

Legal Framework of Green Waqf for Ecological Disaster Mitigation: Harmonizing Islamic Law and Indonesian Positive Law

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Abstract

The increasing intensity of ecological disasters in Indonesia, such as floods and forest degradation, requires sustainable mitigation strategies that involve community participation. Green waqf has emerged as an innovative model of Islamic philanthropy that integrates religious values with ecological concerns. However, its implementation still faces challenges related to legal certainty. Previous studies on green waqf have primarily focused on theological, economic, and environmental management aspects. At the same time, comprehensive analyses of the harmonization of Islamic law with Indonesian positive law to mitigate ecological disasters remain limited. In addition, there is no integrated legal framework that effectively bridges sharia norms and national regulations. This study aims to formulate a legal framework for green waqf as an instrument for mitigating ecological disasters by harmonizing Islamic law principles with Indonesian positive law. This study employs a juridical-normative method with a legislative, conceptual, and philosophical approach. Data were obtained from analyses of Islamic law sources, classical and contemporary fiqh literature, and laws and regulations related to waqf, the environment, and disaster management in Indonesia. The results of the study indicate that green waqf has strong legitimacy in Islamic law, supported by the principles of maqāṣid al-sharī'ah, particularly ḥifẓ al-bi'ah (protection of the

environment), al-nafs (protection of life), and al-māl (protection of property). On the other hand, Indonesian positive law provides normative space for the development of green waqf through existing waqf regulations and environmental protection laws, even though it does not explicitly regulate it. Regulatory fragmentation and the absence of technical guidelines pose significant obstacles to implementing green waqf as a disaster mitigation instrument. This paper advances the fields of Islamic law and environmental law by providing a practical framework for integrating green waqf. The results of this study are expected to serve as a reference for policymakers, waqf administrators, and environmental stakeholders to enhance sustainable Islamic philanthropy-oriented ecological disaster- mitigation.

KEYWORDS: Ecological Disaster, Green Waqf, Islamic Law, Mitigation.

Introduction

In Indonesia, waqf, as an Islamic legal institution, has significant potential to contribute to disaster mitigation through an environmentally based approach known as "green waqf". This concept positions waqf not only as a socio-economic philanthropic instrument, but also as a means of protecting ecosystems and reducing disaster risk. However, the development of green waqf in Indonesia still faces fundamental challenges, including gaps and fragmentation in the legal framework governing the ecological function of waqf in disaster mitigation. This aligns with the divine decree of Allah Ta'ala as stated in Surah Ar-Rum [30]: 41, which can be summarized as follows:

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ

There has been visible damage on land and in the sea due to the actions of human hands, so that Allah will feel for them some of the (effects of) their actions. Hopefully they will return (to the right path)"

According to Ibnu Katsir's Tafsir, this passage suggests that the decline of natural green ecosystems has led to the following natural

disasters, which are a result of the numerous immoral actions carried out by the people living in those areas. Abul Aliyah asserted that anyone who defies Allah on earth is essentially causing harm to the planet. This is because the preservation of the earth and sky relies on obedience to Allah. Therefore, it is the obligation of humans to maintain the balance of the environment. Environmental changes can occur as a result of natural processes or human ecological activities¹.

An instance of this issue can be observed in Bandung, where the issuance of building licenses that do not align with the local natural structure poses a threat to the neighboring community². In Sukabumi, West Java, floods are largely caused by the reduction of green open areas resulting from soil degradation due to land conversion for construction and human habitation³. In addition, the absence of green open space should be taken into account, as it would affect air quality and the natural environment⁴. Furthermore, Indonesia faces the challenge of managing 4 million hectares of critical land, which is essential given ongoing land degradation. This degradation can take the form of physical, chemical, and/or biological deterioration, resulting in a decrease in its productive capability⁵.

Indonesia has been recognized as the most charitable country in the world for 6 consecutive years and has the capacity to effectively mitigate ecological disasters despite various risks⁶. The World Giving Index (WGI) is a yearly publication by the Charities Aid Foundation (CAF) that provides a comprehensive report on global philanthropy.

¹ Fauzan Fauzan, Imam Mustofa, and Masruchin Masruchin, "Metode Tafsir Maudu'ī (Tematik): Kajian Ayat Ekologi," *Al-Dzikra: Jurnal Studi Ilmu Al-Qur'an Dan Al-Hadits* 13, no. 2 (2020), <https://doi.org/10.24042/al-dzikra.v13i2.4168>.

² Agung Bakti Sarasa, "Tekan Resiko Gempa Sesar Lembang, Pemda Harus Tegas Soal IMB," <https://daerah.sindonews.com/artikel/jabar/6742/tekan-risiko-gempa-sesar-lembang-pemda-harus-tegas-soal-imb>, April 2019.

