



Sustainability of *Waqf Zurrī*: Legal Analysis of Malaysia and Indonesia

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Abstract: This study examines the sustainability of *waqf zurrī* through a statutory analysis of *waqf zurrī* legislation in Malaysia and Indonesia based on the views of classical jurists. Several Muslim-majority countries, such as Egypt, Tunisia, Libya, and the United Arab Emirates, have restricted and repealed *waqf zurrī* laws due to social, economic, and administrative factors, despite the absence of explicit Shariah prohibition. The main question is whether the legal frameworks in Malaysia and Indonesia contain sustainability elements capable of preventing the factors that led to the restriction and repeal of *waqf zurrī* in other Muslim countries. This study employs a qualitative doctrinal legal research design based on document analysis to evaluate sustainability elements within legal frameworks. The analysis focuses on Malaysian state *waqf* enactments, namely the *Wakaf* (Perak) Enactment 2015, the *Wakaf* (Terengganu) Enactment 2016, and the *Wakaf* (State of Selangor) Enactment 2015, as well as Indonesia's Law of the Republic of Indonesia Number 41 of 2004 and Government Regulation of the Republic of Indonesia Number 42 of 2006, supported by fiqh analysis of juristic opinions. The findings indicate that sustainability elements within *waqf zurrī* legislation in Malaysia and Indonesia are reflected in statutory definitions, fundamental concepts of *waqf zurrī*, and governance mechanisms, including legal provisions, managerial competency, protection of family beneficiaries' rights, continuity of benefits, protection of *mawqūf* from Improper Interference, and statutory authority for strengthening *waqf zurrī*. The study suggests that the statutory implementation of *waqf zurrī* in Malaysia and Indonesia can serve as a reference for other Muslim countries in ensuring the sustainability of *waqf zurrī* for the welfare of Muslim communities. This research contributes to contemporary fiqh discourse by discussing the sustainability elements reflected in *waqf zurrī* legislation in Malaysia and Indonesia based on the integration of Shariah principles and modern legal structures.

Keywords: Comparative Legal Analysis; Indonesia; Malaysia; Sustainability; *Waqf Zurrī*.



Introduction

Waqf means *al-habs* (detention or holding).¹ Additionally, *waqf* also carries the meaning of *al-man'*, which refers to prevention.² It further denotes *tasbīl*, meaning dedicating property for the cause of Allah SWT.³ The term *waqf* derives from the Arabic *al-waqf*, which in turn derives from the verb *waqafa*.⁴ From a terminological perspective, *waqf* refers to the detention of property from which usufruct may be derived, while preserving the corpus of the property and suspending the right to dispose of it, so that its benefits are directed to permissible purposes.⁵ As for *waqf zurri*, it involves a specification within the general meaning of *waqf*, whereby the benefits of the endowed asset are designated specifically for certain individuals determined by the endower, comprising one or more members of the endower's family. It also provides benefits to the endower, his family, descendants, and specified individuals regardless of their wealth or poverty, health condition, or age.⁶ *Waqf zurri* is also known by various terms such as family *waqf*, descendant *waqf*, *waqf 'alā al-awlād*, private *waqf*, and *waqf ahli*.⁷

Waqf has existed since the early period of Islam, beginning with the time of the Prophet Muhammad SAW and continuing through the Companions until the present day.⁸ The legal distinction between *waqf zurri* and *waqf khayri* lies primarily in the designation of the initial beneficiaries and the purpose of the endowment. Although the classification of *waqf* into *zurri* and *khayri* is more

¹ Al-Jurjānī, *Al-Ta'rifāt* (Beirut: Dār al-'Ilmiyyah, 2003).

² Ahmad Ikhsan, "Tinjauan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Terhadap Keabsahan Pergantian Nadzir Tanpa Persetujuan Ahli Waris (Studi Putusan Nomor 512Pdt.G2022Pa.Kdr)" (Thesis, Universitas Islam Negeri Syekh Wasil Kediri, 2025).

³ Yenni Samri Juliati and Maftah Rizki Addin HRP, "Wakaf dan Dasar Hukum Wakaf," *Jurnal Manajemen Dan Bisnis Ekonomi* 2, no. 2 (2024): 63–76, <https://doi.org/10.54066/jmbe-itb.v2i2.1431>.

⁴ Muhammad Ainul Hakim Muhammad Khalil et al., "PENGAPLIKASIAN WAKAF AHLI BERTEMPON (MUAQQAT) SEBAGAI MEKANISME MEMAKMURKAN AMALAN WAKAF DI MALAYSIA," 2021, 53–71.

⁵ Al-Khinn et al., *Al-Fiqh al-Manhaji 'alā Madhhab al-Imām al-Shafi'i* (Damascus: Dār al-Qalam, 1992).

⁶ Muhammad Hisyam Mohamad and Nur Syahidah Abdul Jalil, "Zurri Waqf In Malaysia: Syariah Rulings, Implementation Reality, And Future Commercialisation," *Journal of Anqaf, Zakat and Haji (Jawhar)*, 2025, 61–80, <https://doi.org/10.65404/JAWHAR.302004>.

⁷ Mohd Ali Muhamad Don, "Penglibatan Sektor Bukan Kerajaan Di Malaysia, Singapura Dan Indonesia Dalam Mengembangkan Potensi Dana Wakaf Suatu Perbandingan," paper presented at ACCON 2012 Academic Conference, 2012, <https://ir.uitm.edu.my/id/eprint/48547/1/48547.pdf>.

⁸ Mansur Efendi, "Pelaksanaan Pasal 43 Undang-Undang Nomor 41 Tahun 2004 Mengenai Pengelolaan Harta Wakaf di Pondok Modern Darussalam Gontor," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 4 (2019): 151–61, <https://doi.org/doi.org/10.22515/alakhkam.v4i2.1961>.

commonly found in later writings and is not explicitly highlighted in the major classical works of Islamic law, Islamic jurisprudence recognises the validity of a *waqf* created for specific individuals or groups, whether independently, together with public welfare purposes, or followed by public charitable beneficiaries. In *waqf zurrī*, also known as *waqf ahli* or family *waqf*, the first beneficiaries are specific persons such as the children, descendants, relatives of the *wāqif*, or other designated individuals. Muslims have regarded the concept of *waqf zurrī* as a means of performing continuous charity while safeguarding the welfare of family members. Previous studies indicate that *waqf zurrī* serves as an instrument to ensure the well-being of one's family. By contrast, *waqf khayrī* is initially dedicated to public welfare purposes, such as mosques, schools, educational institutions, the poor, scholars, or students. This shows that the difference between the two forms of *waqf* is not merely descriptive but rests on the legal structures of beneficiary designation, the scope of benefit, and the relationship between private familial interests and public welfare. The juristic debate becomes more complex in cases where the *wāqif* designates himself as a beneficiary, as the Mālikī and Shāfi'ī schools generally do not recognise this form on the basis that the benefit already belongs to the *wāqif* before the creation of the *waqf*. In contrast, the Ḥanafī and Ḥanbalī schools, as well as Ibn Ḥazm, recognise certain forms of such endowment because they may encourage the establishment of *waqf*. Thus, the distinction between *waqf zurrī* and *waqf khayrī* involves not only the identity of the beneficiaries but also broader legal reasoning concerning the validity, limits, and objectives of beneficiary designation in Islamic law.⁹

The legality of *waqf zurrī* has been the subject of sustained juristic and legal debate, particularly due to concerns over its potential use to privilege certain family members, such as male descendants, at the expense of others. Early criticism is associated with the position attributed to 'Ā'ishah r.a., who opposed practices resembling pre-Islamic forms of inheritance exclusion, while in the modern period the debate intensified after Muḥammad ibn 'Abd al-Wahhāb declared *waqf zurrī* to be bid'ah (unwarranted innovation), a view later supported by figures such as Shaykh Rāmiz Malak. This critique influenced legal reforms in several Muslim countries, leading to the abolition or non-recognition of *waqf zurrī* in Syria, Egypt, Iraq, Turkey, Lebanon, Libya, and the United Arab Emirates. Conversely, many other jurisdictions, including Jordan, Kuwait, Algeria, Saudi Arabia, Singapore, Malaysia, Indonesia, Iran, and Pakistan, continue to recognise its legality. The opposing view was strongly defended by scholars such as Ḥasanayn Makhluḥ, Muṣṭafa' Aḥmad al-Zarqā', and the Jam'iyat al-'Ulama' bi-Dimashq, who argued that *waqf al-ahlī* is valid in Islamic law and that any misuse

⁹ Muhammad Abdurrahman Sadique et al., "Socio-Legal Significance of Family Waqf in Islamic Law: Its Degeneration and Revival," *IJUM Law Journal* 24, no. 2 (December 2016): 309–34, <https://doi.org/10.31436/iiumlj.v24i2.275>.

or administrative weakness should be addressed through legal regulation and institutional reform rather than outright abolition. Therefore, the debate on *waqf zurri* is not merely about its beneficiaries but concerns deeper juristic reasoning regarding its legitimacy, limitations, social function, and adaptation within modern legal systems.¹⁰

