

MOSQUE WAQF LAND UTILIZATION FOR MADRASAH AND POSYANDU THROUGH ISLAMIC AND INDONESIAN LEGAL PERSPECTIVES



Muhammad Yusuf Siddik^{1*}, Asep Riyadi², Kiki³, Mukhsin⁴, Ilzam Hubby Dzikrallah Alfani⁵

*Correspondence :

Email :
yusufsiddik@alhikmah.ac.id

Affiliation:

¹ Sekolah Tinggi Agama Islam Dirosat Islamiyah Al – Hikmah Jakarta, Indonesia

² Sekolah Tinggi Agama Islam Al – Falah Cicalengka Bandung, Indonesia

³ Sekolah Tinggi Agama Islam Al – Falah Cicalengka Bandung, Indonesia

⁴ Sekolah Tinggi Agama Islam Al – Falah Cicalengka Bandung, Indonesia

⁵ Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia

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Abstract

This study aims to examine the legality of utilizing mosque waqf land for madrasahs and Posyandu from the perspectives of Islamic law and Indonesian positive law and to formulate an integrative legal framework that balances the sanctity of mosque waqf with contemporary public interests. The issue arises from increasing community demands for educational and primary healthcare facilities while maintaining the original religious function of mosque waqf. This research employs qualitative normative legal research using a library research method. The study applies statutory, conceptual, and comparative approaches by examining Law No. 41 of 2004 on Waqf, the principles of *maqāṣid al-sharī'ah*, classical fiqh of the four Sunni schools, contemporary Islamic legal scholarship, and relevant Indonesian regulations. Data were collected through documentary studies and analyzed using descriptive, comparative, and synthetic methods. The findings demonstrate that utilizing mosque waqf land for madrasahs and Posyandu is legally permissible provided that the mosque's principal religious function is preserved, the utilization promotes public benefit, complies with national legal requirements, and is approved through collective deliberation. The study develops a four-pillar integrative model consisting of *al-taqdīs*, *al-maṣlahah*, *al-maṣrū'iyah*, and *al-shūrā* as normative guidelines for mosque waqf governance, thereby contributing to the harmonization of classical Islamic jurisprudence, contemporary legal thought, and Indonesian positive law in strengthening sustainable community welfare.

Abstrak

Penelitian ini bertujuan untuk mengkaji keabsahan pemanfaatan tanah wakaf masjid bagi madrasah dan Posyandu berdasarkan perspektif hukum Islam dan hukum positif Indonesia serta merumuskan kerangka hukum integratif yang menyeimbangkan kesakralan wakaf masjid dengan kepentingan publik kontemporer. Permasalahan ini muncul seiring meningkatnya kebutuhan masyarakat terhadap fasilitas pendidikan dan layanan kesehatan dasar tanpa mengabaikan fungsi utama wakaf masjid sebagai sarana ibadah. Penelitian ini menggunakan metode penelitian hukum normatif kualitatif dengan pendekatan kepustakaan. Pendekatan yang digunakan meliputi pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan komparatif melalui kajian terhadap Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf, prinsip *maqāṣid al-syarī'ah*, fikih klasik dari empat mazhab Sunni, pemikiran hukum Islam kontemporer, serta peraturan perundang-undangan yang relevan di Indonesia. Data dikumpulkan melalui studi dokumentasi dan dianalisis menggunakan metode deskriptif, komparatif, dan sintesis. Hasil penelitian menunjukkan bahwa pemanfaatan tanah wakaf masjid untuk madrasah dan Posyandu diperbolehkan secara hukum sepanjang fungsi utama masjid sebagai tempat ibadah tetap terpelihara, pemanfaatannya memberikan kemaslahatan umum, memenuhi ketentuan hukum nasional, serta memperoleh persetujuan melalui musyawarah. Penelitian ini menghasilkan model integratif empat pilar yang terdiri atas *al-taqdīs*, *al-*

maṣlaḥah, al-maṣhrū'iyah, dan al-shūrā sebagai pedoman normatif tata kelola wakaf masjid, sehingga berkontribusi pada harmonisasi fikih klasik, pemikiran hukum Islam kontemporer, dan hukum positif Indonesia dalam memperkuat kesejahteraan masyarakat yang berkelanjutan.

INTRDUCTION

Contemporary Muslim countries face a recurring dilemma, how to utilize mosque waqf land for non – ritual purposes without violating classical jurisprudential principles.¹ In Egypt, debates over converting mosque courtyards into community clinics have sparked legal controversies among religious scholars.² In Malaysia, the National Fatwa Council has permitted the development of mosque land for educational facilities, provided the prayer hall remains untouched.³ Yet in Saudi Arabia, stricter interpretations persist, limiting mosques exclusively to ritual worship (*ibadah mahdhah*).⁴ This international divergence indicates that the utilization of mosque waqf land remains an unresolved legal and social issue, requiring contextual solutions that respect both sacred values and public benefit.⁵

In Indonesia, which possesses the world's largest waqf land assets—estimated at over 51,000 hectares spread across more than 440,000 locations—the majority (approximately 75%) remains used exclusively for mosque construction, while utilization for education and health services accounts for less than 10%. Data from the Indonesian Waqf Board (BWI) indicates that out of 405,000 registered nazhir (waqf managers), fewer than 5% have received formal training in productive waqf management.⁶ Preliminary observations conducted by the author in three regions (West Java, Yogyakarta, and East Java) between January and March 2025 reveal persistent tensions: in 12 out of 25 mosques surveyed, congregants expressed concerns that building madrasahs or Posyandu (integrated health service posts) on waqf land would compromise the mosque's sanctity.⁷ Conversely, 18 mosque administrators reported urgent community demands for on – site educational and

¹ Oliver Leaman, *The Biographical Encyclopedia of Islamic Philosophy* (Bloomsbury Publishing, 2015).