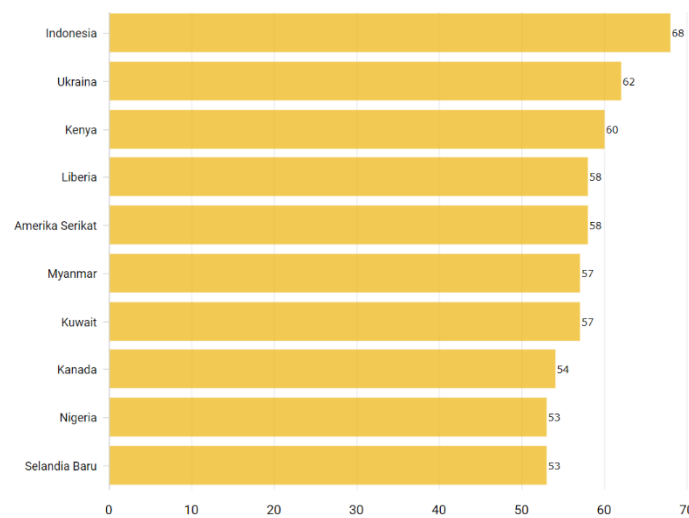
³ Yudha Manggala P Putra, "Berkurangnya Lahan Terbuka Hijau Penyebab Utama Banjir," <https://news.republika.co.id/berita/o6g9cy284/berkurangnya-lahan-terbuka-hijau-penyebab-utama-banjir>, April 2016.

⁴ Dinas Lingkungan Hidup Kota Semarang, "4 Dampak Buruk Kurangnya Penghijauan Di Kota Yang Wajib Diperhatikan," <https://dlh.semarangkota.go.id/4-dampak-buruk-kurangnya-penghijauan-di-kota-yang-wajib-diperhatikan/>, October 2020.

⁵ Agung Nugroho, "Indonesia Hadapi 14 Juta Hektare Lahan Kritis," <https://ugm.ac.id/id/berita/20119-indonesia-hadapi-14-juta-ha-lahan-kritis/>, October 2020.

⁶ Nabilah Muhammad, "10 Negara Paling Dermawan Di Dunia 2023, Indonesia Juara," <https://databoks.katadata.co.id/datapublish/2023/11/16/10-negara-paling-dermawan-di-dunia-2023-indonesia-juara>, November 2023.

For the 2023 WGI report, data analysis was conducted by surveying 147,186 respondents from different countries in 2022.



picture.1.1

According to the World Giving Index (WGI) of 2023, Indonesia is ranked as the most philanthropic country⁷.

Waqf is an Islamic social instrument that exhibits adaptability, originality, and long-term viability. This innovation waqf serves as a platform for *ijtihad*, which must be conducted in compliance with both Sharia law norms and national legislation. The green waqf instrument is a novel initiative aimed at fostering a sustainable ecosystem in Indonesia by leveraging sharia principles through waqf agreements. Further research is required to explore the green waqf concept, which has robust legal validity, to fully realize the potential of land waqf in Indonesia. This potential encompasses 414,829 places spanning 55,259.87 hectares⁸, which illustrates the vastness of available resources. Moreover, there is a possibility that cash waqf could reach IDR 180 trillion per year⁹. At the same time, Islamic law, specifically *maqāṣid al-sharī'ah*, with a focus on the protection of life (*ḥifẓ al-naḥs*) and the environment as prerequisites for the

⁷ Charities Aid Foundation, "Global Trends In Generosity World Giving Index 2024 Inside Giving," 2024, https://www.cafonline.org/docs/default-source/inside-giving/wgi/wgi_2024_report.pdf.

⁸ Delli Ridha Hayati Uswatun Hasanah, "Empowerment: Crowdfunding Sebagai Inovasi Wakaf Uang Dengan Analisis Pembiayaan Al-Qard," *EKSYDA: Jurnal Studi Ekonomi Syariah* 1, no. 1 (2020): 43–56.

⁹ Mohammad Iqbal Irfany et al., "Proposing Green Waqf Development Strategy in Protecting Land Ecosystems in Indonesia: An Interpretive Structural Modeling Approach," *Ekonomu Islam Indonesia* 5, no. 1 (September 2023).

sustainability of life provides strong normative legitimacy for the development of green waqf. However, the lack of harmonisation between Islamic norms and positive law has led to regulatory fragmentation, resulting in weak integration of green waqf into national disaster mitigation policies.

In reviewing research related to green waqf, several published studies have been identified, including: "Green Waqf Development Strategy in Supporting SDG 15 in Indonesia"¹⁰, "Enhancing Green Waqf For Carbonization Technology: Opportunities for Sustainable Development Goals (SDGs) In Indonesia"¹¹, "Green Waqf: Sustainable Surplus Perspective Balanced Scorecard Analysis"¹². "Development of sustainable Tamanu industry in Indonesia based on the green waqf model through sharia crowdfunding platforms"¹³, and "Green Economy and Green Waqf Opportunities of Digital Assets"¹⁴. Additional work includes "Proposing Green Waqf Development Strategy in Protecting Land Ecosystems in Indonesia: An Interpretive Structural Modeling Approach"¹⁵. However, despite these contributions, a notable gap remains: no prior research has specifically addressed the development of a green waqf model to mitigate ecological disasters in accordance with both Islamic and national law. This highlights the novelty and importance of our current study.

