



LEGAL PROTECTION OF WAKAF ASSETS IN INHERITANCE DISPUTES

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ABSTRACT

This study aims to analyze the form of legal protection for waqf assets that are the object of inheritance disputes from the perspective of Indonesian positive law and Islamic legal principles. The focus of this research lies in the legal regulations that guarantee the continuity of the status of waqf assets so that they do not return to being part of the inheritance that can be claimed by the heirs. This study uses a normative legal research method with a statute approach and a conceptual approach. The data used are in the form of primary, secondary, and tertiary legal materials obtained through literature studies, then analyzed qualitatively using descriptive-analytical methods to understand the relationship between applicable legal norms and waqf dispute issues in practice. The results of the study indicate that the legal system in Indonesia provides strong legal protection for waqf assets through the recognition of changes in ownership status after the waqf pledge, the prohibition of transfer or inheritance of waqf assets as regulated in Law Number 41 of 2004 concerning Waqf, and supervision of waqf management by nazhir and state institutions such as the Indonesian Waqf Board. Furthermore, Islamic legal principles such as *taḥbīs al-aṣl wa taṣbīl al-manfa'ah* and protection of the will of the waqif are important foundations for maintaining the sustainability of waqf benefits for the community. This study also found that waqf disputes related to inheritance are generally triggered by weak waqf administration and a lack of public understanding of the principle of waqf permanence. The implications of this study demonstrate the importance of strengthening the waqf administration system, increasing public legal literacy, and optimizing the role of waqf management institutions to ensure legal certainty and the sustainability of waqf's social function as an instrument of public welfare.

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1. INTRODUCTION

Waqf is a philanthropic instrument within the Islamic legal system, possessing social, economic, and spiritual dimensions that are integrated into the lives of Muslim communities (Amirudin & Mardianto, 2025; Tavera et al., 2025). Conceptually, waqf is understood as the act of holding assets for sustainable use for the public interest with the aim of realizing the welfare of the community (*maslahah al-'ammah*) (Cahyani & Yulianti, 2025; Hidayat et al., 2023). From an Islamic economic perspective, waqf is not only interpreted as an individual practice of worship with spiritual value, but also as a wealth distribution mechanism that serves to strengthen social justice and collective solidarity within society.

Throughout the history of Islamic civilization, the institution of waqf has played a significant role in supporting various public sectors, such as education, healthcare, social facilities, and religious activities (Fitriyani et al., 2025; Luthfi, 2026). This demonstrates that waqf not only represents a vertical relationship between humans and God, but also contains a social dimension that emphasizes the importance of shared well-being. Therefore, waqf can be viewed as a socio-economic instrument with strategic potential in strengthening the social welfare system in a sustainable manner (Rohman & Ulum, 2025).

In the context of Indonesia, the country with the largest Muslim population in the world, waqf holds a strategic position in supporting social and economic development (Afrianto, 2026; Amirudin & Mardianto, 2025). The value of social justice, the ideological foundation of Pancasila, aligns with the principle of distribution of benefits embodied in the concept of waqf. Through productive and sustainable management of waqf assets, waqf has the potential to become an alternative funding source for the provision of various public facilities, such as education, healthcare, and economic empowerment of the community. This potential demonstrates that waqf not only has a spiritual dimension but also has a transformative socio-economic function for the welfare of society.

However, optimizing the role of waqf depends heavily on the existence of a legal system and institutional governance capable of guaranteeing legal certainty and protecting waqf assets. Without strong legal protection, the social function of waqf has the potential to be disrupted by various legal issues that arise in practice in society.

One issue that frequently arises is disputes regarding the status of waqf assets when they intersect with inheritance law. This conflict typically arises when heirs question the legitimacy or boundaries of the assets donated by the waqf owner (Fajrin, 2022). This situation creates tension between the spiritual orientation of waqf as a permanent charity (charity jariah) and the civil interests of the heirs, which are based on ownership rights. Such disputes not only trigger legal conflicts but also have the potential to disrupt the sustainability of the waqf's social function if not resolved appropriately.

Inheritance disputes involving waqf assets are generally triggered by low public legal literacy regarding the legal status of waqf, administrative ambiguity such as the absence of a Waqf Pledge Deed (AIW), and weak oversight of waqf management by the nadzir (Al-Anshori, 2025). In a number of cases, heirs attempt to reclaim the waqf assets due to the lack of formal evidence confirming that the assets have been legally transformed into waqf assets. This situation indicates that the administrative and institutional governance of waqf is still not functioning optimally. Furthermore, coordination between institutions authorized to manage waqf, such as the Indonesian Waqf Board, the Ministry of Religious Affairs, and religious courts, is often not effectively integrated (Fitri, 2025; Hidayatullah & Saiin, 2025). This lack of synergy has the potential to lead to overlapping authority and delay the resolution of disputes related to waqf assets.

