within the *waqf* framework, demands that the *nazhir* operates with absolute transparency, integrity, and strict adherence to the wakif's original stipulations (Hasan et al., 2022). When a *nazhir* engages third parties to utilise *waqf* land, they do not simultaneously abdicate their fiduciary responsibilities. Instead, their role transitions from direct operational management to strategic oversight and rigorous contract enforcement (Hietschold et al., 2023). The *nazhir* remains legally and morally culpable for ensuring that the lessee or borrower does not degrade the asset, alter its fundamental character, or utilise it for purposes contravening Islamic principles (Yumarni & Suhartini, 2019).

The statutory framework governing *nazhir* accountability in Indonesia is primarily articulated in Article 11 of the *Waqf* Law, which enumerates four categories of *nazhir* duties: administrative, management, protective, and reporting. These duties, as systematically presented in Table 2, collectively constitute a comprehensive fiduciary framework that is designed to ensure the perpetual integrity and optimal productivity of *waqf* assets. The table further delineates the specific accountability mechanisms associated with each duty category, highlighting the central role of the BWI as the primary oversight body. Critically, the table reveals a significant gap in the current framework: while the legal basis and accountability mechanisms for each duty category are clearly defined, there is no explicit provision addressing the *nazhir*'s obligations when delegating management rights to third parties through lease or loan agreements.

Table 2. *Nazhir* Duties and Liabilities Under Indonesian *Waqf* Law

Duty Category	Specific Duties	Legal Basis	Accountability Mechanism
Administrative	Registration of <i>waqf</i> assets; maintenance of <i>waqf</i> documentation; issuance of <i>waqf</i> certificates	UU 41/2004 Art. 11(a)	BWI oversight; mandatory registration with Land Office (BPN)
Management	Development and optimisation of <i>waqf</i> assets; investment of <i>waqf</i> funds; productive utilisation	UU 41/2004 Art. 11(b)	Performance evaluation by BWI; annual productivity reports
Protective	Safeguarding <i>waqf</i> corpus; preventing encroachment; legal defence of <i>waqf</i> rights	UU 41/2004 Art. 11(c)	Legal liability for asset loss; civil and criminal sanctions
Reporting	Periodic financial reports; operational activity reports; asset valuation updates	UU 41/2004 Art. 11(d)	Annual reporting to BWI; public disclosure requirements
Contractual (Gap)	Oversight of lease/loan agreements; contract enforcement; third-party monitoring	Not explicitly regulated	No specific mechanism — regulatory gap identified

Source: Compiled by author from UU No. 41/2004 Art. 11 and comparative analysis.

The challenge, however, lies in the practical implementation of such oversight, particularly among individual *nazhir* who often lack institutional support systems and adequate legal expertise. The absence of standardised and transparent reporting mechanisms for these civil contracts frequently obscures both the financial transactions and operational realities from the designated beneficiaries and relevant regulatory authorities (Bin Mohd Sharif et al., 2023). This lack of transparency significantly increases the risk of mismanagement, unauthorised subleasing, and the gradual erosion of the *waqf*'s public utility function (Ghazali et al., 2021). Consequently, strengthening *nazhir* accountability through mandatory digital registration of lease agreements, rigorous periodic audits, and clearly defined performance indicators is imperative to mitigate the risks associated with the delegation of management rights (Hj. Mohaiyadin et al., 2022).

The fiduciary nature of the *nazhir*'s role is further complicated by the inherent power asymmetry between the *nazhir* and the designated beneficiaries of the *waqf*. In many instances, beneficiaries—whether local communities, religious institutions, or the general public—lack either the legal standing or the practical capacity to challenge *nazhir* decisions, including the execution of lease or loan-for-use agreements (Rudiarto et al., 2025). This imbalance of power highlights the critical importance of robust institutional oversight mechanisms, particularly the role of the BWI in supervising *nazhir* performance and ensuring compliance with the *Waqf* Law. The scholarship of Ayub et al. (2025) concerning the governance and management of *awqaf* as social finance institutions demonstrates that effective governance frameworks—characterised by transparency, accountability, and stakeholder participation—are essential to ensuring that *waqf* assets continue to fulfil their intended social function.