However, in recent decades, many Muslim-majority countries such as Egypt, Syria, Iraq, Turkey, Lebanon, Libya, and the UAE have repealed *waqf zurri* legislation.¹¹ Examination of *waqf zurri* legal frameworks in these countries reveals varying approaches: some repealed the system entirely, some limited it to several generations or years, while others imposed no limitation. Egypt is among the countries that repealed *waqf zurri* entirely. Initially, Act No. 5 removed the perpetual nature of *waqf zurri*, rendering non-charitable *waqf* temporary and limited to two generations, with a maximum duration of sixty years. However, this legislation was later amended to repeal the *waqf* completely *zurri* through Act No. 180(1) of 1952.¹² This is further supported by Muhammad Abdurrahman Sadique, who notes that Egypt repealed *waqf zurri* entirely through Law No. 180 of 1952, while Tunisia did so through Law No. 46 of 1954, Libya through Law No. 16 of 1973, and the UAE through the *Waqf* Decree of 1980.¹³ Additionally, *waqf zurri* is still practised in Lebanon but is subject to restrictions, including the removal of perpetuity and limitation to two generations. The legislation also limits the amount of the estate that may be endowed to no more than one-third of the estate to safeguard the rights of heirs. Meanwhile, Jordan, through the *Waqf* and Islamic Affairs Law No. 32 of 2001, stipulates that *waqf zurri* must not contradict Islamic inheritance rules to prevent harm to heirs or the deprivation of female heirs of inheritance.¹⁴

These repeals raise various questions, particularly about the factors that led to these changes. Aziz Sulton Bahtiar identifies several reasons behind the

¹⁰ Ulfa Pirmani, Edi Kurniawan, and Najmi, "From the Debate on the Legality of Waqf Al-Ahli to Its Implementation in Southeast Asia: Indonesia, Malaysia, and Singapore," *International Journal of Law and Society (IJLS)* 3, no. 2 (August 2024): 59–76, <https://doi.org/10.59683/ijls.v3i2.81>.

¹¹ Ratna Suraiya and Nashrun Jauhari, "Relevansi Wakaf Ahli dalam Membangun Ketahanan Keluarga," *Tasyri': Journal of Islamic Law* 1, no. 2 (July 2022): 253–92, <https://doi.org/10.53038/tsyr.v1i2.33>.

¹² Mohd Zaidi Daud, Mohd Norhusairi Mat Hussin, and Syed Alawi Mahdi Syed Mohamad, "Civilizational Development through Family Waqf: An Analysis from Islamic Historical Perspectives," *Journal of Al-Tamaddun* 18, no. 2 (2023): 71–86, <https://doi.org/doi.org/10.22452/JAT.vol18no2.6>.

¹³ Muhammad Abdurrahman Sadique, "The Socio Legal Significance Of Family Waqf And Its Revival Under State Control," *South East Asia Journal of Contemporary Business, Economics and Law* 7, no. 4 (2015): 63–69.

¹⁴ Daud, Mat Hussin, and Syed Mohamad, "Civilizational Development through Family Waqf: An Analysis from Islamic Historical Perspectives."

repeal of *waqf zurrī*, as implemented in Egypt through Law No. 180 of 1952. Among these factors is the misuse of *waqf zurrī* to avoid the distribution of inheritance according to *fara'id* after the endower's death. Another factor is the use of *waqf zurrī* to evade creditors' debt claims.¹⁵ According to Ratna Suraiya and Nashrun Jauhari, five main factors underlie the repeal of *waqf zurrī* legislation. These factors include the endower's intention and purpose, issues related to beneficiaries, governance weaknesses, economic factors, and socio-political considerations.¹⁶ Both studies indicate that these factors primarily reflect weaknesses on the part of endowers and beneficiaries, compounded by inefficient governance of *waqf* assets and governmental intervention to access *waqf* funds.

Previous studies also support the view that local authorities sought avenues to gain full control over *waqf* assets and their funds. However, this was difficult in the case of *waqf zurrī* due to its specific legal constraints, which prevent benefits from being redirected beyond the beneficiaries designated by the endower. Consequently, governments could not freely impose laws to utilise *waqf zurrī* funds. As occurred in Turkey since the early 1830s, authorities gradually introduced measures to restrict *waqf zurrī*, beginning with administrative controls and ultimately leading to full repeal. Inefficient management by *waqf* administrators and *mutawalli* was used as a strong justification for legislation enabling full governmental control over *waqf* assets. The Syrian government employed a similar rationale through the enforcement of Ordinance No. 28.¹⁷ This raises the question of why Muslim-majority countries in Southeast Asia have largely retained *waqf zurrī* legislation. Why have the issues that led to the repeal elsewhere not influenced countries such as Malaysia and Indonesia? Therefore, an analysis of *waqf zurrī* legislation in these two countries is crucial. Specifically, this study examines whether their legal frameworks include provisions that ensure the sustainability of *waqf zurrī* and mitigate the factors that previously led to its repeal in other Muslim countries.

Method

This study adopts a qualitative doctrinal legal research design based on document analysis. The doctrinal approach is used to examine statutory provisions and fiqh doctrines relating to *waqf zurrī*, while the legal frameworks of Malaysia and Indonesia are assessed to identify their statutory and governance

¹⁵ Aziz Sul-ton Bahtiar, "Dari Wakaf Ahli Ke Wakaf Khairi" (Institut Agama Islam Negeri Ponorogo, 2022), https://etheses.iainponorogo.ac.id/20732/1/101180027_Aziz%20Sul-ton%20Bahtiar_HKI.pdf.

¹⁶ Suraiya and Jauhari, "Relevansi Wakaf Ahli dalam Membangun Ketahanan Keluarga."

¹⁷ Sadique, "The Socio Legal Significance Of Family Waqf And Its Revival Under State Control."

mechanisms for sustaining *waqf zurri*. Data were collected entirely from primary and secondary documents without interviews or questionnaires. The primary sources consist of selected Malaysian state *waqf* enactments, namely the *Waqf* Enactment (Perak) 2015, the *Waqf* Enactment (Terengganu) 2016, and the *Waqf* Enactment (State of Selangor) 2015, as well as Indonesian *waqf* legislation, namely Law of the Republic of Indonesia No. 41 of 2004 and Government Regulation No. 42 of 2006. Secondary sources include classical fiqh works, juristic opinions, journal articles, theses, books, and previous studies related to *waqf zurri*, family *waqf*, *waqf* governance, and the restriction or repeal of *waqf zurri* legislation in several Muslim countries. This study establishes a hierarchy of sources according to their authority and analytical function. Statutory provisions are treated as the primary legal basis for identifying the positive legal framework of *waqf zurri*; classical fiqh doctrines function as normative Islamic legal sources for assessing its validity, limits, and objectives under Shariah, while modern academic literature is used to contextualise historical debates, governance issues, and contemporary developments relating to family *waqf*. The literature was searched in Scopus, Web of Science (WoS), and Google Scholar using terms related to *waqf zurri*, *waqf al-ahli*, family *waqf*, Islamic law, *waqf* governance, legal reform, and the restriction, abolition, or repeal of family *waqf* legislation. Studies were included when they directly addressed the legal, *fiqh*, historical, or governance aspects of *waqf zurri*, particularly in relation to Malaysia, Indonesia, or Muslim countries that have restricted or repealed family *waqf*. Studies that discussed *waqf* only in general terms or were not directly related to the objective of this study were excluded.

Data were analysed using thematic content analysis, focusing on three main themes: the legal definition and recognition of *waqf zurri*, the fundamental legal and fiqh concepts of *waqf zurri*, and governance mechanisms supporting its sustainability. In this study, “sustainability elements” refer to legal and governance mechanisms that support the continuity, protection, and effective administration of *waqf zurri*. These include protecting family beneficiaries’ rights, maintaining the continuity of waqf benefits, ensuring institutional supervision, demonstrating managerial competency, safeguarding against improper interference, and strengthening waqf governance through statutory authority. The findings were then evaluated using a fiqh framework as a normative benchmark to assess whether the Malaysian and Indonesian legal frameworks are consistent with Shariah principles, particularly regarding the validity of waqf, the designation of beneficiaries, the preservation of waqf property, the continuity of benefit, and the prevention of harm to heirs or beneficiaries. This framework also enables the study to assess whether the statutory and governance mechanisms in Malaysia and Indonesia function as preventive measures against factors that previously led to the restriction or repeal of *waqf zurri* in other Muslim countries.

Results and Discussion

Factors Leading to the Restriction and Repeal of *Waqf Zurri* Legislation

The factors that led some Muslim-majority countries to restrict and repeal *waqf zurri* legislation were not due to prohibitions grounded in Shariah or religion, but rather to governance and *waqf zurri* asset management issues. As highlighted in the study by Ratna Suraiya and Nashrun Jauhari, several factors contributed to the repeal of *waqf zurri* laws. One of the primary factors is that many individuals implemented *waqf zurri* not as an act of devotion to Allah SWT, but rather as a means to prevent inheritance from being distributed to certain heirs considered weak, such as daughters and persons with disabilities, reflecting practices that existed during the pre-Islamic era. Additionally, some ruling elites utilised *waqf zurri* as an instrument to protect and preserve their wealth, fearing that it would be exhausted by their descendants or seized by their opponents.¹⁸ Moreover, that *waqf zurri* has long been criticized for being frequently used to circumvent Islamic inheritance rules, particularly the law of *farā'id*.¹⁹

Furthermore, *waqf zurri* was perceived as potentially generating social implications for beneficiaries. There was a perception that the system could encourage excessive dependency, extravagant lifestyles, and a tendency to neglect productive economic efforts. Besides, as the number of beneficiaries increased across generations, the likelihood of family disputes also rose. This situation was exacerbated by the lack of responsibility in preserving and maintaining the sustainability of *waqf* assets inherited from previous generations. In addition, governance-related factors also contributed to the repeal of *waqf zurri* in countries such as Egypt, Syria, and Lebanon. Low levels of professionalism among *nāzir* were often associated with weaknesses in the administration of *waqf* assets. There was also a perception that some *waqf* managers acted in favour of certain beneficiaries, including providing excessive financial guarantees to their own families. Management was not conducted systematically or professionally, unlike efficient private asset management. Weak integrity, transparency, and trust in the administration of *waqf* assets further contributed to institutional inefficiency.

