

## Different opinions of ulama in Fiqh Waqf: Epistemological, methodological, and contextual analysis

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### Abstract:

This study critically examines juristic disagreement (*ikhtilaf*) in waqf jurisprudence through an integrated epistemological, methodological, and contextual analysis, while exploring the pathways toward harmonizing classical doctrines with contemporary socio-economic demands. Using a qualitative, library-based research design, the study analyzes classical fiqh sources from the four Sunni schools, foundational works of *uṣūl al-fiqh*, contemporary academic discussions, and modern fatwas. The research scope encompasses the conceptual foundations of waqf, the validity of various asset types, *istibdal*, temporary waqf, and contemporary innovations, including cash waqf, waqf-linked *sukuk*, and digital *waqf*. The findings reveal that *ikhtilaf* is rooted in divergent epistemic commitments regarding textual authority, legal causation, and public interest, as well as methodological distinctions in legal reasoning and contextual influences across historical periods. Major challenges include the increasing complexity of financial instruments, fragmented regulatory frameworks, and limited capacity among waqf managers to operationalize *maqasid*-oriented governance. The study recommends strengthening collective *ijtihad*, developing *maqasid*-driven regulatory frameworks, and establishing measurable evaluative standards for modern waqf practices. Practical implications highlight the need to integrate classical fiqh reasoning with contemporary governance principles to ensure that waqf remains socially transformative and aligned with sustainable development objectives. This research formulates a normative–analytical model that synthesizes *maqasid*-oriented reasoning with juristic diversity, providing a conceptual platform for harmonizing waqf jurisprudence and enhancing the strategic relevance of waqf in the modern era.

**Keywords:** cash waqf; digital waqf; epistemology; fiqh methodology; Islamic legal theory.

## INTRODUCTION

Waqf, as one of the most enduring Islamic philanthropic institutions, has been deeply embedded in the socio-economic fabric of Muslim civilization throughout history. Its development cannot be separated from the formative teachings of Islam, particularly the Qur'anic encouragement of charity and the prophetic model of social solidarity. The classical definition of waqf as *habs al-ashl* or the permanent dedication of an asset, and *tasarruf al-manfa'ah* or the continuous distribution of its benefits for public welfare, illustrates the

centrality of generosity and sustainability in Islamic ethical thought. Historically, waqf has played an essential role in building mosques, madrasahs, libraries, public kitchens, caravanserais, hospitals, irrigation systems, and agricultural lands that sustained the economic independence of Muslim societies for centuries (Mohsin et al., 2016). The waqf initiated by Umar ibn al-Khattab in the Garden of Khaybar set a paradigmatic foundation for fiqh waqf rulings, becoming a reference for subsequent juristic interpretations (Al-Qaradawi, 1995). Theologically, waqf is rooted in the general Qur'anic exhortations to spend wealth in the path of God and the prophetic emphasis on *ṣadaqah jāriyah*, which positions waqf as an instrument of perpetual charity with profound spiritual and social significance.

Within the broader framework of Islamic economics, fiqh waqf occupies a pivotal place in promoting human welfare and socio-economic development. As a philanthropic mechanism, waqf does not merely serve religious obligations but provides essential resources for the establishment of educational, religious, and health institutions that uplift community well-being. Contemporary economic analyses show that waqf has the potential to become a major driver of equitable development through productive asset management, especially when supported by sound governance structures (Cizakca, 2019). For this reason, mastery of fiqh waqf is crucial, as it forms the normative basis for ensuring that waqf institutions operate in accordance with sharia principles while responding effectively to the evolving needs of society (Ardhy & Fauziah, 2025). The resilience of waqf throughout history demonstrates its adaptability and its ability to function as a bridge between religious devotion and socio-economic empowerment.

Despite this rich tradition, the implementation of waqf law has never been uniform across the Muslim world. A complex tapestry of juristic reasoning, socio-cultural factors, and methodological diversity among scholars has resulted in a broad spectrum of positions on various aspects of waqf. The four major Sunni legal schools—Hanafi, Maliki, Shafi'i, and Hanbali—differ significantly in their opinions concerning the types of assets that can be endowed, the legal mechanisms for establishing waqf, the conditions for validity, and the nature of asset perpetuity (Kamali, 2020). This plurality is not a weakness but reflects the intellectual richness of Islamic jurisprudence, demonstrating its capacity to engage with diverse socio-historical realities. Classical scholars often viewed *ikhtilaf* among *fuqaha'* as a form of divine mercy that provides legal flexibility for the ummah, especially in complex or context-dependent matters (Abou El Fadl, 2019). Such diversity is intrinsic to Islamic legal tradition, where interpretive reasoning plays a constructive role in ensuring that the law remains responsive to changing circumstances.