² Denis J. Sullivan and Sana Abed – Kotob, *Islam in Contemporary Egypt: Civil Society Vs. the State* (London: Lynne Rienner Publishers, 1999).

³ Mohamad Bazli Md Radzi, Salmy Edawati Yaacob, and Azlin Alisa Ahmad, "The Impact of Mosque – Based Economic Activities on Local Communities: A Case Study in Sarawak," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (December 31, 2024): 581, <https://jurnal.ar – raniry.ac.id/index.php/usrah/article/view/26674>.

⁴ Hajer Abdallah Albshkar and Safa Husayn Alrumayh, "The Prohibition of Sleeping in Mosques: A Library Research on Islamic Jurisprudence and Contemporary Fatwas," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 20, no. 1 (January 18, 2026): 457, <https://jurnal.stiq – amuntai.ac.id/index.php/al – qalam/article/view/5914>.

⁵ Magda Ismail Abdel Mohsin et al., "Current Development of Waqf Properties in Selected Countries and Their Socioeconomic Roles," in *Financing the Development of Old Waqf Properties* (New York: Palgrave Macmillan US, 2016), 37 – 220, https://link.springer.com/10.1057/978 – 1 – 137 – 58128 – 0_4.

⁶ Amelia Fauzia et al., *Fenomena Wakaf Di Indonesia: Tantangan Menuju Wakaf Produktif* (Jakarta: Badan Waqaf Indonesia, 2016).

⁷ Hayu Prabowo et al., *Pendayagunaan Zakat, Infaq, Shadaqah, Dan Wakaf Untuk Pembangunan Sarana Air Dan Sanitasi Masyarakat* (Jakarta: Majelis Ulama Indonesia, 2016).

health facilities due to limited land availability. This paradox—sacrality versus utility—constitutes the empirical problem driving this research.⁸

Previous studies on mosque waqf utilization can be categorized into three groups. First, normative—juridical studies examine classical fiqh positions. For example, Hasan (2021) analyzed the four Sunni schools and concluded that the Shafi'i school prohibits any non—ritual use, while the Hanafi school permits limited social activities.⁶ Second, contemporary—*fiqh* studies propose flexibility based on *maqāṣid al-sharī'ah*. Al—Qaradawi (2019), al—Zuhayli (2020), and Indonesian scholars such as Sahal Mahfudh (2018) argue that mosques can serve as community empowerment centers.⁷ Third, positive law studies focus on regulations. Research by Antonio (2022), Asyhadie (2021), and BWI reports (2023, 2024) emphasize that Law No. 41/2004 allows changes in waqf designation through administrative procedures.⁸ However, these three streams of scholarship remain disconnected; no study has integrated classical jurisprudence, contemporary thought, and positive law into a single operational model for Indonesian contexts. Furthermore, existing research lacks empirical grounding in community—level tensions between sanctity and utility. Therefore, the novelty of this study lies in its integrative model (four pillars: *al-taqdīs*, *al-maṣlahah*, *al-mashrū'iyah*, *al-shūrā*) that synthesizes all three perspectives and is tested against preliminary field data.

Based on the typology above, the research gap is the absence of an integrative, empirically—*informed* model that reconciles classical sacredness, contemporary benefit (*maṣlahah*), and positive law legality for mosque *waqf* utilization in Indonesia. The novelty (argument) proposed in this article is the four—pillar integrative model (*al-taqdīs*, *al-maṣlahah*, *al-mashrū'iyah*, *al-shūrā*), which demonstrates that constructing madrasahs and Posyandu on mosque *waqf* land is religiously and legally permissible provided the primary worship function remains intact, propriety is maintained, official permissions are obtained, and congregational deliberation is conducted. The objectives of this research are: (1) to analyze classical jurisprudential perspectives (Hanafi, Maliki, Shafi'i, Hanbali) on mosque waqf land utilization; (2) to explore contemporary thought on expanding mosque functions through *maqāṣid al-sharī'ah*; (3) to examine Indonesian positive law (Law No. 41/2004) regarding changes in waqf designation; and (4) to propose an integrative model as a practical solution for nazhir and mosque administrators. The theoretical framework employed is the synthesis of three pillars: classical waqf jurisprudence,⁹ contemporary *maqāṣid*¹⁰ and *maṣlahah* theory,¹¹ and positive law administrative legality.¹²

⁸ Mufti Afif, Andi Triyawan, Miftahul Huda, Arie Rachmat Sunjoto, et al., *Optimalisasi Pengelolaan Filantropi Islam Berbasis Masjid* (UNIDA Gontor Press, 2021).

⁹ Mohammad Abdullah, "Classical Waqf, Juristic Analogy and Framework of Awqaf Doctrines," *ISRA International Journal of Islamic Finance* 12, no. 2 (August 5, 2020): 281–296, <https://www.emerald.com/insight/content/doi/10.1108/IJIF-07-2019-0102/full/html>.

¹⁰ Husnul Fatarib et al., "Progressive Legal Reasoning in Contemporary Islamic Legal Reform: Negotiating the Maqāṣid and Hermeneutic Approaches," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (2025): 277–294.

¹¹ Muhammad Widyarta Wijaya et al., "Blockchain—Based Waqf and Maṣlahah Mursalah: A Sharia Analysis in Light of MUI Fatwas," *El-kahfi | Journal of Islamic Economics* 6, no. 02 (2025): 363–380.