From an economic perspective, *waqf zurri* was also considered capable of affecting national development if not managed productively. The perception that *waqf* property could not be commercially developed led to some assets being abandoned and failing to contribute to economic growth. In addition, tax exemptions granted to *waqf* assets were seen as reducing state revenue, particularly when the size and number of *waqf* assets increased. Data indicated

¹⁸ Suraiya and Jauhari, "Relevansi Wakaf Ahli dalam Membangun Ketahanan Keluarga."

¹⁹ Eirik Hovden, "Backdating the Criticism and Abolition of Family Waqf: Examples from Zaydī Yemen," *Journal of the Economic and Social History of the Orient* 68, nos. 5–6 (November 2025): 708–33, <https://doi.org/10.1163/15685209-12341653>.

that in some regions, such as Syria and Egypt, waqf land constituted a significant share of total agricultural land, thereby influencing national economic development structures. Moreover, social conditions and political dynamics also affected the sustainability of *waqf zurrī*. In certain situations, governmental intervention in *waqf* assets occurred under the justification of national interest. For instance, prior to the revolution in Egypt, some *waqf* assets were requested to be transferred to the royal authority to cover financial shortages of the Bayt al-Māl and to finance political and military agendas during the rule of Sultan Dhahir Bairus and Muhammad ‘Ali.²⁰ This factor demonstrates that changes in political power structures could directly influence the position and sustainability of *waqf zurrī*. Legal analysis in Malaysia and Indonesia is, therefore, crucial to understanding how these two countries regulate and sustain the *waqf zurrī* system. The approaches adopted in *waqf* legislation and governance in both countries may offer solutions to address issues that threaten the sustainability of *waqf zurrī*.

Structure of *Waqf* Legal Position in Malaysia and Indonesia

In Malaysia, the supreme law of the land is the Federal Constitution. Any matter to be enforced or decided must not contradict its provisions.²¹ Similarly, matters relating to *waqf* are stipulated in the Federal Constitution of Malaysia, which provides that issues concerning Muslim property, including *waqf*, fall under state jurisdiction. As provided in the Federal Constitution under the State List, Ninth Schedule: “Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession... and non-charitable trusts; *Wakafs* and the definition and regulation of charitable and religious trusts...”

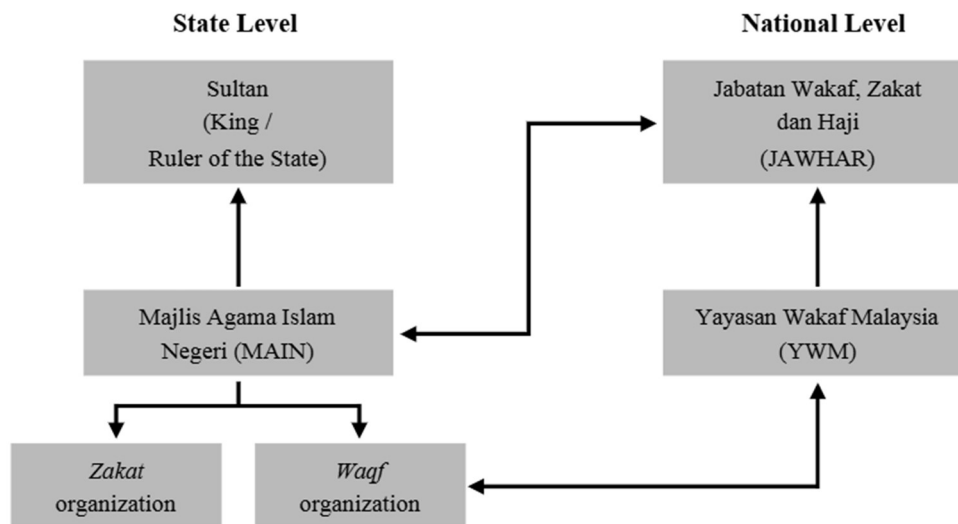
Thus, in Malaysia, each state enacts its own *waqf* legislation in accordance with the distribution of powers. Examples of states that have enacted specific *waqf* enactments include:

1. Selangor – *Waqf* (State of Selangor) Enactment 2015
2. Melaka – *Waqf* (State of Melaka) Enactment 2005
3. Negeri Sembilan – *Waqf* (Negeri Sembilan) Enactment 2005
4. Perak – *Waqf* (Perak) Enactment 2015
5. Terengganu – *Waqf* (Terengganu) Enactment 2016
6. Pahang – *Waqf* (Pahang) Enactment 2022
7. Sabah – *Waqf* (State of Sabah) Enactment (Amendment) 2023

Figure 1. *Waqf* Management Structure in Malaysia

²⁰ Suraiya and Jauhari, “Relevansi Wakaf Ahli dalam Membangun Ketahanan Keluarga.”

²¹ Mohd Shuzaini Soib and Jasni Sulong, *A Comparative Study Of The Practice Of Zakat Distribution To Asnaf Fi Sabilillah In Selected States In Malaysia*, 33, no. 2 (2024), <https://al-qanatr.com/aq/article/view/646>.



Source: Norzilan (2018)²²

At the national level, the Malaysian government established the Department of *Waqf*, Zakat and Hajj (JAWHAR) on 27 March 2004, followed by the establishment of Yayasan Waqaf Malaysia on 23 July 2008 under the Trustees (Incorporation) Act 1952. These institutions were established in response to various constraints at the state level in managing waqf property development, including idle *waqf* assets, deteriorating properties, non-commercial assets, and a lack of viability. These challenges were attributed to weak governance among trustees and confusion in interpreting Shariah requirements related to *waqf* development.²³ Additional issues included limited enforcement mechanisms, the absence of specific institutional oversight for *waqf zurri*, and inconsistencies in interpretation and management across states.²⁴ This situation does not affect the functioning of the State Islamic Religious Councils (MAIN) as the sole trustee of all *waqf* assets, as provided for in Islamic legal enactments at the state level.²⁵ National-level institutions primarily serve a coordinating role

²² Nur Izzati Norzilan, "Waqf in Malaysia and Its New Waves in the Twenty-First Century," *Kyoto Bulletin of Islamic Area Studies*, 2018, 140–57, <https://doi.org/doi.org/10.14989/230454>.

²³ Muhammad Hilmi Mat Johar and Siti Aminah Mat Saad, "The Role Of Waqf In Improving The Economic Status Of Muslims, Especially In The Agricultural Sector In Malaysia," *Jurnal 'Ukwan* 9, no. 2 (2024): 296–310.

²⁴ Sri Wahyu Sakina Ahmad Sanusi, Salmy Edawati Yaacob, and Mohd Fairuz Md Salleh, "Wakaf Zurri: Instrumen Pengurusan Harta dalam Pembangunan Tamadun Islam," *Journal of Al-Tamaddun* 16, no. 1 (June 2021): 139–52, <https://doi.org/10.22452/JAT.vol16no1.10>.

²⁵ Ku Hanani Ku Halim, Azizah Othman, and Syarifah Md Yusof, *Governance of Wakaf Management in Mosque Institutions: A Study t At-Taqwa Masjid, Pulau Pinang*, 5, no. 1 (2023), <https://repo.uum.edu.my/id/eprint/32450>.

to ensure more organised, systematic, and effective administration, while remaining subject to state *waqf* enactments and applicable Malaysian law.

Waqf management in Malaysia falls under the MAIN in each state, which is accountable to the Sultan, while at the national level, MAIN coordinates with the Department of *Waqf*, Zakat and Hajj (JAWHAR). Under JAWHAR's coordination, Yayasan Waqaf Malaysia (YWM) plays a role in strengthening *waqf* development under the supervision of the Minister in the Prime Minister's Department (Religious Affairs), with the involvement of representatives from JAWHAR, MAIN, the Ministry of Finance, and academics. Although the basic structure of *waqf* administration is subject to MAIN, the administrative patterns differ across states. Selangor was among the early states to place authority over *waqf* land under MAIN and subsequently established Perbadanan *Wakaf* Selangor in 2009 to strengthen *waqf* development in a manner comparable to zakat institutions. Negeri Sembilan established Perbadanan *Wakaf* Negeri Sembilan, while Sabah and Kedah manage *waqf* through Baitulmal Negeri Sabah and Tabung Baitulmal Kedah, respectively. In other states, such as Johor and Kelantan, *waqf* management remains directly under the supervision of the respective State Islamic Religious Councils.²⁶

In Indonesia, the supreme law is known as the 1945 Constitution (*Undang-Undang Dasar 1945*). Indonesia has been highly proactive in structuring *waqf* management.²⁷ This is evident in the existence of national-level *waqf* legislation, which centralizes the legal framework for *waqf* in Indonesia through the enactment of Law Number 41 of 2004 of the Republic of Indonesia.²⁸ *Waqf* administration is under the Indonesian *Waqf* Board (Badan *Wakaf* Indonesia, BWI), a national institution responsible for supervising, developing, and protecting *waqf* assets. This approach demonstrates a more centralized administrative structure than Malaysia's does.

