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From Law to Practice: Assessing Productive Waqf Governance Under Indonesia's Law No. 41/2004

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Abstract

This study examines the implementation of Law No. 41 of 2004 on Waqf at the Muhammadiyah Mosque in Bengkulu City, focusing on governance gaps between local waqf management and the Indonesian Waqf Board (BWI). A qualitative case study was employed, with data collected through semi-structured interviews (8 nazirs and BWI officers), document analysis (financial reports, meeting minutes), and participant observation (3 plenary meetings). Thematic analysis followed Miles and Huberman's (2020) interactive model. Key issues include: (1) Exclusive planning (100% of meetings excluded BWI, violating Article 43); (2) Nazir incompetence (78% lack management training); (3) Low asset productivity (15–40% utilization rates); and (4) Weak supervision (no BWI oversight). The study highlights systemic non-compliance with national laws and Islamic governance principles (e.g., shura). Comparatively, Malaysia's corporate waqf models achieve 85% efficiency, suggesting adoptable reforms. Institutional reforms—collaborative planning, nazir capacity-building, and tiered supervision—are critical to align waqf management with Shariah and legal mandates, unlocking its socio-economic potential.

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INTRODUCTION

Waqf, as an Islamic philanthropic institution, has played a pivotal role in shaping the socio-economic landscape of Muslim societies since the early centuries of Islam. Historically, it served as a mechanism for wealth redistribution and public welfare, financing infrastructure such as hospitals, schools, and marketplaces (Çizakça, 2016; Hasanah, 2012). During the Ottoman Empire, waqf institutions administered more than 35,000 properties, accounting for nearly 20% of state expenditures (Kuran, 2018). The spiritual and economic duality embedded in waqf reflects not only a religious obligation but also a systemic approach to societal equity, echoing Islamic principles of justice, solidarity, and empowerment.

In recent decades, various Muslim-majority countries have revitalized waqf institutions through modern financial governance. Malaysia, for instance, introduced Waqf Share Schemes and corporate waqf models regulated under the Waqf Act 2022, aligning asset management with Sharia-compliant investment practices (ISRA, 2023). Egypt, on the other hand, has implemented digital waqf deeds to enhance accountability and dispute resolution (El-Gamal, 2021). These institutional innovations mirror broader efforts to harmonize religious mandates with global governance standards, particularly those supporting Sustainable Development Goals (SDG 1 on poverty eradication and SDG 4 on education access) (UNDP, 2023).

In contrast to these advancements, Indonesia—home to the largest Muslim population globally—continues to underutilize its waqf potential. According to the Indonesian Waqf Board (BWI), the country holds an estimated waqf value of USD 12 billion annually, yet less than 15% is managed productively (BWI, 2023). Most assets are in the form of idle land, lacking institutional frameworks for monetization or public service integration (Bank Indonesia, 2023). This gap highlights a dissonance between the spirit of Islamic economic justice and the empirical realities of waqf implementation on the ground.

Law No. 41 of 2004 on Waqf was enacted to overcome this stagnation, providing a legal framework to professionalize nazir (waqf manager) roles and formalize BWI's supervisory authority. Article 43 of the law explicitly mandates the Indonesian Waqf Board to oversee waqf implementation and institutional performance. However, numerous studies and field audits show that these mandates are inconsistently executed, particularly in decentralized regions (Susilawati et al., 2023; Ascarya, 2021). Bureaucratic fragmentation, lack of human resource capacity, and weak legal enforcement are commonly cited as barriers, undermining the transformative potential of productive waqf.

The province of Bengkulu exemplifies these challenges. Despite its vast waqf potential—valued at approximately Rp1.2 trillion—the region continues to face a poverty rate of 34.9%, one of the highest in Sumatra (BPS, 2023). Within this landscape, Muhammadiyah mosques manage over 60% of waqf assets, yet reports indicate that only 18% of these assets are utilized productively (Field Data, 2024). This disconnect suggests not only a governance vacuum but also the persistence of traditional, inward-looking waqf models that fail to incorporate professional standards, community participation, or strategic oversight.

More critically, a 2023 audit revealed that Muhammadiyah's waqf operations in Bengkulu function almost entirely through internal management structures, with no direct involvement from BWI. This condition not only violates Law No. 41 of 2004 but also contradicts Islamic principles of accountability and consultation (shura), as mandated in Qur'anic verse 42:38. It also reflects a deeper institutional puzzle: why do large Islamic organizations with nationwide presence fail to synchronize with state waqf governance mechanisms at the local level? This question necessitates a closer look at the interplay between legal mandates, organizational autonomy, and lived realities.

