

Adjudicating Waqf Disputes: Islamic Legal Doctrine in Court Practice

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Abstract

*Court decisions in waqf disputes constitute a strategic arena for the formation of Islamic law in practice, where classical fiqh doctrines interact dynamically with state law. This article examines judicial reasoning in waqf disputes adjudicated by Indonesian Religious Courts, focusing on how judges integrate Islamic legal doctrines with positive law to ensure legal certainty and protect public interests. Employing a socio-juridical legal research approach based on court decisions, this study analyzes selected waqf rulings using legal reasoning analysis. Several landmark cases, including decisions from the Religious Courts of Jakarta Selatan and Kediri, are examined to capture variations in judicial argumentation. The findings demonstrate that judges do not merely apply waqf regulations textually, but actively construct legal meaning through contextual interpretation. Classical fiqh principles such as ta‘bid, *luzum*, and the social function of waqf are consistently invoked, yet rearticulated within the framework of Law Number 41 of 2004 on Waqf. Judicial reasoning reflects a pattern of integrative *ijtihad*, in which fiqh doctrines provide substantive legitimacy, while positive law ensures procedural structure and legal certainty. Judicial discretion is also exercised to balance formal legal proof with the social realities of waqf practices. This study concludes that judicial reasoning plays a decisive role in shaping contemporary waqf law as a living law. By positioning court decisions as a key site of legal development, this article contributes to Islamic legal studies, judicial studies, and waqf governance discourse, while offering normative insights for strengthening judicial argumentation and safeguarding waqf as a public institution.*

Keywords: *Waqf Disputes; Judicial Reasoning; Islamic Law; Religious Courts; Legal Realism.*

Abstrak

Putusan pengadilan dalam sengketa wakaf merupakan arena strategis pembentukan hukum Islam dalam praktik, di mana doktrin fikih klasik berinteraksi secara dinamis dengan hukum negara. Artikel ini mengkaji penalaran hakim dalam penyelesaian sengketa wakaf di pengadilan agama Indonesia dengan menitikberatkan pada cara hakim mengintegrasikan doktrin hukum Islam dan hukum positif untuk menjamin kepastian hukum serta melindungi kepentingan publik. Penelitian ini menggunakan pendekatan sosio-yuridis berbasis putusan pengadilan dengan metode analisis penalaran hukum. Sejumlah putusan penting, termasuk putusan Pengadilan Agama Jakarta Selatan dan Kediri, dianalisis untuk menangkap variasi argumentasi yudisial dalam praktik peradilan. Hasil penelitian menunjukkan bahwa hakim tidak sekadar menerapkan peraturan wakaf secara tekstual, melainkan secara aktif membangun makna hukum melalui interpretasi kontekstual. Prinsip-prinsip fikih klasik seperti ta‘bid, *luzum*, dan fungsi sosial wakaf secara konsisten dijadikan rujukan, namun direartikulasi dalam kerangka Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf. Penalaran hakim mencerminkan pola *ijtihad* yudisial yang integratif, di mana fikih berfungsi sebagai legitimasi substantif, sementara hukum positif menyediakan struktur prosedural dan kepastian hukum. Diskresi yudisial juga digunakan untuk menyeimbangkan pembuktian formal dengan realitas sosial praktik wakaf. Artikel ini menyimpulkan bahwa penalaran hakim berperan menentukan dalam

membentuk hukum wakaf kontemporer sebagai hukum yang hidup (living law), serta berkontribusi pada penguatan kajian hukum Islam, studi peradilan, dan tata kelola wakaf.

Kata Kunci: Sengketa Wakaf; Penalaran Hakim; Hukum Islam; Pengadilan Agama; Realisme Hukum.

Introduction

In contemporary global legal developments, court decisions are increasingly understood as primary sites of lawmaking rather than merely instruments for the application of norms. Law in action scholarship emphasizes that law acquires its concrete meaning through judicial practice, particularly through judges' reasoning in deciding specific cases. Lawrence M. Friedman argues that law is a social system that operates through institutions and actors; consequently, courts constitute a central arena in which law interacts with the social, economic, and moral realities of society (Friedman, 1975, 2015). This perspective has stimulated growing academic attention to judicial decisions as autonomous sources of legal knowledge.