²⁶ Adrianna Syariefur Rakhmat and Irfan Syauqi Beik, "Pengelolaan Zakat dan Wakaf di Malaysia dan Turki: Studi Komparatif?" *ILTIZAM Journal of Shari'ah Economics Research* 6, no. 1 (2022): 48–58, <https://doi.org/10.30631/iltizam.v6i1.1077>.

²⁷ Marwadi Marwadi et al., "Traditional Islamic Legal Epistemology in Pesantren's Practice of Hisāb," *Al-Ahkam* 35, no. 2 (October 2025): 429–258, <https://doi.org/10.21580/ahkam.2025.35.2.27687>.

²⁸ Makhrus, "Dinamika Kebijakan Negara dalam Pengelolaan Wakaf di Indonesia," *JSSH (Jurnal Sains Sosial dan Humaniora)* 2, no. 2 (2018): 209–224, <https://doi.org/10.30595/jssh.v2i2.3137>.

Figure 2. *Waqf* Management Structure in Indonesia

Source: *Sesep Saepul Alam (2023)*²⁹

The Law of the Republic of Indonesia Number 41 of 2004 places *waqf zurrī* within a purpose-based *waqf* framework (*manqūf ‘alaih*), whereby *waqf* may be allocated to specific individuals or groups permitted by Shariah and law. Although the term “*waqf zurrī*” is not explicitly stated, provisions relating to *waqf* beneficiaries and the *waqif*’s ability to stipulate conditions provide clear scope for the implementation of family- and lineage-oriented *waqf*. Nevertheless, the law emphasises that *waqf* management must be carried out professionally by a *nāzīr* and be subject to principles of sustainability and benefit in order to prevent the stagnation of *unproductive waqf assets*.³⁰

Subsequently, Government Regulation Number 42 of 2006 further elaborates on the implementation of *waqf zurrī* by establishing administrative, management, and supervisory procedures for *waqf* assets. This regulation explains procedures for the *waqf* declaration (*ikrār waqf*), registration of *waqf* property, certification of *nāzīr*, as well as reporting and supervisory mechanisms by the Indonesian *Waqf* Board (*Badan Wakaf Indonesia*, BWI) and relevant authorities. In the context of *waqf zurrī*, this Government Regulation ensures that although the benefits of *waqf* are directed to the descendants of the *waqif*, the management of *waqf* assets remains under the control of recognised institutions and subject to national oversight mechanisms.

²⁹ Sesep Saepul Alam, “Studi Komparatif: Pengelolaan Wakaf Di Indonesia, Malaysia Dan Saudi Arabia,” *An Nuqud: Journal of Islamic Economics* 2, no. 1 (January 2023): 25–33, <https://doi.org/10.51192/annuqud.v2i1.419>.

³⁰ Miftahul Huda, Aditya Prastian Supriyadi, and Ramadhita, “Productive Waqf Law Reform: A Solution to Support Indonesian Local Economy amid Contemporary Global Recession,” *MILRev: Metro Islamic Law Review* 4, no. 1 (June 2025): 319–59, <https://doi.org/10.32332/milrev.v4i2.10210>.

Overall, the position of *waqf zurrī* in Indonesia is within a legal framework that recognises it as part of the national *waqf* system, with an emphasis on governance, accountability, and long-term public interest. The combination of the Law of the Republic of Indonesia Number 41 of 2004 and Government Regulation Number 42 of 2006 demonstrates a moderate state approach, balancing the *waqif's* right to designate beneficiaries with the need to ensure that *waqf* assets are managed productively, transparently, and in line with Shariah objectives and public interest.

Analysis of Juristic Opinions and Legal Provisions on *Waqf Zurrī* in Malaysia and Indonesia

In this study, the sustainability of *waqf zurrī* is not treated merely as the persistence of a legal institution across time but as a normative-legal construct that integrates Shariah validity, governance functionality, and institutional adaptability. Conceptually, *waqf zurrī* is sustainable when three cumulative conditions are met: (i) its legal structure remains compliant with the essential fiqh requirements of *waqf*; (ii) its governance mechanisms are capable of preventing systematic misuse, asset stagnation, and intra-family injustice; and (iii) its institutional design is adaptable to changing political, economic, and regulatory environments without requiring the abolition of the institution itself. These conditions are assessed in this article through two interrelated dimensions: Shariah validity and governance quality.

The views of Islamic scholars, particularly the jurists of the four recognised Sunni schools, differ on many issues, including the definition of *waqf* itself and the pillars and conditions for its validity. According to the Ḥanafī school, there are two opinions regarding the definition of *waqf*. The first, according to Abū Yūsuf and Muḥammad, defines *waqf* as the detention of property under the ownership of Allah SWT while its benefits are distributed to whomever the endower intends. According to Abū Ḥanīfah, *waqf* refers to the detention of property under the ownership of the endower while donating its benefits, even in a general manner.³¹ The Mālikī school defines *waqf* as granting the benefit of an asset for the duration of its existence, provided that the asset remains under the ownership of the one granting the benefit, even if only constructively (*taqdīrī*).³² Meanwhile, the Shāfi'i school defines *waqf* as the detention of property whose benefit can be utilised while preserving the asset's corpus, with ownership removed from the endower and its benefit directed

³¹ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, *Al-Mawsū'ah al-Fiqhiyyah al-Kuwaitiyyah* (Kuwait: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 2006).

³² Muḥammad Alīsh, *Manḥ Al-Jalīl Sharḥ Mukhtaṣar Khalīl* (Beirut: Dār al-Fikr, 1984).

toward permissible purposes.³³ The Ḥanbali school defines *waqf* as the absolute restriction of the owner's authority to dispose of the beneficial property, while maintaining the permanence of the corpus and terminating ownership rights, with the benefits allocated for charitable purposes to draw closer to Allah SWT.³⁴

The legal provisions of *waqf zurri* in Malaysia and Indonesia, although differing in wording from the expressions used by jurists, refer to the same meaning and concept. In Malaysia, an explicit reference to *waqf zurri* is found in the *Wakaf (Perak) Enactment 2015*, Section 10(2)(a), which states that "*Wakaf ahli*" or "*Wakaf zurri*" means a *Wakaf* dedicated by the *waqif* to his family or a specific person or persons for charity. In other states, the definition of *waqf zurri* can be inferred from general legal provisions governing *waqf*. For instance, in Selangor, the law provides that any person intending to create a *waqf* may dedicate property to his heirs. A clearer understanding requires reference to Section 2(1), which defines "*Wakaf*" as meaning to surrender the title of any property from which its benefit and interest may be enjoyed, to surrender the benefit or interest which may be enjoyed from any property; or to contribute the expertise and services from which its benefit or interest may be enjoyed. "*Wakaf khas*" means any *manquf* created for a benevolent or specific party pursuant to Hukum Syarak, while "heir" means a person who is entitled to inherit an estate pursuant to Hukum Syarak. Similarly, in the state of Terengganu, Section 35(1) provides that any person who intends to create *Wakaf* may do so to his heir. However, to clearly understand the concept of *waqf*, it must be read together with the interpretation in Section 2(1), which defines "*Wakaf*" means to surrender the title of any property from which its benefit, usufruct or interest may be enjoyed, to surrender the benefit, usufruct or interest which may be enjoyed from any property; or to contribute the expertise and services from which its benefit or interest may be enjoyed. Furthermore, "*Wakaf khas*" means any *manquf* created for the specific purpose pursuant to Hukum Syarak. The term "heir" means a person who is entitled to inherit an estate pursuant to Hukum Syarak. It is therefore observed that the general concept of *waqf* in Malaysia contains an element of separation between the ownership of the *manquf* and the endower.

In Indonesia, Article 1 of the Law of the Republic of Indonesia Number 41 of 2004 defines *waqf* as a legal action performed by a *waqif* to separate and/or hand over part of his/her assets for permanent or temporary utilisation, in accordance with its purposes, for religious purposes and/or public welfare under Islamic law. A specific provision relating to *waqf zurri* is found in Government

³³ Al-Khaṭīb al-Shirbīnī, *Mughnī Al-Muḥtāj Ilā Ma'rifat Ma'ānī Alfāz al-Minhāj* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994).

³⁴ Zheirina Diakh Febriani, "Optimalisasi Wakaf Dengan Uang dalam Pengembangan Istana Tahfidzul Qur'an NU PAREPARE" (Institut Agama Islam Negeri Parepare, 2023), <https://repository.iaipare.ac.id/id/eprint/6434/1/18.2700.022.pdf>.

