

From the Debate on the Legality of *Waqf al-Ahlī* to its Implementation in Southeast Asia: Indonesia, Malaysia, and Singapore

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ABSTRACT: *The debate on the heresy of waqf al-ahlī (family endowment) in the early 20th century significantly impacted its legality in Muslim countries. In Southeast Asia, with samples from Indonesia, Malaysia, and Singapore, they followed the majority opinion of ulama. They implemented it in the law to improve the management of waqf al-ahlī. This paper examines the legality of waqf al-ahlī from the perspective of fiqh and the Law and its implementation model in the three countries through extensive literature study. The results reveal that the debate on the legality of waqf al-ahlī is more influenced by socio-economic and political factors and misunderstandings about the purpose of waqf rather than theological considerations. Therefore, most Muslim scholars recognise this type of waqf, and it is implemented by most Muslim countries, including the three countries that are the objects of this study. Comparative analysis shows that Singapore achieves higher productivity and efficiency in managing waqf al-ahlī than Indonesia and Malaysia. These findings refute the view of waqf al-ahlī as heresy and emphasise the importance of good governance, a comprehensive legal framework, and efficient management to optimise the potential of waqf al-ahlī as an instrument of sustainable socio-economic development.*

Perdebatan tentang *bid'ah* tidaknya *waqf al-ahlī* pada awal abad ke-20 berdampak signifikan terhadap legalitasnya di negara-negara Muslim. Di Asia Tenggara, dengan sampel Indonesia, Malaysia, dan Singapura, memilih mengikuti pendapat mayoritas dan menerapkannya dalam undang-undang untuk meningkatkan manajemen *waqf al-ahlī*. Tulisan ini mengkaji legalitas *waqf al-ahlī* perspektif fikih dan undang-undang serta model implementasinya pada ketiga negara tersebut melalui studi pustaka ekstensif. Hasilnya mengungkapkan bahwa perdebatan legalitas *waqf al-ahlī* lebih dipengaruhi oleh faktor sosio-ekonomi, politik, dan kesalahpahaman tentang tujuan wakaf, bukan pertimbangan teologis. Karena itu mayoritas ulama mengakui jenis wakaf ini dan diterapkan oleh mayoritas negara Muslim termasuk tiga negara yang menjadi objek penelitian ini. Analisis komparatif menunjukkan Singapura mencapai tingkat produktivitas dan efisiensi lebih tinggi dalam pengelolaan *waqf al-ahlī* dibandingkan Indonesia dan Malaysia. Temuan ini membantah pandangan *waqf al-ahlī* sebagai *bid'ah* dan menekankan pentingnya tata kelola yang baik, kerangka hukum komprehensif, dan manajemen efisien untuk mengoptimalkan potensi *waqf al-ahlī* sebagai instrumen pembangunan sosial-ekonomi berkelanjutan.

Keywords: Family Endowment, Heresy, Southeast Asia, Waqf Law, Model of Implementation.

I. INTRODUCTION

The practice of *waqf al-ahlī*, or waqf explicitly designated for family members, sparked significant debates in the Islamic world during the first decade of the 20th century. These debates ultimately led to varied legal standings for *waqf al-ahlī* under national laws. Countries such as Egypt (1946), Syria (1930), Iraq (1955), Turkey (1926), Lebanon (1948), Libya (1974), and the United Arab Emirates (1980) do not recognise its legality. Conversely, the majority of countries, including Jordan (1976), Kuwait (1951), Algeria, Saudi Arabia, Singapore, Malaysia, Indonesia, Pakistan, Iran, and many others, have recognised it (M. Abbasi & Abbasi, 2013; Abdul-Karim, 2010; Al-'Alāwayn, 2011; Fahrurroji, 2019; Kamarubahrin & Ayedh, 2018)

In response to these opposing views, this paper argues that the diversity of legal interpretations opens up constructive discussions to reassess the legality of *waqf al-ahlī*. The discussion is framed from the Islamic jurisprudence (*fiqh*) perspective, contextualised with practices, models, and implementations of *waqf al-ahlī* in Indonesia, Malaysia, and Singapore. From the standpoint of *fiqh*, Muḥammad ibn 'Abd al-Wahhāb (d. 1792 CE) issued a fatwa declaring waqf al-ahlī as *bid'ah* (unwarranted innovation) (Al-Wahhāb, n.d.), a view later adopted by some of his followers (Malak, 1938, 1939a, 1939b; Moumtaz, 2018). However, the majority of Islamic scholars have accepted *waqf al-ahlī* ((Al-'Alāwayn, 2011; Al-Zarqā', 1344; Dimashq, 1938; Makhluḥ, 1951; Zahrah, 2004).

This paper posits that differences in the legal recognition of *waqf al-ahlī* across countries are primarily driven by economic, social, and political factors, as well as misconceptions about the purpose of waqf, rather than theological disagreements. As a result, countries like Indonesia, Malaysia, and Singapore have recognised *waqf al-ahlī*'s legality and codified it into their legal systems over the past few decades.

Previous studies on the legal status of *waqf al-ahlī*, waqf laws, and the models and implementations of *waqf al-ahlī* in specific countries have often been conducted separately. One group of scholars focuses on its jurisprudential aspects (Al-'Alāwayn, 2011; Al-Farsī, 2023; Al-Wahhāb, n.d.; Al-Zarqā', 1344; Dimashq, 1938; Layish, 1983; Makhḷūf, 1951; Malak, 1938, 1939a, 1939b; Moumtaz, 2018; Reiter, 1995). Another group examines waqf laws (Mohsin, 2010; Sadique et al., 2016), while others emphasise its models and implementation (Ab Hamid et al., 2023; Ab Rahman et al., 2024; Lienhardt, 1996; Mohamad, 2018).