¹² Rindang Dwi Putri Nirmala et al., "Legal Status of Profession Waqf from a Positive Legal Perspective in Indonesia," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 1085–1091.

METHODS

This study employed a qualitative normative legal research design to examine the legal permissibility of utilizing mosque waqf land for madrasahs and *Posyandu* from the perspectives of Islamic law and Indonesian positive law. A normative juridical approach was adopted because the study focused on analyzing legal norms, principles, and doctrines rather than empirical social behavior. The research integrated three complementary approaches. The statutory approach examined the legal framework governing waqf administration in Indonesia, particularly Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006, together with related implementing regulations. The conceptual approach analyzed fundamental legal concepts, including waqf, mosque functions, *maqāṣid al-sharī'ah*, *maṣlaḥah*, and *ḥifẓ al-masjid*, to establish a coherent theoretical basis for legal interpretation. The comparative approach evaluated the legal reasoning of the four Sunni schools of Islamic jurisprudence alongside contemporary Islamic scholarship and Indonesian positive law to identify convergent and divergent legal principles. Primary legal materials consisted of classical Islamic legal texts, including *al-Majmū'*, *al-Mughnī*, *al-Hidāyah*, and *al-Mudawwanah*, as well as contemporary works by Yusuf al-Qaradawi, Wahbah al-Zuhayli, and Sahal Mahfudh, together with Indonesian waqf legislation. Secondary legal materials included peer-reviewed journal articles, academic books, official reports of the Indonesian Waqf Board, and other scholarly publications, while tertiary materials comprised legal dictionaries and encyclopedic references to support conceptual clarification.

Data were collected through documentary research using library-based methods. Legal materials were obtained from university library collections, official government regulations, authoritative digital legal databases, and accredited academic publications. A documentation sheet and a comparative legal matrix served as the principal research instruments for recording, classifying, and comparing legal doctrines across different legal traditions. The research procedure consisted of identifying and selecting relevant legal materials, classifying them according to classical Islamic jurisprudence, contemporary Islamic legal thought, and Indonesian positive law, extracting legal arguments related to mosque waqf land utilization, and synthesizing the findings into a unified analytical framework. Data analysis was conducted using descriptive-analytical methods to explain the legal position of each perspective, comparative legal analysis to identify similarities and differences among legal doctrines, and synthetic analysis to formulate an integrative four-pillar model consisting of *al-taqdīs* (sanctity), *al-maṣlaḥah* (public benefit), *al-mashrū'īyyah* (legal legitimacy), and *al-shūrā* (collective deliberation). No statistical software was employed because the study relied on qualitative doctrinal legal analysis. Methodological rigor was ensured through source triangulation, theoretical triangulation, and cross-validation of classical jurisprudence, contemporary legal scholarship, and Indonesian statutory regulations to enhance the credibility, consistency, and reliability of the legal interpretation.

RESULT AND DISCUSSION

RESULT

Classical Jurisprudence Perspective

The classical jurisprudential perspective on mosque waqf land cannot be understood merely as a set of static legal rules; rather, it must be situated within the historical and sociological context of early Islamic society¹³. During the formative period of the four Sunni schools (8th – 11th centuries CE), mosques functioned primarily as spaces for ritual worship, religious education, and limited communal gatherings. The sacred character of the mosque (*ḥurmah al-masjid*) was emphasized to protect it from being treated as ordinary private property. This historical context explains why classical jurists, particularly the Shafi'i school¹⁴, adopted a restrictive stance.

Sociologically, the Shafi'i school's prohibition of any non – ritual use of mosque *waqf* land (al – Nawawi, *Al-Majmū'*) emerged in an environment where alternative social institutions—such as madrasahs, kuttabs, and bimaristans—were already well – established and funded by private *waqfs*.¹⁵ Thus, the mosque did not need to serve additional functions. Philosophically, the Shafi'i view prioritizes *ta'abbudi* (devotional obedience) over *ta'aqquli* (rational consideration), meaning that the endower's (*waqif*) original intention is considered inviolable.¹⁶

In contrast, the Hanafi school's more flexible position (*al-Marghinani, Al-Hidāyah*) reflects a different sociological reality: in Central Asia, where the Hanafi school predominated, mosques often served as community centers due to the scarcity of dedicated educational institutions.¹⁷ The Maliki and Hanbali schools adopted a middle ground, permitting social activities in mosque courtyards but prohibiting structural alterations.¹⁸ This variation across the four schools demonstrates that classical jurisprudence was not monolithic; rather, it contained internal flexibility that contemporary scholars can build upon.

Contemporary Thought Perspective

Contemporary Islamic thought represents a significant epistemological shift from classical jurisprudence.¹⁹ While classical scholars operated within a framework that prioritized textual literalism and precedent (*taqlīd*), contemporary thinkers employ the *maqāṣid al-sharī'ah* (objectives of Islamic law) approach to reorient waqf law toward

¹³ Abdullah, "Classical Waqf, Juristic Analogy and Framework of Awqaf Doctrines."

¹⁴ M Muthoifin et al., "The Practice of Changing the Status of Change of Waqf Property in the Islamic Social Economic View," *Journal of Ecohumanism* 3, no. 6 (2024): 229 – 238.

¹⁵ Maftuh Salam, *Strategi Penanaman Nilai Aswaja An-Nahdliyah*, ed. Annisa Anita Dewi, Nisrina Haifa, and Dani Muldiana, 1st ed. (Sukabumi: CV Jejak, 2025).

¹⁶ Asmaji Muchtar, *Fatwa-Fatwa Imam Asy-Syafi'i: Masalah Ibadah*, ed. Achmad Zirzis, 2nd ed. (Jakarta: PT Kalola Printing, 2015).

