

ANALYSIS OF STOCK WAQF REGULATIONS AS THE FOUNDATION FOR IMPLEMENTATION IN INDONESIA

Fikry Ramadhan Suhendar¹, Nurlailiyah Aidatus Sholihah²,
Khadher Ahmad³, Muhammad Masruri⁴

¹Sekolah Tinggi Ilmu Ekonomi Miftahul Huda Subang
Jl. Rancasari dalam No B 33 pamanukan, Subang, Indonesia

²Sekolah Tinggi Agama Islam Darussalam Kunir
Jl. Kunir, Desa Simpar, Cipunagara, Subang, Indonesia

³University Malaya
350603 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur, Malaysia

⁴Universiti Tun Hussein Onn Malaysia
Islamic Centre University Tun Hussein Onn, 86400, Parit Raja Batu Pahat, Johor, Malaysia
E-mail: ¹fikry@stiemifdasubang.ac.id, ²nurlailiyah@darussalamuniversity.ac.id,
³khadher82@um.edu.ac.id, ⁴masruri@uthm.edu.my

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Abstract: This article aims to analyze the regulations governing stock waqf, which forms the basis for implementing stock waqf in Indonesia. Stock waqf involves movable property categorized as securities. The study employs a qualitative approach, drawing data from relevant literature on waqf. Qualitative data collection techniques include literature review related to waqf. Descriptive data analysis is used to describe and analyze the research findings. The research indicates that regulations governing stock waqf implementation are not yet comprehensive. This is due to the absence of detailed rules regarding procedures for stock waqf (Islamic endowment), whether by donating stock lots, dividends, or capital gains. The permissibility of stock waqf dividends is based on the Hanafi opinion, while the permissibility of stocks endowment stock lots is based on the Shâfi'i opinion, So basically the two types of waqf object, namely waqf in the form of dividends and lots of Shariah Shares can be used as waqf objects.

Keywords: stock waqf regulations; implementation in Indonesia; waqf stock dividends, Shâfi'i and Hanafi opinions

Abstrak: Artikel ini bertujuan untuk menganalisis regulasi wakaf saham yang dijadikan landasan pelaksanaan wakaf saham di Indonesia. Wakaf saham merupakan wakaf benda bergerak yang masuk dalam kategori surat berharga. Artikel ini menggunakan pendekatan kualitatif dengan sumber data diambil dari literatur-literatur yang berkaitan dengan wakaf. Jenis data yang digunakan dalam artikel ini adalah data kualitatif dengan teknik pengumpulan data dilakukan dengan cara penelusuran kepustakaan yang berkaitan dengan wakaf. Teknik analisis data deskriptif digunakan dalam penelitian ini guna mendeskripsikan hasil penelitian beserta analisis dalam penelitian ini. Berdasarkan penelitian yang dilakukan menunjukkan bahwa aturan mengenai pelaksanaan wakaf saham belum menyeluruh. Hal ini berdasarkan belum adanya aturan yang terperinci mengenai tata cara wakaf saham baik dengan mewakafkan lot saham maupun deviden atau capital gainnya. Kebolehan mewakafkan dividen saham berdasarkan pada pendapat Hanafiyah sedangkan kebolehan mewakafkan lot saham berdasarkan pendapat Syafi'iyah, sehingga pada dasarnya kedua jenis benda wakaf tersebut yaitu wakaf berupa deviden dan lot saham Syariah dapat dijadikan sebagai objek benda wakaf.

Kata kunci: regulasi wakaf saham; implementasi di Indonesia; dividen saham wakaf, pendapat Shâfi'i dan Hanafi

Introduction

This research is motivated by the incomplete regulations governing stock waqf,¹ as Indonesian waqf laws have not provided detailed explanations regarding the implementation of stock waqf.² Clear rules are necessary concerning the specifics of administering waqf-ed stocks, including ownership of stock lots and the dividends generated. Current regulations in Indonesia do not offer precise guidelines on how these specific types of stock waqf should be carried out. Therefore, this study focuses on analyzing the legal regulations of stock waqf concerning rules related to stocks waqf lots and dividends.

According to Hogan as cited in Paksi (2020) there are two models for managing stock waqf: corporate stock waqf and individual stock waqf. Corporate stock waqf involves institutions raising funds by selling waqf certificates to the public. Individual stock waqf can be done in two ways: owners may waqf the profit obtained from the difference in selling their stocks or stock endowment the dividends. This way, the proceeds from managing these stocks will eventually be distributed to the community.³ Previous researchers have conducted studies on stock waqf, such as Alfiah et al., (2020) who found that planning aspects within the Indonesian Waqf Board (BWI) have not been effectively implemented. Issues in organizing and actuating at the district level hinder the prioritization of waqf management. Furthermore, controlling measures are informally conducted, limiting effective outcomes due to a lack of field surveys.⁴