Legally, waqf in Indonesia has a strong legal basis through Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning the Implementation of Waqf (Lubis & Nasution, 2025). These regulations emphasize that once the waqf pledge is legally made, the ownership status of the assets changes from private property to waqf assets for the benefit of the community. Therefore, they cannot be inherited, sold, or transferred in any form. This provision aims to maintain the permanence of the social function of waqf so that its benefits continue to benefit the community. However, in practice, these regulations have not been able to fully prevent waqf property disputes, particularly those related to inheritance claims from the waqf's family.

Several previous studies have examined the management and legal protection of waqf. Lubis & Nasution (2025) demonstrated that a weak administrative system can trigger conflict between waqf managers and the community. Abasi (2024) found that waqf disputes are often triggered by a lack of formal documentation and an integrated asset registration system. Meanwhile, Evrytanadha & Erma (2024) emphasized the importance of the role of supervisory institutions in maintaining accountability and preventing misuse by nadzir (religious administrators). However, most studies have focused on institutional management aspects and have not specifically addressed the legal protection of waqf property in inheritance disputes.

Based on previous research, there remains a research gap regarding the relationship between waqf law and inheritance law in the protection of waqf assets. Most previous studies have focused more on economic management and optimization of waqf utilization, while legal conflicts between waqf and inheritance are still rarely discussed, even though disputes between heirs and waqf managers occur quite frequently in society.

The novelty of this research lies in its analysis of legal protection for waqf assets in inheritance disputes through an integrative approach between Islamic law and positive law in Indonesia. This research examines not only the normative aspects of waqf regulations but also their implementation in conflicts between heirs and waqf managers, including preventive and repressive legal protection mechanisms to prevent unauthorized claims or transfers.

This research aims to analyze the forms and mechanisms of legal protection for waqf assets in inheritance disputes based on Islamic law and positive law in Indonesia. It also identifies the factors causing these disputes and the role of relevant institutions in resolving them, thereby strengthening legal certainty and the sustainability of waqf's social function in society.

2. RESEARCH METHODS

This study employs a normative legal research approach, focusing on the study of legal norms enshrined in legislation, legal doctrine, and various other written legal sources (Sukmawan & Damayanti, 2025; Wiraguna, 2024). Normative legal research positions law as a system of norms that regulate human behavior in social life. Therefore, the primary object of this study is secondary legal materials obtained through library research. This approach is used to systematically analyze various legal provisions relating to the legal protection of waqf assets in inheritance disputes. Therefore, this study does not collect data through fieldwork, but rather emphasizes the analysis of relevant legal sources to gain a comprehensive understanding of the issues under study.

The research approaches employed in this study consist of a statutory approach and a conceptual approach. The statutory approach examines various regulations related to waqf and inheritance as a normative basis for analyzing the research problem. The regulations reviewed include Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, and provisions relating to waqf and inheritance in the Compilation of Islamic Law (KHI) (Aslina & Addieningrum, 2022). Meanwhile, a conceptual approach is used to analyze various legal concepts and doctrines developed in Islamic legal literature and positive law regarding the legal protection of waqf assets. Through this approach, the research seeks to understand the concept of waqf, the principles of legal protection, and the relationship between waqf and inheritance from a theoretical perspective.

The legal materials used in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are the main legal sources with legally binding force, including the Civil Code, Law Number 41 of 2004 concerning Waqf, and Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf (Choeri, 2022). Furthermore, this research also refers to Islamic legal provisions relating to waqf as stipulated in the Compilation of Islamic Law. Secondary legal materials include various scientific literature that provides explanations and analysis of primary legal materials, such as law books, scientific articles, legal journals, research results, and academic works relevant to the topic of legal protection for waqf assets. Meanwhile, tertiary legal materials are used as supplementary materials to provide additional explanations of specific legal terms or concepts, such as legal dictionaries and the Great Indonesian Dictionary.

The collection of legal materials in this research was conducted through library research by exploring, identifying, and compiling various legal sources relevant to the research problem. The obtained legal materials were then inventoried, classified by type and relevance, and systematically reviewed to understand the regulations on waqf and the legal protection mechanisms for waqf assets in inheritance disputes.

The analysis of the legal materials was conducted qualitatively using a descriptive-analytical method, namely by interpreting and reviewing the collected legal materials to identify the relationship between applicable legal norms and the research problem (Nadia et al., 2025). The analysis process was conducted systematically and logically, resulting in a comprehensive understanding of the legal protection of waqf assets in inheritance disputes, which was then formulated in the form of legal arguments to answer the research problem formulation and draw conclusions.

