



Legal Reform of Productive *Waqf* Regulation in the Utilization of Fishermen's Assets

Nurul Hikmah

Universitas Negeri Surabaya, Surabaya, Indonesia

Email: nurulhikmah@unesa.ac.id

Nafi Mubarak

Universitas Islam Negeri Sunan Ampel Surabaya, Surabaya, Indonesia

Email: nafi.mubarak@uinsa.ac.id

Abstract

This research examines the legal implications of uncertainty in the regulation of productive *waqf* for the utilization of fishermen's assets in Indonesia, as well as efforts at legal reform. This research is a normative legal study emphasizing a conceptual and legislative approach. The research findings indicate that the absence of specific regulations can create ambiguity regarding the legal status of *waqf* assets, particularly with respect to ownership, management, and the distribution of benefits. Legal reform is necessary through the formulation of rules based on *maslahah mursalah* to realize *maqashid asy-syariah*, as developed by Jasser Auda, who emphasizes a responsive, inclusive, and sustainable system approach. Furthermore, the formulation of legislation must also draw on the theory of legal pluralism by harmonizing Islamic and state law, while considering the social realities of the fishing community. Legal reform also needs to integrate the aspects of substance, structure, and legal culture as proposed by Lawrence M. Friedman. This research recommends establishing comprehensive regulations for productive endowments in the public interest to ensure legal certainty and sustainably improve the welfare of fishing communities.

Keywords: Fishermen; Legal Reform; Productive *Waqf*.

Introduction

Waqf is an important instrument in the Islamic economic and social system, playing a strategic role in supporting community welfare. According to the provisions of Article 1, paragraph 1 of Law Number 41 of 2004 concerning *Waqf* (Law 41/2004), *waqf* is understood as a legal act performed by the wakif, which is the party who owns the property, to consciously and voluntarily separate and/or relinquish part of their property so that it can be utilized for specific purposes permitted by sharia. The phrase "legal act" indicates that *waqf* is not merely a social or religious action, but rather has binding legal consequences for the

waqif, the *nazhir* as the manager, and other related parties.¹ The separation or transfer of property in this context emphasizes a change in ownership status, where the property that has been endowed is no longer the personal property of the waqif, but rather becomes property designated for public interest or worship, and therefore cannot be sold, inherited, or freely transferred like ordinary property.

The provision regarding the utilization of *waqf* property, as stated in Article 1, paragraph 1 of Law No. 41/2004 on the aspect of "forever or for a certain period," reflects the flexibility in the concept of *waqf* in Indonesia, which is not solely eternal (perpetual) but also allows for temporary *waqf* according to the needs and goals of the *waqif*. This is an important development in modern *waqf* law, as it opens opportunities to optimize *waqf* assets across various productive sectors without compromising the fundamental value of the eternity of its benefits.² The purpose of using *waqf* assets for "religious and/or public welfare needs according to Sharia" indicates that *waqf* has a dual dimension, namely spiritual and socio-economic. The spiritual dimension is reflected in the use of *waqf* for religious activities such as the construction of mosques, madrasas, and preaching facilities. In contrast, the public welfare dimension is evident in the use of *waqf* for education, health, economic empowerment, and other social services.³

An important aspect of the regulation of *waqf* practices in Indonesia concerns the efforts and orientation of productive *waqf* aimed at benefiting the community and society. Productive *waqf* is a paradigm of *waqf* management that positions *waqf* assets not merely as static and consumptive assets, but as economic resources that are actively, professionally, and sustainably managed to generate added value that can continuously be utilized for worship and public welfare.⁴ Essentially, productive *waqf* transforms the orientation of *waqf* management from mere direct use, such as for the construction of mosques, graves, or places of worship, to management that can generate income (income-generating assets), where the proceeds or profits from this management are then channeled for social, educational, health, and economic empowerment of the community, and various other welfare programs.⁵

The term productive *waqf* is essentially not a term that is directly emphasized in Law No. 41/2004; however, the substance of Law No. 41/2004 has essentially facilitated productive *waqf*, especially through provisions that regulate that *waqf* assets can be managed and developed productively by the *nazhir* as long as it is in accordance with sharia principles. In the implementing regulations of the *waqf* law, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning *Waqf* (PP 42/2006),

¹ Ahmad Sofyan Mustafa and Nurul Hikmah, "Konsep Wakaf Profesi Pada Hukum Positif Di Indonesia," *Novum: Jurnal Hukum* 11, no. 1 (2024): 119–29.

² Siti Masriyah, "Peran Wakaf Produktif Dalam Kesejahteraan Masyarakat," *Jurnal Ilmiah Ekonomi Islam* 10, no. 1 (March 13, 2024): 627, <https://doi.org/10.29040/jiei.v10i1.12064>.

³ Fauzan Ulwan Fadhlurrahman, Muhammad Diaz Wahyu Darmansyah, and Yogi Permana Adi Citra, "Managing Islamic Endowments (Waqf): Legal Challenges and Strategic Approaches for Sustainable Development," *Journal of Islamic Law and Legal Studies* 2, no. 1 (June 17, 2025): 16–25, <https://doi.org/10.70063/-v2i1.65>.

⁴ An'im Fattach and Maskun Maskun, "Konsepsi Strategis Pengembangan Wakaf Produktif Melalui Investasi Berbasis Syariah," *Management of Zakat and Waqf Journal (Mazawa)* 3, no. 2 (March 2022): 51–65, <https://doi.org/10.15642/mzw.2022.3.2.51-65>.