This paper integrates these three approaches, focusing on Indonesia, Malaysia, and Singapore as case studies. The aim is to discuss the debates surrounding the legality of *waqf al-ahlī* as a cornerstone for assessing its significance within Islamic traditions. Additionally, this study evaluates how Indonesia, Malaysia, and Singapore have benefited from these debates. The paper is divided into three main sections. The first section discusses the legality and debates surrounding *waqf al-ahlī* in various countries. The second section reviews the general concept of waqf, including *waqf al-ahlī*. Finally, before concluding, the paper examines and compares the models and implementations of *waqf al-ahlī* in Indonesia, Malaysia, and Singapore.

II. METHOD

This research originates from the phenomena and events regarding the debates on whether *waqf al-ahlī* constitutes *bid'ah* in the early decades of the 20th century, which have implications for the legality of this type of waqf in several Muslim countries. Indonesia, Malaysia, and Singapore are among the countries that recognise this type of waqf. The main focus here is on how it is implemented. The data collected was analysed using theories to obtain in-depth interpretations in descriptive form. To achieve this, the method was outlined as follows:

First, this research was a library study in comparative law. The objects of this study were, first, the jurisprudential debates on whether *waqf al-ahlī* constitutes *bid'ah*, and second, the legislation enacted in Indonesia, Malaysia, and Singapore as material for analysing the implementation of *waqf al-ahlī* in these three countries. Thus, the primary data for this research consists of Islamic jurisprudence texts on *waqf al-ahlī* and waqf-related laws in Indonesia, Malaysia, and Singapore. In addition, related journals were used as secondary references. All this data was obtained through the Internet and the Postgraduate Library of UIN Syarif Hidayatullah Jakarta.

Second, the collected data was analysed using the comparative legal analysis method. This method was applied in two steps. The first step involved comparing various opinions in Islamic jurisprudence regarding *waqf al-ahlī* to determine whether it constitutes *bid'ah*. The objective was to identify which perspective was robust and could serve as a foundation. The next step was to compare the implementation models of *waqf al-ahlī* in Indonesia, Malaysia, and Singapore through the laws enacted by these three countries. The goal was to assess how appropriate and effective these models are in the respective

countries. This was done to obtain empirical data on the extent to which this type of waqf contributes to the economic welfare of the Muslim community and to provide an empirical basis for evaluating whether *waqf al-ahlī* constitutes *bid'ah*. After the analysis is conducted based on the comparative legal method outlined above, the conclusions were formulated in the final part of this research based on the research questions posed.

III. RESULT AND DISCUSSION

The Legality and Debate on Waqf al-Ahlī: Bid'ah?

The practice of *waqf al-ahlī* has sparked debates among Islamic scholars. According to Abū Zahrah (d. 1898 CE), this debate dates back to the time of 'Ā'ishah (may Allah be pleased with her), who once opposed this type of waqf. The core issue lies in designating waqf beneficiaries exclusively to male descendants, excluding females. For this reason, 'Ā'ishah viewed the revival of *waqf al-ahlī* as equivalent to resurrecting pre-Islamic Arab traditions (*jahiliyyah*) (Zahrah, 2004).

In modern times, this debate resurfaced with the emergence of a fatwa from Muḥammad ibn 'Abd al-Wahhāb (d. 1792 CE) declaring *waqf al-ahlī* as *bid'ah* (Al-Wahhāb, n.d.), a stance later followed by several other scholars. Before delving further into this issue, let us examine the legal status of *waqf al-ahlī* in various countries.

The legality of *waqf al-ahlī* varies across nations, falling into two categories: legal and illegal. Countries that legalise it include Jordan (1976) and Kuwait (1951) (Al-'Alāwayn, 2011). Additionally, other countries such as Algeria, Saudi Arabia, Jordan, Singapore, Malaysia, Indonesia, Iran, and Pakistan also recognise its legality (M. Z. Abbasi, 2021; Abdul-Karim, 2010; Fahrurroji, 2019; Kamarubahrin & Ayedh, 2018).

On the contrary, countries that prohibit it include Syria through Law No. 3339 of 1930, Egypt through Law No. 48 of 1946, and Iraq through Law No. 1 of 1955 (Al-'Alāwayn, 2011). Turkey also banned this practice in 1926, followed by Lebanon in 1948, Libya in 1974, and the United Arab Emirates in 1980 (Fahrurroji, 2019).

Table 1. Legality of Waqf al-ahlī in Various Countries

Legal	Not Legal
Jordan, Kuwait, Algeria, Saudi Arabia, Singapore, Malaysia, Indonesia, Iran, and Pakistan.	Egypt, Iraq, Turkey, Lebanon, Libya, United Arab Emirates

The variations in legality, particularly in the Middle East, stem from debates over the abolition of *waqf al-ahlī* in the Levant (*bilād al-shām*) and Egypt during the first decade of the 20th century. The initial debate arose in 1903 between 'Azīz Khānkī and Rashīd Riḍā (d. 1935 CE) on the question, "Is *waqf al-ahlī* an Islamic institution?" as published in the *Muqaṭṭan* newspaper (Ziadeh, 1968).

In 1927, the debate reignited when the Egyptian Parliamentary Committee questioned whether *waqf al-ahlī* should be abolished. This debate eventually reached the press, becoming a heated public issue (Sékaly, 1929). Members of the Egyptian Parliament

Supported its abolition, but this stance was challenged by some scholars, particularly those from traditionalist groups.

In the *al-Manār* magazine, Rashīd Riḍā also published the fatwa of Muḥammad ibn ‘Abd al-Wahhāb (d. 1792 CE), which considered family waqf as *bid’ah* (Al-Wahhāb, n.d.). About ten years later, this opinion was supported by Shaykh Rāmiz Malak, a scholar from Tripoli (Malak, 1938, 1939a, 1939b). Furthermore, he emerged as one of the leading intellectuals advocating for the abolition of *waqf al-ahlī* in Syrian law (Moumtaz, 2018, pp. 46–47).