Furthermore, the legal liability of individual *nazhir* in the context of lease and loan-for-use agreements extends beyond mere administrative accountability to include potential civil and criminal sanctions. Article 67 of the *Waqf* Law expressly provides criminal penalties, including imprisonment and fines, for *nazhir* who misuse or misappropriate *waqf* assets. Although these sanctions are theoretically applicable to abuses arising from lease and loan agreements, the absence of specific regulatory provisions governing such arrangements creates substantial evidentiary difficulties in the prosecution of these cases (Bin Mohd Sharif et al., 2023). Therefore, the development of clear and enforceable standards governing *nazhir* conduct in lease and loan-for-use agreements is not merely a matter of administrative efficiency, but also a fundamental prerequisite for the effective legal protection of *waqf* land status.

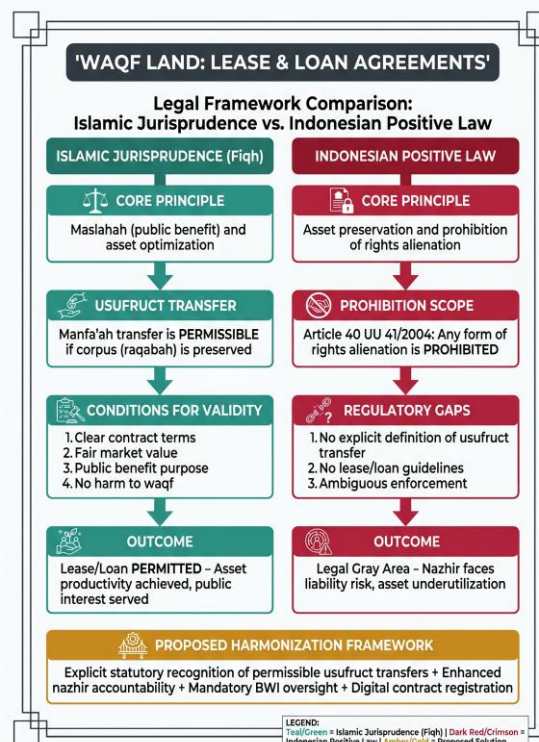
Comparative Analysis of Islamic Jurisprudence and Indonesian Positive Law

A critical comparative analysis reveals a distinct divergence between the rigid protective posture of Indonesian statutory law and the pragmatic flexibility inherent in classical Islamic jurisprudence (*fiqh*). While Article 40 of the *Waqf* Law adopts an uncompromising stance against rights alienation to prevent asset loss, Islamic legal scholars generally exhibit a more nuanced understanding of usufructuary transfers (Abbasi, 2012). In classical *fiqh*, the primary objective is the realisation of public benefit (*maslahah*) and the prevention of asset stagnation. Consequently, if a

waqf property is dormant or deteriorating, leasing it (*ijarah*) is not merely permissible but often actively encouraged, provided the rental income is strictly channelled toward the waqf's intended purpose (Abdullah, 2018).

Islamic jurisprudence differentiates fundamentally between the alienation of the corpus (*raqabah*), which is strictly prohibited, and the temporary transfer of the usufruct (*manfa'ah*), which is permissible and often necessary for asset optimisation (Abdullah, 2018). This jurisprudential flexibility recognises that the ultimate goal of waqf is continuous charitable yield, which cannot be achieved if assets are allowed to remain unproductive due to overly restrictive administrative interpretations (Hamoudi & Cammack, 2018). Therefore, the practice of individual *nazhir* leasing or lending waqf land, while potentially problematic under a strict reading of Indonesian positive law, is largely validated by Islamic legal principles, provided the transactions are executed with absolute transparency, fair market valuation, and an unwavering commitment to the public interest (Mohammed, 1988).

The comparative framework presented in Figure 2 provides a systematic visualisation of the divergent legal pathways through which Islamic jurisprudence and Indonesian positive law approach the question of waqf land lease and loan agreements. Figure 2 illustrates that while both frameworks share the overarching objective of protecting the waqf corpus, they diverge significantly in their treatment of usufruct transfers. The Islamic jurisprudential pathway, grounded in the principle of *maslahah*, leads to a permissive outcome that prioritises asset productivity, while the Indonesian positive law pathway, characterised by regulatory gaps and ambiguous enforcement, leads to a legal gray area that exposes *nazhir* to liability risk and perpetuates asset underutilisation. The proposed harmonisation framework, depicted at the convergence point of both pathways, represents the analytical synthesis of this study, offering a principled resolution to the identified legal dichotomy.



Source: Author's own construction based on UU No. 41/2004 and classical fiqh analysis (2024).

