

Comparative Analysis of Educational Waqf from the Perspective of Fiqh and Positive Law in Indonesia

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ABSTRACT

Educational waqf is one of the essential instruments in developing human resources and equalizing access to education, both from the perspective of fiqh and positive law in Indonesia. This study aims to analyze and compare the concept of educational waqf according to Islamic law (fiqh) with the waqf regulations applicable in the national legal system in Indonesia, as well as to examine the challenges and opportunities for its implementation in educational institutions. The research method used is a qualitative study with a descriptive-analytical approach, through a literature review of primary and secondary sources, both in Indonesian, Arabic, and English. The results of the study indicate that educational waqf has a vital role in developing human resources and increasing access to education in society. From the perspective of fiqh, waqf is considered a continuous charity that provides sustainable benefits, with support from fuqaha who emphasize the importance of spreading knowledge. Meanwhile,

positive law in Indonesia, through Law Number 41 of 2004, provides a clear legal framework for the management of educational waqf, emphasizing transparency and accountability. Although there are differences in approach between fiqh and positive law, both have the same goal of supporting social and academic development. The integration of these two approaches can create a comprehensive solution for the management of educational waqf that is religiously valid and legally strong, thereby contributing significantly to improving the quality of education and empowering the community..

Keywords: educational waqf, fiqh, positive law, nadzir, Islamic law.

Introduction

Waqf is one of the Islamic economic instruments that has a powerful dimension of worship and social impact. In the history of Islamic civilization, waqf has played an essential role in supporting various aspects of community life, especially in the field of education. Educational waqf has become an essential pillar in supporting the sustainability of scientific institutions, such as madrasahs, universities, and libraries, since the golden age of Islam.¹ In Indonesia, educational waqf develops in a unique socio-cultural and legal context, considering that Indonesia is a country with a Muslim majority population, but in its legal system, it adheres to a pluralistic national legal system.

According to Law Number 41 of 2004 concerning Waqf, waqf is a legal act of a waqif to separate and/or hand over part of his/her property to be used forever or for a specific period by the interests for worship and/or general welfare according to Sharia. Waqf in the form of education is a type of waqf that continues to develop, along with the increasing need of society for quality education. However, in practice, many legal issues are still found related to the implementation and management of educational waqf, ranging from the clarity of the legal status of waqf assets, asset management, to conflicts between nadzir and educational management institutions.²

From a fiqh perspective, waqf has a strong legal basis both in the Qur'an and the Hadith of the Prophet SAW. One of the hadiths that is often used as the legal basis for waqf is: "When a son of Adam dies, his deeds are cut off except for three: ongoing charity, beneficial knowledge, and a pious child who prays for him" (HR. Muslim). In

¹ (Islahi, 2014)

² (Syafi'i, 2018)

this Hadith, ongoing charity is generally understood as waqf³. Islamic jurisprudence scholars from various schools of thought have also discussed in detail the pillars, requirements, and forms of waqf, including waqf for education. However, in its implementation in Indonesia, there is a meeting between Islamic jurisprudence law as normative Islamic law and positive Indonesian law as state law, which often gives rise to tension or different interpretations.⁴

Another problem that arises is the lack of public understanding of the law on educational waqf and the lack of socialization and guidance from the authorities. Many people intend to donate their land or buildings to academic institutions but do not understand the positive legal procedures that must be taken, such as recording, certification, and reporting to the Indonesian Waqf Board (BWI). This ignorance can lead to disputes in the future and hinder the purpose of the waqf itself.⁵

In this context, it is essential to conduct a comprehensive analysis of the law of educational waqf from two main perspectives, namely, fiqh and positive law in Indonesia. This study will answer how these two legal systems regulate educational waqf, their common ground and differences, and how the synchronization of the two can be improved to support the progress of the world of education in Indonesia. This study is also expected to enrich the scientific treasury of waqf management professionally, and by Sharia and state law.

A number of studies have been conducted previously related to educational waqf, both from the perspective of fiqh, national law, and institutional management. These studies are an important basis in strengthening the academic foundation of this research, as well as showing the position of the novelty of the study being conducted. Research conducted by Ahmad M. Effendi⁶ in the Ahkam journal entitled "Optimizing Educational Waqf in the Modern Era" discusses the importance of updating the educational waqf model through a productive waqf approach and digitalization.

³ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, vol. 5 (Damaskus: Dar al-Fikr, 2002).