Existing literature tends to treat waqf either through the lens of individual nazir competence or macro-policy evaluations. Kasdi (2014) and Rahimah (2022) have underscored the importance of managerial expertise and Sharia literacy among nazirs, while others such as Nuh and Eko (2023) emphasize state-level policy innovations. However, studies that explore the meso-level—the operational dynamics between local religious institutions and regulatory bodies—remain scarce. Furthermore, mosque-based waqf governance, despite comprising 68% of Indonesia's waqf assets, is strikingly under-researched (Kemenag, 2023).

The gap in literature is especially pronounced in the Sumatran context, where mosque-led waqf operations face both geographical isolation and institutional neglect. There has been no in-depth qualitative study examining the coordination—or lack thereof—between Muhammadiyah's waqf governance and BWI in regions such as Bengkulu. This lack of empirical scrutiny limits the capacity of policymakers and Islamic institutions to devise informed interventions or replicable governance models.

Against this backdrop, this study seeks to investigate how Law No. 41 of 2004 is perceived, interpreted, and implemented by waqf stakeholders at the Muhammadiyah Mosque in Bengkulu. Framed within a constructivist paradigm, the research employs a single-case qualitative design to capture the nuanced experiences, institutional logics, and governance challenges encountered on the ground. Through semi-structured interviews, document analysis, and participant observations, the study aims to unpack not only the regulatory gaps but also the socio-organizational dynamics that shape waqf management in a decentralized religious environment.

By offering empirical insight into the institutional interactions between BWI and Muhammadiyah in one of Indonesia's under-represented regions, this study contributes to both theory and practice. Theoretically, it advances the discourse on Islamic governance by bridging normative Sharia frameworks with empirical institutional behavior. Practically, it provides a governance model that integrates internal organizational control, community participation, and state supervision. Such a model is urgently needed to revitalize waqf as a vehicle for economic justice, religious integrity, and sustainable development in Indonesia.

METHODS

This study employs a constructivist paradigm to explore how nazirs and stakeholders perceive the implementation of Waqf Law No. 41/2004 in Bengkulu, emphasizing the socially constructed nature of governance challenges (Guba & Lincoln, 2018). A single-case study design (Yin, 2023) was selected to conduct an in-depth examination of Muhammadiyah Mosque's waqf management, as it represents a critical case of BWI-Muhammadiyah institutional dynamics in Sumatra.

Data Collection and Sampling

Data were triangulated through:

1. Semi-structured interviews with 8 key informants (5 nazirs, 2 BWI officers, 1 academic) selected via purposive sampling (criteria: ≥5 years of waqf management experience) and snowball sampling to identify hidden stakeholders (Patton, 2020). Interviews focused on planning, organizing, and supervising waqf assets, with

questions like: *"How do you evaluate the effectiveness of internal audits without BWI involvement?"*

2. **Document analysis** of financial reports (2019–2024) and meeting minutes to cross-validate claims.
3. **Participant observation** during 3 plenary meetings to observe decision-making processes.

Ethical and Analytical Rigor

Informed consent was obtained, with anonymization using codes (N1–N8 for nazirs). Data were analyzed through **Miles and Huberman's (2020) interactive model**:

- **Data reduction**: Thematic coding in NVivo 14 identified patterns (e.g., "Accountability Gaps," "BWI Exclusion").
- **Data display**: Matrices linked themes to UU No. 41/2004 articles (e.g., Pasal 43 violations).
- **Conclusion verification**: Member-checking with 2 nazirs and peer debriefing with waqf experts ensured trustworthiness (Creswell & Poth, 2023).

Validity and Limitations

To enhance validity, **triangulation** compared interview responses with documentary evidence, while an **audit trail** documented analytical decisions. Limitations included potential **informant bias** (nazirs defending organizational practices) and limited generalizability. These were mitigated by:

- Using **thick descriptions** to contextualize findings.
- Comparing results with Malaysia's Johor Waqf Corporation model for theoretical transferability (Najib, 2024).

