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# LEGAL ASPECTS OF WAQF FUND DEVELOPMENT THROUGH SHARIA SUKUK INVESTMENT: A PERSPECTIVE FROM INDONESIAN WAQF AND INVESTMENT LAW

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**Abstract**

Waqf is an instrument within the Sharia financial system that holds significant potential for fostering the economic empowerment of the Muslim community. However, the implementation of cash waqf in Indonesia has not yet matched its actual potential. In response to this situation, the Cash Waqf Linked Sukuk (CWLS) scheme emerged as an innovation in waqf fund management through investment in Sharia-compliant sukuk instruments. Under this mechanism, cash waqf funds are safely invested in State Sharia Securities (SBSN), and the investment returns are channeled to fund social programs. This study employs a normative legal research approach utilizing qualitative data analysis. Primary data were obtained from legal sources such as legislation and fatwas from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), while supporting data were derived from legal literature reviews, official institutional reports, and scholarly articles. The collected data were analyzed and presented using a descriptive-analytical method to understand the interplay between waqf law and investment law in Indonesia. The findings indicate that CWLS represents an integration of Islamic philanthropy concepts with Sharia capital market mechanisms. Although a sufficient legal foundation exists, there are gaps in technical regulations—specifically regarding the legal status of the nazhir(waqf manager) in the context of investment fund management. Such ambiguity could give rise to legal risks and hinder the development of productive waqf. Therefore, regulatory synchronization and institutional strengthening are essential to ensure that waqf management via sukuk is conducted transparently, responsibly, and in accordance with Sharia principles.

**Keyword**: Cash Waqf, Sharia Sukuk, Cash Waqf Linked Sukuk, Waqf Law, Investment Law.

## INTRODUCTION

Waqf is one of the important instruments of Islamic social finance that has a strategic role in supporting community welfare and economic empowerment. In Indonesia, the development of waqf has shifted from a predominantly consumptive orientation toward productive waqf, in which waqf assets are managed and developed to generate sustainable benefits for beneficiaries. Hafizd (2021) emphasizes that waqf has an important position in the Islamic economy because its economic function can be strengthened through productive management and appropriate development strategies. This transformation requires not only the preservation of waqf assets but also professional management, institutional strengthening, and effective governance by nazhir (Aryana, 2021). The development of waqf management also needs to be understood within an administrative and legal governance framework because the management of waqf assets involves institutional authority, legal responsibilities, and compliance with applicable regulations (Sahbudi et al., 2023).

The economic function of waqf is increasingly relevant to the need for alternative sources of community empowerment. Research on waqf-based economic empowerment shows that waqf can support productive economic activities and contribute to improving community welfare (Hidayat & Makhrus, 2021). Similarly, Wijaya and Ilmia (2021) demonstrate that waqf can be developed as an instrument for increasing the productivity of micro-enterprises. These findings indicate that the development of waqf should no longer be understood merely as the provision of religious facilities, but also as a mechanism for creating sustainable economic and social value.

One of the innovations in productive waqf is the integration of waqf with Islamic capital market instruments through Cash Waqf Linked Sukuk (CWLS). From the perspective of maqashid al-shariah, waqf-linked sukuk can connect the preservation of waqf assets with the achievement of broader social benefits and public welfare (Fad, 2021). Meanwhile, Kasnelly (2021) explains the increasing importance of sukuk within the development of Islamic finance in Indonesia. Thus, sukuk provides an important mechanism for linking Islamic social finance with productive investment. CWLS was introduced as an innovative mechanism for collecting and developing cash waqf through investment in State Sharia Securities (SBSN). However, its implementation still faces several challenges, including limited public awareness, fundraising constraints, regulatory issues, and the need to strengthen institutional management (Yasin, 2021). Tanjung and Windiarto (2021) found that CWLS has potential to contribute to economic development and infrastructure financing, particularly in the health sector.