⁵ Mochamad Ikwon Nurul Hikmah, Syahid Akhmad Faisol, Dicky Eko Prasetyo, Kamaluddin Nurdin Marjuni, "Professional Waqf 5.0: Penta Helix Strategy and Legal Pluralism in the Digital Era," *Krtha Bhayangkara* 20, no. 1 (2026): 173–194., <https://doi.org/https://doi.org/10.31599/krtha.v20i1.5312>.

which was later amended by Government Regulation Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning *Waqf* (PP 25/2018), does not explicitly define productive *waqf*. However, it already includes aspects of sustainable *waqf* utilization and does not allow *waqf* assets to remain idle or be underutilized.

The lack of clarity in the formulation of productive *waqf* in the aforementioned legislation can lead to issues with legal certainty, particularly regarding the utilization of productive *waqf* in relation to fishermen's assets. Productive *waqf* becomes very important in the utilization of fishermen's assets because it can bridge the limitations of capital, economic vulnerability, and income fluctuations that have been the main characteristics of the capture and aquaculture fisheries sector.⁶ Fishermen generally have limited access to formal financing, technology, and supporting infrastructure, so the assets they possess, such as boats, fishing gear, shrimp ponds, or even catch, are often not managed optimally and sustainably.⁷ Legally, the issue of regulating productive *waqf* in the utilization of fishermen's assets also arises in the legal aspect where the Law Number 7 of 2016 on the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers (Law 7/2016), which was later amended by Law Number 6 of 2023 on the Enactment of Government Regulation instead of Law Number 2 of 2022 on Job Creation into Law (Law 6/2023), does not emphasize the role and existence of productive *waqf* in the utilization of fishermen's assets.

Based on the description of the problems above, this research aims to analyze the efforts to reform the legal regulation of productive *waqf* in the utilization of fishermen's assets. In general, this research employs the theory of legal pluralism, Lawrence M. Friedman's legal system, and the concept of *masalah mursalah* within the *maqashid asy-syariah*, as proposed by Jasser Auda. These theoretical and conceptual frameworks are necessary to provide a comprehensive "analytical tool" so that the objectives of this research can be optimally addressed. Two legal issues are the focus of this research, namely: (i) the legal implications of the uncertainty in the regulation of productive *waqf* in the utilization of fishermen's assets, and (ii) the legal renewal of the regulation of productive *waqf* in the utilization of fishermen's assets in Indonesia.

Research on productive *waqf* in Indonesia has essentially been conducted by several previous studies, including research by Rianti and Munawar (2024), which discusses the relevance between productive *waqf* and the achievement of the SDGs 2030 goals.⁸ Further research by Musyafa and Aisi (2025) explains that the problems of productive *waqf* in Indonesia stem from a lack of comprehensive regulations, low *waqf* literacy, and limited *nazhir* capacity.⁹ Subsequent research by Purnomo (2026) emphasizes that one of the

⁶ Ana Laela Fatikhatul Choiriyah, Dominikus Rato, and Bayu Dwi Anggono, "Urgensi Pembaharuan Pengelolaan Wakaf Di Indonesia," *Jurnal Rechtsens* 12, no. 2 (2023): 239–56, <https://doi.org/10.56013/rechtsens.v12i2.2417>.

⁷ Sriyono - Sriyono and Santi Rahma Dewi, "Meningkatkan Kesejahteraan Masyarakat Nelayan Di Era New Realiti Melalui Model Pembiayaan Inklusif: Prespektif Al Mudharabah," *Jurnal Ilmiah Ekonomi Islam* 7, no. 1 (2021): 81, <https://doi.org/10.29040/jiei.v7i1.1697>.

⁸ Risma Puji Rianti and Wildan Munawar, "Optimalisasi Pengelolaan Wakaf Produktif Dalam Mendukung Sustainable Development Goals (Studi Kasus Lembaga Wakaf Di Kabupaten Bogor)," *PROFJES: Profetik Jurnal Ekonomi Syariah* 03, no. 02 (2024): 143–56, <https://jurnal.uinsyahada.ac.id/index.php/Profetik/index>.

⁹ Okta Khusna Aisi A'ang Yusril Musyafa, "Strategi Pengelolaan Wakaf Produktif Potensi Dan Tantangan Di Indonesia," *Jurnal Pro Justicia* 05, no. 01 (2025): 43–52.

successes in the implementation of productive waqf is adequate concern and *waqf* literacy among the foundation's management.¹⁰ The three previous studies mentioned above generally discuss productive *waqf* but do not specifically address its importance, particularly in legal reform to optimize the utilization of fishermen's assets, as in this study. This emphasizes the novelty of this research, which focuses on legal reforms to productive *waqf* regulations to optimize the utilization of fishermen's assets.

Methods

This research is a normative legal study based on an analysis of authoritative legal materials, including legislation, as well as doctrines, theories, concepts, and legal principles.¹¹ The primary legal materials used in this research are: the 1945 Constitution of the Republic of Indonesia, Law No. 41/2004, Law No. 7/2016, Law No. 6/2023, Government Regulation No. 42/2006, and Government Regulation No. 25/2018. The secondary legal materials used include research on productive *waqf*, fishermen's assets, the theory of legal pluralism, Lawrence M. Friedman's legal system, and Jasser Auda's *maslahah mursalah*, encompassing journal articles and books. Non-legal materials are research results from non-legal fields that support this study, such as economic research on *waqf* and technical research on fishermen. The analysis in this research is conducted prescriptively to improve, perfect, or direct the law to be more effective, just, and responsive to society's needs. In this context, prescriptive analysis is usually carried out through several systematic and interconnected stages.¹² The first stage is the identification of legal issues, which is the process of discovering and formulating actual legal problems, whether in the form of normative gaps, normative conflicts, unclear regulations, or discrepancies between norms and practices. The second stage is the inventory and analysis of legal materials. The third stage is the normative evaluation, which assesses whether the existing norms have met legal principles, theories, concepts, and doctrines. The fourth stage is the formulation of prescriptive arguments, the core stage in which the researcher provides recommendations or legal constructions to be applied. The final stage is the formulation of conclusions and recommendations, which summarize all the analysis results and affirm the proposed solutions.¹³