After Muḥammad ibn ‘Abd al-Wahhāb's fatwa was published in the *al-Manār* magazine and the issue of abolishing *waqf al-ahlī* gained momentum, approximately one year later, in Muharram 1347 AH/June 1928 CE, Shaykh Ḥasanayn Makhlūf (d. 1990 CE), a prominent scholar of al-Azhar and Chief Justice of Egypt, published his book *Manhaj al-Yaqīn fī Bayān anna al-Waqf al-Ahlī min al-Dīn*. According to him, *waqf al-ahlī* is part of the religion, and scholars have widely accepted its validity. Even if there are flaws in its implementation, this does not mean it should be abolished; instead, its management must be improved (Makhlūf, 1951).

Three years earlier, Shaykh Muṣṭafā Aḥmad Al-Zarqā’ (d. 1999 CE) also refuted the view that negates *waqf al-ahlī* as part of religion through his work, *al-Shams al-Jaliyyah fī al-Rad ‘alā man Uftiyā bi Buṭlān Awaqāf al-Dhurriyyah*. This work was directed at those who issued a fatwa declaring *waqf al-ahlī* invalid in religion. According to him, *waqf al-ahlī* is part of religion. If there are flaws in its implementation, the system should be corrected rather than abolished entirely, as what is needed is the improvement of its management, handled institutionally with strict requirements (Al-Zarqā’, 1344).

Meanwhile, the views of Shaykh Rāmiz Malak were countered by the *Jam‘iyyat al-‘Ulamā’ bi-Dimashq* (Association of Scholars in Damascus), which published their work *Risālah Jam‘iyyat al-‘Ulamā’ bi Dimashq fī Ibṭāl Risālah al-Ustādh al-Shaykh Rāmiz al-Malak fī Jawāz Ḥall Awaqāf al-Dhurriyyah* in 1938. For them, the arguments of Rāmiz al-Malak, which negated *waqf al-ahlī* as part of religion, were unacceptable (Dimashq, 1938).

As a result of these debates, in 1930, *waqf al-ahlī* was no longer recognised under Syrian law through Law No. 3339 of 1930. Fourteen years after Syria enacted this law, Egypt also ceased recognising *waqf al-ahlī* through Law No. 48 of 1946, followed by Iraq in 1955 through Law No. 1 of 1955. Interestingly, the findings of Fadwā Arshīd al-‘Alāwayn indicate that the illegality of *waqf al-ahlī* in several Arab countries is primarily influenced by political, economic, waqf management, and misconceptions regarding the purpose of waqf. The details are as follows: From a political perspective, al-‘Alāwayn highlights that political conditions contributed to the abolition of the legality of *waqf al-ahlī*, as seen in Egypt.

Before the Egyptian revolution in 1952, there was a void in the *Baitul Mal* while the Tatar empire needed to be countered. Consequently, several waqf assets were handed over to the royal palace to fill the *Baitul Mal* void (Al-‘Alāwayn, 2011). From an economic perspective, there was a perception that *waqf al-ahlī* could hinder the country's economy, mainly state revenue through taxes. Waqf assets were exempt from taxation, while *waqf al-ahlī* assets continued to grow. In Egypt, for instance, in 1926, waqf land assets

constituted 1/8 of agricultural land. Ten years later, in 1936, these assets increased to 1/7 of the agricultural land (Al-'Alāwayn, 2011).

In terms of waqf management, there needed to be more professionalism among waqf administrators (*nazir*). This was one of the significant factors behind the abolition of the legality of *waqf al-ahlī* in Syria, Lebanon, and Egypt. Additionally, dishonesty among administrators further exacerbated the situation (Al-'Alāwayn, 2011).

Finally, misconceptions about the purpose of waqf arose. This was evident from two aspects: the waqf donors and the beneficiaries. From the donors' perspective, some wealthy Arabs made *waqf* donations for worldly reasons. From the beneficiaries' perspective, laziness, a glamorous lifestyle, and extravagance emerged, widening the gap between the rich and the poor. Furthermore, family conflicts among waqf beneficiaries worsened the situation (Al-'Alāwayn, 2011).

As explained above, the analysis of the factors driving the debate over *waqf al-ahlī* indicates that the main issue does not lie in its legitimacy under Islamic law but rather in the unstructured and suboptimal management of the waqf system. Shaykh Makhlūf argues that although there are shortcomings in the practice of *waqf al-ahlī*, the solution is not to abolish the institution entirely. Instead, an in-depth study is needed to formulate comprehensive regulations to mitigate weaknesses and optimise the effectiveness of waqf, thereby restoring its function and significance as it was during the early Islamic period. This approach applies to both *waqf al-ahlī* and *waqf al-khayrī*, as both require improvements in their implementation (Makhlūf, 1951).

Muṣṭafā Aḥmad al-Zarqā' asserts that the necessary reforms include enhancing the legal framework of *waqf* and developing coordinated governance systems at the municipal level. Furthermore, al-Zarqā' emphasises the importance of institutional *waqf* management with strict provisions and requirements to ensure its effectiveness and accountability (Al-Zarqā', 1344).

General Concept of Waqf

In our language, Indonesian, the term waqf is a derivative form of the Arabic word *waqf*, from the root word *waqafa* – *yaqifu* – *waqfan*, which means to restrain. This means restraining part of one's property for charity so that it can be used for public benefit. In this context, charity refers to *ṣadaqah* in the nomenclature of the time of the Prophet and his companions, or other synonymous terms like *ḥabs* (restraint), as the term *ḥabs* is still used by the people of Morocco today to refer to waqf (Al-Zarqā, 1998, p. 13).