Dikuraisyin's research highlighted asset management processes by Sabilillah Waqf Institution, emphasizing accurate asset identification for planning and risk-profit calculations. The institution enhances local potential through cooperative ventures in business capital provision, employing *mudhârabah*, *musyâarakah*, and *murâbahah* agreements for socio-economic and religious benefits.⁵ Apart from that, research by Choiri and Makhtum discovered generational changes in waqf trustees' data management, impacting asset utilization and hindering effective development and supervision.⁶ Further research by Nurjanah et al. explored *iştibdâl* waqf, permissible under specific conditions outlined by the NU Fatwa Council. The focus is on safeguarding the intended benefits of waqf-ed items for the community's greater good.⁷ And then research by Harahap et al. emphasized qualitative methods in waqf research, suggesting the need for Waqf Core Principles (WCP) to standardize asset reporting and management in Indonesia.⁸ And then Sukiati et al. validated copyright as a viable waqf object, meeting criteria per Islamic law and national regulations.⁹

This research addresses a critical gap in the regulatory framework concerning stock waqf in Indonesia, where existing laws lack detailed provisions for the implementation and administration of waqf-ed stocks, particularly regarding the ownership and management of stock lots and dividends generated from such endowments. The absence of clear guidelines hampers the effective execution of stock waqf initiatives, prompting the

¹ Aden Rosadi, Deden Effendi, and Busro Busro, "The Development of Waqf Management Throught Waqf Act in Indonesia (Note on Republic of Indonesia Act Number 41 of 2004 Regarding Waqf)," *MADANIA: JURNAL KAJIAN KEISLAMAN* 22, no. 1 (July 3, 2018): 3.

² Nova Rini et al., "Problems, Solutions, and Strategies for Developing Stock Waqf in Indonesia," *Jurnal Ekonomi & Keuangan Islam* (January 4, 2024): 17.

³ Girindra Mega Paksi, Asfi Manzilati, and Marlina Ekawati, *Wakaf Bergerak: Teori Dan Praktik Di Asia* (Peneleh, 2020), 118.

⁴ Esti Alfiah, Mesi Herawati, and Riri Novitasari, "Manajemen POAC Wakaf Di Indonesia" 7, no. 2 (2020): 129.

⁵ Basar Dikuraisyin, "Manajemen Aset Wakaf Berbasis Kearifan Lokal Dengan Pendekatan Sosio-Ekonomi Di Lembaga Wakaf Sabilillah Malang" 7, no. 2 (2020): 113–114.

⁶ Muttaqin Choiri and Ahmad Makhtum, "Traditionalism Nazhir Kyai on Waqf Asset Development in Bangkalan Madura" 8, no. 1 (2021): 88.

⁷ Nurjanah, Rahmatsyah, and Ali Mutakin, "Fatwa Lajnah Bahtsul Masail NU Concerning Istibdâl Wakaf and Their Relevance with Renewal of Islamic Law" 7, no. 2 (2022): 528.

⁸ Arridha Harahap, Ririn Tri Ratnasari, and Moh. Nurul Qomar, "Waqf Management : A Bibliometric Review" 9, no. 1 (2022): 71.

⁹ Sukiati et al., "Copyright as a Waqf Object in the Context of Fiqh and Positive Law" 8, no. 1 (2023): 286.

need for comprehensive regulations to govern these specific types of endowments.

In the narrative expressed by Paksi, have proposed two models for managing stock waqf: corporate and individual. In the corporate model, institutions raise funds by issuing waqf certificates to the public. Meanwhile, individual stock waqf can involve waqf (endowment) either the capital gains or the dividends from stocks, ensuring that profits benefit the community over time.¹⁰ Previous studies, like those by Alfiah et al., (2020) underscore the challenges within the Indonesian Waqf Board (BWI), where administrative shortcomings at the district level impede effective waqf management. Insufficient formal controls and evaluations further limit operational effectiveness.¹¹ Dikuraisyin's research on the Sabilillah Waqf Institution sheds light on asset management practices, emphasizing meticulous asset identification and risk-profit calculations. This institution leverages cooperative ventures through *mudhârabah*, *musyarâkah*, and *murâbahah* agreements to enhance local economic potential, combining social and religious benefits.¹² Additionally, Choiri and Makhtum's findings highlight the evolving data management practices among waqf trustees, impacting asset utilization and necessitating improved development strategies and oversight.¹³

Nurjanah et al.'s (2022) research explores istibdal waqf under guidelines set by the NU Fatwa Council, focusing on preserving the intended social benefits of waqf-ed assets.¹⁴ Harahap et al.'s (2022) study advocates for the establishment of Waqf Core Principles (WCP) to standardize asset reporting and

management practices in Indonesia, emphasizing the need for qualitative methodologies in waqf research.¹⁵ Furthermore, Sukiati et al. (2023) have validated copyright as a permissible waqf asset under Islamic and national legal frameworks, expanding the scope of potential waqf-ed items.¹⁶

From several existing literatures, while various studies contribute valuable insights into different aspects of waqf management and regulation, the specific area of stock waqf remains under-regulated in Indonesia. Addressing this gap requires detailed legal frameworks that encompass ownership rights, dividend distribution mechanisms, and operational guidelines tailored to stock-based endowments. By enhancing regulatory clarity and adopting best practices from these scholarly insights, Indonesia can foster a more robust and effective environment for managing stock waqf, thereby maximizing its socio-economic impact and community benefits.