Results and Discussion

A. Legal Implications of Uncertainty in the Regulation of Productive Waqf in the Utilisation of Fishermen's Assets

Waqf is one of the Islamic legal institutions that has both a religious and socio-economic dimension, which is essentially defined as a legal act by an individual or legal entity (*waqif*) to separate and/or donate part of their property to be used forever or for a

¹⁰ Basuki Joko Purnomo, "Model Pemanfaatan Wakaf Produktif (Studi Kasus Pada Yayasan Al-Huda Kota Bekasi)," *AT Tajir: Jurnal Manajemen Bisnis Syariah* 3, no. 2 (2025): 11–21.

¹¹ Masnun, Muh. Ali, Dicky Eko Prasetyo, Maalikatussofa "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, no. 3 (2025): 372–84, <https://doi.org/https://doi.org/10.2674/novum.v12i03.74364>.

¹² Tunggul Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.

¹³ Moh. Mujibur Rohman et al., "Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials)," *Maqasidi: Jurnal Syariah Dan Hukum* 4, no. 2 (December 27, 2024): 204–21, <https://doi.org/10.47498/maqasidi.v4i2.3379>.

certain period according to their interests for worship and/or public welfare according to sharia.¹⁴ In Indonesia, *waqf* is constitutionally aligned with Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which concerns an economy based on a spirit of collectivism and community participation (cooperatives based on kinship).¹⁵ In this conception, *waqf* contains inseparable fundamental elements, namely the presence of the waqif as the party who endows the property, the existence of waqf property (*mauquf bih*) that has utility and durability, the allocation or purpose of *waqf* (*mauquf 'alaih*) that must comply with sharia principles and public benefit, and the *waqf* declaration as a binding and final statement of intent.¹⁶ There is also the element of *nadzir* as the party that receives, manages, and develops the *waqf* property to ensure it remains productive and provides sustainable benefits.

The valid conditions for *waqf* under Islamic and positive law in Indonesia include several important aspects, namely that the waqif must be legally competent, of sound mind, and have full rights over the endowed property. The property of the *waqf* must have a clear ownership status, possess beneficial value, and not contradict Sharia law. The allocation of *waqf* must be for purposes justified by religion, such as worship, education, health, or social welfare, and the *waqf* declaration must be clearly stated, both verbally and in writing, in the presence of authorized officials to have legal force.¹⁷ Another requirement is the presence of a *nadzir*, who must meet certain qualifications, such as trustworthiness, managerial capability, and responsibility in managing *waqf* assets, to prevent neglect or misuse. In the practice of *waqf* in Indonesia, an important aspect is productive *waqf*.

Productive waqf is the development of the *waqf* concept that is not only oriented towards static utilization, such as the use of land for mosques, graves, or educational institutions, but also emphasizes the active, professional, and sustainable management of *waqf* assets so that they can generate economic value which is then channeled for religious and public welfare purposes, while maintaining the integrity of the principal *waqf* property.¹⁸ In this context, productive *waqf* becomes an important instrument in the economic empowerment of the community because the *waqf* assets, whether in the form of land, buildings, money, or other forms, can be optimized through business activities such as agriculture, trade, sharia investment, or property management, so that their benefits are not only temporary but continue to develop and provide long-term impacts for the wider

¹⁴ Rahmawati et al., "Transformasi Digital Wakaf BWI Dalam Menghimpun Wakaf Di Era Digitalisasi," *Jurnal Tabarru': Islamic Banking and Finance* 4, no. 2 (2021): 532–40, [https://doi.org/10.25299/jtb.2021.vol4\(2\).8375](https://doi.org/10.25299/jtb.2021.vol4(2).8375).

¹⁵ Thamasi Masnun, Muh Ali, Prasetyo, Dicky Eko, Konara, "Financial Reconstruction of State-Owned Enterprises in Indonesia as Special State Finances: Public or Private Law?," *Jurnal Hukum Bisnis Bonum Commune* 9, no. 1 (2026): 44–62, <https://doi.org/https://doi.org/10.30996/jhbbs.v9i1.132464>.

¹⁶ Linatul Uyun and Nuriya Hamida, "Waqf Productivity in Indonesia: Challenges and Prospects for Sustainability Mengungkap Tantangan Dan Peluang Wakaf Produtif Di Indonesia," *Qanun: Jurnal Hukum Keluarga Islam* 2, no. 1 (2024): 80–104, <https://doi.org/10.21580/ahkam.2015.1.25.195.4>.

¹⁷ Nawawi Nawawi et al., "Wakaf Uang Di Indonesia: Tantangan, Peluang Dan Langkah-Langkah Menuju Pemanfaatan Optimal," *Lisan Al-Hal: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 18, no. 1 (2024): 126–47, <https://doi.org/10.35316/lisanalhal.v18i1.126-147>.