Scholars from the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought have different expressions regarding the meaning of waqf; however, it seems that Article 1, Paragraph 1 of Law No. 14 of 2004 on Waqf encompasses these various meanings as follows: "*Waqf* is the legal act of the *waqif* (donor) to separate and hand over part of their property to be utilised forever or for a certain period according to their interests for worship and public welfare by sharia." This means that the waqif donates their property to the *mutawallī* or waqf manager so that its benefits can be permanently enjoyed or for a specified period. The benefits here refer to being used for public interests, such as funding educational institutions, hospitals, mosques, cemeteries, orphanages, warehouses, bakeries, factories,

charitable foundations, educational funds, and other religious activities intended to assist the elderly and the weak, the poor, animal care, agriculture and horticulture, and water resources (Mahamood & Ab Rahman, 2015).

In the organisational structure of waqf, there are three major parties. The *wāqif* or donor is the one who endows their property for the benefit of the recipient, either orally or in writing. The recipient of the waqf property is called *mawqūf ‘alayh*. The manager of the *waqf* is called *mutawallī*, whose role is to manage the waqf property. Meanwhile, the *Qādī* or judge is responsible for overseeing the *waqf* property while monitoring the manager (M. Z. Abbasi, 2012, p. 124). *Waqf* or the waqf institution is not explicitly mentioned in the Qur'an (al-An'ām: 27 & 30, Sabā': 31, and al-Şaffāt: 24), but there are general verses that emphasise charity (*ṣadaqah*) as the legal authority for the validity of waqf (for example, Āli 'Imrān: 92 and al-Baqarah: 177, 215 & 267), along with the traditions of the Prophet and his companions who established waqf as charity (*ṣadaqah*).

"When a person dies, his deeds are cut off except for three things: ongoing charity, the knowledge that is benefited from, or the prayer of a righteous child." (HR. Muslim) (Muslim, 1955, p. III: 1255, hadis no. 1631).

This hadith is further supported by other narrations, such as the waqf of the Kuba Mosque, the first mosque *waqf* in Islamic history before the Prophet migrated to Medina. Then, the second waqf, the Nabawi Mosque, took place in the first year of the migration (Al-Nawawī, 1396, p. III: 1255).

Regarding *waqf* of property, there is a difference of opinion. According to the narration of Imam Aḥmad, it was narrated by al-Imām Aḥmad from 'Abd Allāh ibn 'Umar, who said: *"The first charity in Islam was the charity made by 'Umar."* The Prophet told Umar, *"Keep the principal and let its produce be in the way of Allah"* (Ḥanbal, 1421, p. X: 487). In the narration of Imam al-Bukhārī, it is told by 'Umar ibn Shabbah, from 'Umar ibn Sa'īd ibn Mu'ādh, who said: *"We asked about the first person who made waqf in Islam."* The Ansar said: *"The charity of 'Umar [who endowed the land of Khaibar."* The Muhajirun said: *"The charity of the Prophet, which was the land of Mukhayriq [al-Khaḍrī al-Isrā'īlī from the Banu al-Naḍir], which the Prophet bequeathed, and then the Prophet made it a waqf"* (Al-'Asqalānī, 1379, p. V: 401).

Regardless of the differences of opinion above, it is inevitable that the Prophets and their companions have practised waqf. Although the verses and hadiths remain general, the scholars developed the laws of waqf through *qiyās* (analogy), *ijmā'* (consensus), *istiḥsān* (legal preference), *istiṣḥāb* (continuity), and *'urf* (custom) (Al-Zarqā, 1998). The principle of *istiṣlāḥ* (public interest) was also applied later to legalise new practices, such as cash waqf (Mandaville, 1979). Therefore, the collection of evidence above strengthens the understanding that waqf is an essential practice in Islam. Muslims need an institution that allows them to perform the three good deeds mentioned above, which then evolved into the *waqf* institution, ensuring the continuity of charity, repeated for years, even centuries, after their death.

Muslims may have borrowed the concept of such charitable institutions from other civilisations. This is because charitable institutions have a much older history than the history of Islam, and it is quite possible that Islam was influenced by previous civilisations,

as discussed by several scholars (Cizakca, 1998; Şabrī, 2011; Salarzahi et al., 2010). However, referring to the spirit of the above hadith, the process of borrowing is not straightforward because any institution borrowed must be reformed to align with the fundamental teachings of Islam.

At this point, it is essential to explain how a system that does not originate from Islam, is not explicitly mentioned in the Qur'an, and was initially opposed by many prominent jurists came to be so enthusiastically adopted and developed to phenomenal dimensions. There are two explanations: historical and economic. Let us first consider the historical explanation. The tremendous Islamic conquests enriched the Muslim world beyond imagination and established the economic prerequisites for the emergence of this institution. Moreover, as mentioned above, we must consider the inherent emphasis in prophetic hadiths on the importance of doing good and giving charity. Since wealth is considered a significant source of trial in Islam, the natural tendency among wealthy Muslims to perform good deeds as preparation for the afterlife can easily be understood. Therefore, for these historical reasons, waqf was embraced despite not being explicitly mentioned in the Qur'an and initially rejected by some jurists.

In its development, scholars divided waqf into *waqf al-khayrī* and *waqf al-ahli*. The first type has been explained above, while the second type, also referred to as *al-waqf al-dhurri*, is a waqf designated explicitly for the children and descendants of the donor or for other individuals not related by lineage to the donor (Al-'Alāwayn, 2011).

Most scholars from the Maliki, Shafi'i, Zahirī, Hanbali schools, and Abu Yusuf from the Hanafi school and the Dhahiri school recognise the legality of this type of *waqf*. However, a minority, such as Qadi Shurayh (d. 78 AH), rejected it. Those who accept it base their opinion on the following:

First, the general meaning of the verse

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ

"You will never attain righteousness until you spend from that which you love" (Q.S. Āli 'Imrān: 92).