Figure 2. Legal Framework Comparison: Islamic Jurisprudence vs. Indonesian Positive Law

The jurisprudential analysis of the four major Sunni schools of law (*madhabs*) reveals a remarkable degree of consensus on the permissibility of waqf land leasing, albeit with varying conditions and limitations. The Hanafi school, which is particularly influential in the Indonesian legal tradition, permits the leasing of waqf property for a period not exceeding one year, with the possibility of renewal, provided the rental income is used exclusively for the maintenance and development of the waqf asset (Abbasi, 2012). The Maliki school adopts a more liberal position, permitting long-term leases if the waqf is in a state of deterioration and the lease is the most effective

means of preservation. The Shafi'i school, which is the dominant madhab in Indonesia, generally restricts leases to a maximum of three years, while the Hanbali school permits leases of up to one year (Abdullah, 2018). These jurisprudential positions collectively suggest that the temporary transfer of usufruct rights through lease agreements is not merely a pragmatic accommodation but a well-established principle of Islamic property law.

The comparative analysis further reveals that several Muslim-majority countries have successfully harmonised their positive law frameworks with Islamic jurisprudential principles regarding *waqf* land management. Malaysia, for instance, has developed a sophisticated regulatory framework for *waqf* land leasing through the State Islamic Religious Councils (SIRCs), which explicitly authorise the leasing of *waqf* land for periods of up to 30 years, subject to BWI-equivalent oversight and transparent reporting requirements (Ghazali et al., 2021). Similarly, Egypt's *Awqaf* Ministry has developed comprehensive guidelines for *waqf* land leasing that explicitly distinguish between permissible usufruct transfers and prohibited corpus alienation, providing a clear regulatory framework that has significantly enhanced the productivity of Egyptian *waqf* assets (Sait & Lim, 2006). These comparative experiences offer valuable lessons for Indonesia's ongoing efforts to reform its *waqf* land management framework.

The analysis of Indonesian case law further illuminates the practical dimensions of this legal dichotomy. While there is no definitive Supreme Court (Mahkamah Agung) ruling specifically addressing the permissibility of *nazhir*-initiated lease and loan agreements on *waqf* land, several lower court decisions have grappled with related issues of *nazhir* accountability and *waqf* asset protection. These cases consistently reveal a judicial tendency to prioritise the protective intent of the *Waqf* Law over the practical imperatives of asset management, often resulting in the invalidation of lease and loan agreements on the grounds of prohibited rights alienation (Harahap et al., 2023). This judicial conservatism, while understandable in light of the historical prevalence of *waqf* asset misappropriation in Indonesia, ultimately perpetuates the cycle of asset underutilisation that the *Waqf* Law itself seeks to address.

Implications for *Waqf* Protection and Proposed Legal Reform

The identified legal ambiguities and operational challenges have profound implications for the long-term protection and efficacy of *waqf* land in Indonesia. The current statutory framework, while designed to be highly protective, inadvertently creates a chilling effect on innovative asset management by failing to explicitly differentiate between prohibited corpus alienation and necessary usufructuary delegation (Sukmana, 2020). This regulatory gap forces *nazhir* to operate in a legal gray area, increasing their vulnerability to legal challenges while simultaneously hindering the optimal utilisation of vast tracts of dormant *waqf* land (Rudiarto et al., 2025). The scholarship of Pinuji et al. (2023) and Al-ossmi (2025) on land tenure security in Islamic countries provides a compelling theoretical framework for understanding this challenge, demonstrating that the absence of clear regulatory guidelines for usufruct transfers is a pervasive problem across Muslim-majority countries with Islamic land tenure systems.

To resolve this dichotomy, comprehensive legal reform is required to harmonise the protective intent of Indonesian positive law with the pragmatic flexibility of Islamic jurisprudence. Such reform should explicitly define the parameters under which lease and loan agreements are permissible, establishing stringent criteria for contract duration, fair market valuation, and mandatory public reporting (Ghazali et al., 2021). The proposed framework should also establish a tiered approval system, wherein short-term leases (up to three years) may be executed by the *nazhir* with notification to the BWI, while longer-term arrangements require prior BWI approval and independent valuation. This tiered approach would balance the need for administrative efficiency with the imperative of robust oversight, ensuring that the BWI's supervisory capacity is deployed proportionately to the risk profile of each transaction.