¹⁸ Ainul Ikhsan, Muhammad Luthfi Sartono, and Muhammad Kamil Husain, "Zakat and Waqf in the Era of Capitalism: Reconstructing the Paradigm of Economic Justice within the Modern Financial System," *Asian Journal of Muslim Philanthropy and Citizen Engagement* 2, no. 1 (January 8, 2026): 25–48, <https://doi.org/10.63919/ajmpce.v2i1.58>.

community, especially in addressing poverty, improving access to education, and strengthening the social sector based on community values.¹⁹

Normatively, the concept of productive *waqf*, although not explicitly mentioned, has a basis in Sharia law, specifically Surah Al-Baqarah verse 261, which emphasizes the parable of those who spend their wealth in the way of Allah as a seed that sprouts seven ears. In every ear, there are a hundred grains, implicitly showing the value of productivity and the multiplication of benefits from well-managed wealth.²⁰ The practice of productive *waqf* can also be traced in Islamic history, such as when Umar bin Khattab endowed his land in Khaibar under the guidance of Prophet Muhammad (PBUH), with the principle that the principal land should not be sold, inherited, or donated. However, its proceeds should be allocated to social purposes, which reflects the essence of productivity in *waqf*, as the principal asset is maintained while its proceeds continue to be utilized.²¹ This reinforces the view that, in Islamic law. However, productive *waqf* is not explicitly mentioned; it remains legitimate under the provisions of the Qur'an and the practices of the companions of the Prophet Muhammad (PBUH).

The regulation of *waqf* in Indonesia does not specifically emphasize the term "productive *waqf*," as seen in Law No. 41/2004, Government Regulation No. 42/2006, and Government Regulation No. 25/2018. From the perspective of legislation, the absence of the term "productive *waqf*" does not diminish its essence because, although "productive" is not explicitly stated in the legislation, the substance of productive *waqf* can be implicitly found in Law No. 41/2004, Government Regulation No. 42/2006, and Government Regulation No. 25/2018. This is particularly related to the regulation concerning the obligation of *the nazhir* to manage and develop *waqf* assets according to their purpose, function, and allocation, which emphasizes that *waqf* is not only intended for religious purposes, such as the construction of mosques or graves, but can also be directed towards social and economic activities that provide long-term benefits.²² Regulations regarding the development of *waqf* assets through investment activities, business partnerships, and various forms of other productive management, as long as they do not contradict sharia principles, as well as regulations regarding the professionalism of *nazhir* as *waqf* managers who no longer merely act as asset custodians, but rather as managers responsible for optimizing the economic and social value of *waqf* assets. From this perspective, the lack of emphasis on the term

¹⁹ Mujiyanto Muhammad Jumain, Nagina Gul, and Mir Hassan, "The Productive Waqf Impact upon Pesantrens' Self-Sufficiency: A Comparative Study of Pondok Modern Tazakka Batang and Pondok Pesantren Modern Sulthon Auliya Jakarta," *Global Legal Studies Review* 7, no. 2 (June 30, 2022): 1–15, [https://doi.org/10.31703/glsr.2022\(VII-II\).01](https://doi.org/10.31703/glsr.2022(VII-II).01).

²⁰ Al-Faiz Muhammad Rabbany Tarman, Ridwan Maulana Safii, and Yusuf Rohmat Yanuri, "Historical Consciousness of Hamka's Interpretation of Al-Baqarah Verse 261 and Its Relevance to the History of Educational Institutions in Indonesia," *Borneo : Journal of Islamic Studies* 6, no. 1 (October 12, 2025): 44–57, <https://doi.org/10.37567/borneo.v6i1.4320>.

²¹ Nugraha Eka Hardana and Achmad Kholiq, "Social Benefit System During the Government Omar Ibn Khattab," *Jurnal Legisci* 1, no. 1 (August 16, 2023): 43–56, <https://doi.org/10.62885/legisci.v1i1.16>.

²² Hanim Misbah and Fuadah Johari, "Mapping Waqf Research: A 15-Year Bibliometric Study of Malaysia and Indonesia," *Jurnal Ekonomi & Keuangan Islam* 1, no. 1 (August 27, 2025): 258–86, <https://doi.org/10.20885/JEKI.vol111.iss2.art7>.

"productive *waqf*" in legislation is not a significant issue, as the substance of productive *waqf* has been implicitly recognized and can be implemented.²³

Second, from the perspective of legal certainty, the absence of the term "productive *waqf*" in legislation can have implications for the practice of productive *waqf* itself. The absence of a positive law regulating it can be interpreted as indicating that it is considered unimportant or irrelevant to implement, especially in the era of legal modernization, where the incorporation of substance into positive law through legislation is necessary.²⁴ Therefore, the lack of emphasis on the term productive *waqf* in legislation can lead to legal uncertainty. Legal uncertainty is a condition in which legal norms fail to provide clarity, certainty, and predictability regarding how the law should be applied, whether due to ambiguous, multi-interpretive, incomplete, or overlapping rules, or to inconsistencies in their enforcement by law enforcement officers.²⁵ In this situation, legal subjects, whether individuals or legal entities, cannot know their rights and obligations with certainty, nor do they have guarantees regarding the legal consequences of an action, which potentially leads to injustice, disorder, and a decline in trust in the legal system. Legal uncertainty can also arise from disharmony among regulations, rapid regulatory changes without adequate transition periods, or weak and inconsistent interpretation and enforcement of the law, causing the law to lose its function as a reliable guide for behavior.²⁶ Therefore, legal certainty is a fundamental principle in a state of law, because only with clear, firm, and consistent rules can the law provide protection and justice, and guarantee stability in social and state life.