The potential application of CWLS is not limited to infrastructure financing. Yunita (2021) proposed a CWLS model that could be directed toward sustainable food security by providing financing for agricultural, plantation, and livestock activities. Ubaidillah et al. (2021) similarly positioned CWLS as an alternative instrument for infrastructure financing. Nevertheless, the effectiveness of productive waqf depends substantially on the institutional capacity of nazhir. Safitri et al. (2021) emphasize the importance of an appropriate institutional model for nazhir in improving the collection and distribution of productive waqf. From a legal perspective, Islamiyati et al. (2021) identify several legal issues in the implementation of cash waqf, particularly when its implementation does not fully comply with the applicable legal framework. The importance of institutional and legal certainty is also evident in the broader field of Islamic financial law, where clear legal mechanisms are necessary to regulate institutional relationships and resolve disputes arising from the implementation of Sharia-based financial activities (Nst., 2018).

The following data outlines the potential and realization of waqf in Indonesia:

Table 1. Potential and Realization of Cash Waqf in Indonesia

| Year | Potensi Potential Cash Waqf (IDR) | Realization (IDR) | Realization (%) |
|---|---|---|---|
| 2020 | 180 triliun | 819 miliar | 0,45% |
| 2021 | 180 triliun | 855 miliar | 0,47% |
| 2022 | 180 triliun | 912 miliar | 0,51% |
| 2023 | 180 triliun | 1,012 triliun | 0,56% |

Source: Indonesian Waqf Board (BWI), processed by the author

This indicates a significant gap between the potential and the actual realization of cash waqf. One way to bridge this gap is by developing waqf funds through Sharia-compliant investment instruments—such as Sharia Sukuk (SBSN)—which are secure, Sharia-compliant, and regulated by law. The use of Sharia-based investment instruments is believed to generate returns that can be utilized for social purposes without diminishing the principal value of the waqf funds (Kusuma Wijaya & Ilmia, 2021).

Sharia Sukuk, as State Sharia Securities (SBSN), have been utilized in the Cash Waqf Linked Sukuk (CWLS) scheme; this allows cash waqf funds to be managed and invested in sukuk, with the resulting returns allocated to social activities. The CWLS program, launched by the Ministry of Finance and the BWI, serves as a concrete example of the integration between waqf and the Sharia financial market. In practice, these waqf funds are managed by a nazhir (waqf manager) in collaboration with Sharia Financial Institutions Receiving Cash Waqf (LKS-PWU) and the Ministry of Finance. This institutional arrangement also illustrates the broader importance of legal administration in Islamic social finance, particularly in defining the authority, responsibilities, and accountability of institutions involved in waqf management (Sahbudi et al., 2023). The following outlines the development of Cash Waqf Linked Sukuk (CWLS) in recent years.

Table 2. Development of Cash Waqf Linked Sukuk (CWLS)

| CWLS Series | Year of Issuance | Total Funds Collected | Allocation of Returns |
|---|---|---|---|
| SW001 | 2020 | IDR 50 billion | Health and education |
| SWR001 | 2021 | IDR 24 billion | Community economic empowerment |
| SWR002 | 2022 | IDR 46 billion | Productive social assistance |
| SWR003 | 2023 | IDR 65 billion | Social programs and MSMEs |

Source: Ministry of Finance of the Republic of Indonesia & Indonesian Waqf Board, 2024

Although Cash Waqf Linked Sukuk (CWLS) has emerged as a promising alternative, several legal challenges require attention, such as the clarity of the legal status of invested waqfassets, the mechanism for returns, and legal protections for the nazhir (waqf manager) and wakif (waqf donor). In this context, the development of waqf funds through sukuk must be examined from the perspective of waqf law—as stipulated in Law No. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006—while also being aligned with investment law within the framework of Law No. 19 of 2008 concerning State Sharia Securities (SBSN) and the Capital Market Law (Law No. 8 of 1995) (Luayyin & Arifin, 2023). The absence of specific regulations explicitly governing waqf investment in Sharia capital market products creates significant room for interpretation and even raises the risk of misuse. From the perspective of waqf law, the fundamental principle of waqf is the perpetuity of the waqf asset (al-ta'bid) and the prohibition against its alienation. Therefore, investing waqf funds in sukuk must ensure that the principal waqf capital is not diminished. From an investment law standpoint, the management of waqf funds through sukuk must adhere to principles of transparency, accountability, and investor protection—with the nazhir acting as the manager in this context (Aryana, 2021).