¹⁷ Husnu Shidqiah et al., "Analisis Sejarah Perkembangan Mazhab Fiqh Dan Pengaruhnya Terhadap Hukum Islam Kontemporer," *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 3, no. 2 (February 10, 2025): 113 – 123, <https://ejurnalqarnain.stisnq.ac.id/index.php/ALADALAH/article/view/1243>.

¹⁸ Ahmad Zulkarnaen Rosady, Abdul Munawir, and Abdullah Nazhim Hamid, "Hukum Masuk Masjid Bagi Non – Muslim Perspektif Maqāṣid Al – Syarī'ah," *AL-MABSUTH: Jurnal Studi Islam dan Bahasa Arab* 1, no. 2 (2025): 453 – 471.

¹⁹ Muhammad Husnain, "Islamic Jurisprudence and Religious Minorities: A Critical Study of Classical Fiqh Positions and Contemporary Reinterpretations," *International Research Journal of Arts, Humanities and Social Sciences* 2, no. 02 SE – Articles (March 30, 2025): 847 – 855, <https://doi.org/10.3456/369mkx96>.

substantive outcomes rather than formal categories.²⁰ Yusuf al – Qaradawi argues that the essence of waqf is to channel benefits to the community (*tasyīl al-manfa'ah lil-ummah*), not merely to preserve physical structures.²¹ This philosophical reorientation transforms the question from "What does the text say?" to "What benefit does this action produce for the community?"

Wahbah al – Zuhayli adds a sociological dimension: the role of the mosque must evolve with changing social conditions.²² During the Prophet's time, his mosque in Medina functioned as a center for worship, education, governance, and social services.²³ Therefore, revitalizing this multi – functional role is not an innovation (*bid'ah*) but a return to authentic prophetic practice. From a philosophical perspective, this view is grounded in the maxim *al-'ibrah bi maqāṣid al-sharī'ah lā bi ṣawāhir al-nuṣūṣ* (consideration is given to the objectives of Islamic law, not merely the literal meanings of texts).

Indonesian social jurisprudence (*social fiqh*), as articulated by KH. Sahal Mahfudh, integrates these global contemporary perspectives with local Indonesian realities.²⁴ He emphasizes that jurisprudence must be responsive to societal needs, particularly poverty alleviation, education access, and healthcare. The mosque, in this framework, is not merely a place of *ibadah mahdhah* but a *markaz li tanmiyah al-mujtama'* (community development center).²⁵ This view aligns with the Indonesian context, where land scarcity and limited public infrastructure necessitate the multi – functional use of mosque *waqf* land.

Indonesian Positive Law Perspective

Indonesian positive law provides a distinct yet complementary framework to classical and contemporary jurisprudence. Law No. 41/2004 concerning Waqf represents a codification of *waqf* principles that respects both sharia norms and modern administrative requirements. Article 22 of this law states that any change in the designated use of *waqf* property requires written permission from the Minister of Religion based on the consideration of the Indonesian Waqf Board (BWI). Importantly, the law explicitly permits *waqf* utilization for public benefit, including education, health, and social services, provided that the change does not contradict the original purpose of the endowment.²⁶

From an analytical perspective, Indonesian *waqf* law adopts a *conditional flexibility* approach ²⁷. Unlike classical Shafi'i jurisprudence, which largely prohibits any change, and unlike a purely utilitarian approach that would permit any beneficial change, Law

²⁰ Abdullah, "Classical Waqf, Juristic Analogy and Framework of Awqaf Doctrines."

²¹ Laelatus Sobriyah et al., "Wakaf Tunai Fiqih Klasik Dan Kontemporer Dalam Pemikiran Abu Hanifah Dan Al – Qaradawi," *Al-Madzhab* 2, no. 2 SE – Articles (December 30, 2025): 69 – 86, <https://ejournal.uinsgd.ac.id/index.php/madzhab/article/view/2413>.

²² Wahbah Az – Zuhaili and Wahab Ibnu, "Tafsir Al – Munir Fi Al – 'Aqidah Wa Asy – Syari'Ah Wa Al – Manhaj," *Damaskus: Dar al-Fikr* (1998).

²³ Ossama Hegazy, "Towards a Contemporary Mosque: Rethinking the Prophet – Mosque in Medina via Applying Socio – Semiotics," *The International Journal of Religion and Spirituality in Society* 4, no. 1 (2014): 17 – 24, <https://cgscholar.com/publishers/articles/towards – a – contemporary – mosque>.

²⁴ Arif Maftuhin, *Menerjemah Fikih Sosial*, 1st ed. (Yogyakarta: Magnum Pustaka Utama, 2023).

²⁵ Uswatun Khasanah et al., "Pemikiran Ekonomi Ilmuwan Muslim Kontemporer," *Jurnal Ilmiah Research Student* 1, no. 3 (2024): 464 – 471.

²⁶ K.N. Sofyan Hasan and Muhamad Sadi Is, *Hukum Zakat Dan Wakaf Di Indonesia*, 1st ed. (Jakarta: Kencana, 2021).

²⁷ Ery Agus Priyono et al., "Contract Law in the Waqf Land Transfer Practice: Civil Code and Islamic Law Perspectives," *Al-Ahkam* 36, no. 1 (2026): 47 – 76.