Regulation of the Republic of Indonesia Number 42 of 2006, Article 30(5), which states that family *waqf* is allocated for the welfare of relatives based on blood lineage (*nasab*) with the *waqif*. An important element within the Indonesian legal concept of *waqf* is the separation between the *manqūf* and the endower, which corresponds with the Shāfi'i definition. Although there are differences among jurists, all opinions converge on the objective that *waqf* benefits the Muslim community and should be perpetual in nature.³⁵ Additionally, jurists unanimously agree that the endower cannot reclaim property once endowed.³⁶ These legal provisions in Malaysia and Indonesia fulfill the essential elements of *waqf* in Islam, including the detention of assets, the prohibition on sale or transfer, the preservation of the corpus, and the utilization of the benefits for charitable and religious purposes.

Regarding the pillars and conditions of *waqf*, jurists also differ in opinion. The Ḥanafī jurists recognize only one pillar: the *ṣiḡhab*. The majority of jurists, including the Māliki, Shāfi'i, Ḥanbali, and Zaydi schools, identify four pillars: the *waqif*, the *manqūf bih*, the *manqūf 'alaih*, and the *ṣiḡhab*.³⁷ A *waqf* is considered valid in fiqh once all conditions are fulfilled.³⁸ The following table presents a compilation of Malaysian and Indonesian legal provisions related to the pillars of *waqf zurri*.

Table 1. Legal Provisions in Malaysia and Indonesia Relating to the Pillars of *Waqf Zurri*

Pillars of <i>Waqf Zurri</i>	Act/Enactment/Law/Regulation	Section/Article
Waqif	<i>Wakaf</i> (Perak) Enactment 2015	Section 3(1),(2) Section 6
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 13(1) Section 35(2)
	<i>Wakaf</i> (State of Selangor) Enactment 2015	Section 11(1)
	Law of the Republic of Indonesia Number 41 of 2004	Article 7 Article 8(1),(2),(3)
	<i>Wakaf</i> (Perak) Enactment 2015	Section 17(1),(2)

³⁵ Nina Maulani, "Syarat Wakaf Dalam Kajian Fiqih Islam Dan Undang Undang Ri No 41 Tahun 2004 Tentang Wakaf," *Al-Akhhbar (Jurnal Ilmiah Keislaman)* 8, no. 2 (2022): 79–88.

³⁶ Abdillah Nurul Bahri, Ahmad Furqon, and Ali Murtadho, "Analisis Hukum Tentang Rukun Dan Syarat Wakaf Berbasis Teknologi Digital," *Jurnal Ekonomi Dan Hukum Islam* 9, no. 1 (2025): 1–14, <https://doi.org/10.35316/istidlal.v9i1.771>.

³⁷ Maskur and Soleh Gunawan, "Unsur Dan Syarat Wakaf Dalam Kajian Para Ulama Dan Undang-Undang Di Indonesia," *TAZKIYA Jurnal Keislaman, Kemasyarakatan & Kebudayaan* 19, no. 2 (2018): 81–96.

³⁸ Achmad Habib.A, "Implementasi Wakaf Ahli Di Yayasan Bustanul Athfal" (Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2024), <http://etheses.uin-malang.ac.id/id/eprint/62399>.

Mauquf Bih		Section 19
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 23(1),(2),(3)
	<i>Wakaf</i> (State of Selangor) Enactment 2015	Section 19(1),(2),(3)
		Section 20
		Section 24
	Law of the Republic of Indonesia Number 41 of 2004	Article 15 Article 16
Mauquf 'Alaih	<i>Wakaf</i> (Perak) Enactment 2015	Section 12(1) Section 13(1),(2)
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 28 Section 30(1) Section 31(1)
	<i>Wakaf</i> (State of Selangor) Enactment 2015	Section 27 Section 28 Section 29 Section 30(1),(2),(3),(4)
	Law of the Republic of Indonesia Number 41 of 2004	Article 9 Article 10
Sighah	<i>Wakaf</i> (Perak) Enactment 2015	Section 3(3)
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 13(2)
	<i>Wakaf</i> (State of Selangor) Enactment 2015	Section 11(2)
	Law of the Republic of Indonesia Number 41 of 2004	Article 17

Source: *Wakaf* (Perak) Enactment³⁹, *Wakaf* (State of Selangor) Enactment⁴⁰, *Wakaf* (Terengganu) Enactment⁴¹, and Law of the Republic of Indonesia⁴².

Based on the analysis of the *Wakaf* (Perak) Enactment 2015, although the pillars of *waqf* are not expressly stated in a single specific provision, the overall clauses in Section 3(1), (2), (3), Section 6, Section 12(1), Section 13(1), (2), Section 17(1), (2) and Section 19 generally encompass the fundamental elements of *waqf* itself. For example, Section 3(1) stipulates the criteria for a *waqif*, namely that “A person who has attained the age of baligh, of sound mind, is not declared a bankrupt and on his own free will, may surrender his property as a *Wakaf* for any charitable purposes according to Hukum Syarak.” Meanwhile, Section 3(3) states that “A *Wakaf* shall be created by way of sighthah before not less than two witnesses in accordance with Hukum Syarak.” In addition, Section 17(1) refers to the conditions relating to the mawquf: “A mawquf shall be a property which

³⁹ Wakaf (Perak) Enactment 2015, 9 Enactment (2015).

⁴⁰ Wakaf (State of Selangor) Enactment 2015, 15 Enactment (2015).

⁴¹ Wakaf (Terengganu) Enactment 2016, 1/2016 Enactment (2017).

⁴² Law of the Republic of Indonesia Number 41 of 2004 on Waqf, 41 of 2004 Law of the Republic of Indonesia.

is owned by the *waqif*, has no restrictions to be surrendered to the Majlis and is capable of providing usufruct or benefit.” Although the Enactment does not explicitly mention the requirement of a *mawquf ‘alaih* and its criteria as one of the pillars of *waqf*, a separate provision is provided under Part III entitled Mawquf ‘Alaih. Section 12(1) states that “For *Wakaf* khas, where in a *Wakaf* the *waqif* has not named the mawquf-alaih, the mawquf-alaih dies or is dissolved or the mawquf-alaih cannot be traced within the period of four years after the commencement of the *Wakaf*, the *Wakaf* shall become a *Wakaf* am upon notification by the Majlis in the Gazette.” These provisions must therefore be read together with other provisions to clarify the validity of the *waqf*. Among them, Section 4(1) explains that a *Wakaf* shall come into effect when all the requirements and conditions of the *Wakaf* have been fulfilled. Since the pillars of *waqf* are not expressly listed in the form of enumeration as in other state *waqf* enactments, such as Terengganu and Selangor, Section 45(2) provides that “In the event of a lacuna or where any matter is not expressly provided for in this Enactment, the Court shall apply Hukum Syarak.”

In contrast, the *Wakaf* (Terengganu) Enactment 2016 contains a specific provision listing the pillars of *waqf*, as provided in Section 12, namely *the waqif*, *mawquf*, *mawquf ‘alaih* and *sighab*. The details relating to these pillars are provided separately in Sections 13(1), 35(2), 23(1), (2), (3), 28, 30(1), 31(1), and 13(2). Similarly, the *Wakaf* (State of Selangor) Enactment 2015 clearly provides, in Section 10, a general list of the pillars of *waqf*. The detailed explanations of these pillars are found in different sections, namely Section 11(1), (2), Section 19(1), (2), (3), Section 20, Section 24, Section 27, Section 28, Section 29, and Section 30(1), (2), (3), (4). Therefore, it can be concluded that the validity of *waqf*, including *waqf zurri*, within the Malaysian legal framework remains dependent on the existence of the *waqif*, *mawquf bih*, *mawquf ‘alaih* and *sighab*, in line with the view of the majority of fuqaha regarding the concept of *waqf zurri*.

However, the Indonesian legal framework differs slightly, with several explicit additions to the elements of *waqf*, as stated in the study by Muh. Arief Budiman, which includes the *waqif*, *nazhir*, *waqf* property, *waqf* pledge (*ikrar Wakaf*), allocation of *waqf* property, and a specific time period.⁴³ After analysing the Indonesian *waqf* legal provisions, it can be concluded that all pillars and conditions of *waqf zurri* are indirectly contained in Article 6, which relates to the essential elements required in a *waqf*. The details are further elaborated in Articles 7, 8(1), 8(2), 8(3), 9, 10, 15, 16, and 17 of Law of the Republic of Indonesia Number 41 of 2004. Thus, after examining all legal provisions in both countries,

⁴³ Muh Arief Budiman, “Keabsahan Dan Pengelolaan Wakaf Ahli (Keluarga),” *Jurnal EKOBIS-DA; Jurnal Ekonomi Dan Bisnis* 01, no. 02 (2020): 38–51, <https://doi.org/doi.org/10.58791/febi.v1i2.289>.

it can be concluded that they fulfil each of the fundamental pillars required for the establishment of *waqf zurri*.