Second, prophetic traditions (*hadith*), such as: "The Messenger of Allah (peace be upon him) designated seven orchards in the city of Medina as charity for the Banu Muttalib and Banu Hashim" (HR. al-Bayhaqi), and "Do you not see that Hujra al-Madari informed me that the family of the Messenger of Allah consumed from his charity lawfully, not unlawfully" (HR. Ibn Abi Shaybah).

Third, the practices of the Companions, who also implemented it. Examples include 'Umar ibn Khaṭṭāb, who endowed a piece of land in the Khaybar area and allocated its yield (the fruits from the land) to the poor, relatives, enslaved people, fighters in the way of Allah, guests, and travellers. Zubayr ibn 'Awwām, who endowed a house for his descendants. 'Uthmān ibn 'Affān, who endowed a piece of land in the Khaybar area for his son, Abān ibn 'Uthmān, and his descendants. Zayd ibn Thābit endowed a house for his children and their descendants (Al-'Alāwayn, 2011, pp. 53–58).

On the other hand, those who reject this type of *waqf* argue that the institution of *waqf* was abrogated (*mansūkh*) by the revelation of the inheritance verses in *Surah al-Nisā'*, verses 11, 12, and 176.

Implementation Model of *Waqf al-Ahlī* in Southeast Asia

In the previous discussion, we reviewed the legality and debates surrounding *waqf al-ahlī* in several countries. This section examines how this *waqf* is legalised in Indonesia, Malaysia, and Singapore.

1. Indonesia

In Indonesia, *waqf al-ahlī* is not yet very familiar. This may be due to the understanding that *waqf* is solely for public purposes, such as for mosques, schools, Islamic boarding schools, cemeteries, and others, rather than for children and descendants. Legally, it has been recognised since the enactment of the *Waqf* Law No. 41 of 2004.

Compared to some countries like India, Pakistan, and several Middle Eastern nations, Indonesia was late in legalising this type of *waqf*. Countries under British colonisation in Central Asia, such as India, Pakistan, and Bangladesh, had already legalised and debated its legitimacy as early as 1793 (M. Abbasi & Abbasi, 2013). Meanwhile, debates regarding its validity in the Middle East emerged as early as 1903 (Moumtaz, 2018).

However, this does not mean that *waqf al-ahlī* was never practised in Indonesia. It has been implemented since Islam entered the Malay-Indonesian region. Rabitah Harun, Zuraidah Mohamed Isa, and Norhidayah Ali argue that *waqf* was already known among Muslims in Indonesia by the mid-13th century. It continued to exist even under Dutch and Japanese occupation for more than three hundred years (Harun et al., 2012) and persists. Amelia Fauzia provides an even more comprehensive account of the history of philanthropy (including *waqf*) from one era to another, up to modern Indonesia (Fauzia, 2013).

Indeed, *waqf al-ahlī* was formally legislated in 2004. However, its legal foundation has existed since 1960, as stipulated in Law No. 05 of 1960 on Basic Agrarian Principles, specifically Article 49, Paragraph 3, which states that *waqf* land is protected under Government Regulation. This article did not comprehensively explain *waqf*, thereby leaving room for misuse. According to the background of Government Regulation No. 28 of 1977 on *Perwakafan Tanah Milik* (Land Ownership Waqf) in Part I, it is stated:

"Primarily due to the existence of various forms of waqf (family waqf, public waqf, and others) and the absence of mandatory registration of waqf property, many waqf assets became untraceable. Worse, the waqf property could appear as if it had become the inheritance of the trustee's heirs (nazir)."

Such cases were widespread, often leading to land disputes. To address this issue, 17 years later, Government Regulation No. 28 of 1977 on *Perwakafan Tanah Milik* was enacted on May 17, 1977.

The above regulation governed social *waqf* (*waqf khayrī*) as land *waqf*. Following the issuance of the regulation, the Minister of Home Affairs issued Regulation No. 6 of 1977 to ensure its effective implementation. Subsequently, the Minister of Religious Affairs

(PMA) issued Regulation No. 1 of 1978 concerning implementing Government Regulation No. 28 of 1977. Unfortunately, neither this Government Regulation nor its derivatives—comprising the regulations of the two ministers, the Minister of Home Affairs and the Minister of Religious Affairs—addressed *waqf al-ahlī* until the enactment of Law No. 41 of 2004.

Table 2. Law No. 41 of 2004

No	Chapter	Article	Waqf Legislation
1.	I	1	General Provisions
2.	II	2-31	Fundamental Principles of Waqf
3.	III	32-39	Registration and Announcement of Waqf Properties
4.	IV	40-41	Changes to the Status of Waqf Properties
5.	V	42-46	<i>Management and Development of Waqf Properties</i>
6.	VI	47-61	<i>Indonesian Waqf Board</i>
7.	VII	62	Resolution of Waqf Disputes
8.	VIII	63-66	Guidance and Supervision
9.	XI	67-68	Criminal Provisions and Administrative Sanctions
10.	X	69-70	Transitional Provisions
11.	XI	71	Closing Provisions

According to this law, waqf is divided into two types: *waqf al-khayrī* and *waqf al-ahlī*. *Waqf al-khayrī* refers to waqf allocated for public benefit. In contrast, *waqf al-ahlī* is designated for and managed by the waqif's (endower's) family (Explanation of Government Regulation No. 42 of 2006, Article 2). For legal compliance, both types of waqf must be recorded, registered, and formalised in a waqf pledge deed (Law No. 41 of 2004, Part I: General Provisions, Article 1).

Regarding the registration procedure, Article 30 of the law states that waqf properties must be registered by the Nazhir (waqf manager) with the Minister seven working days after issuing the waqf certificate. Since these provisions remain general, the detailed registration procedures are elaborated in Government Regulation No. 42 of 2006 on implementing the Waqf Law of 2004, Articles 30, paragraphs 4 to 6.