⁴ (Ali, 2011)

⁵ Ahmad M Effendi, "Optimalisasi Wakaf Pendidikan Di Era Modern," *Jurnal Ahkam* 20, no. 2 (2020): 134–49.

⁶ Effendi.

Effendi emphasized that so far, the practice of waqf is still conventional and has not been maximized for financing educational operations professionally. However, this study focuses more on the managerial aspect and has not explored the dimensions of fiqh and positive law comparatively. Meanwhile, ⁷ in The journal *Al-Ahkam: Jurnal Syariah dan Hukum Islam* examines the Problems of Certification of Waqf Land for Educational Institutions. He highlighted the many educational assets that have not been legally certified, thus creating vulnerability to ownership conflicts. Fauzi suggested that the government and religious institutions work together to accelerate the process of legalizing waqf land. This study focuses on the agrarian law aspect, not a comprehensive analysis of Islamic law.

In the context of fiqh studies, Abdul Azim Islahi ⁸, through his book *History of Waqf and Its Administration in the Muslim World*, presents the long history of waqf as the backbone of Islamic education since the classical era. He explains how Islamic madrasas and universities such as Al-Qarawiyyin and Nizamiyah developed due to the strong waqf system. However, this study is historical and has not been contextualized with the modern legal conditions of Indonesia. Research by Muhammad Muslich ⁹ in the *Journal of Islamic Economics and Business* highlights the productive waqf practices carried out by the Islamic University of Indonesia (UII). He explained that UII has succeeded in managing waqf assets in the form of property and businesses that generate income for operational needs and scholarships. This study provides an empirical picture, but has not yet examined the aspects of Islamic law and positive regulation theoretically. Ahmad Nasution¹⁰ in the *Journal of Islamic Law and Culture* raises the importance of synchronizing national waqf law and sharia. He emphasized the need for a deep understanding of the maqashid sharia principle in making waqf regulations. However, this research is conceptual and does not explicitly discuss the education sector.

⁷ Fauzi (2020)

⁸ Islahi, *History of Waqf and Its Administration in the Muslim World*.

⁹ Mohammad Muslich, "Pengelolaan Wakaf Produktif Oleh Universitas Islam Indonesia," *Jurnal Ekonomi Dan Bisnis Islam* 3, no. 1 (2019): 89–102.

¹⁰ Ahmad Nasution, "Sinkronisasi Hukum Wakaf Nasional Dan Syariah," *Journal of Islamic Law and Culture* 2, no. 2 (2017): 76–91.

Furthermore, Muhammad Yahya ¹¹ in the Indonesian Waqf Journal highlights the importance of digitizing waqf data and the role of the Indonesian Waqf Board (BWI) in welcoming the Industry 4.0 era. Yahya stated that digital literacy among Nadzir is still low and has not been fully supported by a capable technology system. Although important, the focus is still limited to institutional aspects and has not reached the relationship between fiqh and national law.

Although there have been many studies related to educational waqf, most of them are still separated between the aspects of fiqh and positive law. There has not been a specific comprehensive study that analyzes the concept and practice of educational waqf from the perspective of fiqh and positive law simultaneously and integratively, especially in the context of contemporary Indonesia. Therefore, this study is here to fill this gap with a normative analysis approach and a comprehensive literature study. This study offers novelty in academic studies related to educational waqf in Indonesia with an integrative and comprehensive approach between classical and contemporary Islamic fiqh with national positive law, especially Law Number 41 of 2004 concerning Waqf. So far, most previous studies have focused more on the technical aspects of institutions (for example, management of nadzir or optimization of waqf assets), economic aspects (productive waqf), or normative discussions are limited to one side of the law (either fiqh or national law).

In addition, another novelty of this research lies in several results, namely (1) the Comparative and Integrative Approach. This research examines educational waqf from two different legal perspectives methodologically and philosophically—namely, Islamic jurisprudence and Indonesian positive law—simultaneously and in depth. This analysis produces a more complete and contextual understanding of the challenges and opportunities for harmonizing waqf law in the realm of education. (2) Focus on the Education Sector. Although there have been many studies on waqf in general, this research highlights explicitly waqf in the field of education, both as a source of funding for educational institutions and as an instrument for social development of the

¹¹ Muhammad Yahya, “Digitalisasi Wakaf Dan Peran BWI Dalam Menyambut Era Industri 4.0,” *Jurnal Wakaf Indonesia* 4, no. 1 (2022): 21–39.

community. This provides a new contribution in directing the potential of waqf to strategic sectors of national development. (3) Formulation of Implementation Strategy. This research is not only descriptive, but also offers a formulation of practical solutions and strategies to bridge the differences between the fiqh system and the positive law system. For example, in terms of certification of educational waqf assets, increasing the capacity of nadzir, and utilizing digital waqf technology. And (4) Relevance to Contemporary Issues. By raising the issues of digitalization, institutional accountability, and the crisis of education financing, this study presents an actual and contextual approach to the current reality of Indonesian education, while also contributing to the discourse of fiqh that is adaptive to the times (fiqh al-waqi').