Public participation is another important factor in the development of cash waqf. Haidlir et al. (2021), based on evidence from Indonesia, found that attitude, subjective norms, perceived behavioral control, religiosity, knowledge, and trust influence people's intention to contribute cash waqf. In addition, Wulandari and Khumaedah (2021) show that managerial and entrepreneurial capabilities are important for improving the effectiveness of cash waqf programs. The development of cash waqf also needs to be understood within the framework of Islamic economic law. Ahyani et al. (2021) emphasize the importance of understanding cash waqf from the perspective of Sharia economic law, particularly because its potential for public welfare remains considerable despite relatively limited public understanding. Mu'is et al. (2022) further discuss cash waqf from the perspective of contemporary Islamic law, demonstrating the continuing development of legal interpretations concerning cash waqf. More broadly, the relationship between Islamic principles and the national legal system demonstrates the importance of integrating Sharia-based economic practices with the Indonesian legal framework, particularly where Islamic social finance instruments are implemented through state-regulated financial mechanisms (Kalingga et al., 2022).

The integration of cash waqf with sukuk also raises specific legal and Sharia issues. Specifically examine CWLS in relation to DSN-MUI fatwas, emphasizing the normative foundation of the instrument. In another context, Siswantoro (2022) developed a CWLS model for financing export-oriented micro, small, and medium enterprises affected by the COVID-19 pandemic. These studies demonstrate that CWLS has both normative and practical dimensions in the development of productive Islamic social finance.The potential of CWLS can also be linked to poverty reduction and economic recovery. Sulaeman et al. (2022) argue that optimization of CWLS can contribute to Indonesia's post-pandemic economic recovery. Eugenia et al. (2022) further identify cash waqf as an alternative instrument for supporting the Sustainable Development Goal of ending poverty, emphasizing the importance of professional nazhir, literacy, transparency, accountability, and productive investment. This study is expected to contribute a juridical analysis regarding the integration of waqflaw with Sharia capital market instruments, as well as provide policy recommendations for the management of waqf funds in a manner that is productive, trustworthy, and highly effective for the welfare of the community.

## LITERATURE REVIEW

a. Legal Aspects of Waqf

Waqf is an Islamic social finance instrument based on the principle of preserving the principal asset while utilizing its benefits for religious and social purposes. In Indonesian positive law, this principle is reflected in Law No. 41 of 2004 concerning Waqf. The development of contemporary cash waqf demonstrates that waqf assets are no longer limited to immovable property but may also involve movable assets and financial instruments. Hafizd (2021) argues that the economic function of waqf can be optimized through productive development strategies. The implementation of this principle requires effective nazhir institutions because nazhir has the responsibility to maintain, manage, and develop waqf assets. Similarly emphasize that strengthening the institutional model of nazhir is important for improving the collection and distribution of productive waqf. From a legal perspective, cash waqf requires compliance with the applicable legal framework. Islamiyati et al. (2021) show that the implementation of cash waqf may generate legal problems when practices are not aligned with applicable regulations. Mu'is et al. (2022) further demonstrate that contemporary Islamic law continues to develop in responding to the increasing use of cash waqf in modern financial systems.

b. Productive Waqf and Cash Waqf

Productive waqf represents a transformation from the traditional utilization of waqf toward economic development. Wijaya and Ilmia (2021) demonstrate the potential of waqf-based institutions to support the productivity of micro-enterprises, while Hidayat and Makhrus (2021) emphasize the role of waqf-based institutions in community economic empowerment. Cash waqf expands participation because individuals can contribute without owning large immovable assets. Nevertheless, Haidlir et al. (2021) show that knowledge, religiosity, trust, attitudes, and subjective norms influence public intention to participate in cash waqf. This finding is reinforced by Jannah (2023), who identifies low literacy as one of the major challenges in increasing cash waqf participation.

c. Waqf-Linked Sukuk and CWLS.

The development of CWLS represents an important innovation in Islamic social finance. Fad (2021) explains the relationship between waqf-linked sukuk and maqashid al-shariah, particularly in terms of achieving social welfare while maintaining the principles of waqf. Kasnelly (2021) places sukuk within the broader development of Islamic finance in Indonesia. Yasin (2021) identifies several challenges in the implementation of CWLS, particularly related to fundraising, public preference, socialization, and regulatory development. Specifically emphasize the relevance of DSN-MUI fatwas in providing the Sharia basis for CWLS. Tanjung and Windiarto (2021) demonstrate its potential for economic development, while Ubaidillah et al. (2021) position CWLS as an alternative infrastructure financing instrument. The productive orientation of CWLS can also be extended to specific development sectors. Yunita (2021) proposes CWLS for sustainable food security, while Siswantoro (2022) develops a model for financing export-oriented MSMEs. Sulaeman et al. (2022) further emphasize the importance of optimizing CWLS to support economic recovery.

d. Governance, Literacy, and Public Participation.