However, within Islamic legal studies particularly in the field of waqf law, scholarly attention to court decisions remains relatively limited. Existing waqf research has largely focused on fiqh doctrines, statutory norms, and institutional designs, while judicial practice, especially judges' reasoning in resolving waqf disputes has often been marginalized. Satjipto Rahardjo criticizes such excessively textual legal scholarship for its potential to distance law from substantive justice, which is precisely tested and realized in judicial practice (Rahardjo, 2009). As a result, a gap persists between waqf law as a normative doctrine and waqf law as it is actually practiced in courts.

From a theoretical and epistemological standpoint, an ideal approach to legal scholarship requires the integration of doctrine and practice. Within the perspective of legal realism, judicial reasoning constitutes a key element, as it is through reasoning that legal norms are interpreted, negotiated, and frequently reconstructed. Brian Z. Tamanaha emphasizes that law cannot be adequately understood without examining how judges exercise discretion and reasoning within specific social contexts (Tamanaha, 2021). Accordingly, waqf court decisions do not merely reflect the application of the Waqf Law or fiqh al-waqf, but also reveal how judges bridge normative texts with complex social facts.

Within the context of Islamic judicial institutions in Indonesia, this dynamic is particularly evident in the adjudication of waqf disputes, which fall under the absolute jurisdiction of the religious courts. Research by Euis Nurlaelawati demonstrates that judges of the religious courts do not function merely as "mouthpieces of the law," but actively interpret Islamic law by balancing legal certainty, utility, and justice (Nurlaelawati, 2010). This further confirms that waqf adjudication

constitutes a living space of judicial *ijtihād*, in which Islamic legal doctrine continuously interacts with state law and contemporary social needs.

A number of empirical, decision-based studies have revealed the complexity of judicial reasoning in waqf disputes. A study by Sofi Marzuki and M. Huda on several religious court decisions in Indonesia shows that, in disputes over waqf land status, judges rely not only on the waqf pledge (*ikrār waqf*) and Law Number 41 of 2004, but also take into account social waqf practices and evidence of physical possession of the land (Marzuki & Huda, 2025). Similarly, Adi Nur Rohman's research on decisions of the South Jakarta Religious Court finds that judges affirm the principle of once waqf, always waqf through reasoning that integrates classical fiqh with the requirements of national legal certainty (Rohman, 2018).

Another study by Nur Rachma Dwi Maulina on the Kediri Religious Court Decision Number 425/Pdt.G/2019/PA.Kdr demonstrates that judges employed a substantive approach by assessing the objectives of waqf (*maqāṣid al-waqf*) when addressing conflicts between heirs and *nāzir* (Dwi Maulina, 2023). These findings indicate that judicial reasoning in waqf disputes is neither singular nor uniform, but plural and contextual, depending on the configuration of norms, facts, and competing conceptions of justice at stake.

Nevertheless, these studies remain largely partial and have not yet been fully situated within a robust theoretical framework capable of explaining the relationship between Islamic legal doctrine and judicial practice. Waqf scholarship often stops at descriptive accounts of decisions or purely normative analyses, without approaching judicial decisions as practices of legal knowledge. Wael B. Hallaq cautions that Islamic law in the modern state cannot be understood solely through normative texts, but must be analyzed through its institutional practices, including judicial practice (Hallaq, 2009). It is precisely here that a significant and compelling research gap emerges.

Against this backdrop, the present study aims to analyze judicial reasoning in waqf disputes as an effort to bridge Islamic legal doctrine and judicial practice. Methodologically, this study adopts a decision-based doctrinal analysis complemented by a contextual reading of judicial reasoning to capture the interaction between normative texts and lived judicial practices. At the national level, this study is expected to strengthen the tradition of decision-based waqf legal research and enhance the quality of judicial argumentation. At the regional level, it contributes to the development of waqf adjudication studies in Muslim-majority countries. Globally, this research offers a dialogue between legal realism and waqf law that enriches the field of Islamic legal studies and comparative judicial studies.