This research is essential to conduct because educational waqf is a strategic instrument in realizing equality and improving the quality of education in Indonesia. In many cases, Islamic educational institutions such as Islamic boarding schools, madrasahs, and integrated Islamic schools are highly dependent on waqf assets as the primary source of funding. Therefore, effective and efficient regulation and governance of educational waqf will have a direct impact on the sustainability of these institutions. On the other hand, synchronization between fiqh law and positive law related to waqf is still a challenge. Many gaps are found between the principles of fiqh and the practice of positive law, both in terms of administration, management, and resolution of waqf disputes ¹². This research is here to bridge the understanding between these two legal systems, so that there is no dichotomy that is detrimental to Muslims in general. In addition, this research also contributes to strengthening national regulations on waqf to be more accommodating to Sharia principles and the realities of society. With a better understanding, Nadzir, Wakif, and managers of educational institutions can manage waqf more professionally, accountably, and by legal provisions.

¹² Nasution, "Sinkronisasi Hukum Wakaf Nasional Dan Syariah."

Method

This study uses a qualitative-descriptive approach with normative-juridical and fiqhiyah analysis methods. The normative-juridical method is used to examine positive legal regulations related to educational waqf, such as Law Number 41 of 2004, Government Regulation Number 42 of 2006, and fatwas of the Indonesian Ulema Council (MUI) related to waqf. Meanwhile, the fiqhiyah method is used to examine the concept and law of waqf from the perspective of classical and contemporary Islamic fiqh from various schools of thought. In analyzing the data, the author uses a comparative and interpretative approach. Comparative is used to compare the principles of waqf law in fiqh and national legislation. Interpretative is used to interpret the meanings of law in the socio-cultural context of Indonesian society.

The data sources in this study consist of primary and secondary data. Primary data were obtained from official documents such as Laws, Government Regulations, and MUI fatwas. Meanwhile, secondary data were obtained from classical fiqh literature such as *al-Majmu'* by Imam Nawawi, *Al-Fiqh al-Islami wa Adillatuhu* by Wahbah az-Zuhaili, and other contemporary works in Indonesian, Arabic, and English. The author also uses relevant previous research results, both in the form of scientific journals, dissertations, and theses from various academic institutions. Some of the journals used as references include: *Journal of Islamic Economics, Banking, and Finance*, *Jurnal Ahkam*, and *Al-Ahkam: Jurnal Syariah dan Hukum Islam*.

Results and Discussion

1. Educational Waqf from the Perspective of Fiqh

In classical Islamic law, waqf is known as one of the most essential forms of ongoing charity. Etymologically, waqf comes from the word *waqafa*–*yaqifu*–*waqfan*, which means to hold or stop. In sharia terminology, waqf is to have a property that can be utilized without reducing the substance (*ain*) of the property, and its benefits are distributed for the public or specific interests according to the intention of the *wakif* ¹³. Educational waqf is included in the category of social waqf (*wakaf khairi*),

¹³ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

which is intended for the public interest in the field of science and human resource development. In the view of the fuqaha, educational waqf has a special place because it is closely related to the dissemination of knowledge. Imam al-Sarakhsi from the Hanafi School stated that building a madrasah or financing teachers through waqf is one of the most critical ongoing charities ¹⁴.

According to al-Qardawi (1999), waqf is "a resource donated for the public benefit, which can be used to support various aspects of life, including education." This opinion shows that educational waqf has a broad social dimension, which includes community empowerment through education ¹⁵. According to Ibn Qudamah (1997), waqf is "property that is removed from private ownership and handed over for the public interest." This means that educational waqf aims to provide sustainable benefits to society, especially in improving access to and quality of education. In this context, educational waqf is considered a long-term investment for human resource development¹⁶.