Furthermore, the capacity building of individual *nazhir* must be prioritised as a critical component of any comprehensive reform agenda. The current system, which relies heavily on the individual *nazhir*'s legal acumen and ethical integrity, is inherently vulnerable to abuse and mismanagement (Rusli et al., 2025). The development of standardised training programmes, professional certification requirements, and peer support networks for individual *nazhir* would significantly enhance their capacity to navigate the complex legal landscape of *waqf* land

management. The scholarship of Mohaiyadin et al. (2022) on blockchain technology as a tool for enhancing *waqf* accountability offers a particularly promising avenue for reform, demonstrating that digital technologies can significantly reduce the information asymmetries and transparency deficits that currently characterise the *waqf* management system.

The proposed harmonisation framework also carries significant implications for the role of the BWI as the principal regulatory authority for *waqf* in Indonesia. The current mandate of the BWI, which primarily focuses on registration and oversight, should be expanded to include the active facilitation of productive *waqf* land management. Such responsibilities would include the development of standardised lease and loan agreement templates, the establishment of a centralised database of *waqf* land transactions, and the provision of legal advisory services for individual *nazhir* (Hasan et al., 2022). This expanded mandate would transform the BWI from a passive regulatory institution into an active partner in the realisation of *waqf*'s socioeconomic potential, thereby aligning its institutional role with the broader objectives of the Indonesian government's *waqf* development agenda.

The analysis of the legal framework governing *waqf* land lease and loan agreements also provides important insights into the broader discourse on Islamic social finance and its contribution to sustainable development. The studies of Mohsin (2016) on cash *waqf* financing and Çizakça (2011) on the historical evolution of *waqf* institutions demonstrate that the productive utilisation of *waqf* assets is not merely a matter of legal technicality, but rather a fundamental prerequisite for the realisation of *waqf*'s transformative socioeconomic potential. By establishing a clear and enforceable framework for *nazhir*-initiated lease and loan agreements, Indonesia has the opportunity to unlock the substantial economic value of its extensive *waqf* land assets and channel these resources toward the achievement of sustainable development goals and the reduction of socioeconomic inequality.

The proposed legal reform framework must also address the critical issue of beneficiary rights and participation. The current system, which vests exclusive decision-making authority in the *nazhir*, effectively excludes designated beneficiaries from meaningful participation in the management of *waqf* assets intended to serve their interests (Rudiarto et al., 2025). The introduction of participatory governance mechanisms, such as beneficiary representation on *waqf* management committees and transparent public reporting of *waqf* transactions, would substantially enhance the accountability and legitimacy of *nazhir*-initiated lease and loan agreements. This participatory approach is consistent with the broader principles of good governance in Islamic social finance institutions, as articulated by Ayub et al. (2025) and Hasan et al. (2022).

Finally, the proposed harmonisation framework must be grounded in a clear articulation of the theoretical foundations of *waqf* law, drawing from both Islamic jurisprudence and contemporary legal theory. The scholarship of Abbasi (2012) on classical Islamic *waqf* law and Hamoudi (2018) on Islamic family endowments provides a strong jurisprudential basis for understanding the permissibility of temporary transfers of usufruct rights. Meanwhile, contemporary legal theory—particularly the concept of property rights as a bundle of entitlements (Mohammed, 1988)—offers a complementary analytical framework for examining the legal implications of *nazhir*-initiated lease and loan agreements. By integrating these theoretical perspectives, the proposed framework can establish a principled and coherent basis for reforming Indonesian *waqf* land management law, ensuring that the legal protection of *waqf* assets remains both robust and responsive to the practical demands of asset optimisation.

Proposed Legal Framework for *Waqf* Land Lease and Loan Agreements

The synthesis of the foregoing analysis results in a comprehensive proposed legal framework governing *waqf* land lease and loan agreements in Indonesia, as systematically presented in Table 3. This framework is intended to harmonise the protective objectives of the *Waqf* Law with the pragmatic flexibility recognised in Islamic jurisprudence, thereby providing clear and enforceable guidelines for *nazhir*-initiated civil contracts.

The proposed framework is organised around four principal dimensions: permissibility criteria, procedural requirements, accountability mechanisms, and enforcement provisions. Each dimension is formulated through an integrated approach that combines Indonesian positive law, principles of Islamic jurisprudence, and comparative best practices drawn from Muslim-majority countries with more advanced *waqf* management systems. Collectively, these elements are designed

to ensure both the legal protection of waqf assets and the effective optimisation of their socioeconomic functions.