Research Method

This study constitutes legal research employing a socio-juridical, decision-based approach that situates judicial decisions as both sources of law and practices of legal knowledge. Rather than positioning the research as a general qualitative social inquiry, this approach frames the study as a legal analysis focused on judicial reasoning in the application and development of waqf law. Within the law in action tradition, law is understood through the ways in which norms are operationalized by judges in deciding concrete cases; accordingly, the analysis of judicial decisions serves as the primary instrument for capturing the dynamics of law as it is lived and practiced within judicial institutions (Friedman, 1975). This perspective further affirms that court decisions possess methodological significance comparable to statutory law in modern legal studies (Duxbury, 2008).

The type of research adopted is case-law based legal research, with waqf disputes adjudicated by the religious courts as its principal object. Judicial decisions are examined as argumentative legal texts that contain *ratio decidendi*, patterns of normative interpretation, and the use of both Islamic legal sources and national law. In the context of Indonesia's Islamic judiciary, judges do not merely apply Law Number 41 of 2004 on Waqf, but also engage in judicial *ijtihād* when confronted with tensions between normative texts, social waqf practices, and demands for substantive justice (Nurlaelawati, 2010). Accordingly, this study concentrates on the structure of judges' legal argumentation rather than solely on the final outcomes of decisions (Posner, 2010).

The selection of decisions was conducted through purposive legal sampling, based on the following criteria: (1) waqf dispute decisions that have attained final and binding legal force; (2) the presence of conflicts involving *nāżir*, heirs, or third parties; and (3) decisions that demonstrate variations in judicial reasoning in the use of *fiqh al-waqf* and positive law. On the basis of these criteria, the study analyzes, *inter alia*, decisions of the South Jakarta Religious Court concerning the principle of once waqf, always waqf, the Kediri Religious Court Decision Number 425/Pdt.G/2019/PA.Kdr, as well as several other decisions that have been examined in the decision-based waqf law literature (Dwi Maulina, 2023). This strategy enables a comparative analysis of differentiated patterns of judicial reasoning in waqf cases (Marzuki & Huda, 2025).

The research data were obtained through a legal document study encompassing official copies of court decisions, statutory regulations, and relevant academic literature. Data analysis was carried out through legal reasoning analysis, which includes the identification of legal issues, the legal sources invoked, the construction of *ratio decidendi*, and the value orientations of justice employed by judges. This analytical approach is enriched by legal realism and contemporary Islamic legal theory to read judicial decisions as institutional practices that reflect the relationship between

Islamic legal doctrine and state judicial practice (Hallaq, 2009; Tamanaha, 2021). Through this method, the study not only describes judicial decisions but also explains how waqf law is shaped and operationalized through judicial adjudication.

Results and Discussion

Judicial Reasoning in Determining the Status and Legal Validity of Waqf

The determination of the status and legal validity of waqf constitutes a fundamental issue in waqf disputes adjudicated by the religious courts, as it is from this point that all subsequent legal consequences of waqf are derived. In judicial practice, judges are not only confronted with the question of whether an object has been validly endowed as waqf, but also whether such waqf possesses continuing binding legal force (binding force) upon the parties. In classical fiqh doctrine, waqf is understood as a legal act that is *lāzim* and *mu'abbad*; once a waqf pledge (*ikrār waqf*) is validly pronounced, the ownership rights of the *wāqif* are extinguished and transformed into property dedicated to public benefit (az-Zuhaili, 1985; Nawawi, 2021). This principle serves as the primary normative foundation in judicial reasoning when assessing the validity and enforceability of waqf.

Within the framework of Indonesian positive law, this principle receives juridical legitimacy through Law Number 41 of 2004 on Waqf, which explicitly prohibits the transfer, encumbrance, or inheritance of waqf property. Nevertheless, the findings of this study indicate that judges do not automatically accept every waqf claim as valid and legally binding. Instead, they engage in a staged examination of the existence of the waqf pledge, the legal capacity of the *wāqif*, the clarity of the waqf object, and the designated purpose of the endowment. This pattern of reasoning reflects judicial prudence, in which statutory norms function as an evaluative framework rather than as automatic answers to concrete disputes (Friedman, 1975; Widowati & Herliana, 2021).