These studies collectively highlight the incomplete regulatory framework for stock waqf in Indonesia, particularly regarding the legal grounds for waqf stock dividends or lots. Therefore, this research aims to analyze stock waqf regulations in Indonesia comprehensively.

As the concept creation of new waqf concepts such as cash waqf,¹⁷ stocks, and securities is an innovation resulting from the *ijtihad* of scholars, the *ijtihad* of scholars acts as a response to the dynamics of modern society, where the form of wealth is not only in the form of physical assets such as land or buildings, but also financial assets that have great potential in social and economic development.¹⁸ For example, cash waqf allows for

¹⁰ Paksi, Manzilati, and Ekawati, *Wakaf Bergerak: Teori Dan Praktik Di Asia*, 118.

¹¹ Alfiah, Herawati, and Novitasari, "Manajemen POAC Wakaf Di Indonesia," 129.

¹² Dikuraisyin, "Manajemen Aset Wakaf Berbasis Kearifan Lokal Dengan Pendekatan Sosio-Ekonomi Di Lembaga Wakaf Sabilillah Malang," 113–114.

¹³ Choiri and Makhtum, "Traditionalism Nazhir Kyai on Waqf Asset Development in Bangkalan Madura," 88.

¹⁴ Nurjanah, Rahmatsyah, and Mutakin, "Fatwa Lajnah Bahtsul Masail NU Concerning Istibdal Wakaf and Their Relevance with Renewal of Islamic Law," 528.

¹⁵ Harahap, Ratnasari, and Qomar, "Waqf Management : A Bibliometric Review," 71.

¹⁶ Sukiati et al., "Copyright as a Waqf Object in the Context of Fiqh and Positive Law," 286.

¹⁷ Dede Dennis, Abdul Qoyum, and Muhammad Prima Sakti, "Determinant of Cash Waqf Nahdatul Ulama (Case of Muslim Students in Indonesia)," *MADANIA: JURNAL KAJIAN KEISLAMAN* 22, no. 1 (July 3, 2018): 20.

¹⁸ Aldi Khusmufa Nur Iman, Faridatun Najiyah, and Munji Asshiddiqi, "Unfolding the Possibility to Develop Share-Waqf in Indonesia through the Concepts, Opportunities & Challenges," *Journal of Islamic Economic Laws [MIGRATED]* 4, no. 1 (January

flexible provision of funds for social programs,¹⁹ while stock and securities waqf can provide sustainable benefits through dividends invested for the benefit of the wider community.²⁰

Method

The research adopts a qualitative approach aimed at achieving in-depth understanding.²¹ of issues concerning stock waqf regulations in Indonesia. Data sources consist of literature and written regulations related to stock waqf. Qualitative data, which involves interpretations of concepts and regulations regarding waqf, form the basis of this study. Data collection is conducted through literature review focusing on stock waqf and its regulations, particularly in Indonesia. Data analysis employs descriptive methods to describe the regulations pertaining to stock waqf, followed by analysis based on the implementation of stocks and opinions of scholars regarding waqf.

The research on stock waqf regulations in Indonesia adopts a qualitative approach aimed at achieving a comprehensive understanding of the subject. This methodology, as outlined by Yusuf,²² emphasizes the depth of insight needed to explore the complexities and nuances of regulatory frameworks governing waqf-ed stocks. The study primarily draws upon literature and written regulations pertaining to stock waqf,

utilizing qualitative data to interpret and analyze the concepts and legal provisions surrounding waqf in Indonesia.

Data collection for this research involves a thorough literature review focused specifically on stock waqf and its regulatory landscape within Indonesia. This review encompasses scholarly articles, legal texts, and relevant documents that outline the current state and development of stock waqf practices. By examining these sources, the study seeks to gather a comprehensive dataset that informs the analysis of regulatory frameworks and their implications for stock-based endowments.

In analyzing the collected data, the research employs descriptive methods to systematically document and characterize the regulations governing stock waqf. This approach allows for a detailed exploration of how these regulations are structured, implemented, and perceived within the scholarly community and legal frameworks. Furthermore, the analysis includes an assessment of practical implications, considering how these regulations impact the management, utilization, and distribution of waqf-ed stocks.