The benefits of educational endowments are very significant. First, educational endowments can increase access to education for underprivileged groups in society. With the existence of school buildings that are donated, children from disadvantaged families can get an education without having to think about the cost of renting a building. Second, educational endowments also contribute to improving the quality of education by providing adequate facilities, such as laboratories, libraries, and other learning facilities. Third, educational endowments can give scholarships to underprivileged high-achieving students, so that they can continue their education to a higher level. Thus, educational endowments not only provide direct benefits in the form of facilities but also contribute to the development of quality human resources.

The history of waqf in the Islamic world can be traced back to the time of the Prophet Muhammad SAW, where he encouraged Muslims to do charity and give donations for the benefit of society. One of the early examples of waqf is the waqf

¹⁴ Muhammad bin Ahmad Al-Sarakhsi, *Al-Mabsut*, vol. 10 (Beirut: Dar al-Ma'rifah, 1993).

¹⁵ Y Al-Qardawi, *Fiqh Al-Zakat: A Comparative Study* (Islamic Book Trust, 1999).

¹⁶ (Ibn Qudamah, 1997)

carried out by the Prophet Muhammad in the form of a mosque and a water source, which were then utilized by the community. Over time, the concept of waqf developed and began to be implemented in various forms, including in the field of education. During the Caliphate, many schools and educational institutions were established using waqf funds, which shows the importance of the role of waqf in the development of education in the Islamic world.

After the Caliphate, many large educational institutions were established and survived for a long time due to the support of waqf, some examples of which are;

1. Al-Azhar University, in Cairo, Egypt.

It is one of the oldest educational institutions in the world that stands and survives until today thanks to a strong waqf system. Since its founding in 970 AD, Al-Azhar has acquired various forms of waqf, including agricultural land, houses, shops, and even learning equipment, all of which are used to support academic activities, student welfare, and the development of science.¹⁷ These waqfs are managed by professional nazhirs appointed by the government or institutional managers, with an administrative system that has developed since the Mamluk and Ottoman eras. During its heyday, Al-Azhar's funding came almost entirely from waqf management, without relying on royal or state funds.¹⁸ It is this waqf-based funding model that has enabled Al-Azhar to provide free education to millions of students from around the world to this day.

2. Al-Qarawiyyin University in Fez, Morocco.

Founded by Fatimah al-Fihri in 859 CE, it is one of the oldest educational institutions in the world that continues to operate today. The university's survival has historically relied heavily on the waqf system. Al-Qarawiyyin's waqf resources include agricultural land, shops, lodgings, and even manuscripts and scientific books donated by Muslim scholars and businesspeople.¹⁹ The waqf was used to finance teachers' salaries, provide learning facilities, and fund social and scientific

¹⁷ (Islahi, 2014)

¹⁸ (Hoexter, 1998)

¹⁹ (Islahi, 2014)

activities. According to historical reports, the management of the Al-Qarawiyyin waqf was carried out independently with an orderly administrative structure, making this university an independent and sustainable center of science.²⁰ This model shows that waqf has a central role in the development of Islamic higher education historically.

3. Zaitunyah University (al-Zaytuna) in Tunis, Tunisia.

It is one of the oldest centers of Islamic knowledge that was established in the 8th century AD. The sustainability and glory of this institution are highly dependent on the waqf system. Zaitunyah's waqf sources include agricultural land, rental houses, shops, and libraries donated by local philanthropists and elites to support academic and socio-religious activities.²¹ The funds from the waqf were used to pay lecturers, provide accommodation for students, and expand the university and mosque buildings. In addition, many great scholars also donated rare books and manuscripts as a contribution to science²². The waqf structure in Zaitunyah is managed autonomously by a council of scholars and waqf administrators, making it an independent and sustainable model of Islamic education financing throughout history.

4. Darussalam Gontor Modern Islamic Boarding School (PMDG). Indonesia.

Established in 1926 in Ponorogo, East Java, it is a successful example of an independent and sustainable waqf-based Islamic educational institution. In 1958, its three founders, known as Trimurti—KH Ahmad Sahal, KH Zainuddin Fannani, and KH Imam Zarkasyi—officially donated this Islamic boarding school to Muslims through a waqf deed and established the Gontor Waqf Board as a legal institution that manages all of the assets and policies of the Islamic boarding school.²³ Gontor's waqf sources are very diverse, ranging from Islamic boarding school land, dormitory buildings, mosques, agricultural land, to productive business

²⁰ George Makdisi, "The Rise of Colleges: Institutions of Learning in Islam and the West," *Edinburgh University Press*, 1981.