In the realm of waqf, differences of opinion arise due to several interrelated factors, including varying hermeneutical approaches to scriptural texts, divergent assumptions about social contexts, and distinct methodological orientations within *uṣūl al-fiqh*. Some jurists prioritize textual literalism, whereas others emphasize maqasid-oriented or maslahah-driven analysis, leading to contrasting conclusions in waqf rulings. For instance, the permissibility of cash waqf (waqf al-nuqud) historically generated intense debate, with the Hanafi school generally approving it under certain conditions based on maslahah considerations, while some scholars from the Maliki and Shafi'i traditions expressed reservations due to concerns regarding asset perpetuity. This early debate has regained prominence in the modern era, particularly as contemporary Islamic financial institutions advocate cash waqf as an efficient instrument for poverty alleviation and public financing (Mannan, 2020). Differences also appear in the treatment of movable assets, intellectual property, usufruct-based waqf, and modern financial instruments such as waqf-linked sukuk. These issues show how classical juristic debates continue to influence current policy discussions, making a systematic study of *ikhtilaf fuqaha'* indispensable for developing relevant waqf governance frameworks.

The contemporary revival of waqf presents both opportunities and challenges. In the globalized era, characterized by rapid technological innovation, shifting economic structures, and increasingly complex social needs, waqf is no longer perceived merely as a passive charitable act but as a strategic economic instrument. Modern waqf institutions have embraced new modalities such as digital waqf platforms, corporate waqf, equity waqf, and blockchain-based waqf transparency systems (Thompson, 2022). These innovations demonstrate the transformative potential of waqf to contribute to sustainable development goals by funding education, healthcare, environmental conservation, and social entrepreneurship. However, the emergence of these new instruments inevitably intersects with classical fiqh debates, creating tensions between historical juristic interpretations and contemporary policy demands. The challenge lies in navigating these tensions through sound epistemological and methodological reasoning that respects the integrity of Islamic legal tradition while enabling necessary reforms.

The epistemological dimension of *ikhtilaf* in waqf fiqh is particularly significant. Differences among scholars often stem from the way they conceptualize the relationship between the textual sources (Qur'an and Sunnah) and rational tools (*ijma'*, *qiyas*, *istihsan*, *maslahah mursalah*). For example, jurists who give stronger weight to general Qur'anic principles of charity and public benefit tend to adopt more inclusive interpretations regarding allowable waqf assets, while those who emphasize strict adherence to textual precedents may limit waqf to immovable properties. Such epistemological orientations shape not only the substance of fiqh rulings but also the underlying philosophy of law that informs juristic reasoning (Ahmed, 2022). In studying waqf today, it becomes essential to understand these epistemological roots, because they provide insight into why certain legal positions emerged and how they might be reinterpreted in contemporary contexts.

Methodologically, the schools of fiqh employ distinct interpretive tools and principles that lead to divergent legal conclusions. The Hanafi school's relatively flexible use of *istihsan* and *maslahah* often results in permissive rulings that facilitate socio-economic benefit, such as its acceptance of cash waqf. Meanwhile, the Shafi'i approach, which adheres tightly to *qiyas* and classical textual precedents, tends to be more restrictive, particularly regarding asset perpetuity and waqf formation procedures (Zarqa, 2018). The Maliki emphasis on public interest (*maslahah mursalah*) contributes to broader allowances for waqf forms relevant to social welfare, while the Hanbali school strikes a balance between strict textualism and selective *maslahah*-oriented reasoning (Ibn Bayyah, 2020). These methodological distinctions reveal that *ikhtilaf* in waqf is not arbitrary but emerges from coherent juristic frameworks that continue to shape Islamic legal discourse.

Contextual factors also play an essential role in shaping juristic views. Scholars living in agrarian societies with abundant land resources tended to prioritize immovable waqf assets, whereas those operating in commercial urban centers were more open to movable or monetary forms of waqf (Lapidus, 2019). Historical contexts such as political stability, state patronage, and economic structures also influenced waqf administration and legal interpretation. In today's world, new contextual realities—such as digital economies, financial technologies, and transnational philanthropic networks—necessitate renewed engagement with fiqh principles in light of these changing conditions. A contextual analysis thus enables scholars and policymakers to differentiate between rulings that are intrinsically tied to textual evidence and those that were shaped by historical contingencies, allowing for more adaptive and contemporary interpretations.