Central to the research is the interpretation of opinions and insights from scholars and experts in the field of waqf studies. Their perspectives provide critical insights into the effectiveness, challenges, and potential improvements of current regulatory practices governing stock waqf in Indonesia. By synthesizing these viewpoints with the regulatory findings, the research aims to offer a balanced and informed analysis of the regulatory landscape surrounding stock waqf.

Overall, the qualitative approach adopted in this study enables a nuanced examination of stock waqf regulations in Indonesia, highlighting both the strengths and weaknesses of current frameworks. Through this methodological lens, the research contributes to broader discussions on enhancing regulatory clarity, promoting effective governance, and maximizing the socio-economic impact of waqf-ed stocks for the benefit of communities in Indonesia and beyond.

30, 2021): 27, accessed November 18, 2024, <https://journals.ums.ac.id/jisel/article/view/12510>.

¹⁹ Haris Maiza Putra et al., "Reconstruction of the Practice of *Siyasa Syar'iyyah* During the Islamic Empire's Relevance to the Practice of Sharia Financing CWLS Retail in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (November 9, 2023): 347.

²⁰ Suyoto Arief et al., "Analysing The Effectiveness of Stock Waqf Management in Indonesia and Malaysia: Regulation Practices and Nadzir Readiness," in *Conference on SDGs Transformation through the Creative Economy: Encouraging Innovation and Sustainability (TCEEIS 2023)* (Atlantis Press, 2024), 18, accessed November 18, 2024, <https://www.atlantispress.com/proceedings/tceeis-23/125997237>.

²¹ A. Muri Yusuf, *Metode Penelitian: Kuantitatif, Kualitatif, Dan Penelitian Gabungan* (Jakarta: Kencana, 2017), 43.

²² Yusuf, *Metode Penelitian: Kuantitatif, Kualitatif, Dan Penelitian Gabungan*, 43.

Results and Discussion

Waqf According to the Hanafi and Shafi'i Schools of Thought

According to the Hanafi school, as described by Zuhaili, and which is confirmed by Hanafi scholars Al-Syarkashi, waqf is the act of dedicating a waqf property for the sake of goodness. This definition implies that the ownership of the waqf property remains with the *waqif* (endowment), allowing them to reclaim or sell the waqf property if desired,²³ except for mosques.^{24 25} On the other hand, the Shâfi'i school differs from the Hanafi in its understanding of waqf. They assert that once an asset is waqf, it becomes the property of Allah,²⁶ and the waqif's ownership over the asset is terminated. This understanding is rooted in the Shâfi'i view that waqf involves setting aside an asset for benefit, with the stipulation that the asset must remain intact perpetually. Permissible benefits include its use by a trustee for the welfare of the Muslim community, aimed at drawing closer to Allah.²⁷ This view aligns with the Hanbali perspective, which equates it with gifts or the manumission of slaves, both resulting in the termination of ownership over the donated property or emancipated slave.²⁸

In addition to the perspectives of the Hanafi and Shâfi'i schools, other prominent scholars and jurists have contributed nuanced views on the concept of waqf, enriching our understanding of its legal and theological implications.

The Maliki school, another major school of Islamic jurisprudence, generally aligns closely with the Hanafi perspective regarding the ownership of waqf properties. According to Maliki jurists, such as Ibn Abi Zayd al-Qayrawani, the waqif (donor) retains ownership of the endowed property. This means that the waqif has the right to revoke the endowment under certain conditions, such as if the intended purpose of the waqf can no longer be fulfilled. The Maliki school emphasizes the flexibility for the waqif to manage and maintain control over the waqf property, ensuring its intended benefits are realized effectively within the framework of Islamic law.

In summary, while the Hanafi and Shâfi'i perspectives provide foundational insights into waqf, the Maliki schools contribute additional dimensions to our understanding, emphasizing the nuanced interpretations and applications of waqf within Islamic law and practice. These diverse viewpoints enrich the discourse on waqf role in promoting communal welfare and spiritual objectives, adapting to contemporary needs while upholding its core principles of charity and perpetuity.²⁹

Regulation of Shariah Stock Waqf (Endowments) in Indonesia

The permissibility of Shariah stock endowments according to the law is a form of movable property endowment, as stated in Law No. 41 of 2004 Article 16 paragraph (3) and Government Regulation No. 42 of 2006 Article 21. Before the enactment of Law No. 41 of 2004, regulations governing endowments in Indonesia existed since the Dutch East Indies era. Administrative regulations on endowments began with circulars such as the Secretary of Government Circular (SESG) dated January 31, 1905, which instructed district heads to list endowments. This was followed by SESG dated April 4, 1931, replacing the former circular, requiring district heads

²³ Wahbah al-Zuhaylî, *Al-Fiqh al-Islâmi Wa Adillatuhu*, vol. 8 (Damaskus: Dâr Al-fikr, 2008), 151.