²¹ (Islahi, 2014)

²² (Berkey, 1992)

²³ (Abdullah, 2013)

units such as shops, printing houses, and student cooperatives. Higher education institutions such as the Darussalam Islamic Study Institute (ISID) and Darussalam University (UNIDA) Gontor are also under waqf management. All proceeds from the management of these assets are used to fund student education, teacher salaries, development of infrastructure, and scholarships for underprivileged students²⁴. The uniqueness of Gontor's waqf system lies in its collective management and the principle of "the pondok does not belong to the kiai, but to the people". Waqf is not inherited by the founder's descendants, but is managed by a waqf board that is elected independently and collegially. This pattern makes Gontor not dependent on government assistance or foreign donors, but grows with waqf-based economic independence.²⁵. This system has become an ideal model for managing educational endowments in Indonesia.

In the contemporary era, contemporary scholars such as Dr. Monzer Kahf²⁶ emphasize the importance of revitalizing educational waqf as an instrument of community empowerment and a supporter of human development. Even new forms, such as cash waqf, are becoming a modern solution to reach urban communities and formal financial systems.

2. Educational Endowments According to Positive Law in Indonesia

Waqf is one of the financial and social instruments that have existed for a long time in Islamic tradition. In Indonesia, waqf is not only understood as a tool to raise funds for social activities, but also as a means to improve the quality of public education. In this context, educational waqf becomes very important, especially considering the challenges faced by the education system in Indonesia. With the increasing need for quality education, educational waqf is expected to make a significant contribution to meeting these needs. Educational waqf in positive law in

²⁴ M Fathurrahman, "Sistem Wakaf Produktif Dalam Kemandirian Pondok Pesantren Modern Gontor," *Jurnal Ekonomi Syariah Teori Dan Terapan* 5, no. 4 (2018): 295–308.

²⁵ (Lubis, 2020)

²⁶ Monzer Kahf, "The Role of Waqf in Improving the Ummah Welfare," *Paper Presented in International Seminar on Waqf as a Private Legal Body*, 2003.

Indonesia is regulated in Law Number 41 of 2004 concerning Waqf (Law of the Republic of Indonesia Number 41 of 2004, 2004). According to Article 1, number 1 of the Law, waqf is defined as a legal act carried out by a person or group of people who hand over part of their property to be used for the public interest by Sharia. This definition shows that waqf is not only an act of philanthropy but also a legal act that has power and legitimacy in the eyes of the law.

In the context of education, waqf can be divided into several types, including cash waqf, goods waqf, and productive waqf. Cash waqf is a waqf in the form of cash that can be used to fund various educational activities, such as building school buildings, providing learning facilities, or providing scholarships. Meanwhile, goods waqf includes waqf in the form of movable or immovable goods, such as land, buildings, or educational equipment. These goods can be used for educational purposes, for example, by building schools or other academic institutions. Productive waqf refers to assets that are donated to generate income that can be used to fund educational activities.

An example is land that is rented for commercial activities, and the rental income is used to support educational institutions. Government Regulation Number 42 of 2006 is a guideline for the implementation of Law No. 41 of 2004, which regulates in detail the procedures, management, and use of waqf assets, including educational waqf (Government Regulation of the Republic of Indonesia Number 42 of 2006, 2006). The articles contained in the regulation explain the procedures for registering waqf, managing waqf assets, as well as the rights and obligations of the parties involved in waqf. One of the essential things regulated in this regulation is the need for transparency and accountability in the management of waqf assets. This aims to ensure that waqf assets are used following the intentions and objectives of the wakif (the person who is the waqif). With clear regulations, it is hoped that the management of educational waqf can be carried out effectively and efficiently, so that the benefits can be felt by the wider community.

Educational endowments have various significant benefits, both for individuals and society as a whole. One of the main benefits of educational endowments is

increasing access to education. With educational endowments, underprivileged communities can have better access to education. For example, with the presence of school buildings that are donated, children from disadvantaged families can go to school without having to think about the cost of renting the building. In addition, endowments can also be used to provide better educational facilities, such as laboratories, libraries, and sports facilities. This will undoubtedly contribute to improving the quality of education received by students. Educational endowments also provide opportunities to provide scholarships to students or students who excel, but are financially disadvantaged. These scholarships can help them continue their education to a higher level. By increasing access and quality of education, educational endowments contribute to the development of quality human resources. This is very important for national development, especially in facing the challenges of globalization and competition in the job market. In addition, educational endowments can also be used to support other social activities, such as skills training, seminars, and workshops that can improve the abilities and knowledge of the community.