Given the void and fragmentation of the legal framework for green waqf in ecological disaster mitigation, it is necessary to frame legal issues in a focused and systematic manner. The lack of clarity in national regulations regarding the legal basis for green waqf,

¹⁰ Sri Rahayu Ningsih et al., "Strategi Pengembangan Green Waqf Dalam Mendukung SDG 15 Di Indonesia," *Policy Brief: Pertanian, Kelautan Dan Biosains Tropika* 4, no. 4 (2022): 1–7.

¹¹ Nurul Fatma Hasan and Syahrudin, "Enhancing Green Waqf For Carbonization Technology: Opportunities For Sustainable Development Goals (Sdgs) In Indonesia," *El-Barka: Journal of Islamic Economic and Business* 5, no. 2 (2022): 235–51.

¹² Moch Mahsun et al., "Green Waqf: Sustainable Surplus Perspective Balanced Scorecard Analysis," *Karsa: Journal of Social and Islamic Culture* 30, no. 2 (December 2022): 266–97.

¹³ Muhammad Khoirul Fikri and Rizky Andrean, "Development of Sustainable Tamanu Industry in Indonesia Based on the Green Waqf Model through Sharia Crowdfunding Platforms," *Review of Islamic Social Finance and Entrepreneurship (RISFE)* 2, no. 1 (2023): 77–89.

¹⁴ Husnul Hatimah et al., "Green Economy and Green Waqf Opportunities of Digital Assets," *Proceedings of the 2022 Brawijaya International Conference (BIC 2022)*, April 2022.

¹⁵ Mohammad Iqbal Irfany et al., "Proposing Green Waqf Development Strategy in Protecting Land Ecosystems in Indonesia: An Interpretive Structural Modeling Approach."

understood as the allocation of endowment resources for environmental sustainability, has implications for the weak legal certainty and protection for managers of environmentally based waqf. At the same time, although Islamic law provides normative legitimacy through the principles of *maqāṣid al-sharī'ah*, a more operational juridical explanation of the position of green waqf in the contemporary Islamic legal system is needed. In addition, the absence of a structured and applicable green waqf model -meaning a practical system for implementing environmental waqf- has resulted in environmental waqf not being optimally integrated into ecological disaster mitigation strategies in Indonesia.

Based on these conditions, this study has legal significance in filling legal gaps and overcoming the fragmentation of environmental waqf regulations in Indonesia. The novelty of this research lies in formulating a green waqf legal framework as a disaster-mitigation instrument. This framework is developed through the harmonization of Islamic law with the Indonesian positive legal system. As a result, it not only expands the legal function of waqf but also positions it as an integral part of national law for disaster mitigation and sustainable environmental protection.

This study seeks to answer key legal questions: (1) what is the legal basis for green waqf in Indonesian positive law; (2) how is green waqf legitimized in Islamic law via *maqāṣid al-sharī'ah* principles and (3) how can a green waqf model be developed as a sustainable ecological disaster mitigation tool with legal certainty. These questions provide the analytical foundation for formulating a legal framework for green waqf that integrates Islamic and Indonesian law.

The state of the art and novelty are described in the following table:

Focus of Previous Studies	Analytical Perspective	Limitations of Previous Studies	Position and Novelty of This Study
Productive waqf and Islamic philanthropy	Islamic law and Islamic economics	Waqf is mainly positioned as a socio-economic instrument, with	Positions waqf as a legal mechanism for mitigating

		no link to disaster mitigation	ecological disaster
Green waqf and sustainable development	SDGs and green economy	Prioritize broad sustainability objectives over specific disaster risk reduction measures	Shifts the focus from SDGs to ecological disaster mitigation
Waqf regulation in Indonesia	Indonesian positive law	The ecological functions of waqf are not explicitly addressed within existing regulations	Proposes a legal framework for green waqf within the national legal system
Green waqf from an Islamic normative perspective	Maqāṣid al-Sharī'ah	Remains confined to normative legitimacy without integration into state law	Integrates Islamic law and Indonesian positive law within a harmonized legal framework
Community-based environmental waqf practices	Empirical case studies	Practices remain fragmented and lack standardization	Develops an applicable and replicable legal instrument for green waqf

This research distinguishes itself from previous studies by integrating Islamic law and Indonesian positive law to formulate a legal framework for green waqf. The study specifically examines green waqf as an instrument for ecological disaster mitigation, rather than solely as a component of the SDGs agenda and develops a normative and applicable legal instrument for waqf. Through this approach, research expands the discourse on environmental waqf and provides

substantive contributions to the development of national legal policies in disaster mitigation and sustainable environmental protection.