RESULT AND DISCUSSION

RESULT

Waqf Planning Implementation

Table 1. Planning Function Implementation

Aspect	Findings	Supporting Data	Regulatory Compliance	Recommendations
Planning Forum	Internal meetings 2x/year	2023-2024 meeting minutes	Article 43	BWI involvement
Legal Documents	100% complete certificates	Waqf certificate archives	Article 11	Digitalization
Participation	Limited to management	Interviews N3, N5	-	Community forum

The study reveals that waqf planning at Muhammadiyah Mosque in Bengkulu has met administrative requirements but remains exclusive. As shown in Table 1, while all waqf assets have complete legal documentation, planning forums only involve internal organization members. Article 43 of Law No. 41/2004 mandates BWI participation in waqf planning. However, 100% of planning meetings during 2023-2024 excluded BWI, as documented in meeting minutes.

Strategic management theory (Robbins, 2021) suggests participatory planning yields more comprehensive decisions. These findings align with Afrianty's (2024) study in West Sumatra showing community involvement increases waqf accountability by 40%. In-depth interviews with head nazir (N1) revealed: "We face difficulties coordinating schedules with BWI due to unclear mechanisms." This indicates the need for standardized inter-institutional protocols.

Nazir Organization

Table 2. Nazir Profile and Performance

Indicator	Findings	Standard	Gap Analysis
Educational Background	78% non-management	Relevant bachelor's degree	-22%
Training	2x/year internal	4x/year national standard	-50%
Task Division	Clear structure	Best practice	0%

The nazir organizational structure consists of 9 members with clear division of duties. However, Table 2 shows 7 of 9 nazirs lack management or financial educational backgrounds. Limited nazir capacity affects waqf asset productivity. Data shows training frequency only meets 50% of BWI's ideal standard (4x/year). Kasdi's (2019) East Java study proved well-trained nazirs could increase waqf income by 300%. Our findings reinforce that capacity building is critical. Interviews with trainers (N7) revealed: "Training budgets are limited due to physical program priorities." This highlights the need for dedicated HR development funds.

Waqf Program Implementation

Table 3. Asset Utilization Performance

Asset Type	Potential (Rp/year)	Realization	Efficiency
Palm Oil Plantation	**2 Billion**	**300 Million**	**15%**
Rental Buildings	**500 Million**	**200 Million**	**40%**
Educational Land		**3 Schools**	

Waqf productive program implementation shows suboptimal results. Table 3 reveals the 6-hectare palm oil plantation only yields 15% of its economic potential. Field observations identified three main factors:

1. Lack of routine maintenance
2. Unattractive profit-sharing system
3. Limited marketing channels

ISRA's (2023) Malaysia study shows corporate waqf models achieve 85% efficiency. Similar approaches could be adapted to local contexts. Despite economic limitations, waqf scholarships have supported 120 underprivileged students, demonstrating tangible community benefits.

Supervision And Accountability

Table 4. Supervision System

Mechanism	Frequency	Key Findings	Recommendations
Internal Audit	Annual	Superficial	Clear SOPs
Reporting	Biannual	Standard format	Digital system
Triangulation		Not implemented	Application

Current waqf supervision relies on annual internal audits by Muhammadiyah's Financial Supervisory Board (LPSK). Table 4 shows this mechanism lacks data triangulation.

The 2023 audit report identified weaknesses:

- Manual transaction recording prone to errors
- No field verification
- Unaddressed recommendations

Article 6 of Law No. 41/2004 designates BWI as primary supervisor, yet BWI remains inactive at mosque level. BWI regional staff (N8) cited human resource limitations.
Susilawati's (2022) research proposes a "Tiered Supervision" model integrating:

1. Internal controls
2. Regulatory monitoring
3. Community participation

DISCUSSION

Waqf Planning Implementation

The study reveals that waqf planning at Muhammadiyah Mosque in Bengkulu remains highly exclusive, conducted solely by internal administrators without the mandated involvement of the Indonesian Waqf Board (BWI). This directly violates Article 43 of Law No. 41 of 2004, which stipulates that BWI must oversee and participate in the planning of waqf programs. Such institutional isolation not only undermines the legal framework but also contradicts foundational Islamic principles of participatory governance.

From a Shariah perspective, the concept of shura (consultative decision-making) is central to Islamic public administration. The Qur'an affirms, "and those who conduct their affairs by mutual consultation" (Qur'an 42:38), and the Prophet Muhammad (peace be upon him) consistently practiced consultation in waqf-related decisions, including the management of the Khaybar land endowment (Hadith Bukhari). Modern Islamic economists, such as Kahf (2019), argue that legitimate waqf governance must include scholars, Shariah advisors, regulators, and community stakeholders. The absence of BWI's participation, therefore, not only reflects administrative neglect but also an ethical deviation from Islamic governance ideals.

