

Productive Waqf and Efforts to Renew Waqf Law in the Jasser Auda System Approach

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ABSTRACT

Productive waqf represents a new paradigm of Islamic philanthropy that shifts the focus from passive asset maintenance to active asset development, aiming to maximize the socio-economic benefits of the community. This transformation inherently demands a reform of traditional waqf law, which tends to be conservative. This article analyzes efforts to reform waqf law, particularly regarding the diversification of waqf objects and management flexibility, through the lens of Jasser Auda's Systems Approach. The analysis shows that productive waqf aligns with Auda's Purposefulness feature, which reconstructs the *Maqasid of Sharia* from protection to development. This approach justifies the expansion of waqf objects (e.g., cash waqf and intellectual property rights) and provides a philosophical foundation for *Istibdal* (change of function) to realize the welfare of the community in a holistic and sustainable manner. Furthermore, the use of this systems approach is important in managing waqf investment risks, which is a logical consequence of the *development*-oriented paradigm.

1. Introduction

Waqf, as an Islamic social financial instrument, plays a strategic role in alleviating poverty and improving welfare (Wakf Law, 2004). However, the implementation of traditional waqf, which is closely tied to the principles of *Luzum* (necessity) and *Ta'bid* (permanence of assets), often encounters obstacles in facing the challenges of the modern economy. Many waqf assets become *idle* or unproductive due to their non-strategic location or physical deterioration, thus failing to achieve the primary goal of sharia, namely *Maslahah 'ammah* (public welfare).

The concept of productive waqf emerged as a solution, emphasizing the professional investment and management of waqf assets to generate profits that will be distributed to beneficiaries (*Mauquf 'alaih*). This paradigm shift from consumptive (static) waqf to productive (dynamic) waqf requires the legitimacy of *ijtihad* and progressive legal reform. Therefore, an adaptive methodological framework is needed, and Jasser Auda's Systems Approach offers a strong philosophical basis to justify this legal reform within the framework of contemporary *Maqasid Sharia*. This article will analyze in depth how this systems approach provides a foundation for Nadzir (waqf managers) to carry out dynamic, results-oriented waqf management that is integrated with the needs of community development, and how Auda's theory supports measured risk management in waqf investment.

2. Literature Review

2.1 Classical Waqf Fiqh and Limitations

In classical jurisprudence, waqf is dominated by the Shafi'i School which views an absolute prohibition on the sale or *Istibdal* (replacement) of waqf assets, except in very urgent conditions. The principles of *Luzum* and *Ta'bid* are rooted in literal efforts *to hifz al-mal (property protection) so that assets are not lost or used by unjust rulers, while ensuring sustainable rewards for the Wakif* (al-Zuhayli, 2003). The main focus is asset substance protection (preservation). The wisdom behind this rigidity is to maintain the stability of *ahkam* (legal decisions) and avoid bad intentions in the use of social funds .

These limitations hamper the management flexibility needed for waqf sustainability in a rapidly changing economic environment. The Maliki and Hanbali schools of thought are more moderate. The Maliki school permits *istibdal* if a waqf asset is damaged or its benefits diminish, provided it is replaced with a better asset. This minority view, also supported by Ibn Taymiyyah, serves as an important starting point for contemporary *ijtihad* . Contemporary legal reforms, such as the Waqf Law in Indonesia, explicitly expand the objects of waqf to include movable property and allow for *istibdal* under strict supervision, demonstrating an effort to bridge classical fiqh with the realities of the community's needs.

2.2 Jasser Auda's Systems Approach: Foundations of Renewal

Jasser Auda criticized the *atomistic and hierarchical approach to Islamic law* (Auda, 2007). He proposed six key features of the Systems Approach to reconstruct *the Maqasid of Sharia* to better suit the modern era: *Cognition , Wholeness , Openness , Interrelated - Hierarchy , Multidimensionality , and Purposefulness* . The most relevant features for waqf renewal are:

1. Purposefulness : Auda shifts the orientation of *Maqasid* from *protection and preservation* to development and rights (Auda, 2015). *The objectives of sharia should guide the law, not the other way around. In the context of waqf, the goal is not simply to protect the land, but to generate maximum socio-economic benefits.*
2. Openness : The legal system must be open to new developments (technology, contemporary economic instruments) and good '*Urf (customs)*.
3. Wholeness and Interconnected Hierarchy: This concept emphasizes that *Maqasid* should not be viewed in isolation. *Hifz al-Mal* (protection of wealth) should not be contrasted with *Hifz al-Nafs* (protection of life). In fact, protecting waqf assets through investment and development is a means to support the protection of the lives of the people through healthcare, education, and poverty alleviation.
4. Multidimensionality: Waqf must serve multiple dimensions of *Maqasid* simultaneously, for example, health waqf (*Hifz al-Nafs*) and education waqf (*Hifz al-'Aql*), not just waqf for mosques (*Hifz al-Dīn*). *This approach urges the Nadzir to develop a diversified waqf portfolio .*

3. Methodology

This research uses a qualitative method with a library research approach and *is descriptive -analytical in nature*. The primary data are the works of Jasser Auda on the Systems Approach and *Maqasid Sharia* . Secondary data consist of classical and contemporary fiqh literature, waqf legislation in Indonesia, fatwas of the National Sharia Council (DSN), and reports of waqf institutions. The analysis technique used is philosophical content analysis , by making the features of Auda's Systems Approach as a scalpel to review and evaluate the legitimacy of *ijtihad* and legal reform in productive waqf practices. The main focus of the analysis is placed on how productive waqf meets the demands of Auda's Intention and Openness , as well as its relevance to the Nadzir Cognition aspect in managing systemic risk .