This study adopts a doctrinal legal approach, also known as the normative juridical method, which emphasizes legal principles, systematicity, harmony, history, and comparative analysis¹⁶. Primary legal sources include Law No. 41 of 2004 and Government Regulation No. 42 of 2006, both concerning waqf, the compilation of Islamic law, the al-Qur'an, and hadith. Secondary legal sources consist of relevant publications and scientific articles. Data collection was conducted through library research and analyzed utilizing qualitative descriptive methods.

Result and Discussion

A. Ecological Disaster Mitigation

Etymologically, the term "ecology" is derived from the Greek words "oikos," meaning house or place of living, and "logos," meaning knowledge. Ecology is a scientific discipline that investigates the interdependent interactions between organisms such as plants, animals, microbes, and their surroundings, including the physical environment, and other living things¹⁷. Ecology is an integral aspect of human existence, particularly in the contemporary era, when numerous disruptions to the natural order of life are driven by various factors, often resulting in diverse calamities.

The term "disaster" etymologically originates in ancient Greek, namely 'dus' meaning 'bad', and 'aster' meaning 'star'. This term refers to an astronomical phenomenon that connotes something bad^{18,19}. In the Qur'an, disasters are mentioned ten times (e.g., QS. al-Baqarah:

¹⁶ Husnul Hatimah et al., "Green Economy and Green Waqf Opportunities of Digital Assets," *Proceedings of the 2022 Brawijaya International Conference (BIC 2022)*, April 2022.

¹⁷ Fauzan, Mustofa, and Masruchin, "Metode Tafsir Maudu'ī (Tematik): Kajian Ayat Ekologi."

¹⁸ Miftahul Jannah Khalifah Muhammad Ali, Irfansyauqi Beik, "The Role of Waqf Forests in the Prevention of Natural Disasters in Indonesia," *BWI Working Paper Series (BWPS)* BWPS No.2/, no. 2 (2021): 1–11.

¹⁹ Miftahul Jannah Khalifah Muhammad Ali, Irfansyauqi Beik, "The Role of Waqf Forests in the Prevention of Natural Disasters in Indonesia," *BWI Working Paper Series (BWPS)* BWPS No.2/, no. 2 (2021): 1–11.

156, Ali 'Imran: 165)²⁰ and have various meanings, encompassing not only loss of property but also moral and spiritual issues for individuals or societies²¹. According to Law No. 24/2007 concerning Disaster Management, a disaster is an event or series of events that threatens and disrupts life and livelihood caused by both natural and non-natural or human factors, resulting in human casualties, environmental damage, property loss, and psychological impacts²². Therefore, the magnitude of disasters' impact on the lives of all creatures worldwide underscores the need for disaster mitigation efforts to minimize the risks they pose.

Mitigation refers to proactive measures taken before a disaster, such as creating maps of disasters-prone areas, constructing earthquake-resistant buildings, reforesting trees, and offering counseling and raising awareness among residents in vulnerable areas²³. According to Law No. 24/2007, mitigation is defined as actions aimed at reducing disaster risk, including physical development, raising awareness, and improving the capacity to face potential risks. This ecological catastrophe is a shared concern for all stakeholders, who are employing diverse scientific methodologies in the hope that their collective efforts will yield a favorable outcome for both the environment and humanity.

B. Green Waqf Concept

Green waqf, sometimes referred to as green waqf, is a term used to describe a specific type of waqf. The terms "waqf" and "green" are linguistically derived²⁴, suggesting a connection to nature or natural elements. Etymologically, "waqf" signifies cessation, but the hadith given by Ibn Umar concerning land waqf in Khaibar links the concept

²⁰ Nurwinsyah Rohmaningtyas, "Wakaf Dan Bencana Alam Di Indonesia," *Jurnal Ekonomi Syariah* 4, no. 2 (2021).

²¹ Nurlaili Adkhi Rizfa Faiza, *Cash Waqf Linked Sukuk Sebagai Pembiayaan Pemulihan Bencana Alam Di Indonesia*, TESIS: UIN Sunan Ampel Surabaya, 2019.

²² Indonesiabaik.id, "4.940 Bencana Terjadi Di Indonesia Sepanjang 2023," <https://indonesiabaik.id/infografis/4940-bencana-terjadi-di-indonesia-sepanjang-2023>, n.d.

²³ Pusat Kebijakan Manajemen Kesehatan (PKMK) FK UGM, "90% Wilayah Indonesia Terancam Bencana Ekologi," <https://www.bencana-kesehatan.net/index.php/13-berita/berita/1509-90-wilayah-indonesia-terancam-bencana-ekologi>, 2023.