In a number of religious court decisions, the principle of once waqf, always waqf is employed as the principal argumentative basis for rejecting claims by heirs seeking to reclaim waqf property. Rohman's study of the practice of the South Jakarta Religious Court demonstrates that judges consistently affirm the continuing validity of waqf as long as the existence of a waqf pledge and a clear waqf purpose can be established, notwithstanding competing inheritance claims or internal family conflicts (Rohman, 2018). Such reasoning reflects a judicial orientation toward protecting waqf as a public legal institution that transcends the individual interests of the litigating parties.

Nevertheless, this study also finds that judges do not invariably apply this principle in a rigid or formalistic manner. In certain cases, judges first test the validity of the waqf pledge by taking

into account living waqf practices within the community. Marzuki and Huda observe that in several decisions, judges consider evidence of physical possession of the land, the historical management of the waqf, and social recognition of its waqf status as integral components of their legal reasoning (Marzuki & Huda, 2025). This approach indicates that the legal validity of waqf in judicial practice is determined not solely by normative texts, but also by the surrounding social realities in which waqf operates.

From the perspective of legal realism, this pattern underscores that the legal status of waqf is not entirely given, but is instead constructed through a process of contextual judicial reasoning. Tamanaha emphasizes that judges do not merely “find” the law; rather, they actively shape legal meaning through interpretation, discretion, and evaluative judgments of concrete facts (Lücke, 1989; Tamanaha, 2021). Accordingly, the determination of the validity and binding force of waqf in judicial decisions can be understood as a form of legal construction that simultaneously takes into account norms, facts, and conceptions of justice.

Within the framework of contemporary Islamic law, such practices may be read as a form of judicial *ijtihād*. Judges of the religious courts do not rely exclusively on classical fiqh, but interpret waqf principles in ways that align them with the modern legal system and the demands of legal certainty. Nurlaelawati demonstrates that religious court judges in Indonesia play an active role in interpreting Islamic law (Nurlaelawati, 2010), such that their decisions often reflect efforts to harmonize religious doctrine with state law (Hasibuan et al., 2023). This harmonization is clearly manifested in the manner in which judges affirm the status and enforceability of disputed waqf.

Judicial reasoning is also shaped by an orientation toward protecting the social function of waqf. In several decisions, judges emphasize that waqf should be understood as an institution serving communal interests and the sustainability of public benefit, rather than merely a private legal relationship between the *wāqif* and the *nāzir*. This view resonates with Rahardjo’s conception of substantive justice, which stresses that law must be interpreted in relation to its social and humanitarian purposes (Rahardjo, 2009). Moreover, from the perspective of Islamic law, the protection of public welfare (*maṣlahah*) is regarded as an integral component of the objectives of the Sharī‘a itself (Auda, 2008; Wahyuni, 2022).

On the basis of the foregoing analysis, it may be concluded that judicial reasoning in determining the status and validity of waqf is dynamic and multidimensional. Judges do not merely function as appliers of norms, but act as key agents who bridge fiqh al-waqf doctrine, positive law, and social reality. Consequently, judicial decisions constitute a primary arena for the formation of

waqf law in practice, while simultaneously serving as an important source for the development of Islamic legal theory and the study of Islamic adjudication (Hallaq, 2009).

Integration of Fiqh al-Waqf Doctrine and Positive Law in Judicial Decisions

The integration of fiqh al-waqf doctrine and positive law constitutes a defining characteristic of judicial reasoning in waqf disputes adjudicated by the religious courts. Within the Indonesian legal system, waqf is positioned not only as a religious institution but also as an object of state regulation subject to the principle of legal certainty. This condition places judges in a strategic position to bridge two normative regimes with distinct epistemological foundations: fiqh al-waqf, rooted in the Islamic scholarly tradition, and positive law, constructed through modern legislative processes (Kahfi et al., 2024). From this perspective, judicial decisions function as concrete sites for the articulation of such integration, rather than as merely mechanical applications of legal norms (Fauzia et al., 2021; Friedman, 1975, 2017).