No. 41/2004 requires three cumulative conditions: (1) the change must be substantively justified (serving public benefit); (2) it must be procedurally legitimate (permission from BWI and Minister); and (3) it must not violate the *nadhīr* (original intention of the *waqif*) unless the *waqif* is unknown or the original purpose is impossible to fulfill.²⁸

The Indonesian Waqf Board (BWI) has issued several implementing regulations that clarify the procedures for changing the designation of mosque waqf land ²⁹. For example, BWI Regulation No. 2/2020 requires that any proposal for multi–functional use of mosque land must include: (a) a written request from the *nazhir* (waqf manager); (b) approval from at least 2/3 of the congregants present at a formal deliberation (*musyawarah*); (c) a feasibility study demonstrating that the primary worship function will not be compromised; and (d) a commitment to maintain the sanctity and cleanliness of the mosque. These administrative mechanisms ensure that the flexibility granted by positive law does not lead to abuse or arbitrary decision – making.³⁰

Comparative Analysis and Synthesis

The three perspectives classical jurisprudence, contemporary thought, and Indonesian positive law can be compared across five analytical dimensions, as shown in Table 1.

Table 1. Comparative Analysis of Three Perspectives on Mosque Waqf Utilization

Dimension	Classical Jurisprudence	Contemporary Thought	Indonesian Positive Law
Status of Mosque Land	Sacred, perpetual (<i>ta'bīdī</i>), cannot be altered	Can be utilized based on public benefit (<i>maslahah</i>)	Can be utilized with formal permission and conditions
Permitted Uses	Primarily <i>ibadah mahdhah</i> (prayer, <i>i'tikaf</i>); limited social activities in courtyards (Hanafi, Maliki, Hanbali)	Worship plus social, educational, health activities	Worship, social, education, health (with permits)
Basis of Justification	Sanctity of place (<i>hurmah al-masjid</i>) and endower's intention (<i>nadhīr</i>)	<i>Maqāṣid sharī'ah</i> and <i>maslahah mursalah</i>	Administrative legality and public function
Flexibility	Rigid (Shafi'i) to moderate (Hanafi, Maliki, Hanbali)	Dynamic and adaptive	Conditional (procedural requirements)
Change Mechanism	Generally prohibited (Shafi'i); tacit acceptance of customary practice (others)	Reinterpretation through <i>ijtihād</i>	Formal permission from BWI and Minister of Religion

The table reveals that the three perspectives are not irreconcilable opposites, but rather interconnected approaches that complement one another in addressing the issue of waqf management and transformation. Classical jurisprudence establishes the

²⁸ Hasan and Is, *Hukum Zakat Dan Wakaf Di Indonesia*.

²⁹ Nurul Aulia Dewi et al., "Analysis of Institutional Reform of the Indonesian Waqf Board (Bwi) and Problems of National Waqf Governance," *Profit: Jurnal Kajian Ekonomi dan Perbankan Syariah* 9, no. 1 (2025): 284–302.

³⁰ Fauzia et al., *Fenomena Wakaf Di Indonesia: Tantangan Menuju Wakaf Produktif*.

foundational principle of sanctity, emphasizing the permanence and inviolability of waqf assets as a form of religious devotion.³¹ This principle serves as the ethical and theological basis that none of the perspectives entirely abandon. Contemporary thought, meanwhile, introduces the principle of benefit (*maslahah*), shifting the focus from merely preserving the physical form of waqf assets toward maximizing their social, economic, and public welfare impact in changing contexts.³² Indonesian positive law then operationalizes these two principles through formal legal and procedural mechanisms, ensuring that any modification, exchange, or development of *waqf* property is conducted responsibly and under institutional supervision. In this sense, the law functions as a mediating framework that balances the classical concern for preservation with the contemporary demand for utility and relevance. Therefore, the differences among these perspectives are primarily methodological and procedural rather than substantive, since all ultimately aim to protect the purpose and integrity of waqf for the benefit of the Muslim community.³³

Figure 1 illustrates the integrative synthesis of these three perspectives into a unified model.

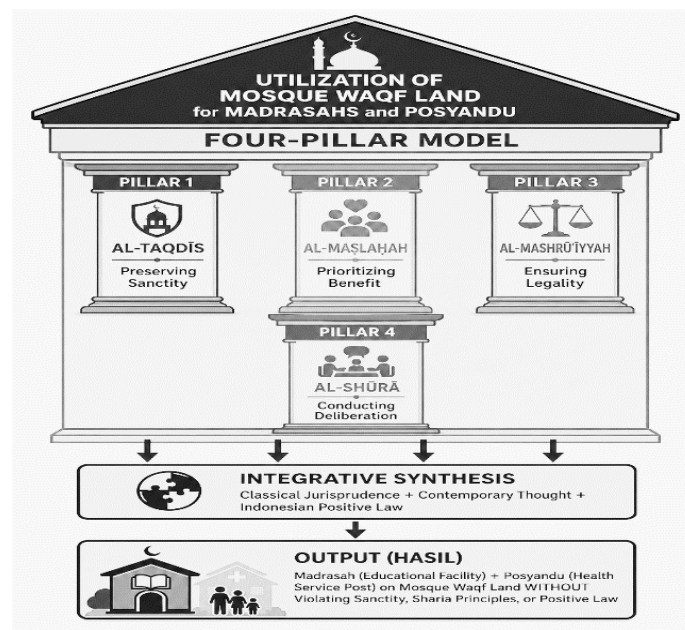


Figure 1. Four – Pillar Integrative Model for Utilizing Mosque *Waqf* Land

As shown in Figure 1, the integrative model synthesizes the three perspectives through four operational pillars. First, *Al-Taqdīs* (Preserving Sanctity): Derived from classical jurisprudence, this pillar ensures that the primary worship function and the sacred character of the mosque remain intact. No construction or activity may compromise the prayer hall or disrupt congregational prayers. Second, *Al-Maslahah* (Prioritizing Benefit): Derived from contemporary thought, this pillar requires that any additional use

³¹ Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory*, 6th ed. (New York: Oxford university press, 2021).