3. Results And Discussion

4.1 Productive Waqf as the Realization of Intentional and Development Features

Productive waqf is a practical manifestation of *the Maqasid* ala Auda orientation, which focuses on development . Its goal is to maximize benefits (*Maslahah*) sustainably, which goes far beyond simply preserving the integrity of assets.

1. Shifting Goals and Legal Consequences: Auda's approach justifies a shift from the rigid protection of wealth (*hifz al-mal*) *to the development of* wealth and the achievement of rights for beneficiaries. If waqf assets (e.g., vacant land in remote locations) are left unproductive for decades, this contradicts the goal of sharia, which is to achieve prosperity (Auda, 2007). This concept requires Nadzir to think like a social investment manager, where investment returns are the primary measure of waqf success.

2. *Legitimacy of Istibdal* Through the Principle of Holism: In this context, *Istibdal* (the conversion/sale of unproductive waqf assets) becomes philosophically legitimate. Auda argues that when maintaining the form of an asset actually undermines the purpose of the system (i.e., socio-economic benefits), the form of the asset must be sacrificed for the purpose. This is an act of self - renewal of the waqf system (Mashuri, 2020). *Istibdal* is permitted not because the asset is damaged, but because its systemic benefit value is lower than that of a more productive replacement asset, which directly supports *Hifz al-Nafs* (health, food) and *Hifz al-Aql* (education).
3. Risk Management and Intention: Productive waqf, as an investment activity, inevitably carries risks . Classical fiqh tends to avoid risk (*gharar*) . However, Auda's System Approach views risk as an inevitable element of development. Intention justifies measured and professional risk-taking *in order to achieve greater Maslahah* . *Nadzir*, with adequate Cognition , must be able to manage *gharar* (uncertainty) into *khatar* (measured risk), so that long-term profit opportunities can be exploited without jeopardizing the overall waqf assets.

B. Legal Updates through Openness Features and Object Diversification

Openness feature provides a theoretical basis for expanding waqf objects and investment instruments accommodated by positive law.

1. Diversification of Waqf Objects and Liquidity Innovation: Acceptance of Cash Waqf and Intellectual Property Rights (IPR) as waqf objects is a concrete manifestation of this openness. In classical Islamic jurisprudence, waqf is generally limited to immovable objects. However, under a systems approach, liquid and valuable assets capable of providing sustainable benefits should be recognized as waqf objects (Ascarya, 2019). Cash waqf, in particular, allows for the rapid and efficient mobilization of social funds , addressing the chronic liquidity problem of land waqf.
2. Innovative Instruments: Sukuk Waqf: Transparency also supports the use of modern Islamic financial instruments such as Sukuk Waqf or *Cash Waqf Linked Sukuk (CWLS)* . These instruments integrate waqf with capital markets, enabling waqf funds to participate in financing large-scale infrastructure or social projects while keeping the waqf capital intact. This is a perfect example of Auda's Wholeness , where waqf is linked to state financial instruments for a more massive impact.
3. Digital Transformation of Waqf (*Digital Waqf*) : Modern transparency demands that waqf institutions adapt to technology. The concept of *digital waqf* (through a waqf *crowdfunding platform* and payment app) is an implementation of Auda's Openness , enabling *waqf donors* to donate small amounts instantly and globally. Legal updates are needed to regulate the validity of digital transactions and ensure asset security within the waqf *fintech ecosystem*.

C. Challenges of Implementation and Professionalism of Nadzir (Cognition Features)

Despite the philosophical foundation, the implementation of productive waqf faces significant challenges related to Auda's Cognition feature . Cognition demands in-depth understanding and professionalism.

1. Dual Competencies of Nadzir: The transition from purely charitable management to social-business management requires Nadzir to have dual competencies: sharia understanding and business/investment expertise (Baharum & Nawawi, 2017). A Nadzir's lack of qualifications in investment risk analysis, project feasibility studies, and modern governance can lead to failed or high-risk waqf investments, ultimately defeating the purpose of *Maslahah* itself.
2. Regulation, Governance , and Accountability: Legal reform must be accompanied by strengthening governance, transparency, and accountability. The systems approach emphasizes the need for a robust oversight system (by the Indonesian Waqf Board/BWI) to mitigate the risk of misuse of waqf assets, especially following the *Istibdal* permit *and investment* diversification. Waqf law needs to explicitly regulate the limits of permissible risk and standards for reporting the performance (*return*) of productive waqf to align with the principles of transparent cognition.

5. Conclusion

Jasser Auda's System approach provides a strong methodological framework to justify and guide the reform of waqf law towards a productive waqf model . The reconstruction of *Maqasid Syariah* from *protection* to *development* places sustainable welfare as the core value that must be achieved by waqf institutions. This principle legitimizes legal flexibility, including the expansion of waqf objects (money, IPR), the use of modern financial instruments, and permission for *Istibdal* , as long as it is based on the professionalism of Nadzir and holistic analysis (*Wholeness*). This legal reform must be balanced with the improvement of Nadzir Cognition , strengthening regulations, and technological adaptation to ensure that productive waqf truly becomes a major force in the economic and social development of the people in the contemporary era .

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