From the two perspectives above, it can be understood that there is an urgent need to reinforce the implementation of productive *waqf* in legislation so that its execution can guarantee legal certainty and enable the state to play a role in providing legal protection. Specifically regarding the utilization of fishermen's assets through productive *waqf*, this requires special regulation based on at least three arguments, namely: first, from a legal perspective, there has been a specific regulation on the protection and empowerment of fishermen through Law No. 7/2016, amended by Law No. 6/2023, which links the empowerment and protection of fishermen with efforts to increase job creation in the community. Law No. 6/2023, in the spirit of "job creation," not only treats the empowerment and protection of fishermen as mere administrative facilitation but also ensures that these efforts improve the community's economic status, with implications for job creation.²⁷ Special regulations on the use of fishermen's assets through productive *waqf* are particularly

²³ Agus Rochani, Nany Yuliastuti, and Budi Sudarwanto, "The Existence Of Waqf In Establishing A Sustainable Communal Space," *Journal of Islamic Architecture* 7, no. 1 (June 28, 2022): 57–66, <https://doi.org/10.18860/jia.v7i1.15310>.

²⁴ Dicky Eko Prasetyo, "Politik Hukum Omnibus Law Terkait Cybercrime Di Indonesia Dalam Perspektif Hukum Progresif," *Indonesian Journal Of Law Studies* 3, no. 1 (2024): 27–41.

²⁵ Bayangsari Wedhatami Dicky Eko Prasetyo, Muh Ali Masnun, "Legal Uncertainty of Golf Game as Sports and Entertainment Branch in Local Tax Imposition," *Wawasan Yuridika* 4, no. 1 (2024): 76–93, <https://doi.org/https://doi.org/10.25072/jwy.v8i1.4369>.

²⁶ Purwanto Purwanto et al., "Streamlining Regional Regulations with Omnibus Law for Legal Harmonization," *Rechtsidee* 12, no. 2 (December 26, 2024): 7–13, <https://doi.org/10.21070/jihr.v13i1.1038>.

²⁷ Irfa Nugroho, Arinto, Ronaboyd, Emmilia Rusdiana, and Sonny Zulhuda Prasetyo, Dicky Eko, "The Impact of Labor Law Reform on Indonesian Workers : A Comparative Study After the Job Creation Law," *Lex Scientia Law Review* 8, no. 1 (2024): 67–108.

necessary to ensure legal harmonization among Law No. 7/2016, Law No. 6/2023, and Law No. 41/2004.

Second, under Law 7/2016, the profession of a fisherman is not singular but is categorized into several types, namely small fishermen, traditional fishermen, laborers, and owners.²⁸ The categorization of fishermen is because fishermen in the coastal socio-economic structure can be distinguished into several categories that reflect differences in access to capital, technology, and positions in the production relationship, namely small fishermen, traditional fishermen, laborers, and owners, each of whom has its own characteristics and dynamics in fishing practices. Small fishermen are generally fishery entrepreneurs operating on a limited scale, using small boats with limited capacity and simple fishing gear, and working in coastal waters, making them very vulnerable to weather changes, fluctuations in catch, and limited access to markets and capital.²⁹ Meanwhile, traditional fishermen place greater emphasis on fishing technologies passed down through generations, often grounded in local wisdom and simple methods, resulting in relatively low productivity but often more environmentally friendly.³⁰ On the other hand, labor fishermen are a group that does not own production tools, such as boats or fishing gear, and works for owner fishermen under a profit-sharing or wage system, which in many cases places them in a weak economic position due to their dependence on capital owners and the uncertainty of income. In contrast, owner-fishermen are those who possess the means of production, such as boats, engines, and fishing gear, and thus have greater control over the production process and the distribution of catch, while also obtaining a larger share of profits in the fishing business.³¹ The relationship among these four categories indicates social stratification within the fishing community, where the distribution of resources and economic outcomes is not always equitable, often leading to disparities that require policy intervention to promote greater justice and welfare for fishermen. Specific regulations on the use of fishermen's assets through productive *waqf* are important, given that fishermen are categorized differently.

Third, the *utilisation* of fishermen's assets through productive *waqf* must be able to synergize and harmonize two different regulations, namely the regulations related to the protection of fishermen and the regulations related to *waqf*, which in this case are Law 7/2016, Law 6/2023, and Law 41/2004. The absence of specific regulations on the use of fishermen's assets through productive *waqf* can lead to conflicts with existing regulations and even legal disharmony, as Law No. 7 of 2016, Law No. 6 of 2023, and Law No. 41 of 2004 were formulated with different objectives. Based on the three arguments above, a special regulation on the utilization of fishermen's assets through productive *waqf* is needed to provide legal certainty and simultaneously synergize and harmonize the legislation, namely

²⁸ Muhammad Rinaldy Bima, "Inconsistency in the Definition of Small Fishermen within the Indonesian Legal Framework: A Comparative Study of Legislation," *SIGn Jurnal Hukum* 5, no. 1 (May 22, 2023): 91–101, <https://doi.org/10.37276/sjh.v5i1.259>.

²⁹ Irfa Ronaboyd Dicky Eko Prasetyo, "Bajo Tribal Marine Customary Rights Supervision: A Reform with Archipelagic Characteristics," *Jurnal Kajian Pembaruan Hukum* 2, no. 2 (2022): 235.

³⁰ Yuliyus and Nora Susilawati, "Critical Legal Feminism Pada Kedudukan Perempuan Dalam Hak Waris Pada Sistem Patriarki," *Culture & Society: Journal of Anthropological Research* 2, no. 3 (2021): 123–29.