This exclusion also has significant implications for legitimacy and transparency. Robbins' (2021) theory of strategic management emphasizes that participatory decision-making leads to broader ownership and more sustainable outcomes. Similarly, Afrianty's (2024) study in West Sumatra demonstrated that community involvement in waqf planning increased accountability metrics by over 40%. Thus, the lack of external engagement in Bengkulu represents more than a procedural gap—it reflects a cultural resistance to inclusive institutional practices.

In Islamic legal theory, Imam Al-Ghazali's doctrine of maslahah mursalah (unrestricted public interest) provides the normative foundation for institutional innovation in waqf management. Any mechanism that increases public benefit—such as external oversight and shared planning—is not only permissible but encouraged. In this case, BWI's involvement is justified as maslahah because it ensures policy alignment, professional input, and fiduciary accountability.

Furthermore, DSN-MUI Fatwa No. 106/2016 on productive waqf management explicitly mandates transparent planning and oversight mechanisms involving supervisory bodies. The fact that 100% of planning meetings in this study excluded BWI underscores a serious compliance gap. This suggests that the current governance structure at the mosque level is misaligned with both national regulations and fatwa-based religious obligations.

To address this, the study recommends the establishment of joint planning forums that include representatives from the mosque, BWI regional offices, and community beneficiaries. Such forums would not only fulfill legal mandates but also institutionalize collaborative decision-making in line with Islamic governance ethics. Ultimately, the transition from closed to collaborative planning models is essential to unlocking the socio-economic potential of waqf and restoring its role as a cornerstone of Islamic public finance.

Nazir Organization and Professionalism

The second major finding highlights the limited professional capacity of waqf managers (nazirs) at Muhammadiyah Mosque in Bengkulu. Of the nine appointed nazirs, 78% lack educational backgrounds in management, finance, or Shariah economics. Moreover, the frequency of training—two sessions per year—is well below the national standard of four, as outlined by BWI guidelines. While the organizational structure appears administratively sound, the lack of human capital development critically undermines the mosque's ability to maximize waqf productivity.

This condition contradicts the ethical and functional criteria prescribed in Islamic teachings. The Qur'an states: "Indeed, the best one you can hire is the strong and trustworthy" (Qur'an 28:26), underlining both competence (quwwah) and integrity (amanah) as essential in public appointments. In the classical tradition, Caliph Umar ibn al-Khattab appointed specialized administrators for zakat and waqf—based on merit and domain expertise—not merely piety or social standing. Similarly, Al-Mawardi's Al-Ahkam Al-Sultaniyyah emphasized that public trustees must possess technical mastery relevant to their administrative responsibilities.

The findings of this study resonate with Kasdi's (2019) research in East Java, which demonstrated that nazirs who received structured training in asset management and fiqh muamalah were able to increase waqf revenues by over 300%. These results also align with Sadeq's (2020) comparative study of Southeast Asian waqf institutions, which identified inadequate human capital as the single greatest barrier to successful waqf monetization and sustainability.

Institutional frameworks in Indonesia have acknowledged these gaps. DSN-MUI Fatwa No. 77/2010 explicitly mandates that nazirs must demonstrate proficiency in Shariah financial jurisprudence and asset management. However, in practice, most mosque-based waqf institutions continue to treat nazir roles as honorary positions rather than strategic ones. This traditionalist paradigm—rooted in voluntarism and religious symbolism—has not evolved to meet the demands of modern Islamic finance ecosystems.

Interviews in this study confirmed that limited budgets and competing priorities often deprioritize training programs. One participant noted, "We focus our funds on physical infrastructure, and there's little left for human development." This resource allocation reflects a deeper issue: the undervaluation of intellectual capital in religious asset management. In contrast, Malaysia's Johor Waqf Corporation allocates a fixed percentage of waqf income for staff certification and continuing education, resulting in higher professionalism and asset performance (ISRA, 2023).

From a maqasid al-shariah perspective, the underinvestment in nazir development compromises both hifz al-mal (protection of wealth) and hifz ad-din (preservation of religious values). Poorly managed waqf assets not only underperform economically but also risk reputational damage to Islamic institutions. The Prophet Muhammad (peace be upon him) said, "Allah loves when one of you does a job, he perfects it" (Hadith Muslim). This hadith sets a spiritual benchmark for professionalism—an ethic that must translate into institutional policies and operational practices.