Despite numerous differences of opinion among the *fuqahā'* regarding definitions, pillars, fundamental concepts, and related matters in Islamic law, this diversity remains open to acceptance. In this regard, the court or, within a legal context, the judiciary plays a role in evaluating the various opinions and their supporting arguments to determine the most appropriate view to be adopted based on the prevailing context and local realities. This approach has been practised in Malaysia, as highlighted in the study by Noor Lizza et al. concerning the issue of hibah (gift) over encumbered property. Some *fuqahā'* require explicit consent from the pledgee for any transaction (*tasarruf*) involving the pledged property, while others permit certain transactions with or without such consent. The court held that the hibah may still be considered valid even in the absence of explicit consent from the pledgee, provided that the rights and interests of the pledgee remain protected. This not only clarifies the practical application of fiqh within the Malaysian Syariah courts but also demonstrates the flexibility of Islamic law in adapting to contemporary legal contexts.⁴⁴

Concerning the factors that led to the restriction and repeal of *waqf zurri* laws in several Islamic countries, these were merely technical and governance weaknesses. They were not the result of any absolute prohibition under Shariah. Accordingly, upon examining the legal provisions in Malaysia and Indonesia as the subject of this study, the researcher finds that the statutory framework governing *waqf zurri* in both jurisdictions contains important elements that may serve as foundations for sustainability and mitigate the factors that previously led to such abolition. All of these essential elements have been compiled and classified as presented in Table 2 below.

Table 2. Sustainability Elements of *Waqf Zurri* in the Legal Framework of Malaysia and Indonesia

Element	Act/Enactment/Law/Regulation	Section/Article
Guarantee of Family Members' Rights	<i>Wakaf</i> (Perak) Enactment 2015	Section 16
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 22
	<i>Wakaf</i> (State of Selangor) Enactment 2015	Section 18
Continuity of the Benefits of <i>Waqf Zurri</i>	<i>Wakaf</i> (Perak) Enactment 2015	Section 22(1)
		Section 39(1)
		Section 40(1), (2)

⁴⁴ Noor Lizza Mohamed Said, Muhamad Mu'izz Abdullah, and Adnan Mohamed Yusoff, "Judicial Resolution of Hibah (Gift) over Encumbered Property: An Analysis of the Abdul Hamid Masidullah v. Norehan Abdul Jabbar Case," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (2025): 586–600, <https://doi.org/10.29300/mzn.v12i2.8660>.

	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 38(2) Section 42(1)
	<i>Wakaf</i> (State of Selangor) Enactment 2015	Section 37(2) Section 41(1),(2),(3) Section 42
	Law of the Republic of Indonesia Number 41 of 2004	Article 44(1),(2)
	Government Regulation of the Republic of Indonesia Number 42 of 2006	Article 49(1),(2)
Governance	<i>Wakaf</i> (Perak) Enactment 2015	Section 22(2) Section 22(2)
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 43 Section 48 Section 49
	Law of the Republic of Indonesia Number 41 of 2004	Article 45(1)(d),(e) Article 67(1),(2),(3)
	Government Regulation of the Republic of Indonesia Number 42 of 2006	Article 3(2) Article 6(4) Article 7(c)(6) Article 9(1),(2),(3) Article 11(3)(d)(6) Article 12(1),(2),(3) Article 13(1),(2) Article 45 Article 56
Competency of <i>Wakaf</i> Asset Managers	Government Regulation of the Republic of Indonesia Number 42 of 2006	Article 53(1),(2) Article 55(1),(2)
Protection of Mawqūf from Improper Interference	<i>Wakaf</i> (Perak) Enactment 2015	Section 21 Section 35 Section 42
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 4 Section 5 Section 38(2) Section 44 Section 45
	Law of the Republic of Indonesia Number 41 of 2004	Article 40 Article 41
	Government Regulation of the Republic of Indonesia Number 42 of 2006	Article 49 Article 50 Article 51
Statutory Basis for	<i>Wakaf</i> (Perak) Enactment 2015	Section 47
	<i>Wakaf</i> (Terengganu) Enactment 2016	Section 55(1),(2)

Strengthening *Wakaf* (State of Selangor) Enactment 2015 Section 43(1),(2)
Wakaf Zurri

Source: *Wakaf* (Perak) Enactment⁴⁵, *Wakaf* (Terengganu) Enactment⁴⁶, *Wakaf* (State of Selangor) Enactment⁴⁷, Law of the Republic of Indonesia⁴⁸, and Government Regulation of the Republic of Indonesia⁴⁹.

Based on the analysis of the legal structure governing *waqf* in Malaysia (Perak, Terengganu, and Selangor) and Indonesia, this study finds that both legal frameworks not only recognise the existence of *waqf zurri*, but also contain sustainability elements aimed at addressing the key factors that previously led to the repeal of *waqf zurri* laws in several Islamic countries. In other words, rather than repealing *waqf zurri* laws, these frameworks seek to close existing gaps and weaknesses.

First, the issue of avoiding *farā'id* distribution and discrimination among heirs is addressed through validity requirements for *waqf*. State *waqf* enactments in Malaysia invalidate *waqf* that contradict Hukum Syarak, are intended for unlawful purposes, benefit oneself, or deny the rights of certain heirs. This can be observed in Section 16 of the *Wakaf* (Perak) Enactment 2015, which states that a *waqf* is invalid if it is made only to some of the heirs entitled to the *waqif's* estate without the consent of the other heirs, as well as in Section 22 of the *Wakaf* (Terengganu) Enactment 2016 and Section 18 of the *Wakaf* (State of Selangor) Enactment 2015, which clearly provide that a *waqf* is invalid if it is created for unlawful purposes, for objectives not intended to draw closer to Allah SWT, or if it is inconsistent with Hukum Syarak. These provisions directly prevent *waqf zurri* from being used as an instrument to deny the rights of vulnerable family members, such as women. Thus, issues that previously justified the repeal of *waqf zurri* laws in Egypt may be avoided through preventive control mechanisms rather than through absolute abolition. Furthermore, the legal provisions of both countries safeguard family members' rights and promote good governance, thereby preventing *waqf zurri* from being used as an instrument to evade debt obligations or to manipulate assets through institutional oversight. In Indonesia, any change in the use of *waqf* requires approval from the Indonesian *Waqf* Board (BWI), and criminal sanctions apply to unauthorised transfers. In Malaysia, MAIN holds administrative and investigative authority. This indicates that *waqf* is no longer confined to a purely family-based autonomous system but operates

⁴⁵ Wakaf (Perak) Enactment 2015.

⁴⁶ Wakaf (Terengganu) Enactment 2016.

⁴⁷ Wakaf (State of Selangor) Enactment 2015.

⁴⁸ Law of the Republic of Indonesia Number 41 of 2004 on Waqf.

⁴⁹ Government Regulation of the Republic of Indonesia Number 42 of 2006 Concerning the Implementation of Law Number 41 of 2004 on Waqf, 42 of 2006 Government Regulation.

within a supervised public trust framework. Consequently, *waqf* cannot be used as a legal shield against the financial liabilities of the *waqif*.

Additionally, inefficiency in the management of *mutawallis* or *nazhir*, often cited as a justification for repeal in several Islamic countries, is addressed through governance professionalization. Indonesia provides for audits, training, supervision, periodic reporting, and replacement of the *nazhir*. For example, Government Regulation of the Republic of Indonesia Number 42 of 2006, particularly Articles 53 and 55, outlines continuous efforts by authorities to improve governance quality by enhancing the capacity of *nazhir*. Government support includes operational facilities, regulatory coordination, certification processes, district-level advisory officers, and facilitation of domestic and international *waqf* funding. Malaysia, on the other hand, grants enforcement, administrative, and management takeover powers for neglected *waqf*. If *waqf zurri* assets are no longer economically viable and affect beneficiaries, some jurists permit *istibdal*. According to the Hanafi school, *istibdal* is generally not permitted unless stipulated by the *waqif*, but this condition may be disregarded if the asset can no longer provide benefit.⁵⁰ This demonstrates that management weaknesses no longer justify abolition, as legal mechanisms for improvement are available. These measures also prevent stagnation in *waqf* assets and ensure continued benefits despite increasing beneficiary numbers. Moreover, misconduct by *nazhir* or *Waqf* asset managers can be prevented through clear statutory provisions. The Law of the Republic of Indonesia Number 41 of 2004, Article 45(1)(d) and (e), provides that *nazhir* who fail to perform their duties or commit violations may be subject to legal action and dismissal. Similarly, Section 48 of the *Wakaf* (Terengganu) Enactment 2016 provides for the enforcement, investigation, and inspection of governance-related offences. These governance mechanisms reflect governmental commitment to ensuring that *waqf zurri* contributes to public welfare, particularly for Muslims.

Besides, the element of protection of *manqūf* from improper interference reflects a legal safeguard to ensure that *waqf* assets are not unlawfully occupied, mismanaged, transferred, absorbed into unrelated institutional control, or redirected from the original purpose determined by the *waqif*. In Perak, Sections 21, 35, and 42 of the *Wakaf* (Perak) Enactment 2015 protect the *manqūf* through vesting in the Majlis, preventing valid *waqf* property from being treated as ordinary Baitulmal property, and empowering legal action against unauthorised occupation, use, damage, or interference. In Terengganu, Sections 4 and 5 establish the Majlis as the sole trustee and vest *manqūf* in the Majlis, while Section 38(2) requires the benefits of *Wakaf* khas to be applied according to the *waqif*'s

⁵⁰ Nashita Jeanny Fardisa, "Tukar Guling Wakaf (Studi Komparasi Pandangan Mazhab Hanafi Dan Peraturan Pemerintah No. 42 Tahun 2006)" (Universitas Nahdlatul Ulama Sunan Giri, 2022), <https://repository.unugiri.ac.id/id/eprint/1790/>.

stipulated terms, and Sections 44–45 criminalize unauthorized occupation or management of *waqf* property. In Indonesia, Article 40 of Law No. 41 of 2004 prohibits *waqf* assets from being used as security, seized, gifted, sold, inherited, exchanged, or otherwise transferred, while Article 41 only permits changes for public interest subject to Shariah compliance, ministerial approval, and BWI consent. Articles 49–51 of Government Regulation No. 42 of 2006 further regulate asset exchange by requiring replacement property of equal or higher value and benefit, formal approval, and registration procedures. Collectively, these provisions show that Malaysia and Indonesia protect *waqf zurrī* not by preventing all forms of state or institutional involvement, but by ensuring that any intervention is legally authorised, Shariah-compliant and directed toward preserving the corpus, purpose and long-term benefit of the *manqūf*.