³² Mowafq Masuwd, "Revitalizing the Mosque's Role as an Economic Stabilizer for the Muslim Community: Social Fiqh Perspectives and Contemporary Practice," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 20, no. 1 (January 13, 2026): 291, <https://jurnal.stiq-amuntai.ac.id/index.php/al-qalam/article/view/5913>.

³³ Sitta Saraya et al., *Dinamika Hukum Di Indonesia: Perkembangan Dan Tantangan*, 1st ed. (Jakarta: PT Star Digital Publishing, 2025).

of mosque waqf land must produce tangible public benefit (*maslahah 'āmmah*), such as improved educational outcomes or better health access. Third, *Al-Mashrū'iyah* (Ensuring Legality): Derived from Indonesian positive law, this pillar mandates compliance with administrative procedures: written permission from BWI, approval from the Minister of Religion, and proper documentation. Fourth, *Al-Shūrā* (Conducting Deliberation): Synthesized from all three perspectives (classical *ijmā'*, contemporary participatory governance, and positive law's *musyawarah* requirement), this pillar requires congregational consensus before any change is implemented.

DISCUSSION

The concept of *ḥifẓ al-masjid* (preserving the mosque's sanctity)³⁴ is not merely a juristic construct but is deeply rooted in primary Islamic sources. Its basis can be traced to three levels of authority:

First, Qur'anic foundation. Allah commands respect for houses of worship in Surah al-Nur (24:36): "*In houses which Allah has ordered to be raised and that His name be mentioned therein, exalting Him within them in the mornings and the evenings.*" Classical exegetes (Ibn Kathir, al-Tabari) interpret this verse as imposing an obligation to maintain the physical and spiritual sanctity of mosques as places dedicated exclusively to Allah's worship.³⁵

Second, Prophetic tradition (Hadith). The Prophet Muhammad (PBUH) explicitly prohibited activities that compromise a mosque's sanctity. In an authentic hadith narrated by Abu Hurairah, the Prophet said: "*If you see someone buying or selling in the mosque, say to him: 'May Allah not make your trade profitable.'*"³⁶ (Sunan al-Tirmidhi, No. 1321). Similarly, the Prophet prohibited reciting lost-and-found announcements (*inshād al-qāllah*) inside the mosque. These prohibitions establish the principle that mosques are reserved for worship and activities that support worship, not for mundane worldly transactions.

Third, Juristic maxims (*qawā'id fihiyyah*). Classical jurists derived the maxim: "*Mā kāna li al-'ibādah lā yuṣrafu ilā ghayrihā*" (What is designated for worship cannot be diverted to other purposes).³⁷ This maxim underpins the Shafi'i school's restrictive position.³⁸ Additionally, the maxim "*Al-aṣl fī al-masjid al-'ibādah*" (The original purpose of the mosque is worship) serves as the default legal principle, from which any deviation requires justification.

However, classical jurists also recognized an exception: activities that *support* worship (*mu'īn 'alā al-'ibādah*) are permissible.³⁹ Teaching the Qur'an, holding religious study

³⁴ Masuwd, "Revitalizing the Mosque's Role as an Economic Stabilizer for the Muslim Community: Social Fiqh Perspectives and Contemporary Practice."

³⁵ Ibnu Katsir, *Tafsir Al-Qur'an Al-Adzim Ibnu Katsir* (Beirut, 2000); Ṭabarī, *Jamī' al-Bayān'an Ta'wīl Āy Al-Qur'ān*, 1954.

³⁶ Muhammad bin Isa Al-Tirmidzi, *Jamī' Al-Tirmidzī* (Riyadh: Bayt al-Afkar al-Dawliyyah, 1999) No. 1321.

³⁷ Abdul Jamil Wahab et al., "A Theological Approach to the Construction of Houses of Worship in Indonesia," *Cogent Social Sciences* 10, no. 1 (2024): 2356914.

³⁸ Muhammad Sa'i, "Mosque Dualism: The Function of The Mosque As A Place Of Worship And The Function of The Mosque As A Place of Social – Islamic Educational Activities," *Edukasi Islami: Jurnal Pendidikan Islam* 12, no. 01 (2023).

³⁹ Subaidi Subaidi et al., "Mosques as Centers of Worship And Moral Empowerment: A Case Study of Darul Huda Mosque, Pattani," *Jurnal Al-Ijtima'iyyah* 11, no. 2 (2025): 189 – 205.

circles (*ḥalaqāt*), and even providing food for breaking fast during Ramadan are considered supportive activities. This exception provides the classical legal basis for limited educational and social functions, which contemporary scholars have expanded.

One of the most significant theoretical contributions of this study is identifying and analyzing a paradigm shift in *waqf* jurisprudence from an exclusive focus on sanctity preservation (*ḥifẓ al-masjid*) to an integrated approach balancing sanctity with public benefit (*maslahah 'āmmah*). This shift did not occur abruptly but evolved through three distinct phases:

Phase 1, sanctity—Dominant Paradigm (Classical Era, 8th—13th centuries CE). During this phase, the Shafi'i school's view dominated, particularly in regions where alternative social institutions (madrasahs, hospitals, public kitchens) were already established through private waqfs. The sociological context was one of institutional abundance; therefore, mosques could afford to remain exclusively for worship. The philosophical orientation was *ta'abbudi* (devotional obedience), prioritizing formal adherence to the endower's intention over contextual adaptation.⁴⁰

Phase 2, Transitional Paradigm (Post—Colonial Era, 19th—20th centuries CE). As Muslim societies faced colonial pressures, economic decline, and institutional decay, the previously abundant social infrastructure deteriorated. In this context, jurists from the Hanafi, Maliki, and Hanbali schools—which had always maintained moderate positions—began to be revisited.⁴¹ The sociological driver was *institutional scarcity*: no longer could societies afford mosques that served only ritual functions. The philosophical orientation shifted toward *ta'aqquli* (rational consideration), asking: "What produces the greatest benefit for the community given current constraints?"