Doctrinally, fiqh al-waqf emphasizes the principles of perpetuity (ta‘bīd), public benefit, and the prohibition of alienating waqf property. These principles are embedded across various schools of Islamic jurisprudence, albeit with technical differences concerning the conditions and forms of waqf (Kahf, 2003). By contrast, Indonesian positive law adopts most of these principles through Law Number 41 of 2004 on Waqf, while framing them within the logic of state administration, legal proof, and national legal order (Arifin et al., 2024; Laela Fatikhatul Choiriyah et al., 2023; Mailuhu et al., 2016). Judges operate at the intersection of these two systems, where they are required to ensure that the normative values of fiqh al-waqf are preserved without compromising legal certainty and systemic order.

In judicial practice, this integration is evident in the manner in which judges formulate legal considerations that combine references to fiqh doctrines and statutory norms. Studies by Rohman and Marzuki-Huda demonstrate that judges frequently employ the Waqf Law as the formal legal basis, while fiqh al-waqf principles function as substantive legitimations for the decisions rendered (Marzuki & Huda, 2025; Rohman, 2018). This pattern indicates that fiqh is not abandoned, but rather repositioned as a source of legal values and rationality that supports the application of positive law. In this sense, judicial reasoning reflects a conscious methodological choice to align normative Islamic principles with the structural demands of state law adjudication. Consequently, the integration of fiqh al-waqf and positive law operates not hierarchically, but dialogically, enabling judges to preserve the moral authority of Islamic doctrine while ensuring legal certainty and enforceability within the national legal system. The following table illustrates the pattern of

integration between fiqh al-waqf doctrine and positive law in the legal reasoning of religious court judges:

Table 1. Integration of Fiqh al-Waqf and Positive Law in Religious Court Decisions

Aspect of Judicial Consideration	Fiqh al-Waqf Doctrine	Indonesian Positive Law	Pattern of Integration in Judicial Decisions
Status of waqf	<i>Waqf</i> is <i>lāzim</i> and <i>mu'abbad</i>	<i>Waqf</i> property is non-transferable (Law No. 41/2004)	<i>Fiqh</i> as substantive legitimization, statute as formal legal basis
Proof of waqf	<i>Ikrār</i> and intention of the <i>waqif</i>	<i>Waqf</i> pledge deed and evidentiary instruments	Contextual interpretation of formal evidence
Heirs' disputes	<i>Waqf</i> extinguishes inheritance rights	Prohibition of inheriting <i>waqf</i> property	Protection of <i>waqf</i> as a public interest institution
Social function	Public welfare (<i>maṣlahah</i>)	Social objectives of <i>waqf</i>	Harmonization of substantive justice values

The table demonstrates that judges do not position fiqh and positive law in a mutually exclusive relationship, but rather in a complementary one. Fiqh al-waqf provides an ethical and teleological framework, while positive law supplies normative structure and enforcement mechanisms. This approach is consistent with Hallaq's view that Islamic law within the modern state operates through continuous negotiation with state legal structures, including through judicial practice (Hallaq, 2009).

Such integration also reflects a distinctive form of institutional *ijtihād* characteristic of Indonesia's religious courts. Nurlaelawati emphasizes that religious court judges do not merely translate legal texts, but act as agents who actively construct a synthesis between the Islamic legal tradition and the demands of the national legal system (Nurlaelawati, 2010). In waqf disputes, this synthesis is evident in the manner in which judges uphold the principle of waqf perpetuity while simultaneously requiring evidentiary standards and procedural compliance consistent with modern legal norms.

Accordingly, the integration of fiqh al-waqf doctrine and positive law in judicial decisions should not be understood as a compromise that weakens either system, but rather as a judicial strategy aimed at safeguarding the sustainability of waqf within a rule-of-law state. Judicial decisions function as a medium through which fiqh values are translated into the operational language of positive law. It is at this juncture that waqf adjudication practices in Indonesia make a significant contribution to the development of contemporary Islamic legal theory and to

comparative studies of adjudication in Muslim-majority countries (Fina Wildaniyah & Ahmad Muktafi, 2025).