Finally, the existence of a statutory authority to formulate subsidiary regulations strengthens the *waqf zurrī* law by imposing additional requirements necessary for sustainability. Improvements may include requiring a professional and competent *naẓīr* to manage *waqf zurrī* assets effectively. Such regulations may be enacted under existing statutory powers, such as Section 47 of the *Wakaf* (Perak) Enactment 2015, Section 55(1) and (2) of the *Wakaf* (Terengganu) Enactment 2016, and Section 43(1) and (2) of the *Wakaf* (State of Selangor) Enactment 2015. Similarly, in Indonesia, asset managers need not be limited to family members; competent external professionals may be appointed to manage *waqf zurrī* assets.⁵¹

It should be noted that the relatively ‘solution-oriented’ position of Malaysia and Indonesia in preserving *waqf zurrī* through regulatory reform, rather than abolition, cannot be uncritically contrasted with jurisdictions that opted for restriction or repeal. The latter often operated under very different structural and historical conditions, including colonial legal codification, land reform policies, the fiscal needs of the modernising state, and ideological projects aimed at centralising control over religious endowments. In some cases, such as Egypt and Turkey, the large proportion of *waqf* land and its perceived rigidity in the face of national development agendas made abolition politically and economically attractive, even if Shariah did not strictly require it.

By contrast, Malaysia and Indonesia have developed their *waqf zurrī* context, where the scale, distribution, and socio-political role of *waqf* are significantly different, and where Religious Councils and National *Waqf* Boards can be designed ex ante as regulatory guardians of *waqf* assets. The elements of sustainability stated in this article are therefore not intended to suggest that Malaysia and Indonesia represent a universally superior model, but rather to

⁵¹ Arif Zunaidi, “Wakaf Keluarga Perspektif UU No. 41 Tahun 2004 dan Maqasid Al-Usrah Jamal Al-Din Atiyyah,” *Mahakim: Journal of Islamic Family Law* 5, no. 2 (July 2021): 115–33, <https://doi.org/10.30762/mahakim.v5i2.137>.

illustrate one possible trajectory of integrating classical fiqh with modern legal governance under specific constitutional, political, and institutional conditions. A full evaluation of the comparative merits of these approaches would require empirical socio-legal research beyond the doctrinal scope of this study.

Conclusion

This study concludes that the legal frameworks of Malaysia and Indonesia demonstrate a regulatory approach that preserves *waqf zurrī* while addressing the main weaknesses that historically contributed to its restriction or repeal in several Muslim-majority countries. The findings show that the sustainability of *waqf zurrī* in both jurisdictions is not sustained merely through formal legal recognition, but through a combination of Shariah-based validity controls, protection of family beneficiaries, continuity of *waqf* benefits, institutional supervision, managerial competency, and statutory authority to strengthen *waqf* governance. In this study, Shariah-based controls refer to legal provisions that prevent *waqf zurrī* from being used in a manner inconsistent with Hukum Syarak, including the denial of heirs' rights or misuse of *waqf* for unlawful purposes. Meanwhile, the structural reform approach involves using statutory and institutional mechanisms to address governance weaknesses without repealing *waqf zurrī* as a valid form of family *waqf*. The comparison between Malaysia and Indonesia and other Muslim-majority countries should therefore not be understood as a simple distinction between preservation and repeal. Rather, it reflects different legal and institutional responses to similar problems, including misuse of *waqf zurrī*, exclusion of certain heirs, weak governance, ineffective asset management, and state intervention. Malaysia and Indonesia retain *waqf zurrī* by regulating its validity, administration, and governance, whereas other jurisdictions have responded to similar problems by imposing restrictions or repealing it. This study, therefore, contributes to contemporary *waqf* discourse by showing that the sustainability of *waqf zurrī* depends not only on its juristic permissibility but also on the capacity of modern legal frameworks to translate fiqh principles into enforceable governance mechanisms.

Nevertheless, this study is limited to normative and document-based legal analysis. It does not examine the empirical implementation of *waqf zurrī* by *waqf* institutions, *nazhir*, *mutawalli*, beneficiaries, or state religious authorities. Future research should therefore move beyond doctrinal assessment by examining the practical effectiveness of *waqf zurrī* governance in Malaysia and Indonesia, particularly with respect to institutional accountability, beneficiary participation, managerial competency, and mechanisms to ensure the productive development of *waqf* assets. Further studies may also develop a governance-based sustainability framework for *waqf zurrī*, which can be tested across jurisdictions that continue to recognize family *waqf*. Such research would strengthen the discussion of *waqf*

zurri from a purely normative legal argument into a more operational, evidence-based, and policy-relevant model for contemporary *waqf* governance.

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Author Contributions Statement

Noor Lizza Mohamed Said conceptualised the study, formulated the research design, and led the overall direction of the research. She was also responsible for analysing the data and critically revising the manuscript to strengthen its academic quality, clarity, and coherence. Mohamad Mu'az Fakhri Aziz contributed by conducting the data collection process, interpreting the findings in light of the research objectives, and preparing the initial draft of the manuscript. Both authors contributed to the development of the article, reviewed the final version of the manuscript, and approved it for publication.

AI Usage Statement

The authors declare that artificial intelligence (AI)-assisted tools were used solely to support language refinement, grammar checking, and editorial improvements during the manuscript preparation process. AI tools were not used to generate original research data, conduct data analysis, interpret findings, or formulate the study's conclusions. All intellectual content, research design, analysis, arguments, and final decisions regarding the manuscript remain the sole responsibility of the authors. The authors carefully reviewed, verified, and edited all AI-assisted outputs to ensure accuracy, originality, and compliance with academic integrity standards.

Conflict of Interest

The authors declare that there are no conflicts of interest related to the publication of this article. This study was conducted independently without any influence from financial parties, institutions, or personal relationships that could affect the research, analytical process, or conclusions presented in this article.

References

- Abdillah Nurul Bahri, Ahmad Furqon, and Ali Murtadho. "Analisis Hukum Tentang Rukun Dan Syarat *Wakaf* Berbasis Teknologi Digital." *Jurnal Ekonomi Dan Hukum Islam* 9, no. 1 (2025): 1–14. <https://doi.org/10.35316/istidlal.v9i1.771>.
- Achmad Habib.A. "Implementasi *Wakaf* Ahli Di Yayasan Bustanul Athfal." Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2024. <http://etheses.uin-malang.ac.id/id/eprint/62399>.

- Ahmad Ikhsan. “Tinjauan Undang-Undang Nomor 41 Tahun 2004 Tentang *Wakaf* Terhadap Keabsahan Pergantian Nadzir Tanpa Persetujuan Ahli Waris (Studi Putusan Nomor 512Pdt.G2022Pa.Kdr).” Thesis, Universitas Islam Negeri Syekh Wasil Kediri, 2025.
- Ahmad Sanusi, Sri Wahyu Sakina, Salmi Edawati Yaacob, and Mohd Fairuz Md Salleh. “*Wakaf Zurri*: Instrumen Pengurusan Harta dalam Pembangunan Tamadun Islam.” *Journal of Al-Tamaddun* 16, no. 1 (June 2021): 139–152. <https://doi.org/10.22452/JAT.vol16no1.10>.
- Alīsh, Muḥammad. *Manḥ Al-Jalīl Sharḥ Mukhtaṣar Khalīl*. Beirut: Dār al-Fikr, 1984.
- Al-Jurjānī. *Al-Taʿrīfāt*. Beirut: Dār al-ʿIlmiyyah, 2003.
- Al-Khaṭīb al-Shirbīnī. *Mughnī Al-Muḥtāj Ilā Maʿrīfat Maʿānī Alfāz al-Minhāj*. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994.
- Al-Khinn, Muṣṭafā, Muṣṭafā al-Bughā, and ʿAlī al-Sharbajī. *Al-Fiqh al-Manhajī ʿalā Madhhab al-Imām al-Shafīʿī*. Damascus: Dār al-Qalam, 1992.
- Aziz Sul-ton Bahtiar. “Dari *Wakaf* Ahli Ke *Wakaf* Khairi.” Institut Agama Islam Negeri Ponorogo, 2022. https://etheses.iainponorogo.ac.id/20732/1/101180027_Aziz%20Sul-ton%20Bahtiar_HKI.pdf.
- Budiman, Muh Arief. “Keabsahan Dan Pengelolaan *Wakaf* Ahli (Keluarga).” *Jurnal EKOBIS-DA; Jurnal Ekonomi Dan Bisnis* 01, no. 02 (2020): 38–51. <https://doi.org/doi.org/10.58791/febi.v1i2.289>.
- Daud, Mohd Zaidi, Mohd Norhusairi Mat Hussin, and Syed Alawi Mahdi Syed Mohamad. “Civilizational Development through Family *Waqf*: An Analysis from Islamic Historical Perspectives.” *Journal of Al-Tamaddun* 18, no. 2 (2023): 71–86. <https://doi.org/doi.org/10.22452/JAT.vol18no2.6>.
- Efendi, Mansur. “Pelaksanaan Pasal 43 Undang-Undang Nomor 41 Tahun 2004 Mengenai Pengelolaan Harta *Wakaf* di Pondok Modern Darussalam Gontor.” *Al-Abkam: Jurnal Ilmu Syariʿah Dan Hukum* 4 (2019): 151–161. <https://doi.org/doi.org/10.22515/alakhkam.v4i2.1961>.
- Fardisa, Nashita Jeanny. “Tukar Guling *Wakaf* (Studi Komparasi Pandangan Mazhab Hanafi Dan Peraturan Pemerintah No. 42 Tahun 2006).” Universitas Nahdlatul Ulama Sunan Giri, 2022. <https://repository.unugiri.ac.id/id/eprint/1790/>.