Although educational waqf has many benefits, there are several challenges that need to be faced in its management. One of the main challenges is the lack of public awareness of the concept of waqf and its benefits, especially in the context of education. Therefore, socialization and education efforts are needed to increase public awareness of the importance of waqf. Another challenge is unprofessional management. In some cases, the management of waqf assets is not carried out professionally, resulting in the waqf assets not being utilized optimally. It is essential to involve competent institutions in the management of educational waqf so that it can be carried out correctly. In addition, regulations that are not yet optimal are also a challenge in the management of educational waqf. Although there are already regulations governing waqf, there are still several aspects that need to be improved so that the management of educational waqf can be carried out more effectively. Competition with other funding sources is also a challenge, where in some cases, educational waqf competes with different funding sources, such as government funds

or donations from the private sector. This can reduce public interest in waqf, especially if they feel that there are already sufficient funds available for education.

To overcome the existing challenges and increase the potential of educational waqf, several efforts can be made. First, it is essential to educate and socialize the community about the concept of waqf, its benefits, and how to make a waqf. This can be done through seminars, workshops, and social media campaigns. Second, it is necessary to increase professionalism in the management of educational waqf, for example, by involving institutions that have experience and competence in this field. Training for waqf managers can also help improve their abilities. Third, the government can evaluate existing regulations and simplify them to facilitate the registration and management process of waqf. With simpler regulations, it is hoped that more people will be willing to make a waqf. Fourth, building collaboration with the private sector can be one way to increase funds available for education. For example, companies can be invited to participate in educational waqf programs as part of their corporate social responsibility (CSR).

To provide a clearer picture of the implementation of educational waqf, there are several case studies that have been successfully implemented in Indonesia. One of them is the Waqf of the Islamic University of Indonesia (UII), which is an educational institution that has succeeded in managing waqf effectively. Through the waqf program, UII has succeeded in building various educational facilities, including lecture buildings, laboratories, and sports facilities. In addition, UII also provides scholarships to outstanding students through waqf funds managed by²⁷. Another example is the elementary school endowment in Yogyakarta, where there are several elementary schools established through endowments. These schools provide free education to children from underprivileged families. The management of the endowment is carried out by a transparent and accountable foundation, so that the community can see directly the benefits of the endowment given.²⁸. In Jakarta, there are a number of

²⁷ A Mardani, "Wakaf Pendidikan: Konsep Dan Implementasi Di Indonesia," *Jurnal Hukum Dan Pembangunan* 48, no. 3 (2018): 345–60.

²⁸ A Sukardi, "Peran Wakaf Dalam Meningkatkan Akses Pendidikan Di Indonesia," *Jurnal Pendidikan Dan Kebudayaan* 4, no. 1 (2019): 23–34.

institutions that manage productive waqf, where the land that is donated is rented for commercial activities. The rental income is used to fund the education of underprivileged children. This model has proven effective in creating a sustainable source of funding for education.²⁹

Overall, educational waqf in positive law in Indonesia has a vast potential to improve the quality and access of education for the community. With clear regulations and professional management, educational waqf can provide significant benefits in human resource development. Although there are challenges to be faced, educational efforts, increasing professionalism, and collaboration with the private sector can be strategic steps to optimize the potential of educational waqf. Thus, educational waqf is not only a tool to meet educational needs, but also contributes to sustainable social and economic development in Indonesia.

3. Comparison of Fiqh and Positive Law Regarding Educational Waqf

A comparative analysis between fiqh and positive law shows that both have common ground in terms of good intentions and public welfare, but also have differences in formal and operational legal aspects.

In the practice of waqf, there are conceptual and procedural differences between the perspectives of fiqh and positive law applicable in Indonesia. Fiqh emphasizes that the primary purpose of waqf is for the welfare of the people, based on spiritual values and orientation to the afterlife. Waqf is understood as a form of ongoing charity that provides continuous rewards as long as its benefits are still felt by the community.³⁰ In this case, waqf functions as a means of worship that connects social concerns with the afterlife. In contrast, positive law views waqf as a legal and social instrument that is directed towards general welfare administratively. Law Number 41 of 2004 concerning Waqf places waqf within a structured, legal, and measurable national development framework.³¹

²⁹ M Zainuddin, "Wakaf Produktif Dalam Pembangunan Pendidikan Di Indonesia," *Jurnal Ekonomi Syariah* 5, no. 2 (2020): 45–58.

³⁰ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

³¹ Ali, *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia*.