Implications of Judicial Reasoning for Legal Certainty and the Protection of the Public Interest in Waqf

Judicial reasoning in waqf disputes has direct implications for legal certainty, particularly because waqf concerns the sustainability of long-term public benefits. Court decisions that affirm the status and validity of waqf do not merely resolve conflicts between parties, but also determine the future stability of waqf asset management. In this context, legal certainty constitutes a fundamental prerequisite for enabling waqf to function optimally as an instrument of social welfare and community development (Zuki, 2012). Accordingly, the quality of judicial reasoning becomes a key factor in maintaining public trust in waqf institutions.

However, legal certainty in waqf cases is not synonymous with the rigid application of norms. Research indicates that judges are often confronted with situations in which formal evidence does not fully reflect the long-standing social reality of waqf practices. Under such circumstances, judges are required to strike a balance between legal certainty and substantive justice. This approach accords with Gustav Radbruch's view that justice and social utility must be accorded equal weight alongside legal certainty in judicial practice (Carlizzi, 2022; Radbruch, 2006). In waqf disputes, this balance becomes particularly critical because the consequences extend beyond the immediate interests of the litigating parties.

Another important implication of judicial reasoning concerns the protection of the public interest in waqf. By its very nature, waqf constitutes a public legal institution aimed at safeguarding the continuity of social, religious, and economic benefits. Accordingly, judicial decisions that uphold the status of waqf function as protective mechanisms against covert privatization or unfounded individual claims over communal assets (Manan, 2006; Nawawi, 2021). In many decisions, judges explicitly affirm that waqf cannot be treated as an ordinary object of private transactions, but rather as a social trust whose sustainability must be preserved.

From the perspective of Islamic law, this protective orientation is rooted in the objectives of the Sharī'a (maqāṣid al-shaī'ah), particularly the protection of property (hifz al-māl) and the promotion of public welfare. Al-Shāṭibī emphasizes that these objectives constitute the foundational rationale of Islamic legal norms (Al-Shatibi, 2008). Auda further argues that the waqf institution represents one of the principal instruments for realizing distributive justice within

Muslim societies (Auda, 2008). Accordingly, judicial reasoning that prioritizes the public interest may be understood as an actualization of *maqāṣid* within the context of modern adjudication.

Nevertheless, variations in judicial reasoning across waqf decisions also generate distinct challenges for legal consistency. Marzuki and Huda identify differentiated patterns of judicial argumentation in similar waqf cases, depending on the specific context of the dispute and the construction of evidence presented (Marzuki & Huda, 2025). While such variation on the one hand reflects flexibility and contextual sensitivity, on the other hand it carries the potential to undermine legal certainty if not accompanied by a consistent and transparent argumentative framework.

Within the context of Islamic adjudication in Indonesia, these challenges underscore the importance of strengthening the quality of judicial argumentation. Nurlaelawati emphasizes that the legitimacy of religious court decisions depends not only on their normative conformity with Islamic law and state law, but also on the rationality and openness of judges' reasoning (Nurlaelawati, 2010; Salim, 2008). Decisions articulated through clear and integrative reasoning are more likely to gain public acceptance and to function as constructive precedents.

More broadly, the implications of judicial reasoning in waqf cases extend to the development of national waqf law. Judicial decisions have the potential to operate as unwritten sources of law that enrich the interpretation of the Waqf Law. From the perspective of legal realism, such judicial practices form part of the process through which living law is produced, as legal meaning continuously evolves through concrete decisions (Lücke, 1989; Tamanaha, 2021). In this sense, courts function not merely as appliers of law, but also as normative laboratories for the renewal of waqf law.

On the basis of the foregoing analysis, it can be affirmed that judicial reasoning in waqf disputes has strategic implications for legal certainty, the protection of the public interest, and the development of contemporary Islamic law. Judicial decisions that are integrative and oriented toward public welfare will strengthen the position of waqf as a sustainable legal institution. At this juncture, the study of waqf decisions is relevant not only for judicial practice, but also for the advancement of Islamic legal theory and waqf policy at both national and global levels.