The sustainability of cash waqf cannot depend exclusively on the availability of financial instruments. It also depends on institutional capacity, public literacy, and trust. Aryana (2021) emphasizes the importance of governance and accountability in waqf management. Eugenia et al. (2022) similarly identify professionalism of nazhir, transparency, accountability, literacy, and productive investment as important elements in optimizing cash waqf.

e. Legal and Investment Perspective

The integration of waqf and investment law creates a specific legal issue because waqf has the fundamental requirement of preserving the principal asset, whereas investment involves the management of assets with potential returns and risks. Therefore, CWLS requires a legal framework capable of balancing asset preservation, Sharia compliance, investment accountability, and public protection. In this context, the legal analysis should focus on at least four dimensions: (1) the legal status of waqf funds as investment assets, (2) the legal position and responsibility of nazhir, (3) protection of wakif and waqf assets, and (4) the harmonization between waqf regulations, SBSN regulations, capital market regulations, and DSN-MUI fatwas. This provides the conceptual basis for examining CWLS not only as an Islamic financial innovation but also as a legal instrument requiring regulatory certainty. Irfany et al. (2022) demonstrate that public understanding, access to information, ease of donation, and trust affect decisions to participate in cash waqf. Isman and Suaib (2022) highlight the role of Islamic banking institutions in facilitating cash-based waqf. Meanwhile, Masrizal et al. (2023) and Rahmania and Maulana (2023) demonstrate the importance of behavioral and literacy factors in explaining cash waqf intention.

## METHOD

This study is a normative legal research project employing a qualitative data analysis approach; it focuses on examining legal materials as the primary basis for addressing the research problem. This approach is utilized to analyze the development of waqf (endowment) funds through Sharia sukuk investments from the perspectives of Indonesian waqf law and investment law. The problem-solving procedure is descriptive-analytical in nature, involving the description and analysis of applicable legal provisions—including norms found in legislation, fatwas (religious rulings), and other official documents—to gain a deep and comprehensive understanding of productive waqf management practices.

The study relies on secondary legal data, comprising both primary and secondary legal materials. These include various legislative acts—such as Law No. 41 of 2004 concerning Waqf, Law No. 19 of 2008 concerning State Sharia Securities (SBSN), Law No. 8 of 1995 concerning Capital Markets, and Law No. 25 of 2007 concerning Investment—as well as fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) regarding cash waqf and Sharia sukuk. Additionally, secondary data were gathered from legal literature, scholarly journals, official government reports, publications by the Indonesian Waqf Board (BWI), and other documents relevant to the research topic. All data were analyzed qualitatively through legal reasoning to construct arguments and findings that systematically address the research problem.

## RESULTS AND DISCUSSION

A. Development of Waqf Funds through Investment Instruments (Sharia Sukuk)

The development of waqf funds through Sharia sukuk investment instruments has been realized via the Cash Waqf Linked Sukuk (CWLS) scheme, introduced by the Indonesian government in 2020. CWLS are sovereign sukuk financed by cash waqf funds, with the proceeds allocated to social financing. Through this mechanism, waqf funds are not merely held in reserve but are optimized to generate sustainable economic benefits for the community. CWLS represents a tangible form of productive waqf, as the collected funds are not consumed immediately but are instead invested in accordance with Sharia principles in safe, state-guaranteed instruments (Kasnelly, 2021). The CWLS scheme represents a synergistic effort between Sharia financial institutions and the state to integrate Islamic philanthropy into Sharia capital market instruments. This also aligns with the principle that productive waqf requires a modern and structured financial management system.