To address this issue, the study recommends that mosque-based waqf institutions adopt a minimum professionalization standard for all nazirs, including annual certification, structured onboarding, and participation in national-level capacity-building programs. Additionally, a policy mandate should be introduced requiring at least 20% of waqfgenerated revenue to be allocated for human capital development. This aligns with global Islamic finance standards and ensures that waqf institutions are not only spiritually aligned but also professionally competent.

Productive Waqf Asset Utilization

The study's third major finding reveals that productive waqf assets at Muhammadiyah Mosque in Bengkulu—such as palm oil plantations and rental buildings—are operating at significantly suboptimal levels, with economic realization rates ranging from only 15% to 40% of their potential. This inefficiency reflects deep-rooted structural, managerial, and strategic challenges that undermine waqf's role as a tool for economic justice and social development.

From a normative standpoint, Islam strongly encourages economic productivity through lawful trade and asset optimization. The Qur'an asserts, "Allah has permitted trade and forbidden usury" (Qur'an 2:275), signaling that asset-based wealth generation is both permissible and encouraged within a Shariah framework. Furthermore, classical scholars such as Ibn Qayyim al-Jawziyyah argued for ijtihad-based waqf models that evolve in accordance with changing socio-economic contexts, as long as they serve the public good (maslahah). This includes the adaptation of commercial partnerships like mudharabah, musyarakah, and ijarah to manage waqf assets effectively.

The failure to apply such models at the local level reflects both a lack of financial literacy and an absence of institutional innovation. As reported by interviewees, the current utilization model suffers from three critical limitations: (1) irregular maintenance of agricultural assets, (2) unattractive or rigid profit-sharing schemes, and (3) poorly developed marketing and distribution channels. These issues are consistent with ISRA's (2023) findings in Malaysia, which emphasize that successful corporate waqf initiatives typically involve clear business plans, diversified revenue models, and professional asset management.

The DSN-MUI Fatwa No. 110/2017 supports the commercial deployment of waqf through Shariah-compliant contracts that enable sustainability and profit-sharing with beneficiaries. However, such frameworks are rarely adopted at the mosque level, where traditional management paradigms continue to dominate. The result is a gap between Shariah-compliant principles and their operational actualization—a phenomenon also identified in Sadeq's (2020) comparative analysis of Southeast Asian waqf institutions.

Despite these inefficiencies, the study notes that waqf income, however limited, is already used to provide scholarships to over 120 underprivileged students. This is commendable, but also indicative of a missed opportunity: if productivity were increased to even 60%, the scale of community impact could be tripled. In the context of maqasid al-shariah, this limitation represents a failure to fully achieve hifz al-maal (protection and development of wealth) and hifz an-nafs (preservation of life) through poverty alleviation.

The Prophet Muhammad (peace be upon him) demonstrated that waqf should be both sustainable and benefit-oriented. The hadith on waqf land in Khaybar (narrated by Abu Dawud) shows that the Prophet endorsed commercial cultivation, provided the returns benefited the community. This model aligns with contemporary interpretations of Islamic finance, wherein religious endowments are not static, but dynamic entities requiring strategic vision, financial discipline, and entrepreneurial spirit.

Therefore, the study recommends that mosque-based waqf institutions transition from passive custodianship to active asset management, modeled after successful corporate waqf frameworks. This includes appointing professional asset managers, engaging with

Islamic financial institutions, and developing clear performance indicators. Additionally, a partnership-based ecosystem—where waqf assets are jointly managed by nazir, local cooperatives, and microfinance entities—could unlock both efficiency and community ownership.

CONCLUSION

This study highlights significant gaps in the implementation of Law No. 41 of 2004 concerning Waqf at the Muhammadiyah Mosque in Bengkulu City. Despite the legal mandate for the Indonesian Waqf Board (BWI) to oversee waqf management, the mosque's planning and supervision processes remain exclusive, lacking BWI involvement and community participation. The nazirs' limited professional capacity and infrequent training further hinder productive waqf asset utilization, with economic realization rates as low as 15%. Additionally, the absence of standardized supervision mechanisms compromises accountability and transparency. These findings underscore the urgent need for institutional reforms, including collaborative planning forums, nazir capacity-building programs, and the adoption of corporate waqf models to align with Shariah principles and national regulations. Addressing these challenges could unlock the socio-economic potential of waqf, fostering poverty alleviation and sustainable development in Indonesia.

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