The difference is also seen in terms of authority. In fiqh, the scientific authority lies with the ulama and fuqaha who determine the law of waqf through ijihad and fatwa, while in positive law, the state holds the authority through formal institutions such as the Indonesian Waqf Board (BWI), religious courts, and Waqf Pledge Deed Making Officers.³² This state authority is tasked with regulating, supervising, and ensuring legal certainty regarding the implementation of waqf.

In terms of the legality of property, Islamic jurisprudence requires sufficient intention and pledge from the wakif to make the waqf valid. This process is considered complete according to Islamic law even without formal registration or a certificate of ownership. In the view of classical Islamic law, a waqf pledge made with sincere intention and witnessed by the community is strong enough to be legally binding.³³ On the other hand, according to positive law, a new waqf is considered valid if it has been made through a waqf oath deed before an authorized official and officially recorded by the relevant institution. Land or assets that are waqf must also be certified to have permanent legal force and avoid disputes in the future.³⁴

The responsibility of the nadzir also shows two different approaches. In fiqh, the nadzir acts as a manager of the trust who is spiritually and morally responsible to Allah. Therefore, honesty, sincerity, and sincerity are the main benchmarks in carrying out the duties of the nadzir. Accountability in this perspective is more vertical, namely between humans and God.³⁵ Meanwhile, in positive law, nadzir is required to have administrative capacity, prepare financial reports, create asset management plans, and submit periodic reports to the authorities. Nadzir can also be subject to legal sanctions if proven to have misused waqf assets.³⁶

In resolving disputes, fiqh relies on sharia mechanisms, such as settlement through hisbah or mediation based on ulama. This path is generally taken in traditional communities or Islamic boarding schools that still hold tightly to religious social

³² (Syafi'i, 2018)

³³ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

³⁴ (Fauzi, 2020)

³⁵ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

³⁶ (Yahya, 2022)

structures. Settlement is carried out with the principle of social justice and consideration of the benefit³⁷. In positive law, dispute resolution is carried out through formal channels in religious courts or civil courts, depending on the type and form of the case. This procedure is considered to provide legal certainty and protection for all parties, especially when it comes to land ownership or significant waqf economic value.

Despite their different approaches, both legal systems have the same goal, namely, to maintain the sustainability of waqf as a form of community contribution to social and educational development. Fiqh provides the foundation of values and spirituality, while positive law provides legal guarantees and legal protection mechanisms. Therefore, it is essential to build integration between the two so that the implementation of waqf, especially educational waqf, can take place legally according to religion and legally strong in the state. The comparison can be seen briefly in the following table:

Table 1. Comparison of Educational Waqf According to the Perspective of Fiqh and Positive Law

Aspect	Fiqh Perspective	Positive Legal Perspective
Objective	Benefit of the people, spiritual approach	Public welfare, administrative approach
Authority	Scholars, jurists, and fatwas	Country, BWI, court
Legality of Property	It is enough with the intention and statement of the waqif	Must be officially registered, a waqf certificate, waqf pledge deed
Responsibilities of Nadzir	Spiritual and moral accountability	Legal and administrative accountability
Dispute Resolution	Through Islamic law, hisbah	Through religious and civil courts

Source: Author's Elaboration

³⁷ Nasution, "Sinkronisasi Hukum Wakaf Nasional Dan Syariah."

This difference is not to be disputed, but rather to be synergized to ensure that sharia principles are maintained without ignoring the formal legal aspects that apply in Indonesia. The integration of these two approaches is a middle ground that is a solution, as proposed by Wahbah al-Zuhaili, that fiqh must be able to be contextual with the legal system of a modern state.³⁸

Conclusion

The conclusion of the research results on educational waqf from the perspective of fiqh and positive law shows that educational waqf has a vital role in developing human resources and increasing access to education in society. From the standpoint of fiqh, waqf is considered a form of ongoing charity that has high spiritual value, where the benefits can be sustained by society. The fuqaha, such as Imam al-Sarakhsi and al-Qardawi, emphasize the importance of educational waqf as a means to spread knowledge and empower society. Thus, educational waqf not only functions as a tool to meet academic needs, but also as a long-term investment that provides benefits for future generations.

On the other hand, positive law in Indonesia, as regulated in Law Number 41 of 2004 and Government Regulation Number 42 of 2006, provides a clear legal framework for the management of educational waqf. Positive law emphasizes the importance of transparency, accountability, and professional management in the implementation of waqf. Although there are differences in approach and procedure between fiqh and positive law, both have the same goal in maintaining the sustainability of waqf as a contribution of the community to social and educational development.