Table 3. Proposed Legal Framework for *Waqf* Land Lease and Loan Agreements

Dimension	Current Framework	Proposed Reform	Legal Basis
Permissibility Criteria	No explicit provision for lease/loan; Art. 40 broadly prohibits rights alienation	Explicit statutory recognition of permissible usufruct transfers; distinction between corpus and usufruct alienation	UU 41/2004 (amended); Classical <i>fiqh</i> principles (<i>ijarah, ariyah</i>)
Contract Duration	No specific limits; ambiguous regulatory guidance	Short-term (≤ 3 years): <i>nazhir</i> authority with BWI notification; Long-term (> 3 years): mandatory BWI prior approval	Comparative practice (Malaysia, Egypt); Hanafi/Shafi'i jurisprudence
Valuation Requirements	No mandatory valuation standards	Independent market valuation for all lease agreements; fair market rent as minimum standard	Principle of fair dealing (<i>adl</i>) in Islamic contract law
Documentation	Minimal requirements; no standardised templates	Mandatory use of BWI-approved contract templates; digital registration in national <i>waqf</i> database	UU 41/2004 Art. 11; e-Government regulations
Reporting Obligations	General annual reporting to BWI	Quarterly financial reporting for all lease/loan agreements; public disclosure of transaction details	UU 41/2004 Art. 11(d); Transparency principles
Accountability Mechanism	BWI oversight; general legal liability	Tiered accountability: <i>nazhir</i> personal liability + BWI institutional oversight + independent audit	UU 41/2004 Art. 67; Civil Code liability provisions
Beneficiary Rights	No explicit participation rights	Mandatory beneficiary consultation for long-term agreements; right to challenge BWI decisions	Constitutional right to good governance; Islamic principle of <i>shura</i>
Enforcement	General civil and criminal sanctions	Specific sanctions for lease/loan agreement violations; expedited dispute resolution mechanism	UU 41/2004 Art. 67; Civil Procedure Code

Source: Author's own construction based on comparative legal analysis and Islamic jurisprudence.

The proposed framework, as synthesised in Table 3, represents a principled departure from the current binary approach of either permitting or prohibiting *nazhir*-initiated lease and loan agreements. By establishing a tiered, proportionate regulatory system that differentiates between short-term and long-term arrangements, the framework acknowledges the legitimate operational imperatives of *waqf* land management while maintaining robust safeguards against abuse and misappropriation. The mandatory valuation and documentation requirements address the transparency deficits that currently characterise the *waqf* management system, while the enhanced accountability mechanisms ensure that the BWI's supervisory capacity is deployed effectively and proportionately. Critically, the explicit recognition of beneficiary participation rights transforms the *waqf* governance framework from a purely administrative system into a genuinely participatory one, aligning it with the broader principles of good governance in Islamic social finance institutions.

CONCLUSION

This research demonstrates that, although the strict prohibition on the alienation of waqf property rights under Indonesian Law No. 41 of 2004 is essential for preserving the perpetual nature of waqf assets, it also creates legal ambiguities regarding temporary transfers of usufruct rights, such as lease and loan agreements. The practice of individual *nazhir* delegating management and usage rights to third parties in order to optimise dormant waqf land reveals a fundamental tension between the rigid protective orientation of Indonesian positive law and the pragmatic, utility-oriented flexibility of classical Islamic jurisprudence.

Although such civil arrangements may technically constitute a temporary transfer of management rights, Islamic legal principles generally recognise their permissibility, provided that

they are conducted transparently and produce tangible benefits for the public interest. Resolving this legal dichotomy therefore requires comprehensive legal reform aimed at harmonising statutory prohibitions with jurisprudential flexibility, particularly through the explicit regulation of permissible forms of usufruct delegation.

At the same time, strengthening *nazhir* accountability through mandatory digital registration systems, rigorous supervision by the Indonesian Waqf Board, and targeted capacity-building programmes is essential to ensure that lease and loan agreements function as legitimate instruments of asset optimisation rather than avenues for mismanagement or abuse. Ultimately, bridging this legal gap would enable *nazhir* to transform underutilised waqf lands into productive and sustainable resources, thereby advancing the enduring philanthropic objectives of the waqf institution while fully preserving its inalienable ownership status.

AUTHOR CONTRIBUTIONS STATEMENT

NM conceived the original idea, conducted the legal analysis, reviewed the literature, and wrote the manuscript.

RKR revised the manuscript critically for important intellectual content, supervised the project, and approved the final version.

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