Phase 3, benefit—Integrated Paradigm (Contemporary Era, 21st century CE). Contemporary scholars (al—Qaradawī, al—Zuhayli, Sahal Mahfudh) have fully articulated a paradigm where sanctity and benefit are not oppositional but complementary. Using *maqāṣid al-sharī'ah* as their methodological framework, they argue that protecting the mosque's sanctity (*ḥifẓ al-masjid*) is itself a means to achieving broader objectives: preserving religion (*ḥifẓ al-dīn*), intellect (*ḥifẓ al-'aql*), and community well—being (*ḥifẓ al-mujtama'*). If building a madrasah on mosque land prevents children from attending secular schools that may conflict with Islamic values, then the benefit of preserving religion outweighs the formal argument for exclusive ritual use.⁴²

Analytical observation, this paradigm shift is not a departure from Islamic legal theory but a return to its original flexibility. The Prophet's mosque in Medina was multifunctional this is not an innovation (*bid'ah*) but a *sunnah* that classical jurists themselves acknowledged but deprioritized due to different sociological conditions. Therefore, contemporary Indonesian practice of building madrasahs and *Posyandu* on mosque *waqf*

⁴⁰ Khoiriyah Khoiriyah, Tobroni Tobroni, and Akhsanul Inam, *Interaksi Filantropi Dan Pesantren Hadrami*, ed. Moch Mahsun (Probolinggo: Branded Tech Publisher, 2023).

⁴¹ Istiyah Istiyah, Nazwa Nadyan Zafira, and Sawitri Yuli Hartati, "Types of Waqf from the Perspective of Fiqh and Regulation in Indonesia," *Edusight International Journal of Multidisciplinary Studies* 2, no. 4 (2025); Elda Ermawati et al., "The Reconstruction of the Concept of Waqf Muaqqat in the Hanafi Perspective: Relevance and Implementation in the Modern Era," *Management of Zakat and Waqf Journal (MAZAWA)* 7, no. 1 (2025): 1—17; Subaidi et al., "Mosques as Centers of Worship And Moral Empowerment: A Case Study of Darul Huda Mosque, Pattani."

⁴² Sahal Mahfudh, *Nuansa Fiqh Sosial* (Lkis Pelangi Aksara, 2003); Wahbah Az—Zuhaili, *Al-Wasith Fi Tafsir Al-Qur'an Al-'Adzim* (Beirut: Dar Al—Kitab Al—Alamiyah, 2013); Yūsuf Al—Qardawī, *Kayfa Nata'amal Ma'a Al-Qur'an* (Cairo: Dar Al—Shuruq, 1999).

land is not a break from tradition but a *recontextualization* of tradition to meet present needs.⁴³

To assess the impact and positioning of this study, it is essential to engage with findings from other researchers, both those that support and those that challenge the integrative model proposed here. First, Ahmad Mujahiddin (2021) in his study of waqf law in Egypt and Malaysia found that courts increasingly permit multi-functional use of mosque land when the original *waqif's* intention cannot be precisely determined. This supports our finding that contemporary practice has moved beyond strict Shafi'i literalism.⁴⁴ Second, Mufti Afif et al. (2023), analyzed 15 Indonesian mosques that successfully integrated health posts (*Posyandu*) into their waqf land. They concluded that community deliberation (*musyawarah*) is the single most important factor for avoiding conflict a finding that directly validates the *al-shūrā* pillar in our model.⁴⁵ Third, Abdullah (2024) compared waqf regulations across six Muslim countries and found that Indonesia's conditional flexibility approach (requiring BWI permission) offers the most balanced resolution between sanctity and utility. This aligns with our *al-mashrū'iyah* pillar.

Compared to these previous studies, our research makes three original contributions. First, we synthesize three normally disconnected perspectives (classical, contemporary, positive law) into a single operational model something no previous study has done. Second, we provide explicit methodological grounding for the four pillars (*al-taqdīs*, *al-maṣlaḥah*, *al-mashrū'iyah*, *al-shūrā*), whereas previous studies offered only general recommendations. Third, we contextualize the model specifically for Indonesian society, addressing its unique legal-administrative framework (BWI, Law No. 41/2004) and empirical conditions (land scarcity, community demand for education and health).

CONCLUSION

This study concludes that the utilization of mosque waqf land for madrasahs and *Posyandu* is legally justifiable within both Islamic law and Indonesian positive law, provided that several normative requirements are fulfilled. The findings demonstrate that classical Islamic jurisprudence does not adopt a single uniform position regarding the use of mosque waqf assets, but instead offers varying interpretations depending on the protection of mosque functions, the permanence of waqf objectives, and the realization of public benefit. Contemporary Islamic legal thought, particularly through the framework of *maqāṣid al-sharī'ah*, further reinforces the legitimacy of utilizing waqf land for educational and primary healthcare services when such utilization preserves the religious character of the mosque and advances community welfare. Indonesian positive law, especially the legal framework governing waqf administration, also provides mechanisms that allow changes in the utilization of waqf property under specific legal and administrative conditions without undermining the original charitable objectives of the waqf. Accordingly, the study finds that mosque waqf land may be developed for complementary public services as long as the sanctity of the mosque is maintained, public

⁴³ Agus Rochani, Nany Yulastuti, and Budi Sudarwanto, "The Existence of Waqf in Establishing A Sustainable Communal Space," *Journal of Islamic Architecture* 7, no. 1 (2022): 57–66.