A significant implementation of CWLS was the issuance of the SW001 series in 2020, which successfully raised IDR 50.8 billion. These funds were utilized to finance healthcare services, including the purchase of medical equipment and the enhancement of hospital services for the underprivileged. This demonstrates that investment instruments such as sukuk can serve as strategic vehicles for channeling waqf benefits toward priority social sectors. CWLS not only introduces an innovative Islamic finance model but also demonstrates that waqf management can be integrated with the state financial system (Andini & Winario, 2024). CWLS is considered the cash waqf instrument most relevant to Indonesia's social development needs. Public participation in CWLS has increased alongside improvements in the transparency and accountability of fund managers. Based on the analyzed literature and documentation, the development of CWLS has been supported by several fatwas (religious rulings) from the National Sharia Board of the Indonesian Ulema Council (DSN-MUI), including Fatwa No. 41/DSN-MUI/2004 on Cash Waqf and Fatwa No. 110/DSN-MUI/2017 on Waqf sukuk. These fatwas affirm the legitimacy of managing Waqf funds through investment, provided the principal remains intact and the returns are utilized in accordance with the waqif's (endower's) mandate. In CWLS practice, Waqf funds are managed by professional nazhirs (trustees)—such as the Indonesian Waqf Board (BWI)—and deposited in Sharia banks before being used to purchase sovereign sukuk under agreed-upon contracts, such as ijarah (lease) or wakalah (agency). As long as the principle of al-istitsmar (investment) is applied while preserving the principal, productive Waqf is permissible under Sharia law. The regulations and fatwas supporting CWLS demonstrate that contemporary fiqh (Islamic jurisprudence) is capable of responding to the challenges of the times.

From the perspective of Waqf law, fund development through Cash Waqf Linked Sukuk (CWLS) aligns relatively well with the core principles of Waqf: the preservation of the Waqf asset's principal (al-ta'bid) and the utilization of its returns for the public good. In this context, the state—through the Ministry of Finance—guarantees the security of the funds and ensures the principal remains intact, while the returns are channeled toward social objectives (Pramesti et al., 2024). However, some studies raise critical points regarding the need to strengthen the role of the nazhir (waqf manager) in overseeing the use of investment returns to ensure they remain consistent with the waqif's (endower's) intent and to prevent any irregularities. A Sharia audit mechanism is essential to ensure that productive Waqf practices remain consistent with Islamic principles. Capacity building and competency certification for nazhirs are urgently needed to support trustworthy governance (Raharjo & Mugiyati, 2022).

Furthermore, within the investment legal framework, the use of Waqf funds in sukuk must adhere to principles of accountability and transparency, as stipulated in Law Number 19 of 2008 concerning State Sharia Securities (SBSN) and Capital Market laws. The nazhir occupies a unique position here, acting as a manager of public funds with a dual responsibility: satisfying Sharia requirements while simultaneously upholding good investment governance principles. Consequently, the investment legal framework needs to more clearly accommodate the role of the nazhir, particularly regarding the reporting and accountability of invested Waqf funds. Clarifying the legal status of the nazhir within the investment system is crucial to preventing conflicts of interest and legal violations. The legal standing of the nazhir as a "semi-investor" needs to be codified in new, more detailed, and operational regulations. On the other hand, findings from document studies and official reports indicate that CWLS activity remains concentrated within specific institutions and has not yet expanded nationwide. The role of Sharia financial institutions acting as Cash Waqf Receiving Financial Institutions (LKS-PWU) needs strengthening, particularly regarding operational capacity and legal understanding. Without robust institutional support and reliable oversight systems, there are concerns that the long-term development of Waqf funds through investment will not reach its full potential. The uneven regional distribution of LKS-PWUs acts as a major barrier to expanding national participation in cash Waqf. There is a need for specific implementing regulations regarding the institutional framework and governance of *nazhirs* (waqf managers) who handle investment-based Waqf funds (Mas'ud et al., 2024). A central issue within the perspective of investment law is the position of the nazhir (waqf manager) as the manager of waqf funds in investment schemes such as CWLS. In conventional investment law, the party investing funds is termed an investor and holds rights to profits as well as obligations regarding risks (Raharjo & Mugiyati, 2022). However, in CWLS practice, the nazhir is not an investor in the commercial sense but rather a manager of philanthropic funds acting under the mandate of the *wakif* (waqf donor). This legal position of the nazhir has not been regulated in detail under either the Capital Market Law or the SBSN Law, creating the potential for role conflicts or multiple interpretations during fund management. Ideally, the position of the nazhir in CWLS should be clarified in regulations as equivalent to the role of a trustee in financial law.