3. RESULT AND ANALYSIS

Legal Protection of Waqf Assets in Inheritance Disputes

In Indonesia's positive legal system, waqf is viewed as a legal act that results in a change in the ownership status of property from the waqif's personal ownership to assets allocated for religious purposes and public welfare (Ayuandika et al., 2022). This provision is affirmed in Law Number 41 of 2004 concerning Waqf, which states that waqf is a legal act by a waqif to separate and/or transfer a portion of his or her property for permanent or specified use in accordance with sharia principles. Once the waqf pledge is pronounced before the Waqf Pledge Deed Making Officer (PPAIW), the property is legally no longer the property of the waqif but becomes waqf assets managed by a nazhir (guardian) in accordance with the waqif's stated objectives (Mauliyani, 2022).

This change in legal status demonstrates that waqf not only has a religious dimension but also constitutes a civil legal act with binding legal consequences. From a legal perspective, once the waqf declaration is made, the waqif's ownership rights over the property are permanently lost (Mughtar et al., 2025). Consequently, the property is no longer considered personal property that can be inherited by heirs. This principle aligns with Article 3 of Law Number 41 of 2004 concerning Waqf, which stipulates that a declared waqf cannot be revoked.

Legal protection for waqf assets in the context of inheritance disputes is further strengthened by Article 40 of the law. This article states that waqf assets are prohibited from being used as objects of sale, gift, inheritance, collateral, confiscation, or other forms of transfer of rights. This provision demonstrates that Indonesian positive law provides strong protection for the continued status of waqf assets, preventing them from reverting to personal property, open to dispute by heirs. This prohibition is intended to maintain the continued social function of waqf as a means of worship and community welfare.

To provide a more systematic overview of legal protection for waqf assets, these provisions can be seen in the following table.

Table 1. Forms of Legal Protection for Waqf Assets.

Protection Aspect	Legal Provision	Legal Implication
Change of ownership status	Article 1 and Article 3 of the Waqf Law	Waqf property is no longer owned by the wakif after the waqf declaration (ikrar wakaf) is made
Prohibition of transfer	Article 40 of the Waqf Law	Waqf property may not be sold, inherited, granted, or used as collateral
State supervision	Role of the Ministry of Religious Affairs and the Indonesian Waqf Board	Ensures that waqf management is carried out in accordance with the objectives of the waqf
Legal sanctions	Article 67 of the Waqf Law	Illegal transfer of waqf property may result in criminal sanctions

In addition to normative protection through statutory regulations, waqf law in Indonesia also places the nazhir (Islamic trustee) as the party responsible for managing and maintaining the sustainability of waqf assets. The nazhir has the legal legitimacy to reject any claim of ownership over waqf assets, including claims filed by the waqif's heirs. With this legitimacy, the nazhir functions as both the manager and protector of the waqf's continued function.

From an academic perspective, waqf is understood as a legal institution with both a religious and socio-economic dimension. According to a study by Tavera et al. (2025), waqf is an instrument of Islamic philanthropy that serves to ensure the sustainable distribution of economic benefits to the community. Therefore, the permanent status of waqf assets is a fundamental principle that cannot be changed. Similarly, research by Dzimar et al. (2026) shows that most waqf disputes in Indonesia arise from a lack of clear waqf administration, such as the absence of a Waqf Pledge Deed (AIW) or the failure to register the waqf in land administration.

The research findings indicate that inheritance disputes involving waqf assets are generally not caused by weak legal norms, but rather by the weak implementation of waqf administration in society. Therefore, the waqf administration system plays a crucial role in providing legal protection for waqf assets. This can be seen in the following table.

In judicial practice, religious courts generally reject heirs' claims to waqf assets if a valid waqf pledge can be proven. Judges typically refer to the provisions of Law Number 41 of 2004 concerning Waqf and the principles of waqf law, which emphasize that waqf assets are permanent and non-inheritable. This demonstrates that the national legal system provides strong legal certainty regarding the existence of waqf assets.

Conceptually, the permanent character of waqf assets also aligns with the classical principle of Islamic law known as *taḥbīs al-aṣl wa tasbīl al-manfa'ah*, which refers to retaining the principal of waqf assets and channeling their benefits to the benefit of society (Ayundika et al., 2022). This principle emphasizes that waqf assets may not be transferred to anyone, including through inheritance mechanisms. Therefore, legal protection for waqf assets aims not only to maintain legal certainty of ownership but also to ensure the continuity of waqf's social benefits for society.