²⁴ Syamsudin Al-Syarkhasi, *Kitab Al-Mabsut Li-Syamsyudin al-Syarkhasi*, vol. 12 (Bairut, Libanon: Dar Al-marifah, 1989), 29.

²⁵ Syaikh Syaikh et al., "The Empowerment of Infaq and Waqf Evaluation in Light of Maqasid Al-Sharia Perspective in Mosques in Palangka Raya, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (December 25, 2021): 1003.

²⁶ Rosadi, Effendi, and Busro, "The Development of Waqf Management Through Waqf Act in Indonesia (Note on Republic of Indonesia Act Number 41 of 2004 Regarding Waqf)," 3.

²⁷ al-Zuhaylî, *Al-Fiqh al-Islâmi Wa Adillatuhu*, 8:183.

²⁸ Syamsuddin Abi Abdullah Muhammad bin Abdullah bin Muhammad al-Zarkasyi, *Syarah Al-Zarkasyi Ala Mukhtashor Al-Khurqi Fi Al-Fiqh Ala Madzhab Imam Ahmad Bin Hambal* (Bairût: Dâr Al-Kutub Al-'Ilmiyyah, 2002), 197.

²⁹ Ismail Jalili, Muhammad Firdaus, and AbdulGafar Olawale Fahm, "The Role of Qawâ'id Fiqhiyyah in Strengthening Waqf Law: A Review of Challenges and Solutions in Indonesia," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 11, no. 2 (November 1, 2024): 230.

to request the chairman of the religious court to register endowment lands. Subsequent circulars, like SESG dated October 24, 1934, empowered district heads to settle endowment disputes, and SESG dated May 27, 1935, specified the procedures for endowments. The introduction of Law No. 5 of 1960 was followed by Government Regulation No. 28 of 1997 concerning endowments of immovable property, primarily designated for worship purposes such as mosques, prayer rooms, cemeteries, and others.

The initial scope of these laws was limited, necessitating subsequent regulations to make endowments more productive and expansive. These regulations include Law No. 41 of 2004 and Government Regulation No. 42 of 2006, which not only cater to worship needs but also aim to harness endowments for social welfare and community prosperity. They allow for the endowment of movable assets such as money and securities, including Shariah-compliant stocks. According to the fatwa from the National Sharia Board (DSN-MUI), endowing money is permissible due to its flexibility and utility, unlike other assets. This fatwa covers the permissibility of endowing securities, specifying that the principal value of endowed money must be preserved and used only for Shariah-compliant purposes.³⁰ While Ministry of Religious Affairs regulations address endowing sukuk bonds, detailed rules concerning Shariah stock endowments are still lacking.³¹

Meanwhile, looking at the development of waqf in Malaysia, changes to the waqf law were also carried out, Malaysia is a Southeast Asian country comprising two main regions: the Malay Peninsula and the northern part of Borneo, with Kuala Lumpur as its capital. As an Islamic country rich in waqf resources, Malaysia utilizes waqf assets not only for religious purposes but also for education. Since

the 1980s, waqf management has become more organized under the supervision of the State Islamic Religious Councils (Majlis Agama Islam Negeri, MAIN).³² These efforts were further strengthened with the establishment of the Department of Waqf, Zakat, and Hajj (JAWHAR) in 2004, aimed at improving the efficiency and equity of waqf resource management.³³

Despite its significant potential, waqf management in Malaysia faces several challenges, including inconsistencies in legislation between states, the less strategic location of some waqf lands, and occasional misalignment with Islamic law. However, innovative initiatives such as the waqf stock program by Johor Corporation (JCorp) provide creative solutions to utilize waqf assets more productively. Supported by government institutions and increasing public awareness, waqf in Malaysia continues to evolve as an essential instrument for the welfare of the Muslim community and national development.³⁴

The differences in the history of Islamic culture made Turkey the first to adopt several regulatory changes on waqf, including in the management of waqf which had changed to ta'sis for 41 years (1926-1967),³⁵ likewise in Malaysia, the impact of secularism emerged from the diversity of ethnicities, cultures, and religions that exist, which gave rise to the dualism of the legal system, namely secular and sharia, from the management of waqf in Turkey and Malaysia,³⁶ Indonesia can learn to develop

³⁰ Komisi Fatwa MUI, *Keputusan Fatwa Majelis Ulama Indonesia Tentang Wakaf Uang*, 2002.

³¹ Menteri Agama RI, *Peraturan Menteri Agama Republik Indonesia Nomor 1 Tahun 2022 Tentang Pengelolaan Dan Pengembangan Wakaf Uang Melalui Cash Waqf Linked Sukuk*, vol. Nomor 1 Tahun 2022, 2022.

³² Zunaidah Ab Hasan et al., "Management of Waqf Assets in Malaysia," *International Journal of Nusantara Islam* 3, no. 1 (December 15, 2015): 60.