²⁴ Husnul Hatimah et al., "Green Economy and Green Waqf Opportunities of Digital Assets."

to sadaqah, whereby the asset is preserved in its original form, and its benefits are directed to charitable causes. This hadith serves as the foundation for the practice of waqf. However, in terms of vocabulary, the term sadaqah is still used until the ulama introduced waqf to distinguish it from ordinary sadaqah in practical application. Further, during the period when the Mamluk Dynasty assumed control in Egypt,²⁵ the waqf was categorized into three divisions.

1. Ahbas, namely waqf lands used for the extensive plantation business sector, the proceeds (tsamarah) are used for mosque maintenance. Thus, ahbas, whose etymology means 'detention', has been changed and given a special meaning. Ahbas means a land waqf for plantations, the proceeds of which are used for management.

2. Awqaf hukmiyah refers to waqf lands in Egypt and Cairo that are used for commercial purposes with their proceeds allocated to the maintenance of the holy city. Linguistically, awqaf hukmiyah denotes a state waqf benefit of which are distributed to all residents, regardless of age and religion, including non-Muslims, who are also entitled to receive the²⁶ benefits provided by the state waqf.

3. Awqaf Ahliyah refers to waqf assets, such as land or other property, whose benefits are distributed as social assistance by affluent family members to those who are less fortunate.

According to Beik et al.²⁷, Green Waqf involves utilizing waqf assets to promote sustainability and ecological balance while generating social and economic benefits for society. The term "green" refers to the Green Growth Framework, which aims to foster inclusive, equitable, and sustainable economic growth. In terms of its development, Green Waqf has the potential to contribute to SDGs 13 (climate action) and 15 (land ecosystems). Additional SDGs targets may also be addressed through specific Green Waqf initiatives, such as forest waqf and agricultural waqf.

C. Green Waqf Innovation For Mitigating Ecological Disasters According To Positive Law

²⁵ Wahbah Az-Zuhaili, *Al-Washâya Wa Al-Waqf Fi Al-Fiqh Al-Islâmi* (Bairut: Daarul Fikr, 1998).

²⁶ Khalifah Muhammad Ali, Irfansyauqi Beik, "The Role of Waqf Forests in the Prevention of Natural Disasters in Indonesia."

²⁷ Khalifah Muhammad Ali, Irfansyauqi Beik.

Waqf is a form of Islamic endowment in which assets or funds are donated and managed for long-term charitable or social purposes, with the potential to contribute to Indonesia's economic growth²⁸.

As an Islamic endowment instrument, waqf funds support a variety of public initiatives, including improving society's socio-economic conditions and developing infrastructure²⁹.

Building from these roles, the utilization of waqf mechanisms has also held significant promise in addressing climate change, safeguarding land ecosystems, and advancing renewable energy initiatives³⁰.

The Indonesian Waqf Fund Foundation (YDWI) and the Waqf Center for Indonesian Development and Studies (WaCIDS) have collaborated to establish the Green Waqf initiative, officially launched in August 2021. The main objective of the Green Waqf initiative is to conserve and protect 14 million hectares of vital land ecosystems in Indonesia, through sustainable practices, with particular emphasis on reducing environmentally vulnerable areas. The initiative also seeks to prioritize the use of parks as resources in the energy and health sectors. Additionally, Green Waqf is expected to impact carbon trading, net zero instruments, and social empowerment. By doing so, the initiative aims to align with SDGs 13 (climate action) and SDGs 15 (preservation of terrestrial ecosystems) and, in the long term, contribute to SDGs 7 (renewable energy) in Indonesia.

Article 1, paragraph (1) of the Waqf Law No. 41 of 2004 stipulates that waqf may be used for worship and/or general welfare as defined by sharia. Article 5 further clarifies that the purpose of waqf is to utilize the potential and economic benefits of waqf assets

²⁸ Lisa Listiana and Lu'liyatul Mutmainah, "Towards Energy Security and Sustainability in Indonesia: Exploring The Waqf-Based Potential," *Global Review of Islamic Economics and Business* 10, no. 1 (2022): 015–026.

²⁹ Destika Restiya, Hardjanto, and Neneng Hasanah, "Waqf-Based Private Forest Management Model: Case Study in Bogor Regency, Indonesia," *Journal of Natural Resources and Environmental Management* 13, no. 4 (2023): 586–95.

³⁰ Suryani Suryani and Yunal Isra, "Wakaf Produktif (Cash Waqf) Dalam Perspektif Hukum Islam Dan Maqāṣid Al-Sharī'Ah," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 24, no. 1 (2016), <https://doi.org/10.21580/ws.24.1.680>.

for worship and to enhance general welfare. Article 16 specifies that waqf assets may be movable or immovable, provided they comply with applicable laws and sharia standards.