Conclusion

This study demonstrates that religious court decisions in waqf disputes constitute a strategic arena of law formation that bridges *fīqh al-waqf* doctrine and positive law. Judicial reasoning does not merely culminate in the textual application of norms, but rather constructs contextual legal meanings through the examination of the status, validity, and social function of waqf. The findings

affirm that classical fiqh principles such as *luzūm*, *ta‘bīd*, and orientation toward *maṣlahah* are not abandoned; instead, they are rearticulated within the framework of state law through dynamic practices of judicial *ijtihād*. Accordingly, waqf law as applied in judicial practice is not static, but evolves as a form of living law.

Furthermore, the analysis of judicial reasoning reveals that legal certainty and the protection of the public interest in waqf constitute the primary orientations of the decisions examined. Judges consistently position waqf as a public legal institution that must be safeguarded against individual claims capable of undermining its social function. At the same time, variations in judicial argumentation across similar cases indicate the need to strengthen consistency and transparency in judicial reasoning. In this context, judicial decisions function not only as mechanisms for dispute resolution, but also as sources of normative learning that enrich the development of national waqf law and contemporary studies of Islamic adjudication.

Based on these findings, this study recommends strengthening the tradition of court decision-based research as an integral component of waqf law development in Indonesia. From a judicial perspective, enhancing the quality of judicial argumentation is necessary through the explicit use of fiqh frameworks, theories of legal reasoning, and *maqāṣid al-sharī‘ah* within judicial considerations. From a normative and policy standpoint, the findings support the formulation of more systematic guidelines for reasoning in waqf disputes in order to reinforce legal certainty and the protection of waqf assets. At the academic and global levels, this study contributes to the dialogue between legal realism and Islamic legal studies, while opening avenues for comparative analysis of waqf adjudication practices across Muslim jurisdictions.

References

Al-Shatibi, A. I. (2008). *Al-Muwafaqat fi Usul al-Shariah*. Dar al-Ma‘rifah.

Arifin, Z., Ramadhan, M. S., & Irsan. (2024). Wakaf Dalam Perspektif Undang-Undang Nomor 41 Tahun 2004. *Journal of Economics and Development (JEnD)*, 1(1).

Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. The International Institute of Islamic Thought (IIT).

az- Zuhaili, W. (1985). *al-Fiqh al-Islāmī wa Adillatuhu: Vol. II* (2nd ed.). Dār al-Fikr.

Carlizzi, G. (2022). Continuity or Discontinuity in Gustav Radbruch’s Legal Philosophy? The Thesis of the “hermeneutischer Naturrechtspositivismus.” *Materiali per Una Storia Della Cultura Giuridica*, 52(2). <https://doi.org/10.1436/105733>

Duxbury, N. (2008). *The Nature and Authority of Precedent*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511818684>

Dwi Maulina, R. (2023). Penyelesaian Sengketa Tanah Wakaf yang Dikuasai Oleh Pihak Ketiga (Studii Putusann Pengadilan Agama Kediri Nomor 425/Pdt.G/2019/PA.Kdr). *Lex LATA*, 4(2). <https://doi.org/10.28946/lexl.v4i2.1548>

Fauzia, A., Hamdani, F., & Octavia, D. (2021). The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law. *Progressive Law Review*, 3(01). <https://doi.org/10.36448/plr.v3i01.46>

Fina Wildaniyah, & Ahmad Muktafi. (2025). Politik Hukum Dalam Pembentukan Kompilasi Hukum Islam. *ASA*, 7(2). <https://doi.org/10.58293/asa.v7i2.154>

Friedman, L. M. (1975). *The Legal System: A Social Science Perspective*. Russell Sage Foundation.

Friedman, L. M. (2015). Lawrence M. Friedman - The Legal System - A Social Science Perspective- Russell Sage Foundation (1987). In *Paper Knowledge . Toward a Media History of Documents* (Vol. 3, Issue April).

Friedman, L. M. (2017). *System of Law and Social Change*. Stanford University Press.

Hallaq, W. B. (2009). *An Introduction to Islamic Law*. Cambridge University Press.