³³ Adrianna Syariefur Rakhmat and Irfan Syauqi Beik, "Pengelolaan Zakat dan Wakaf di Malaysia dan Turki: Studi Komparatif," *ILTIZAM Journal of Shariah Economics Research* 6, no. 1 (June 25, 2022): 50.

³⁴ Amalia Azka, "Peran Wakaf Dalam Perkembangan Ekonomi Di Negara Asean Amalia Azka," *Velocity: Journal of Sharia Finance and Banking* 3, no. 1 (May 15, 2023): 106.

³⁵ Rakhmat and Beik, "Pengelolaan Zakat dan Wakaf di Malaysia dan Turki," 50.

³⁶ Muhammad Satrya Mutthaqin and Yenni Samri Juliati Nasution, "Perbandingan Pengelolaan Wakaf Di Indonesia, Arab Saudi, Mesir, Dan Turki," *Economic and Business Management International Journal (EABMIJ)* 6, no. 1 (January 13, 2024): 3.

digital-based waqf in utilizing the progress of the times and the importance of updating regulations on waqf,³⁷ especially in the field of contemporary waqf such as sharia stock waqf so that waqf can develop more productively and optimally.

The development of waqf regulations in Egypt also experienced several changes in the law. In 1946, Egypt passed Law No. 48 concerning waqf management which required the registration of all waqf assets, prohibited cancellation without permission from the religious court, and stipulated that mosque waqf was permanent. In accordance with the development of the times, Egypt also stipulated Law No. 180 of 1952 which limited the use of waqf only for public interest, and in its development in 1971, the Egyptian Waqf Agency was established to manage, develop, and invest waqf assets productively, with the results submitted to the Ministry of Waqf for distribution according to its designation.³⁸ Thus, in Egypt, waqf regulations have changed in accordance with its development, namely for the public interest.

The theory of comprehensive Shariah stock endowments (Syumuliah Sharia Share Waqf Theory) proposes universal regulations to strengthen the concept and guidance for policymakers and managers (nadzir) of Shariah stock endowments. Although Law No. 41 of 2004 Article 16 (3) and Government Regulation No. 42 of 2006 Article 21 (a) allow for the endowment of movable assets, including money, as long as they comply with Shariah principles, these laws do not comprehensively address all aspects of Shariah stock endowments.³⁹

The regulation of Shariah stock endowments in Indonesia reflects a historical evolution from colonial-era administrative circulars to contemporary legal frameworks aimed at enhancing the productivity

and scope of endowments beyond traditional worship purposes. Before the enactment of Law No. 41 of 2004, which significantly expanded the regulatory framework, Indonesia's regulations on endowments originated during the Dutch East Indies era. These early regulations were administrative in nature, starting with circulars like the Secretary of Government Circular (SESG) in 1905, which mandated district heads to compile lists of endowments.

Subsequent circulars in 1931 and 1934 further refined administrative procedures, empowering district heads to register endowment lands and resolve disputes related to endowments. These regulations primarily focused on immovable properties designated for worship, such as mosques, prayer rooms, and cemeteries, as outlined in Law No. 5 of 1960 and Government Regulation No. 28 of 1997.

The enactment of Law No. 41 of 2004 marked a pivotal moment by broadening the scope of endowments to include movable assets like money and securities, including Shariah-compliant stocks. This legal framework, supplemented by Government Regulation No. 42 of 2006, aimed not only to accommodate worship needs but also to harness endowments for broader social welfare and community prosperity objectives.⁴⁰ These regulations signify a shift towards more flexible and utilitarian interpretations of endowment practices, aligning with contemporary socio-economic needs.

According to the fatwa issued by the National Sharia Board (DSN-MUI), the endowment of money and securities, including Shariah-compliant stocks, is permissible under Islamic law due to their flexibility and utility. The fatwa emphasizes the preservation of the principal value of endowed assets and restricts their use to purposes that adhere to Shariah principles, ensuring their ethical and legal compliance.⁴¹

However, despite these advancements, detailed regulations specifically addressing Shariah stock endowments, including comprehensive guidelines

³⁷ Faisal Faisal et al., "Strengthening the National Waqf Ecosystem through Legal Reform: An Analysis of Waqf Issues in the Provinces of Lampung and South Sumatra," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 81.

³⁸ Mutthaqin and Nasution, "Perbandingan Pengelolaan Wakaf Di Indonesia, Arab Saudi, Mesir, Dan Turki," 4.

³⁹ Abdurrahman Kasdi, "Peran Nadzir Dalam Pengembangan Wakaf" 1, no. 2 (2016): 223.

⁴⁰ Dennis, Qoyum, and Sakti, "Determinant of Cash Waqf Nahdatul Ulama (Case of Muslim Students in Indonesia)," 20.