Through comparative analysis, it is seen that the integration between the perspectives of fiqh and positive law can provide a comprehensive solution for the management of educational waqf. The fiqh approach provides a foundation of values and spirituality, while positive law provides legal guarantees and legal protection mechanisms. Therefore, it is crucial to build synergy between these two approaches so

³⁸ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

that the implementation of educational waqf can take place legally from a religious perspective and be legally strong in the state. Thus, educational waqf is expected to contribute significantly to improving the quality of education and empowering the community, as well as becoming a model for sustainable waqf management in Indonesia.

BIBLIOGRAPHY

- Abdullah, Teguh. *Jejak Langkah Gontor: Napak Tilas Trimurti Pendiri Pondok Modern Gontor*. Ponorogo: Gontor Press, 2013.
- Al-Qardawi, Y. *Fiqh Al-Zakat: A Comparative Study*. Islamic Book Trust, 1999.
- Al-Sarakhsi, Muhammad bin Ahmad. *Al-Mabsut*. Vol. 10. Beirut: Dar al-Ma'rifah, 1993.
- Ali, Zainal. *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia*. Jakarta: Sinar Grafika, 2011.
- Az-Zuhaili, Wahbah. *Al-Fiqh Al-Islami Wa Adillatuhu*. Vol. 5. Damaskus: Dar al-Fikr, 2002.
- Berkey, Jonathan P. *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education*. Princeton: Princeton University Press, 1992.
- Effendi, Ahmad M. "Optimalisasi Wakaf Pendidikan Di Era Modern." *Jurnal Abkam* 20, no. 2 (2020): 134–49.
- Fathurrahman, M. "Sistem Wakaf Produktif Dalam Kemandirian Pondok Pesantren Modern Gontor." *Jurnal Ekonomi Syariah Teori Dan Terapan* 5, no. 4 (2018): 295–308.
- Fauzi, Ahmad. "Problematika Sertifikasi Tanah Wakaf Untuk Lembaga Pendidikan." *Al-Abkam: Jurnal Syariah Dan Hukum Islam* 8, no. 1 (2020): 55–70.
- Hoexter, Miriam. *Endowments, Rulers and Community: Waqf Al-Haramayn in Ottoman Algiers*. Leiden: Brill, 1998.
- Ibn Qudamah, A. *Al-Mughni*. Dar al-Kutub al-Ilmiyyah, 1997.
- Islahi, Abdul Azim. *History of Waqf and Its Administration in the Muslim World*. Jeddah: Islamic Research and Training Institute, 2014.

- Kahf, Monzer. "The Role of Waqf in Improving the Ummah Welfare." *Paper Presented in International Seminar on Waqf as a Private Legal Body*, 2003.
- Lubis, M. "Revitalisasi Wakaf Pendidikan Berbasis Pesantren: Studi Kasus Gontor." *Jurnal Al-Tawassuth* 8, no. 2 (2020): 110–25.
- Makdisi, George. "The Rise of Colleges: Institutions of Learning in Islam and the West." *Edinburgh University Press*, 1981.
- Mardani, A. "Wakaf Pendidikan: Konsep Dan Implementasi Di Indonesia." *Jurnal Hukum Dan Pembangunan* 48, no. 3 (2018): 345–60.
- Muslich, Mohammad. "Pengelolaan Wakaf Produktif Oleh Universitas Islam Indonesia." *Jurnal Ekonomi Dan Bisnis Islam* 3, no. 1 (2019): 89–102.
- Nasution, Ahmad. "Sinkronisasi Hukum Wakaf Nasional Dan Syariah." *Journal of Islamic Law and Culture* 2, no. 2 (2017): 76–91.
- Sukardi, A. "Peran Wakaf Dalam Meningkatkan Akses Pendidikan Di Indonesia." *Jurnal Pendidikan Dan Kebudayaan* 4, no. 1 (2019): 23–34.
- Syafi'i, Ahmad. *Hukum Wakaf Dan Perundang-Undangan Di Indonesia*. Jakarta: Prenadamedia, 2018.
- Yahya, Muhammad. "Digitalisasi Wakaf Dan Peran BWI Dalam Menyambut Era Industri 4.0." *Jurnal Wakaf Indonesia* 4, no. 1 (2022): 21–39.
- Zainuddin, M. "Wakaf Produktif Dalam Pembangunan Pendidikan Di Indonesia." *Jurnal Ekonomi Syariah* 5, no. 2 (2020): 45–58.