³¹ Junawan, "Perlindungan Hukum Terhadap Nelayan Di Indonesia," *Tadulako Master Law Journal* 5, no. 2 (2021): 150–64.

Law No. 7/2016, Law No. 6/2023, and Law No. 41/2004, thereby helping to prosper fishermen.

The absence of specific regulations governing the use of fishermen's assets through productive endowments has legal implications for fishermen. Legal implications are all the consequences, effects, or impacts that arise from an event, action, policy, or legal norm on the status, rights, and obligations of legal subjects within a specific legal system, which are indirect in nature.³² These implications can include the emergence of new rights, the creation of obligations, changes in legal status, and the imposition of sanctions for violations of applicable regulations. The legal implications of the uncertainty in the regulation of productive *waqf* in the utilization of fishermen's assets are that it creates legal uncertainty in the implementation of productive *waqf* for the utilization of fishermen's assets. The absence of positive law governing this matter may render the implementation of productive *waqf* to utilize fishermen's assets suboptimal. The existence of regulations governing productive *waqf* for the utilization of fishermen's assets can provide legal certainty and protection for fishermen and other parties involved, making the process more optimal and benefiting the community.

B. Legal Reform on the Regulation of Productive *Waqf* in the utilization of Fishermen's Assets in Indonesia

The regulation of productive *waqf* in the utilization of fishermen's assets in Indonesia needs to be specifically governed by legislation. This effort requires legal reform to regulate *waqf* and the utilization of fishermen's assets in Indonesia. The idea of legal reform, according to Satjipto Rahardjo, is inseparable from his concept of progressive law, which views law as a means to achieve human welfare rather than an end in itself.³³ In this framework, legal reform is understood as a dynamic process to align the law with societal developments.³⁴ Regarding productive *waqf* in the utilization of fishermen's assets, legal reform efforts can be undertaken by establishing specific regulations governing its use. The regulation of productive *waqf* in the utilization of fishermen's assets in Indonesia is fundamentally in line with the Islamic legal perspective, which views that the regulation of productive *waqf* in the utilization of fishermen's assets in Indonesia within positive law will benefit the community in accordance with the aspect of *maslahah mursalah*. The concept of *maslahah mursalah* is an important method in the development of Islamic law, emphasizing the consideration of public welfare as the basis for legal determination, especially in issues not explicitly regulated in the Qur'an or hadith.³⁵ In the study of *usul al-fiqh*, *maslahah mursalah* is understood as a welfare that lacks specific proof for or against it, yet remains in

³² Hananto Widodo et al., "Legal Implications of the Authority of Acting Regional Heads Based on Policy Regulations," *Indonesian Journal of Administrative Law and Local Government* 1, no. 1 (November 9, 2024): 65–81, <https://doi.org/10.26740/ijalgov.v1i01.35774>.

³³ Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, "Membangun Moralitas Dan Hukum Sebagai Integrative Mechanism Di Masyarakat Dalam Perspektif Hukum Progresif," *Mimbar Keadilan* 14, no. 2 (2021): 128–38.

³⁴ Muh. Ali Masnun et al., "Legal Reform of Legal Profession Amidst the Development of Artificial Intelligence in Indonesia: The Perspective of Mesu Budi's Philosophy of Law," *Novum: Jurnal Hukum* 12, no. 2 (2025): 277–87, <https://doi.org/https://doi.org/10.2674/novum.v12i02.72355>.

³⁵ Usman Al Farisi et al., "Negotiation Between Customary Law and Islamic Law: The Practice of Palang Pintu in The Traditional Marriage in The Betawi Muslim Community," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (December 31, 2023): 268–85, <https://doi.org/10.18860/j-fsh.v15i2.21241>.

line with the objectives of sharia.³⁶ Therefore, this concept provides flexibility for the mujtahid to respond to the dynamics of constantly changing social, economic, and technological developments, without deviating from the fundamental principles of Islamic teachings.

Maslahah mursalah, which aligns with *maqashid asy-syariah*, is a form of benefit that is not explicitly mentioned in the texts. However, its substance is in harmony with the main objectives of establishing Islamic law.³⁷ In the framework of *usul al-fiqh*, the relationship between *maslahah mursalah* and *maqashid asy-syariah* is very close, as both are oriented towards achieving goodness (*jalb al-mashalih*) and preventing harm (*dar' al-mafasid*).³⁸ Thus, a *maslahah mursalah* can be deemed valid and serve as a basis for legal rulings if it supports and does not contradict the fundamental objectives of Sharia.

The main objectives of *maqashid asy-syariah*, as formulated by scholars such as Al-Shatibi, encompass the protection of five fundamental aspects of human life, namely religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*).³⁹ Therefore, *maslahah mursalah* that aligns with *maqashid asy-syariah* is a benefit that significantly contributes to the protection or strengthening of one or more of those five elements. For example, economic policies that improve societal welfare can be categorized as efforts to preserve wealth, while public health regulations are part of protecting life. From a contemporary perspective, Jasser Auda developed a systemic approach to understanding *maqashid asy-syariah*, which extends *maslahah mursalah* beyond the five classical objectives to encompass universal values such as justice, freedom, equality, and social welfare.⁴⁰

Jasser Auda emphasizes that a benefit is considered relevant if it can provide a wide, sustainable, and inclusive positive impact for society. This shows that *maslahah mursalah*, in line with *maqashid*, is not only normative but also contextual and responsive to the developments of the times. However, not every claim of *maslahah* can be accepted as a valid *maslahah mursalah*. The scholars stipulate that the benefit must be real (not speculative), general (not only for the interests of individuals or certain groups), and not contrary to definitive evidence (*dalil qath'i*).⁴¹ Thus, the integration between *maslahah mursalah* and *maqashid asy-syariah* requires a balance between the flexibility of *ijtihad* and adherence to

³⁶ Nurul Hikmah, Syahid Akhmad Faisol, and Mohd Aderi Che Noh, "The Existence of Marriage Post The Constitutional Court Decision: As A Right or A Prerequisite?," *Justicia Islamica* 21, no. 1 (2024): 111–36, <https://doi.org/10.21154/justicia.v21i1.7333>.