An example of *waqf al-ahlī* is the Bafadhal Family Waqf in Jambi, which has become a productive waqf. The first waqf is 'Abd al-Rahmān Bā Faḍl's waqf, consisting of land designated for the Bani Bafadhal (Bafadhal clan) in Jambi. The second waqf, also from 'Abd al-Rahmān Bā Faḍl, is in the form of three shophouses in Jambi City, similarly intended for the extended Bafadhal family. The proceeds from these waqf properties are used to support the education of the Bani Bafadhal in Jambi, particularly those pursuing religious studies. Some beneficiaries have been sent to Yemen and Al-Azhar with funds from this *waqf*.

2. Malaysia

Like Indonesia, *waqf al-khayrī* is more commonly known than *waqf al-ahlī* in Malaysia. This means that waqf for public facilities such as mosques, cemeteries, and educational institutions is far more prevalent than waqf for descendants. Nevertheless, *waqf al-ahlī* has undoubtedly been practised. Initial data indicates that in the state of Kelantan, there

was the Tengku Kaya Pahlawan Waqf in 1921, which was allocated to his descendants in the form of 20 lots of land (plots or parcels) consisting of residential sites and coconut plantations. Its estimated value was RM 440,344.89, equivalent to IDR 1,594,334,725.98 based on the exchange rate of rupiah to ringgit as of September 20, 2024. In addition, there was also a shophouse (ruko) valued at RM 76,000. The waqf was developed into a productive waqf by its managers and utilised to support the descendants, including for educational purposes. A similar case was also found in Terengganu. On June 13, 1961, Tengku Nik Maimunah endowed 25,000 hectares of land as a combination of *waqf al-khayrī* and *waqf al-ahlī*. Five-eighths of this land area was allocated for her descendants, while the remainder was intended for religious (public) purposes. The land was later transformed into a productive enterprise, and by 2003, it generated approximately RM 0.94 million (Suhaimi, 2018).

As explained earlier, in Indonesia, waqf management is centralised under a single special law. In Malaysia, the waqf regulation is entrusted to the states (equivalent to provinces in Indonesia). Each state is authorised to draft and formulate its waqf laws. These laws are called Enactments, Acts, or Ordinances, as shown in table 3.

Table 3: Waqf Laws in Malaysia

No	State	Waqf Legislation
1.	Penang	Enactment of Islamic Religious Administration (State of Penang) 2004
2.	Kedah	Enactment of Islamic Legal Administration (Kedah Darul Aman) 2008
3.	Perlis	Enactment of Family Law Administration 1991
4.	Perak	Waqf Enactment (State of Perak) 2015
5.	Kelantan	Enactment of Islamic Religious Council and Malay Customs of Kelantan 1994
6.	Terengganu	Waqf Enactment (State of Terengganu) 2016
7.	Pahang	Enactment of Islamic Legal Administration 1991
8.	Selangor	Waqf Enactment (State of Selangor) 2015
9.	Negeri Sembilan	Waqf Enactment (State of Negeri Sembilan) 2005
10.	Malacca	Waqf Enactment (State of Malacca) 2005
11.	Johor	Enactment of Islamic Religious Administration (State of Johor) 2003
12.	Federal Territories	Act on Islamic Legal Administration (Federal Territories) 1993
13.	Sabah	Enactment of Islamic Legal Administration 1992
14.	Sarawak	Ordinance of the Sarawak Islamic Council 2001

Source: Farhana Mohamad Suhaimi (Suhaimi, 2018)

The numerous laws above influence the terminology used for *waqf al-ahlī*. Four terms emerge that refer to *waqf al-ahlī*, namely: *waqf al-ahlī*, *wakaf zurri*, *wakaf khas*, and *wakaf kepada ahli waris*. The terms *waqf al-ahlī* and *waqf zurri* are used by the State of Perak. Article 10, Paragraph 1 of the Perak Waqf Enactment defines these two terms as follows: "*Waqf al-ahlī* or *wakaf zurri* means a waqf specified by the waqif for their family or one or more particular individuals for charitable purposes." (*Waqf Enactment of the State of Perak, 2015, Section [Article] 10, Paragraph 2*).

This differs from the *Enactment of the Islamic Religious Council and Malay Customs of Kelantan, 1994*, where *waqf al-ahlī* is classified as *waqf khas*:

"*Wakaf khas* means a waqf of perpetual assets, which includes any assets for religious purposes or recognised charitable purposes under Islamic law, including the assets themselves, and the income derived from those assets is given to individuals or purposes specified in the waqf". (*Enactment of the Islamic Religious Council and Malay Customs of Kelantan, 1994, Section [Article] 2, Paragraph 1*).