Green waqf innovation can be categorized into three distinct forms. Firstly, there is land waqf, which is specifically designated for green initiatives, including agricultural land, plantation land, and forest waqf. Furthermore, pursuant to Article 28 of the Waqf Law No. 41 of 2004, LKS-PWU may enter into a financial waqf arrangement with Nadzhir to manage the green waqf projects. Secondly, individuals can contribute to waqf projects by providing financial resources. This mechanism enables donors to allocate their waqf funds directly to Nadzhir, who is responsible for developing environmentally friendly waqf initiatives. These initiatives may include tree-planting projects, the acquisition or expansion of green open spaces, the establishment of forest waqf areas, the restoration of natural river flows, land reclamation for river channels, and other collaborative efforts aimed at mitigating ecological disaster with approved partners.

Consideration of waqf administration to enhance the status and effectiveness of green waqf innovation. For example, when waqf land is established to expand forests, certification of that land is necessary. This certification explicitly states the legitimacy and purpose of the waqf in both the waqf pledge deed and the waqf certificate. In compliance with Article 32 of the Waqf Law, the PPAIW, representing the Nazhir, must register waqf assets with the relevant authorities within 7 working days after the waqf pledge deed is signed.

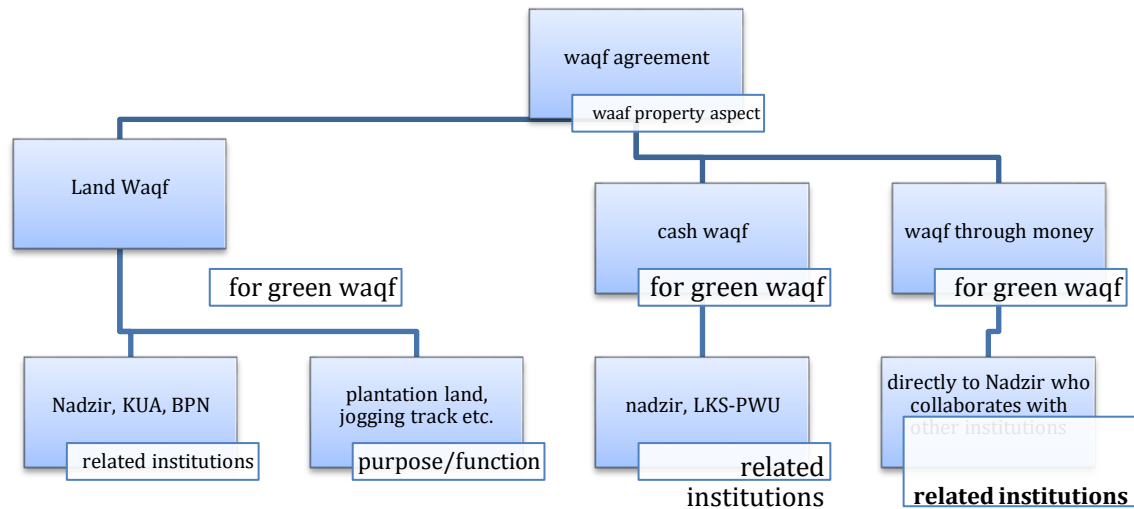


Figure 2
Green waqf instrument

An issue with waqf in Indonesia is the lack of professionalism among nadzir or mutawalli in the handling of waqf assets, particularly in administering waqf assets from inception. In Indonesia, numerous waqf assets remain unrecorded and uncertified, leading to a lack of monitoring and resulting in disputes. This is despite the obligation stated in Article 42 of the waqf asset management and development chapter, which requires the nadzir to manage and develop waqf assets in alignment with their intended objectives, functions, and purposes. Furthermore, public understanding of waqf remains limited, and the efforts to educate and promote Green Waqf have not yet achieved full effectiveness ³¹.

Analysis of legal principles: utility, certainty, sustainability

The legal framework for waqf in Indonesia, as set out in Law No. 41 of 2004, defines waqf as an instrument of Islamic philanthropy intended to promote public welfare and social justice. Notably, this framework explicitly incorporates the principle of benefit (maslahah,

³¹ Didik Jatmiko Deden Misbahudin Muayyad, "Higher Education Financing Model Through Cash Waqf: An Exploratory Study," *Muayyad & Jatmiko, Journal of Islamic Economics Lariba* 7, no. 2 (2021), <https://doi.org/https://doi.org/10.20885/jielariba.vol7.iss2.art3>.

or the public good), establishing a clear normative orientation³². Building on this, from this perspective of ecological fiqh, environmental benefits, such as resource conservation, damage prevention, and cleanliness, are regarded as acts of worship and elements of collective responsibility (fardhu kifayah, or communal obligation). Consequently, disaster-related waqf initiatives focused on environmental rehabilitation, forest conservation, or disaster mitigation infrastructure possess strong sharia legitimacy as a form of ‘green waqf’³³.

The principle of legal certainty is achieved through the establishment of clear definitions, designated subjects and objects, and standardized procedures for waqf management, as well as the provision of protection for waqif and nadzir. These measures ensure that waqf asset management is grounded in a formal legal framework. Nevertheless, research on the effectiveness of Article 32 of the Waqf Law, which addresses the certification of Waqf Land, indicates weak implementation. Delays by the Ministry of Religious Affairs, inefficiencies in the National Land Agency (BPN), and limited awareness among nadzir have resulted in numerous waqf lands remaining unregistered. Consequently, the legal certainty of waqf objects, including the potential for green waqf, remains sub-optimal.