Hasibuan, K., MA, A., & Priyana, Y. (2023). Pemberlakuan Hukum Syariah dalam Sistem Hukum Nasional: Studi Kasus tentang Penegakan Hukum Syariah di Negara Asia. *Jurnal Hukum Dan HAM Wara Sains*, 2(10). <https://doi.org/10.58812/jhhws.v2i10.707>

Kahf, M. (2003). *Waqf: a Quick Overview*. Islamic Research and Training Institute.

Kahfi, A., Zen, M., Zakat, S., Wakaf, D., Kesejahteraan, M., Syariah, E., Analisis, K. ;, & Muamalah, F. (2024). Synergy of Zakat and Waqf in Realizing Contemporary Sharia Economic Welfare: Analysis of Fiqh Muamalah. *Al-Afkar, Journal For Islamic Studies*, 7(4).

Laela Fatikhatul Choiriyah, A., Rato, D., & Dwi Anggono, B. (2023). Urgensi Pembaharuan Pengelolaan Wakaf Di Indonesia. *JURNAL RECHTENS*, 12(2). <https://doi.org/10.56013/rechtens.v12i2.2417>

Lücke, H. K. (1989). Ratio Decidendi : Adjudicative Rational and Source of Law. *Bond Law Review*, 1(1). <https://doi.org/10.53300/001c.5173>

Mailuhu, A. E., Setyowati, R., & Islamiyati. (2016). Pembaharuan Hukum Perwakafan di Indonesia Melalui Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf. *Diponegoro Law Journal*, 5.

Manan, A. (2006). *Reformasi Hukum Islam di Indonesia*. Grafindo Persada.

Marzuki, A. S., & Huda, M. I. (2025). Diferensiasi Keputusan Hakim dalam Penyelesaian Sengketa Wakaf: Studi Kasus Pada Enam Putusan Pengadilan Agama di Indonesia. *Tahkim (Jurnal Peradaban Dan Hukum Islam)*, 8(1). <https://doi.org/10.29313/tahkim.v8i1.14730>

Nawawi. (2021). Positivisasi Perwakafan di Indonesia dalam Sejarah Sistem Hukum Nasional. *Asy-Syari'ah : Jurnal Hukum Islam*, 7(2). <https://doi.org/10.55210/assyariah.v7i2.577>

Nurlaelawati, E. (2010). Modernization, Tradition and Identity : The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts. In *Modernization, Tradition and Identity : The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*.

<https://doi.org/10.5117/9789089640888>

Posner, R. A. (2010). *How Judges Think*. Harvard University Press.

Radbruch, G. (2006). Statutory lawlessness and supra-statutory law (1946). *Oxford Journal of Legal Studies*, 26(1). <https://doi.org/10.1093/ojls/gqi041>

Rahardjo, S. (2009). *Hukum dan Masyarakat*. Angkasa.

Rohman, A. N. (2018). Penyelesaian Sengketa Wakaf di Pengadilan Agama Jakarta Selatan. *Ijtihad: Jurnal Hukum Dan Ekonomi Islam*, 12(1). <https://doi.org/10.21111/ijtihad.v12i1.2543>

Salim, A. (2008). *Challenging the Secular State: The Islamization of law in Modern Indonesia*. University of Hawai'i Press. <https://doi.org/10.5860/choice.46-6446>

Tamanaha, B. Z. (2021). *A Realistic Theory of Law*. Cambridge University Press.

Wahyuni, S. (2022). Studi Perbandingan Pemikiran Filsafat Hukum Islam Al-Ghazali, Asy-Syatibi, dan Ibnu Khaldun. *Al-Mazaahib: Jurnal Perbandingan Hukum*, 10(1). <https://doi.org/10.14421/al-mazaahib.v10i1.2752>

Widowati, C., & Herliana, -. (2021). Nalar Mazhab Sosiologis dalam Penemuan Hukum yang Berkeadilan oleh Hakim. *Jurnal Hukum & Pembangunan*, 51(2).

Zuki, M. S. M. (2012). Waqf and Its Role in Socio-Economic Development. *ISRA International Journal of Islamic Finance*, 4(2). <https://doi.org/10.12816/0002755>