³⁷ Yuni Roslaili, Aisyah Idris, and Emi Suhemi, "Family Law Reform in Indonesia According to the Maqashid Al-Shari'a Perspective (A Case Study of Law No. 16 of 2019)," *Gender Equality: International Journal of Child and Gender Studies* 7, no. 2 (2021): 183, <https://doi.org/10.22373/equality.v7i2.9397>.

³⁸ Agus Riwanto and Sukarni Suryaningsih, "Realizing Welfare State and Social Justice: A Perspective on Islamic Law," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (2022): 41–51, <https://doi.org/10.24090/volkgeist.v5i1.6430>.

³⁹ M. Khusnul Khuluq and Asmuni Asmuni, "Hifz Al-Bi'ah as Part of Maqashid Al-Shari'ah and Its Relevance in the Context of Global Climate Change," *Indonesian Journal of Interdisciplinary Islamic Studies* 7, no. 2 (February 17, 2025): 161–78, <https://doi.org/10.20885/ijiis.vol7.iss2.art3>.

⁴⁰ Luqman Rico Khashogi Luqman, "Menakar Rekonstruksi Maqashid Syariah," *Politea: Jurnal Politik Islam* 5, no. 1 (June 18, 2022): 64–82, <https://doi.org/10.20414/politea.v5i1.5042>.

⁴¹ Fajar Ledianito, Khalilullah, and Muhsin Muis, "Women's Rights in Rejecting Polygamy: Islamic Law Perspective and Compilation of Islamic Law in Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 11, no. 2 (December 30, 2024): 134–51, <https://doi.org/10.24252/al-qadau.v11i2.53218>.

the fundamental principles of sharia, so that Islamic law can continue to provide solutions that are just, relevant, and oriented towards the benefit of all humanity.

The regulation of productive *waqf* in the utilization of fishermen's assets in Indonesia is urgently in need of specific regulation in legislation, when viewed from the perspective of *maslahah mursalah* as developed by Jasser Auda. In the systemic approach of *maslahah mursalah*, Auda emphasizes that the law must respond dynamically to social realities while remaining oriented towards achieving broad *maslahah*.⁴² In this context, the utilization of fishermen's assets through a productive *waqf* scheme is a form of socio-economic innovation that is not explicitly regulated in the texts but aligns with the objectives of Sharia to improve community welfare and reduce economic inequality. The use of fishermen's assets, such as boats, fishing gear, and fishery infrastructure, through productive *waqf* has great potential to strengthen the economic resilience of coastal communities, expand access to social capital, and create sustainable distribution of benefits. Therefore, the absence of specific regulations can lead to legal uncertainty, weak governance, and the risk of misuse, ultimately hindering the realization of such benefits.

Regulating productive *waqf* for fishermen's assets is important to ensure clarity regarding the legal status of the assets, the nazhir's management mechanisms, the distribution patterns of the results, and the protection of fishermen as beneficiaries. Comprehensive regulations will ensure that *waqf* practices are not only formally valid but also effective in achieving the goals of welfare and social justice. From the perspective of *maslahah mursalah*, as articulated by Jasser Auda, the need for such specific regulations constitutes legitimate, even necessary, contemporary *ijtihad*.⁴³ This is because the regulation serves as an instrument to realize the *maqashid asy-syariah*, particularly in preserving wealth (*hifz al-māl*) and improving the welfare of the fishing community. Therefore, the formulation of legislation specifically regulating productive endowments based on fishermen's assets aims to provide sustainable benefits for the community.

The formulation of productive *waqf* regulations for the utilization of fishermen's assets in Indonesia cannot rely solely on a single legal system. However, it must refer to the theory of legal pluralism, which recognizes the coexistence of multiple legal systems that coexist and interact within society. From the perspective of legal pluralism, law is understood not only as a product of the state but also as encompassing religious and customary law that have social legitimacy within the community. Therefore, *waqf*, as an institution rooted in Islamic law and simultaneously adopted in national law, occupies a strategic position as a meeting point between religious and state norms.

In Indonesia, the formal regulation of *waqf* is provided for in Law Number 41 of 2004 concerning *Waqf*, which reflects the integration of Islamic legal values into the national legal system, however, in the practice of productive *waqf*, especially those related to the utilization of fishermen's assets, a more contextual approach is needed, taking into account the social

⁴² Muhammad Baiquni Syihab, "Telaah Kritis Pemikiran Jasser Auda Dalam Buku 'Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach,'" *AN NUR: Jurnal Studi Islam* 15, no. 1 (2023): 114–36, <https://doi.org/10.37252/annur.v15i1.455>.