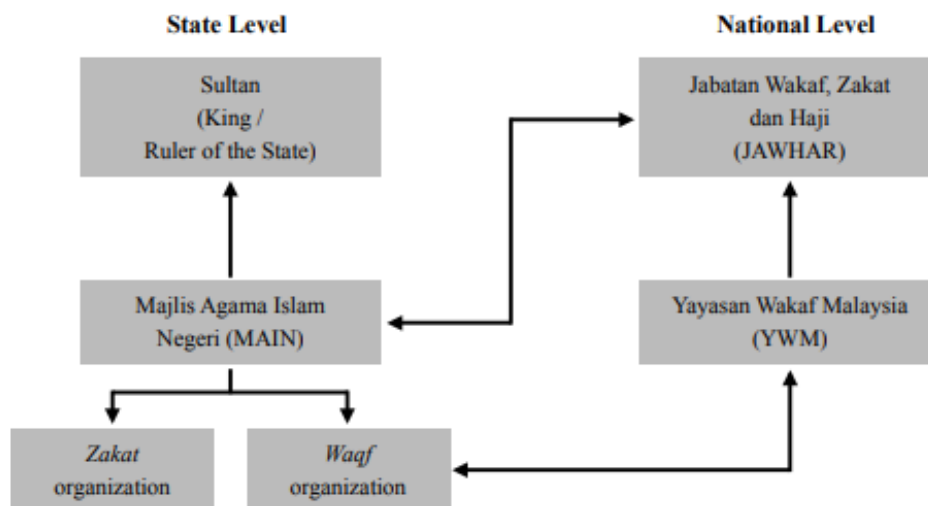
Although the term *waqf al-ahlī* is not explicitly mentioned, this *waqf khas* can still be allocated to individuals, including the family and descendants specified by the waqif. The same term is also used in the *Islamic Legal Administration Act (Federal Territories), 1993*, as follows: "*Wakaf khas* means a perpetual or time-limited waqf of assets for religious or charitable purposes recognised under Islamic law, where the assets endowed and the income derived from them are given to individuals or for purposes specified in the waqf." (*Islamic Legal Administration Act [Federal Territories], 1993, Section [Article] 2, Paragraph 1*).

Unlike the three states mentioned above, another term has emerged: *waqf 'to heirs'*. This is found in the *Waqf Enactment of Selangor* and *Waqf Enactment of Terengganu* as follows: "Any person who intends to endow a waqf may endow property to their heirs" (*Waqf Enactment of Selangor, Section [Article] 31, Paragraph 1; Waqf Enactment of Terengganu, Section [Article] 35, Paragraph 1*). Regardless of the various terms used in each state, *waqf al-ahlī* has been legalised for approximately the last decade. Moreover, state laws on waqf are combined into a single framework encompassing *waqf al-ahlī* and *waqf khayrī*. Meanwhile, for administrative compliance, waqf, whether *waqf al-khayrī* or *waqf al-ahlī*, must be registered and monitored by each state's *Majlis Agama Islam Negeri* (State Islamic Religious Council, MAIN).

Although each region has autonomy in drafting and enacting waqf laws, the following points apply: First, at the national level, they are monitored by and subject to the regulations of the Department of Islamic Development Malaysia (*Jabatan Kemajuan Islam Malaysia*, JAKIM), ensuring that the laws enacted in each state are aligned and uniform (Kader, 2016). This is similar to the case in Pakistan, where each province has specific autonomy to draft waqf laws but must comply with the *Muslims Waqf Act No. 6 of 1913*. Similar to *Pancasila* and the 1945 Constitution (*UUD 1945*) in Indonesia, any derivative laws must not contradict these two foundational principles. Second, at the regional level, each state has established a *State Islamic Religious Council (Majlis Agama Islam Negeri, MAIN)*. This government organisation initially served as the sole entity responsible for managing waqf in Malaysian states and reported directly to the rulers of each state (Mahamood, 2006).

However, MAIN could have generated optimal revenue from waqf lands due to issues of administrative effectiveness and efficiency (Norzilan, 2018, p. 145). Therefore, in 2004, the *Department of Waqf, Zakat, and Hajj (Jabatan Wakaf Zakat dan Haji, JAWHAR)* was established at the national level. Its function was to assist MAIN in facilitating the administration of waqf, zakat and hajj matters (Farhana et al., 2014).

To further enhance the efficiency and effectiveness of the collaborative relationship between MAIN and JAWHAR, the *Malaysian Waqf Foundation (Yayasan Wakaf Malaysia, YWM)* was founded in 2008. As a waqf management institution under JAWHAR, YWM assists MAIN in collecting waqf funds and developing them in the commercial sector as part of sustainable waqf development efforts (Rakhmat & Beik, 2022).



Source: Nur Izzati Norzilan (Norzilan, 2018)

Figure 1. *Coordination Line of Waqf Institutions in Malaysia*

Good coordination between regions has been proven effective in collecting waqf funds. The combination of charitable waqf and family waqf in the form of cash waqf from 2010 to 2019 showed a significant increase, as shown in the following table:

Table 4. *Cash Waqf (Combination of Charitable and Family Waqf)*

No	Chapter	Amount	
		RM	Conversion to RP
1.	2010	399.923,80	1.290.518.109,46
2.	2011	396.318,17	1.278.883.065,95
3.	2012	445.078,52	1.436.228.326,97
4.	2013	988.651,74	3.190.290.186,32
5.	2014	2.063.153,72	6.657.611.370,61
6.	2015	2.034.494,72	6.565.131.356,92
7.	2016	2.184.805,45	7.050.170.554,66
8.	2017	2.667.079,56	8.606.425.702,96
9.	2018	2.781.107,54	8.974.383.731,90
10.	2019	2.850.942,82	9.199.735.895,29

Source: Malaysian *Waqf* Foundation

Note: 1 RM as of September 20, 2024 = Rp. 3,602.51

3. Singapore

Implementing Islamic law in Singapore, including waqf, is regulated under The Administration of Muslim Law Act (AMLA). It was enacted through Act No. 27 of 1966 and has been in effect

since July 1, 1968. AMLA consists of 10 (ten) chapters and 146 (one hundred and forty-six) sections covering *waqf*, marriage, divorce, inheritance, hajj, zakat, and others. Specifically, the details about zakat are explained in the following table:

Table 5. AMLA (Specifically Concerning Zakat)

No	Section	Regulation
1.	Section 64, Paragraph 1	Registration of Waqf
2.	Section 64, Paragraph 2	Implementation of waqf registration by Muwatallī
3.	Section 64, Paragraph 3-8	Procedures and requirements for waqf registration
4.	Section 64, Paragraphs 9-10	Recording and documentation of waqf
5.	Section 64, Paragraph 11	Sanctions and fines
6.	Section 64, Paragraph 12	<i>Islamic Religious Council and Waqf Management Control</i>

Before AMLA was enacted, waqf in Singapore was regulated under the Muhammadan and Hindu Endowments Ordinance, which was enacted on September 8, 1905. Since the enactment of AMLA, the authority for waqf management has been delegated to the Islamic Religious Council (MUIS) (AMLA, Chapter IV, Section 58, 1968).