The principle of sustainability is inherently embedded the concept of permanence (al baqā’) and the beneficial use of waqf assets. By ensuring that waqf property is not transferable, continuous benefits are sustained, especially in public sectors like education, health, and economic empowerment. This foundation aligns with ecological jurisprudence, which in response to the ecological crisis, underscores environmental preservation as an element of long-term *maslahah* and connects ecological sustainability to *maqāṣid al*

³² L Wibowo et al., “Wakaf Sebagai Pilar Ekonomi Syariah: Analisis Tata Kelola Dan Penguatan Kelembagaan Di Indonesia,” *Maslahah: Jurnal Manajemen Dan Ekonomi Syariah* 3, no. 3 (2025), <https://doi.org/10.59059/maslahah.v3i3.2493>.

³³ A Sholihin, “Menelisik Urgensitas Fikih Ekologi Terhadap Pelestarian Lingkungan Hidup,” *Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari’ah*, 2025, <https://doi.org/10.24252/iqtishaduna.vi.54558>.

syarī'ah³⁴. Building upon these foundational ideas, environmental law and sustainable development policies prioritize disaster mitigation, ecosystem protection, and forest damage control as ongoing objectives. The harmonization of sharia sustainability principles, such as *maslahah* and the preservation of Allah's creation, with sustainable development and the green constitution, thus establishes a conceptual groundwork for green waqf initiatives aimed at supporting disaster mitigation³⁵

Green waqf for ecological disaster mitigation according to Islamic law

If the fundamental principle of *muamalat*, as outlined in the Al-Qur'an and Sunnah, is that it is *halal* and permissible, then waqf, particularly in innovative forms that address contemporary conditions and needs, it is also considered permissible provided it remains consistent with Shari'a principles and does not involve any violations. This aligns with the customary practice of *muamalat*.

العبرة بالمقاصد و المسميات لا بالألفاظ و التسميات

The benchmark, meaning the main criterion for judgement lies in the aim and substance rather than in the editorial or implementation. This rule is a fundamental principle in Islamic jurisprudence. It states that in the case of financial transactions, the determining factor is not the written or spoken terms, but rather the genuine intention of the person conducting the transaction. The concept of green waqf, which refers to an Islamic endowment or charitable trust, describes using waqf contracts to their fullest extent to mitigate or avert ecological catastrophes that are already occurring or anticipated. In addition, this ecological catastrophe presents an opportunity for economic growth, requiring initiatives from diverse fields of study and scientific perspectives, particularly within the framework of sharia. Alternatively, it is referred to as:

³⁴ W Noersy, A Khosim, and Y Royani, "Sanksi Pidana Terhadap Pelaku Perusakan Hutan Dalam Undang-Undang Nomor 32 Tahun 2024 Tentang Konservasi Sumber Daya Alam Hayati Dan Ekosistemnya Di Cagar Alam Kamojang Perspektif Hukum Pidana Islam," *As-Syari: Jurnal Bimbingan & Konseling Keluarga* 7, no. 3 (2025), <https://doi.org/10.47467/as.v7i3.9291>.

³⁵ R Saputra, "Konstruksi Peraturan Pemerintah Pasca Pengesahan Undang-Undang Cipta Kerja Terhadap Pembangunan Berkelanjutan," *Borneo Law Review* 5, no. 3 (2021): 399–415, <https://doi.org/10.24970/bhl.v5i3.221>.

الضرار يزال

The harm must be removed.

Achieving prosperity requires removing obstacles to progress. Promoting innovation within the realm of waqf, particularly through the establishment of green waqf, serves this purpose. The concept of green waqf fosters societal responsibility towards nature and encourages individuals and groups to raise awareness of the importance of disaster mitigation.

This mitigation initiative includes both preventive and regulatory components. Preventive measures involve tree planting, allocating land for green space expansion, establishing waqf forests, and maintaining unobstructed land for water flow. Land acquisition may be facilitated by collecting waqf funds through a structured nadzhir initiative. The number is 17.

عن انس بن مالك رضي الله عنه قال قال رسول الله صلى الله عليه وسلم ما من مسلم يغرس غرسا أو يزرع زرعاً فيأكل منه طيراً أو إنساناً أو بهيمة إلا كان له به صدقة (رواه البخاري)

According to a narration by Anas bin Malik, may Allah be pleased with him, the Prophet Muhammad, peace be upon him, stated that when a Muslim plants a tree or sows seeds, and the produce is consumed by birds, humans, or other creatures, the act is regarded as a charitable deed. This narration is attributed to HR. Bukhari.

In addition, this hadith is corroborated by other hadiths that pertain to the establishment of green waqf to alleviate ecological catastrophes.