Based on this description, it can be concluded that legal protection for waqf assets in inheritance disputes in Indonesia is realized through several main mechanisms: legal recognition of changes in ownership status after the waqf declaration, prohibition on the transfer or inheritance of waqf assets, and state oversight through waqf management institutions. Through these mechanisms, waqf law in Indonesia strives to maintain a balance between legal certainty, social benefits, and protection of the will of the waqif as the party donating the assets.

Protection of Waqf Assets in Inheritance Disputes

One of the fundamental principles of Islamic waqf law is the concept of *taḥbīs al-aṣl wa tasbīl al-manfa'ah*, which means retaining the principal of the waqf asset and channeling its benefits for both religious and public purposes (Yatazakka & Abbqary, 2026). This concept emphasizes that the substance of the waqf asset must be maintained and may not be transferred, sold, or inherited, while its benefits can be utilized sustainably according to the waqf's objectives established by the waqif. This principle serves as a normative basis explaining that waqf is not merely a religious philanthropic activity but also a legal protection mechanism for the sustainability of assets intended for the public interest.

The normative basis for this concept stems from a hadith of the Prophet Muhammad (peace be upon him) regarding the waqf of land belonging to Umar ibn al-Khattab in Khaibar. In the hadith narrated by Imam Bukhari and Imam Muslim, the Prophet (peace be upon him) instructed that the land "be retained in its principal and its proceeds given in charity." This hadith later became the primary reference in the literature on waqf jurisprudence and was agreed upon by the majority of scholars as the basic principle of the waqf institution. Through this hadith, scholars emphasized that waqf contains an element of permanence, making waqf assets non-transferable to any party after their declaration.

From a fiqh perspective, waqf is classified as *taṣarruf tabarruʿī*, a voluntary and permanent legal act (Syaifuddin & La Harisi, 2025). The legal consequence of this act is the severance of the ownership relationship between the waqif and the waqf assets. Therefore, waqf assets are no longer included in the category of *tirkah* (inheritance) or inheritance that can be inherited. Scholars from various schools of jurisprudence, including Hanafi, Maliki, Shafi'i, and Hanbali, agree that one of the conditions for a valid inheritance is that it remains in the possession of the testator upon death. If the assets were legally waqf before death, they are no longer inheritable.

Academic studies also support this view. According to Juliati & HRP (2024), waqf is an Islamic legal institution that strictly separates waqf assets from the waqif's personal ownership, preventing them from being transferred through sale, gift, or inheritance. Meanwhile, research (Wahyono, 2025) shows that the permanent character of waqf serves to maintain the sustainability of waqf's socio-economic benefits for the community in the long term.

Findings from various studies on waqf practices in Indonesia also indicate that waqf disputes related to inheritance are generally triggered by a lack of public understanding of the principle of waqf permanence and weak waqf administration. Many cases show that heirs reclaim waqf assets, considering them to still be part of the family's wealth. However, according to Islamic jurisprudence, waqf has severed the ownership relationship between the waqif and the assets.

To systematically understand the legal principles of waqf, the following is a summary of the basic principles of waqf in Islamic law.

Table 2. Basic Principles of Waqf from the Perspective of Islamic Fiqh

Principle	Explanation	Legal Implication
Taḥbīs al-Aṣl	Preserving the principal asset of the waqf so that it remains intact and is not diminished	Waqf property may not be sold or inherited
Tasbīl al-Manfa'ah	Allocating the benefits of the waqf for public and charitable purposes	The waqf is utilized for religious activities and social welfare
Permanence of Waqf	Waqf is permanent and continuous in nature	A waqf cannot be revoked once it has been formally declared
Separation of Ownership	Waqf property is separated from the ownership of the <i>wakif</i> (donor)	It is not considered part of the inheritance estate

Thus, the principle of waqf permanence has an important function as a legal protection mechanism that maintains the sustainability of waqf assets while preventing potential disputes between heirs and waqf managers.

Protection of the Will of the Wakif and the Principle of Benefit in Waqf Disputes

In addition to the principle of permanence, Islamic law also emphasizes the importance of protecting the will of the waqif (*ḥifẓ irādat al-wāqif*). This principle asserts that the waqif's intentions and objectives in waqfing his assets must be respected and consistently implemented as long as they do not conflict with Islamic law. In Islamic jurisprudence (fiqh) literature, the will of the waqif is viewed as the "soul" of the waqf institution, so that all waqf management and dispute resolution must be oriented toward fulfilling this objective.