⁴¹ Komisi Fatwa MUI, *Keputusan Fatwa Majelis Ulama Indonesia Tentang Wakaf Uang*.

for their implementation and management, remain incomplete. Current regulations provide a foundational framework but lack specificity regarding Shariah stock endowments, particularly in comparison to regulations governing other forms of endowments like sukuk bonds, as noted by the Ministry of Religious Affairs.⁴²

The theory of comprehensive Shariah stock endowments, known as the Syumuliah Sharia Share Waqf Theory, advocates for universal regulations to strengthen the concept and provide clear guidance for policymakers and managers (nadzir) of Shariah stock endowments. This theoretical framework underscores the need for detailed regulations that encompass all aspects of Shariah-compliant stock endowments, ensuring consistency and effectiveness in their implementation.

In conclusion, while Indonesia has made significant strides in regulating Shariah stock endowments, including their permissibility and basic operational guidelines, further development is necessary to fully harness their potential for socio-economic development within Islamic principles. Comprehensive regulations would not only clarify legal ambiguities but also enhance the transparency, efficiency, and impact of Shariah stock endowments in supporting community welfare and prosperity initiatives.

Instruments for Endowment: Stock Lots and Dividends

Investors can endow Shariah-compliant stocks either by endowing specific stock lots or their dividends alone.⁴³ If an investor endows stock lots, it must be done through a Shariah-compliant stock endowment agency (SOTS).⁴⁴ Conversely, dividends

or capital gains can be directly endowed to the trustee managing the stocks. Shariah-compliant investments in stocks can enhance company productivity and employment opportunities, bolstering a nation's economic strength and attracting domestic and foreign investors to support economic growth, particularly in Indonesia.⁴⁵

In the realm of endowment practices involving Shariah-compliant stocks, investors have distinct avenues for channeling their contributions, either through endowing specific stock lots or directing dividends alone towards charitable purposes. This dual approach provides flexibility in how investors can support community welfare and religious objectives through their investments.

When investors choose to endow specific stock lots, they typically engage with Shariah-compliant stock endowment agencies. These agencies specialize in managing endowments in accordance with Islamic principles, ensuring that the endowed stocks are utilized for purposes that align with Shariah guidelines. This method allows investors to contribute tangible assets directly while maintaining adherence to ethical and religious standards prescribed by Shariah.

Alternatively, investors may opt to endow dividends or capital gains generated from their Shariah-compliant stocks. In this scenario, the dividends or profits earned are earmarked for charitable purposes and entrusted to trustees responsible for managing the endowment. This approach leverages the financial returns of investments to support ongoing charitable initiatives, thereby maximizing the impact of these investments on community welfare and development.

Shariah-compliant investments in stocks are recognized for their potential to enhance company productivity and create employment

⁴² Menteri Agama RI, *Peraturan Menteri Agama Republik Indonesia Nomor 1 Tahun 2022 Tentang Pengelolaan Dan Pengembangan Wakaf Uang Melalui Cash WaqfLinked Sukuk*, vol. Nomor 1 Tahun 2022, p. .

⁴³ Dini Selasi and Muzayyanah, "Wakaf Saham Sebagai Alternatif Wakaf Produktif Pada Perkembangan Ekonomi Syariah Di Indonesia" 3, no. 2 (2020): 159, <https://journal.iainkudus.ac.id/index.php/tawazun>.

⁴⁴ Hafiz Mubarraq Haridhi, "Syariah Online Trading System

(SOTS) Sebagai Sitem Transaksi Saham Syariah Di Bursa Efek Indonesia Tinjauan Terhadap POJK No. 15 Tahun 2015," *Az-Zarqa': Jurnal Hukum Bisnis Islam* 12, no. 2 (December 1, 2020): 165, accessed November 19, 2024, <https://ejournal.uin-suka.ac.id/syariah/azzarqa/article/view/1847>.

⁴⁵ Aden Rosadi, *Zakat Dan Wakaf Konsep, Regulasi Dan Implementasi* (Bandung: Simbiosis Rekatama Media, 2019), 147.

opportunities, so it must be supported by clear regulations.⁴⁶ By fostering a conducive environment for ethical investments, these practices contribute to strengthening a nation's economic resilience and attractiveness to both domestic and international investors. This is particularly pertinent in Indonesia, where such investments play a crucial role in bolstering economic growth and advancing socio-economic development agendas.⁴⁷

The strategic deployment of Shariah-compliant stock endowments not only aligns with Islamic financial principles but also supports broader initiatives aimed at sustainable development and social welfare. By integrating ethical considerations into investment strategies, stakeholders can uphold religious values while contributing to the prosperity and well-being of communities. As such, these instruments for endowment represent a vital mechanism for channeling financial resources towards impactful and sustainable outcomes, underpinning the broader goals of inclusive economic growth and societal advancement.