عن أنس قال: قال رسول الله صلى الله عليه وسلم: سبعة يجري للعبد أجرهن وهو في قبره بعد موته: من علم علماً، أو كرى نهراً، أو حفر بئراً، أو غرس نخلاً، أو بنى مسجداً، أو ورث مصحفاً، أو ترك ولداً يستغفر له بعد موته (رواه البيهقي)

On the authority of Anas, he said: The Messenger of God, may God bless him and grant him peace, said: seven things whose reward will continue to flow for a servant no matter how hard he dies and is in his grave. Namely: a person who teaches knowledge, drains water, digs a well, plants date trees, builds a mosque, bequeaths a

manuscript, or leaves a child who asks for forgiveness for him after he dies.' (HR. Baihaqi)

According to Al-Bani, this hadith is classified as a *hasan li ghairih* hadith. It reinforces the well-known hadith about charity

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ : إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

"If a person dies, then his deeds are cut off except for three things: (1) Jariyah charity, (2) Knowledge that is taken advantage of, (3) A pious son who always prays for his parents." (HR. Muslim, no. 1631)

Waqf functions as a significant mechanism for uniting Muslims across religious, social, and economic dimensions. Numerous studies have demonstrated that waqf is an instrument in motivating individuals to contribute valuable assets for social benefit. Furthermore, waqf has been shown to promote personal development by cultivating qualities essential for success, reducing negative traits, and encouraging generosity and compassion.

These hadiths provide the foundation for waqf in general and can also underpin green waqf instruments. Recognizing the importance of the natural world and efforts to address ecological catastrophes align with the principles of Islamic law, which prohibit all forms of harm that may result in destruction. The preventive measures that can be implemented align with the guidance provided in the hadith narrated by Anas. These measures include intensifying tree planting, expanding green open spaces, increasing the number of rivers, and utilizing waqf instruments to convert land into river channels. These actions are intended to reduce the negative impacts of natural disasters. Promoting environmental stewardship should continue through educational initiatives and outreach programs designed to cultivate responsible attitudes and behaviors towards the environment among all members of society.

Normatively, environmental law incorporates both the principle of *dubio pro natura*, which holds that environmental decision-making should favor nature, and the precautionary principle, which requires a pro-environmental interpretation when there is doubt in law enforcement. This approach can be applied in a progressive interpretation of the Waqf Law: in cases of doubt regarding the allocation of Waqf during an ecological crisis, it is preferable to prioritize interpretations that advance environmental protection and disaster prevention. However, in the absence of

explicit normative updates, such as changes or additions to provisions that prioritize disaster mitigation and environmental preservation within productive waqf, the realization of this potential relies on the willingness of policymakers and waqf institutions to undertake legal *ijtihad* and sectoral regulation.

Conclusion

The findings indicate that the legal basis for green waqf within Indonesia's positive legal system remains implicit and fragmented. Current waqf regulations do not explicitly recognize ecological functions and disaster mitigation as legal objectives, leading to legal vacuums and uncertainty in the management of environmentally based waqf. Consequently, the green waqf has not been effectively integrated into the national disaster mitigation policy framework.

Second, from the perspective of Islamic law, green waqf possesses strong normative legitimacy. The principle of *maqāṣid al-sharīʿah*, particularly the protection of life (*ḥifẓ al-nafs*), property (*ḥifẓ al-māl*), and the sustainability of life, provides both theological and juridical foundations for the development of environmentally based waqf as an instrument for ecological disaster mitigation. Therefore, there is no conceptual conflict between Islamic law and the concept of green waqf; harmonization with positive law is required to operationalize this legitimacy

Thirdly, the green waqf model applicable to ecological disaster mitigation is characterized by conservation and risk prevention; forest waqf, water resource waqf, and protected land waqf, all of which require professional and sustainable management. This approach conceptualizes waqf as being managed professionally and sustainably. This model is both a philanthropic mechanism and a preventive legal instrument focused on disaster risk reduction and ecosystem protection.

The findings indicate a need to strengthen regulations by establishing derivative regulations that explicitly address green waqf, including the classification of environmental waqf, governance structures, and legal protection mechanisms. The Indonesian Waqf Board (BWI) should assume a strategic role in developing technical

guidelines for green waqf, standardizing environmental waqf management, and enhancing coordination with environmental and disaster management agencies. Furthermore, it is essential to enhance the capacity and professionalism of waqf administrators, especially in the management of environment-based waqf, which demands cross-sectoral expertise and sustainable governance.

Future research should focus on empirical investigations of green waqf implementation at the local level, comparative analyses of green waqf legal frameworks in other countries, and the formulation of an integrative policy model linking waqf, disaster mitigation, and environmental law. Such studies are essential to enhance the empirical foundation and reinforce normative recommendations for developing green waqf as a legal instrument for ecological disaster mitigation in Indonesia.

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