Another legal gap is evident in the aspects of supervision and accountability within waqf fund investment schemes. In investment law, any entity managing public funds is required to adhere to principles of transparency, accountability, and periodic auditing. Conversely, under waqf law, the nazhir's responsibility is primarily Sharia-based and spiritual in nature, involving accountability to the wakif and Allah SWT. The lack of harmony between these two systems can hinder CWLS management practices. There is a need for synergy between waqf accounting principles and Sharia financial reporting standards within the investment oversight framework, highlighting the importance of a Sharia audit system as a bridge between formal law and waqf principles.

On the other hand, the existence of a DSN-MUI fatwa (religious ruling) provides Sharia legitimacy for waqf investment in sukuk instruments. DSN-MUI Fatwa No. 110/DSN-MUI/2017 concerning *Sukuk Waqf* states that waqf investment in sukuk is permissible provided the waqf principal remains intact. Nevertheless, the fatwa does not possess legally binding force within Indonesia's positive legal system (Pramesti et al., 2024). This situation creates a potential conflict between formal legality and Sharia legitimacy should differences in interpretation arise during implementation. It is crucial for the government to incorporate DSN-MUI fatwas into regulations to avoid legal dualism. There is currently insufficient state recognition of fatwas as an official source of law, despite their vital role in Sharia financial transactions.

The integration of investment law and Waqf (Islamic endowment) law holds significant potential to support national development grounded in the Islamic economy (Bahri et al., 2025). Cash Waqf Linked Sukuk (CWLS) serves as a tangible example of the synergy between two distinct legal systems sharing a common objective: delivering social and economic benefits. However, ensuring the sustainability of this scheme requires the design of specific regulations governing Waqf fund management within an investment context, with a focus on long-term legal protection. To date, CWLS management relies on sectoral policies from the Ministry of Finance, the Indonesian Waqf Board (BWI), and the Financial Services Authority (OJK), which lack coordination within a unified regulatory framework. Inter-agency synergy is essential to guarantee the continuity of CWLS; an omnibus law on Sharia Waqf is needed to prevent regulatory overlap (Raharjo & Mugiyati, 2022).

Overall, the analysis reveals that Indonesia's investment regulations are not yet fully compatible with the principles and practices of productive Waqf via Sharia sukuk. Despite existing support through the SBSN Law and DSN-MUI fatwas (religious rulings), there is a need for cross-sectoral regulations that guarantee legal protection for Waqf funds and their managers. Consequently, strengthening Sharia-friendly investment laws is imperative for developing a productive Waqf ecosystem in Indonesia. The integration of Waqf law and investment law is not merely a matter of legal technicalities; it represents a strategic step toward building public trust in an inclusive and sustainable Islamic finance model. Waqf investment will only be effective if accompanied by firm and comprehensive legal policies. There is a need for a Bill on Productive Waqf to serve as a national legal framework.

## CONCLUSION

The utilization of waqf funds through Sharia sukuk instruments—specifically the Cash Waqf Linked Sukuk (CWLS) scheme—represents a strategic approach to fostering the development of productive waqf in Indonesia. This scheme enables the management of waqf funds in a manner that is secure, structured, and compliant with Sharia principles, while making tangible contributions to social sectors such as education, healthcare, and community economic empowerment. From a legal perspective, CWLS rests on a solid foundation comprising the Law on Waqf, regulations regarding State Sharia Securities (SBSN), and various fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). Nevertheless, challenges persist—particularly regarding the legal standing of the nazhir (waqf manager) within the Sharia investment framework and the absence of detailed technical regulations concerning the nazhir's responsibilities, oversight, and role legitimacy in the capital market.

Consequently, synergy between waqf regulations and investment law is essential to ensure that waqf fund management remains transparent, professional, and aligned with Sharia values. The fragmentation of sectoral rules must be addressed by establishing a comprehensive, integrated legal system. Based on the findings of this study, it can be concluded that strengthening the legal framework and clarifying the roles of relevant institutions are crucial for creating a waqf governance system that is modern, trustworthy, and capable of delivering broad benefits for public welfare.

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