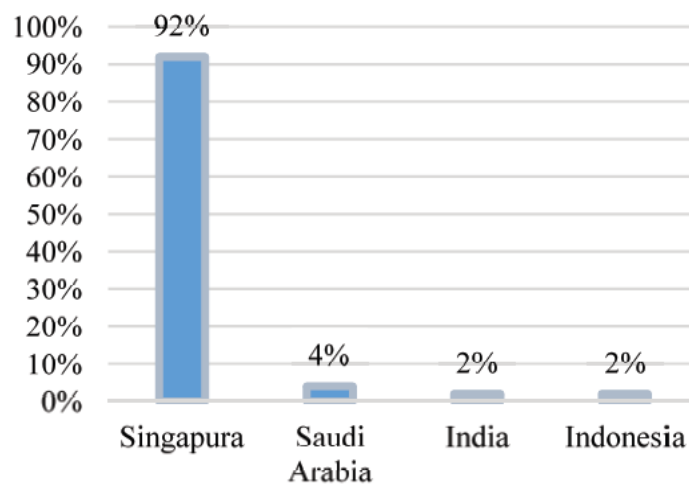
AMLA divides *waqf* into two forms: *waqf 'am* (general) and *waqf khas* (specific) (AMLA, Section 2). In summary, *waqf 'am* is public *waqf* or *waqf al-khayrī* in the Indonesian context, while *waqf khas* is a specific waqf intended according to the wishes of the waqif, which could be for family or other purposes. Initially, not all waqf was managed by MUIS; some were in private hands, which led to poor management systems, the emergence of mismanagement of waqf assets, and the sale of waqf property without MUIS's consent (Pertiwi et al., 2019). This situation caused waqf management in Singapore to be unmonitored, both for public *waqf* and *waqf al-ahlī*, which persisted for many years. As a result, AMLA was amended several times and reached the point where sanctions and fines were imposed on those who failed to register *waqf* property, whether 'am or khas. If a *mutawalli* (*waqf* manager) did not register the waqf or provided false information that made it impossible to inspect the waqf property, such actions, according to AMLA Section 64, Paragraph 11, was considered a criminal offence, punishable by a fine of up to \$5000, imprisonment for no more than 12 months, or both (AMLA, Section 64, Paragraph 11).

In the context of waqf regulation in Indonesia, the *muwalli* (known as *nazir*) has a legal obligation to register waqf assets with the Islamic Religious Council of Singapore (MUIS), as stipulated in Sections 64(1) and 64(2) of the relevant law. This registration process requires the *muwalli* to submit comprehensive documentation, including the specifications of the *waqf* terms, an annual financial report covering income and projected expenses, the *muwalli*'s remuneration, and authentic proof of ownership of the waqf assets (Section 64[3]).

After submitting the registration application and supporting documentation, MUIS conducts a field verification procedure to ensure consistency between the information provided and the actual condition of the *waqf* assets. Subsequently, MUIS systematically records and archives

waqf data, including implementing an electronic documentation system. This mechanism has been explicitly outlined in the Administration of Muslim Law Act (AMLA), particularly in Sections 64(9-10). This regulation reflects efforts to institutionalise and standardise waqf management, emphasising transparency, accountability, and administrative efficiency. This structured procedure can achieve a more professional waqf governance system that aligns with Sharia principles and modern demands.

The firm sanctions and fines imposed on those who fail to register waqf with MUIS and good management have made Singapore the leading country in utilising waqf funds in 2005. In 1968, only six waqfs were registered with MUIS. By 2000, all 100 waqfs were registered, giving MUIS a complete database of all waqf properties, income, expenditure information, and disbursements, serving as crucial information for more effective and efficient waqf management (Karim, 2011).



Source: (Abdul Karim, 2007)

Figure 2. *Utilisation of Waqf Funds*

Based on the data above, the utilisation of waqf funds in Indonesia remains significantly lower compared to Singapore, with a 90% gap despite Indonesia's waqf potential, both *waqf al-khayrī* and *waqf al-ahlī*, being far more significant than Singapore's. Regardless of this ranking, these findings significantly contribute to refuting groups considering *waqf al-ahlī* as *bid'ah*. The benefits of *waqf al-ahlī* can significantly contribute to the welfare of the ummah if appropriately managed.

IV. CONCLUSION

From the discussion above, it can be concluded that the differences in the legality of waqf al-ahlī across several countries are primarily influenced by economic, social, and political factors, as well as misunderstandings about the purpose of waqf rather than religious factors. Although some consider it *bid'ah*, this notion has been rejected by most scholars. Therefore, Indonesia,

Malaysia, and Singapore have followed the majority opinion. All three countries require the registration of both *waqf al-ahlī* and *waqf al-khayrī*. However, there are significant differences in law enforcement. Singapore imposes strict penalties and fines for non-compliance with waqf registration and reporting obligations, while Indonesia and Malaysia have not implemented similar sanctions. Consequently, the administration and productivity of waqf funds in Singapore demonstrate higher efficiency than the other two countries. These findings contribute to developing insights into waqf management and implicitly refuting the perception that waqf al-ahlī is *bid'ah*. This study demonstrates that waqf al-ahlī when effectively managed, can significantly contribute to the welfare of the ummah. The implications of this research emphasise the importance of good governance and a comprehensive legal framework in optimising the potential of *waqf al-ahlī* as an instrument for socio-economic development.

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