In conclusion, the analysis of stock waqf regulations in Indonesia reveals significant developments and areas for improvement in aligning Islamic principles with contemporary legal frameworks. The discussion on different schools of Islamic jurisprudence Hanafi, Shafi'i, Maliki, illustrates diverse perspectives on waqf, particularly concerning the waqif's ownership rights over endowed assets. The Hanafi view allows the waqif to retain ownership and reclaim the waqf property if necessary, whereas the Shâfi'i perspective considers the asset permanently endowed to benefit the community, aligning closely with the Hanbali positions that emphasize the termination of ownership upon waqf establishment. These nuanced interpretations enrich

our understanding of waqf legal and theological dimensions, reflecting varying cultural contexts⁴⁸ and historical developments.⁴⁹

Regarding the regulation of Shariah stock endowments in Indonesia, the evolution from colonial-era administrative circulars to contemporary legal frameworks underpins the expansion of waqf beyond immovable properties to include movable assets like money and securities. Laws such as No. 41 of 2004 and Government Regulation No. 42 of 2006 signify a pivotal shift towards more comprehensive regulatory provisions, aiming to harness waqf for broader social welfare and community prosperity. Despite these advancements, detailed regulations specifically addressing Shariah stock endowments remain incomplete, highlighting the need for further development to clarify operational guidelines and ensure consistency in their implementation.

The theoretical framework of comprehensive Shariah stock endowments advocates for universal regulations to strengthen governance and provide clear guidance for policymakers and nadzîr (waqf manager). This approach aims to enhance transparency, efficiency, and the impact of Shariah stock endowments in supporting socio-economic development within Islamic principles. While current regulations permit the endowment of movable assets like money and securities, including Shariah-compliant stocks, the absence of specific guidelines for Shariah stock endowments underscores the importance of bridging regulatory gaps to optimize their potential benefits. So the proposed solution is to have new, clearer regulations and regulatory alignment.⁵⁰

⁴⁶ Muhammad Iqbal and Faisal Javed, "The Moderating Role of Corporate Governance on the Relationship between Capital Structure and Financial Performance: Evidence from Manufacturing Sector of Pakistan," *International Journal of Research in Business and Social Science* (2147- 4478) 6, no. 1 (January 20, 2017): 101.

⁴⁷ Sabur Mollah and Mahbub Zaman, "Shari'ah Supervision, Corporate Governance and Performance: Conventional vs. Islamic Banks," *Journal of Banking & Finance* 58 (September 1, 2015): 420.

⁴⁸ Rudy Haryanto and Lailatul Maufiroh, "An Waqf Land in Madura; Its Management and Typical Dispute Resolution," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 29, 2023): 496–518.

⁴⁹ Yusep Rafiqi, Asep Suryanto, and Mohamad Anton Athoillah, "The Sumedang Larang Royal Waqf: Legal Perspective" 23, no. 2 (2023).

⁵⁰ Hussein Azeemi Abdullah Thaidi, Muhamad Firdaus Ab Rahman, and Ahmad Zaki Salleh, "Addressing Challenges, Unleashing Potentials: Towards Achieving Impactful Islamic Social Finance," *Ulum Islamiyyah* 35, no. 02 (July 29, 2023): 64.

Instruments for endowment, such as the endowment of stock lots or dividends, offer investors flexibility in supporting charitable causes while adhering to Shariah principles. Shariah-compliant investments in stocks not only bolster economic growth and employment opportunities but also uphold ethical standards, attracting diverse investors and fostering sustainable development. By integrating ethical considerations into investment strategies, stakeholders can advance communal welfare and promote inclusive economic growth, aligning with broader objectives of Shariah-compliant finance.

In summary, while Indonesia has laid a foundational framework for regulating Shariah stock endowments, further development is imperative to address existing gaps and optimize the socio-economic benefits of waqf within Islamic finance. Clear and comprehensive regulations will not only enhance legal clarity but also promote effective management and utilization of Shariah-compliant assets, ensuring their alignment with religious principles while contributing to the welfare of society at large.

Conclusion

Detailed regulations specifically addressing Shariah stock endowments in Indonesia are currently lacking, with existing laws primarily focused on movable and monetary endowments. Therefore, comprehensive regulations are necessary to govern all aspects of Shariah stock endowments, including procedures and permissible shares that can be endowed. Based on research findings, dividends can be endowed, reflecting the Hanafi opinion that the waqif retains ownership of the endowed property. Hence, the waqif may withdraw ownership of the shares endowed as dividends if desired, as the endowment pertains only to the dividends and does not relinquish the waqif's ownership of the stock lot. Conversely, the permissibility of endowing stock lots aligns with the Shāfi'i view that the waqif's ownership over the asset is terminated upon endowment, preventing them from reclaiming or withdrawing the endowed stock lot.

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