- Febriani, Zheirina Diakh. “Optimalisasi *Wakaf* Dengan Uang dalam Pengembangan Istana Tahfidzul Qur’an NU PAREPARE.” Institut Agama Islam Negeri Parepare, 2023. <https://repository.iainpare.ac.id/id/eprint/6434/1/18.2700.022.pdf>.
- Government Regulation of the Republic of Indonesia Number 42 of 2006 Concerning the Implementation of Law Number 41 of 2004 on *Waqf*, 42 of 2006 Government Regulation.
- Hovden, Eirik. “Backdating the Criticism and Abolition of Family *Waqf*: Examples from Zaydi Yemen.” *Journal of the Economic and Social History of the Orient* 68, nos. 5–6 (November 2025): 708–733. <https://doi.org/10.1163/15685209-12341653>.
- Huda, Miftahul, Aditya Prastian Supriyadi, and Ramadhita. “Productive *Waqf* Law Reform: A Solution to Support Indonesian Local Economy amid Contemporary Global Recession.” *MILRev: Metro Islamic Law Review* 4, no. 1 (June 2025): 319–359. <https://doi.org/10.32332/milrev.v4i2.10210>.
- Ku Halim, Ku Hanani, Azizah Othman, and Syarifah Md Yusof. *Governance of Wakaf Management in Mosque Institutions: A Study t At-Taqwa Masjid, Pulau Pinang*. 5, no. 1 (2023). <https://repo.uum.edu.my/id/eprint/32450>.
- Law of the Republic of Indonesia Number 41 of 2004 on *Waqf*, 41 of 2004 Law of the Republic of Indonesia.
- Makhrus. “Dinamika Kebijakan Negara dalam Pengelolaan *Wakaf* di Indonesia.” *JSSH (Jurnal Sains Sosial dan Humaniora)* 2, no. 2 (2018): 209–224. <https://doi.org/10.30595/jssh.v2i2.3137>.
- Marwadi, Marwadi, Eva Mir’atun Niswah, Muhammad Fuad Zain, Ahmad Rezy Meidina, and Muhammad Akmal Kafi. “Traditional Islamic Legal Epistemology in Pesantren’s Practice of *Hisāb*.” *Al-Ahkam* 35, no. 2 (October 2025): 429–458. <https://doi.org/10.21580/ahkam.2025.35.2.27687>.
- Maskur and Soleh Gunawan. “Unsur Dan Syarat *Wakaf* Dalam Kajian Para Ulama Dan Undang-Undang Di Indonesia.” *TAZKIYA Jurnal Keislaman, Kemasyarakatan & Kebudayaan* 19, no. 2 (2018): 81–96.
- Mat Johar, Muhammad Hilmi, and Siti Aminah Mat Saad. “The Role Of *Waqf* In Improving The Economic Status Of Muslims, Especially In The Agricultural Sector In Malaysia.” *Jurnal ’Ukwan* 9, no. 2 (2024): 296–310.

- Maulani, Nina. "Syarat *Wakaf* Dalam Kajian Fiqih Islam Dan Undang Undang Ri No 41 Tahun 2004 Tentang *Wakaf*." *Al-Akhhbar (Jurnal Ilmiah Keislaman)* 8, no. 2 (2022): 79–88.
- Mohamad, Muhammad Hisyam, and Nur Syahidah Abdul Jalil. "Zurri *Waqf* In Malaysia: Syariah Rulings, Implementation Reality, And Future Commercialisation." *Journal of Anqaf, Zakat and Hajj (Jawhar)*, 2025, 61–80. <https://doi.org/10.65404/JAWHAR.302004>.
- Mohamed Said, Noor Lizza, Muhamad Mu'izz Abdullah, and Adnan Mohamed Yusoff. "Judicial Resolution of Hibah (Gift) over Encumbered Property: An Analysis of the Abdul Hamid Masidullah v. Norehan Abdul Jabbar Case." *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (2025): 586–600. <https://doi.org/10.29300/mzn.v12i2.8660>.
- Muhamad Don, Mohd Ali. "Penglibatan Sektor Bukan Kerajaan Di Malaysia, Singapura Dan Indonesia Dalam Mengembangkan Potensi Dana *Wakaf* Suatu Perbandingan." Paper presented at ACCON 2012 Academic Conference. 2012. <https://ir.uitm.edu.my/id/eprint/48547/1/48547.pdf>.
- Muhammad Khalil, Muhammad Ainul Hakim, Ab Rahman Muhamad Firdaus, Abdullah Thaidi Hussein Azeemi, and Azman Ab. Rahman. "Pengaplikasian *Wakaf* Ahli Bertempoh (Muaqqat) Sebagai Mekanisme Memakmurkan Amalan *Wakaf* Di Malaysia." 2021, 53–71.
- Norzilan, Nur Izzati. "*Waqf* in Malaysia and Its New Waves in the Twenty-First Century." *Kyoto Bulletin of Islamic Area Studies*, 2018, 140–157. <https://doi.org/doi.org/10.14989/230454>.
- Pirmani, Ulfa, Edi Kurniawan, and Najmi. "From the Debate on the Legality of *Waqf* Al-Ahli to Its Implementation in Southeast Asia: Indonesia, Malaysia, and Singapore." *International Journal of Law and Society (IJLS)* 3, no. 2 (August 2024): 59–76. <https://doi.org/10.59683/ijls.v3i2.81>.
- Rakhmat, Adrianna Syariefur, and Irfan Syauqi Beik. "Pengelolaan Zakat dan *Wakaf* di Malaysia dan Turki: Studi Komparatif." *ILTIZAM Journal of Shari'ah Economics Research* 6, no. 1 (2022): 48–58. <https://doi.org/10.30631/iltizam.v6i1.1077>.
- Sadique, Muhammad Abdurrahman. "The Socio Legal Significance Of Family *Waqf* And Its Revival Under State Control." *South East Asia Journal of Contemporary Business, Economics and Law* 7, no. 4 (2015): 63–69.
- Sadique, Muhammad Abdurrahman, Abdul Haseeb Ansari, Mohsin Hingun, and Aznan Hasan. "Socio-Legal Significance of Family *Waqf* in Islamic Law:

- Its Degeneration and Revival.” *IUM Law Journal* 24, no. 2 (December 2016): 309–334. <https://doi.org/10.31436/iiumlj.v24i2.275>.
- Sesep Saepul Alam. “Studi Komparatif: Pengelolaan *Wakaf* Di Indonesia, Malaysia Dan Saudi Arabia.” *An Nuqud: Journal of Islamic Economics* 2, no. 1 (January 2023): 25–33. <https://doi.org/10.51192/annuqud.v2i1.419>.
- Soib, Mohd Shuzaini, and Jasni Sulong. *A Comparative Study Of The Practice Of Zakat Distribution To Asnaf Fi Sabilillah In Selected States In Malaysia*. 33, no. 2 (2024). <https://al-qanatir.com/aq/article/view/646>.
- Suraiya, Ratna, and Nashrun Jauhari. “Relevansi *Wakaf* Ahli dalam Membangun Ketahanan Keluarga.” *Tasyri’: Journal of Islamic Law* 1, no. 2 (July 2022): 253–292. <https://doi.org/10.53038/tsyr.v1i2.33>.
- Wakaf* (Perak) Enactment 2015, 9 Enactment (2015).
- Wakaf* (State of Selangor) Enactment 2015, 15 Enactment (2015).
- Wakaf* (Terengganu) Enactment 2016, 1/2016 Enactment (2017).
- Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyyah. *Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaitiyyah*. Kuwait: Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyyah, 2006.
- Yenni Samri Juliati and Maftah Rizki Addin HRP. “*Wakaf* dan Dasar Hukum *Wakaf*.” *Jurnal Manajemen Dan Bisnis Ekonomi* 2, no. 2 (2024): 63–76. <https://doi.org/10.54066/jmbe-itb.v2i2.1431>.
- Zunaidi, Arif. “*Wakaf* Keluarga Perspektif UU No. 41 Tahun 2004 dan Maqasid Al-Usrah Jamal Al-Din Atiyyah.” *Mahakim: Journal of Islamic Family Law* 5, no. 2 (July 2021): 115–133. <https://doi.org/10.30762/mahakim.v5i2.137>.