⁴⁴ Ahmad Mujahiddin, *Hukum Wakaf Di Indonesia Dan Proses Penanganan Sengketanya* (Jakarta: Kencana, 2021).

⁴⁵ Mufti Afif, Andi Triyawan, Miftahul Huda, Arie Rachmad Soenjoto, et al., *Optimalisasi Pengelolaan Filantropi Islam Berbasis Masjid*, ed. Nurul Faizin, 1st ed. (Ponorogo: UNIDA Gontor Press, 2021).

benefit remains the principal objective, statutory requirements are fully observed, and decisions are reached through transparent and participatory deliberation involving relevant stakeholders.

The principal contribution of this study lies in the formulation of an integrative four – pillar model comprising *al-taqdīs* (sanctity), *al-maṣlaḥah* (public benefit), *al-mashrū'iyyah* (legal legitimacy), and *al-shūrā* (collective deliberation). Conceptually, this model bridges the gap between classical Islamic jurisprudence, contemporary Islamic legal thought, and Indonesian positive law by demonstrating that these legal traditions are complementary rather than contradictory in regulating mosque waqf utilization. Theoretically, the study enriches the discourse on waqf governance by proposing a comprehensive analytical framework capable of balancing religious principles with evolving social needs while maintaining legal certainty and institutional accountability. Methodologically, the integration of statutory, conceptual, and comparative approaches provides a systematic model for future normative legal research addressing similar issues within Islamic law. The proposed framework also offers practical guidance for waqf administrators, mosque management boards, religious authorities, and policymakers in evaluating the legality and public benefit of utilizing mosque waqf land for community development. Nevertheless, because this research is based exclusively on documentary and normative legal analysis, future studies are encouraged to employ empirical and comparative approaches to examine the implementation and effectiveness of this integrative model across diverse waqf management practices in Indonesia and other Muslim – majority countries.

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AUTHOR CONTRIBUTION STATEMENT

Contribution Statement As the sole author of this manuscript, I (Muh Yusuf Siddiq) made substantial and exclusive contributions to all aspects of this study. Specifically, I was responsible for: (1) the study's conceptualization, including the identification of the research problem, formulation of research questions, and development of the theoretical framework; (2) the research design, including the selection of the qualitative normative legal research method and library research approach; (3) data collection, including the identification, retrieval, and documentation of primary sources (classical fiqh texts, contemporary works, and Indonesian positive law regulations) and secondary sources (journal articles, books, and institutional reports); (4) data analysis and interpretation, employing descriptive – analytical, comparative, and synthetic methods to derive the integrative four – pillar model; (5) drafting the entire manuscript, including all sections from the introduction to the conclusion and references; (6) critical revision of the

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DATA AVAILABILITY STATEMENT

The data generated and analyzed during this study are primarily derived from publicly available sources. All primary legal materials cited in this research—including classical fiqh texts (such as *Al-Majmū' Sharḥ al-Muhadhdhab*, *Al-Mughnī*, *Al-Hidāyah*, and *Al-Mudawwanah al-Kubrā*), contemporary works (such as those by Yusuf al – Qaradawi, Wahbah al – Zuhayli, and KH. M. A. Sahal Mahfudh), and Indonesian positive law regulations (Law No. 41/2004 on Waqf, Government Regulation No. 42/2006, and BWI Regulation No. 2/2020)—are accessible through public libraries, academic databases, and official government websites. Secondary sources, including journal articles and institutional reports from the Indonesian Waqf Board (BWI), are also publicly available through their respective publishers or institutional repositories. The dataset supporting the findings of this study is fully presented within the article and its references. No additional unpublished or proprietary data were generated or used. For any inquiries regarding the data or materials used in this study, the corresponding author may be contacted directly.

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The authors declare that there are no known competing financial or non – financial interests, personal relationships, or affiliations that could have influenced or appeared to influence the work reported in this paper. Specifically, the author has no financial ties to any funding agency, commercial entity, non – profit organization, or advocacy group that might benefit from or be adversely affected by the conclusions of this research. The author also has no consultancy relationships, honoraria, stock ownership, patent holdings, or organizational affiliations that could reasonably be perceived as constituting a conflict of interest. This research was conducted solely for academic purposes, with the objective of contributing to the advancement of knowledge in the fields of Islamic jurisprudence and Indonesian waqf law, free from any external influence or bias.

AI USE STATEMENT

During the preparation of this manuscript, the authors used DeepSeek and Grammarly (Grammarly Inc.) solely for language editing purposes, including improvements to grammar, sentence clarity, readability, and consistency of terminology. Following the use of these tools, the author carefully reviewed, revised, and verified all edited content to ensure accuracy, coherence, and adherence to academic standards. No generative AI was used to generate original research ideas, interpret legal texts, analyze data, synthesize findings, formulate conclusions, or create the core intellectual content of this manuscript.

The author takes full and exclusive responsibility for the soundness, originality, accuracy, and integrity of all arguments, analyses, and conclusions presented in this article.

ADDITIONAL INFORMATION

Correspondence and requests for materials should be addressed to:
yusufsiddik@alhikmah.ac.id

ORCID

Muhammad Yusuf Siddik  <https://orcid.org/0009-0006-2907-2149>

Asep Riyadi <https://orcid.org/0009-0004-5776-8333>

Kiki  <https://orcid.org/0009-0005-3597-7254>

Mukhsin  <https://orcid.org/0009-0008-1966-2465>

Ilzam Hubby Dzikrallah Alfani  <https://orcid.org/0009-0002-2082-7577>

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