⁴³ F Jamilah, "Nusyus Pada Khi Perspektif Gender Dan Maqosid Syariah Jasser Auda," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 4, no. 2 (2023): 76–97, <https://www.ejournal.iaifa.ac.id/index.php/salimiya/article/view/993%0Ahttps://www.ejournal.iaifa.ac.id/index.php/salimiya/article/download/993/721>.

realities of coastal communities that are also influenced by customary law practices and local habits. Thus, a pluralistic legal approach becomes important so that the regulations formed are not merely top-down but also responsive to the values that live within the community.⁴⁴ Within the framework of legal pluralism, harmonization between Islamic law and state law is the key to formulating productive waqf regulations.⁴⁵ Islamic law provides normative and spiritual foundations for the principles of *waqf*, such as the permanence of the asset (*tahbīs al-aşl*) and the sustainability of benefits (*tasbīl al-manfa‘ah*). In contrast, state law provides legal certainty, institutional support, and oversight mechanisms.⁴⁶ The synergy between the two will create a *waqf* management system that is not only valid under Islamic law but also has binding positive legal force, protecting the parties involved, including fishermen as beneficiaries.

The legal reform of productive *waqf* regulations governing the utilization of fishermen's assets in Indonesia should not stop at merely formulating the substantive aspects of the rules. However, it must comprehensively accommodate the three main elements of the legal system, as proposed by Lawrence M. Friedman: legal substance, legal structure, and legal culture.⁴⁷ Legal substance includes norms, rules, and principles governing productive *waqf*, including the recognition of fishermen's assets as *waqf* objects, management mechanisms, and sustainable benefit distribution.⁴⁸ A good substance will not be effective without adequate legal support, such as professional *nazhir* institutions, the role of the Indonesian *Waqf* Board, and a monitoring and law-enforcement system capable of ensuring certainty and accountability in *waqf* management. From the aspect of legal culture, understanding the values, awareness, and attitudes of the community towards the law itself, especially among fishing communities, becomes crucial. If the community does not yet have sufficient awareness of or trust in the *waqf* system, then no matter how well designed the law's substance and structure are, its implementation will face significant obstacles. Therefore, the formulation of productive *waqf* regulations must be accompanied by efforts in education, socialization, and community empowerment to ensure that the values of *waqf* are widely accepted and internalized. In the context of utilizing fishermen's assets, this is expected to encourage the establishment of *waqf* management that is not only legally valid but also capable of making a tangible impact on the fair and sustainable improvement of coastal communities' welfare.

Conclusion

⁴⁴ Dicky Eko Prasetyo, "Hukum Adat Di Indonesia: Perspektif Pluralisme Hukum," in *Refleksi Dinamika Hukum Di Indonesia* (Jakarta: PT Adikara Cipta Aksa, 2025), 174–80.

⁴⁵ Dicky Eko Prasetyo Disantara, Fradhana Putra, Briggs Samuel, and Mawunyo Nutakor, "The Problematics of the Legal Standing of Deoxyribonucleic Acid (DNA) Test Results Concerning Civil Relationships of Illegitimate Children : A Legal Pluralism Perspective," *Mizani* 11, no. 02 (2024): 435–48.

⁴⁶ Muhammad Bilal Zafar and Ahmad Jafar, "Waqf over a Century: Innovation and Tradition in Shaping Social Equity and Sustainable Development," *International Journal of Sociology and Social Policy* 1, no. 1 (October 10, 2025): 1–25, <https://doi.org/10.1108/IJSSP-12-2024-0625>.

⁴⁷ Danang Wahyu Muhammad Kautsar, Izzy Al, "Sistem Hukum Modern Lawrance M. Friedman: Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital," *Sapientia et Virtus* 7, no. 2 (2022): 84–99.

⁴⁸ Dicky Eko Prasetyo, et al., "Policy Evaluation of the Imposition of Restrictions on Emergency Community Activities (PPKM) in East Java," in *Proceedings of the International Joint Conference on Arts and Humanities 2021 (IJCAH 2021)*, 2021, 871–78.

The legal uncertainty in the regulation of productive *waqf* for the utilization of fishermen's assets poses a risk of unclear legal status for the *waqf* assets, particularly regarding ownership, management, and the distribution of benefits. Without specific regulations, there will likely be differing interpretations among the parties, whether between the *waqif*, *nazhir*, or beneficiaries (*mauquf 'alaih*), which could ultimately trigger legal disputes. This condition can also be exacerbated by the weak position of small fishermen and fishing laborers, who, economically, lack adequate bargaining power, making them potentially disadvantaged in the management scheme of the productive *waqf*, which lacks a clear and firm legal basis.

The renewal of the legal framework for productive *waqf* in the utilization of fishermen's assets in Indonesia should be formulated in positive law that aligns with the aspect of *maslahah mursalah*, which serves as a means to realize *maqashid asy-syariah*. This is in line with Jasser's perspective, which emphasizes that *maslahah mursalah*, as an effort to realize *maqashid asy-syariah*, must be grounded in a systemic approach that underscores the need for law to be responsive to social dynamics and capable of generating broad, inclusive, and sustainable benefits. The reform of the legal regulation of productive *waqf* in the utilization of fishermen's assets must also consider a legal pluralism approach, where the formulation of the regulation should harmonize sharia values with the state's need for legal certainty, as well as take into account the social realities of the fishing community influenced by local practices. Legal reform should not stop at the substantive aspects of the rules but must also address the structural and cultural aspects of law, as proposed by Lawrence M. Friedman.

This research recommends the formulation of specific regulations regarding the management of productive *waqf* in the utilization of fishermen's assets in Indonesia, based on *maslahah mursalah* through a legal pluralism approach that accommodates Islamic Sharia values and Islamic law in harmony with state law or legislation, while also considering the structural, substantive, and cultural aspects of law in its formulation.

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