In contemporary Islamic jurisprudence (fiqh) studies, protecting the will of the waqif is also linked to the concept of *maqāṣid al-sharī'ah*, the primary objectives of Islamic law, which encompass the protection of religion, life, intellect, descendants, and property (Fakhrudin, 2025). Waqf is directly related to the protection of property (*ḥifẓ al-māl*) while also supporting the protection of religion (*ḥifẓ al-dīn*), as many waqf are used for the construction of mosques, education, and socio-religious activities.

In the context of disputes between waqf and inheritance, Islamic law prioritizes the public interest. Islamic jurisprudence dictates that the public interest (*maṣlaḥah 'āmmah*) must take precedence over the individual interest (*maṣlaḥah khāṣṣah*) if the two conflict. Therefore, an heir's claim to waqf assets cannot be justified if it potentially diminishes the social benefits of waqf for the community.

From a socio-economic perspective, waqf plays a strategic role as an instrument for community empowerment (Mursal et al., 2024). Numerous studies have shown that waqf has the potential to be a source of social funding for the education and health sectors, as well as for the economic empowerment of the community. Therefore, the sustainability of waqf must be maintained so that its benefits can be enjoyed sustainably by society across generations. The principle of welfare in waqf is also accommodated in the Indonesian national legal system through Law Number 41 of 2004 concerning Waqf, which stipulates that waqf assets cannot be transferred, pledged, confiscated, or inherited. This regulation demonstrates the harmonization of waqf fiqh principles with the national legal system in protecting the sustainability of waqf assets.

The application of this principle is also evident in the practice of resolving waqf disputes in Religious Courts, where judges are guided not only by statutory regulations but also consider Islamic legal values as a source of material law. This approach allows for decisions that not only provide legal certainty but also reflect substantive justice and social welfare. The relationship between waqf principles and the objectives of sharia can be seen in the following table.

Table 3. Relationship between Waqf Principles and Maqāṣid al-Sharī‘ah

Waqf Principle	Sharia Objective	Form of Protection
Permanence of waqf property	Ḥifẓ al-Māl (protection of wealth)	Ensuring the sustainability and preservation of waqf assets
Protection of the <i>wakif's</i> intention	Ḥifẓ al-Dīn (protection of religion)	Safeguarding the religious purpose of the waqf
Social utilization of waqf	Maṣlaḥah ‘Āmmah (public benefit)	Providing benefits for the wider community
Prohibition of inheritance of waqf property	Social justice	Preventing conflicts between private and public interests

Based on this description, it can be concluded that Islamic law provides strong protection for waqf assets through two main mechanisms: the principle of permanence of waqf assets and the protection of the waqif's will, which is oriented towards the public good. These two principles not only guarantee the continued benefits of waqf but also serve as instruments to prevent conflicts between the individual interests of the heirs and the social interests inherent in waqf. Thus, waqf, from an Islamic legal perspective, is an institution that integrates the dimensions of worship, social justice, and legal protection in a sustainable manner.

4. CONCLUSION

This research demonstrates that legal protection for waqf assets in inheritance disputes in Indonesia has a strong normative basis in both positive law and Islamic legal principles. Once the waqf pledge is legally pronounced, the status of the asset's changes from the waqif's personal ownership to waqf assets designated for religious purposes and public welfare. Consequently, waqf assets can no longer be inherited, sold, donated, or transferred in any form, as stipulated in Law Number 41 of 2004 concerning Waqf. The findings of this research demonstrate that most inheritance disputes involving waqf assets are not caused by weak legal norms, but rather by a lack of public understanding and weak waqf administration, such as the absence of a Waqf Pledge Deed or irregular waqf registration. An important lesson to be learned from this research is that legal certainty and orderly waqf administration are key factors in maintaining the sustainability of waqf's social function and preventing conflict between heirs and waqf administrators.

This study contributes academically by strengthening the understanding of the relationship between waqf law from an Islamic legal perspective and Indonesian positive law in providing protection for waqf assets that are the object of inheritance disputes. This study confirms that the national legal system has accommodated the principles of waqf fiqh, such as the principle of *taḥbīs al-aṣl wa tasbīl al-manfa‘ah* and protection of the will of the waqif, which is oriented towards the public interest. With a normative approach that examines legislation, legal doctrine, and academic literature, this study enriches the literature on waqf legal protection in the context of inheritance disputes. However, this study has limitations because it only uses a normative approach based on library studies without involving field research, so it does not empirically describe the practice of waqf disputes in society. Therefore, further research is recommended to use an empirical approach with a wider coverage of regions and respondents, so that it can provide a more comprehensive picture of the social, cultural, and administrative factors that influence the occurrence of waqf disputes and become the basis for formulating more effective waqf management policies in the future.

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