Through this integrated epistemological, methodological, and contextual analysis, the present study seeks to contribute to the expanding intellectual landscape of waqf fiqh by offering a structured framework for understanding *ikhtilaf fuqaha'* and its implications for modern waqf governance. Such an approach is essential not only for academic enrichment but also for practical policymaking, as waqf institutions increasingly require regulatory clarity and fiqh-based legitimacy to operate effectively. Policymakers, waqf practitioners, and Islamic finance experts can benefit from this analytical framework to design waqf models that respect the classical juristic tradition while aligning with contemporary socio-economic priorities. Ultimately, the goal is to articulate a harmonized and dynamic approach to waqf that preserves its spiritual essence, enhances its operational efficiency, and maximizes its impact on sustainable socio-economic development. A comprehensive understanding of juristic diversity becomes indispensable for envisioning waqf as a transformative instrument capable of addressing modern challenges while remaining deeply faithful to the ethical and legal vision of Islam.

## METHOD

This study employs a qualitative research design with a library-based approach, focusing on the systematic examination of textual sources to understand the epistemological, methodological, and contextual foundations of *fiqh al-waqf*. A library research method is chosen because the primary objective of this study is to conduct an in-depth and critical analysis of classical and contemporary fiqh texts, a process that aligns with the characteristics of normative-doctrinal Islamic legal research, which prioritizes textual interpretation over empirical observation (Bakri, 2020). Accordingly, this study does not involve experiments, surveys, or field-based data collection; rather, it concentrates on dissecting Islamic legal norms, juristic arguments, and doctrinal formulations that constitute the intellectual heritage of waqf jurisprudence (Kamali, 2020).

The data used consist entirely of secondary sources collected through an extensive review of reputable library materials. These sources include classical fiqh references from the major Sunni schools—Hanafi, Maliki, Shafi'i, and Hanbali—such as *al-Mabsut*, *al-Mudawwanah*, *al-Umm*, and *al-Mughni*, which are essential for tracing juristic reasoning and the historical development of waqf doctrines (Zarqa, 2018). In addition, the study incorporates foundational works in *uṣūl al-fiqh*, both classical and contemporary, in order to interpret the methodological principles underlying juristic differences. Contemporary academic sources, including peer-reviewed journal articles, modern monographs on waqf and Islamic economics, and authoritative institutional publications, are also utilized to contextualize classical debates within present-day discourses (Z. Hasan & Putri, 2021). The Qur'an and Sunnah serve as the primary normative references, given their centrality in the construction of waqf rulings and their interpretive legacy across the centuries.

The data collection technique is carried out using a documentation method, which involves systematically identifying, compiling, and critically reading textual materials relevant to waqf jurisprudence. This process includes evaluating textual authenticity, cross-referencing juristic arguments, and engaging in critical note-taking to ensure accuracy and conceptual clarity. Documentation as a qualitative technique allows researchers to conduct text criticism—an important step that helps identify inconsistencies or textual corruption that may have occurred during manual transcription in classical manuscripts (Makdisi, 2019). Through this method, the study ensures that the legal inferences drawn are based on reliable and carefully verified textual evidence.

The analytical process employs two complementary strategies: content analysis and comparative analysis. Content analysis is used to extract, interpret, and categorize core themes found in the literature, particularly those related to legal principles, juristic arguments, and conceptual frameworks in waqf fiqh (Thompson, 2022). Meanwhile, comparative analysis enables the systematic comparison of differing scholarly perspectives—across schools, generations, and epistemological orientations—to identify points of convergence and divergence. This dual-analysis approach allows a deeper understanding of the multi-dimensional nature of *ikhtilaf al-fuqaha'*, especially as it pertains to waqf practices (Cizakca, 2019).

The analysis is structured around three major dimensions relevant to the study. *First*, the epistemological dimension focuses on the sources of evidence and the interpretive frameworks adopted by scholars, including their approaches to *nass*, *ijma'*, *qiyas*, and *maslahah mursalah*. This dimension is essential for understanding the roots of juristic divergence and how different epistemic commitments shape waqf rulings (Abou El Fadl, 2019). *Second*, the methodological dimension examines the *uṣūl al-fiqh* principles applied by various jurists, such as the use of *istihsan* in the Hanafi tradition or the strict reliance on *qiyas* within the Shafi'i school. These methodological orientations play a major role in shaping legal outcomes related to permissible assets, conditions of perpetuity, and management mechanisms for waqf properties (Ibn Bayyah, 2020). *Third*, the contextual dimension evaluates the socio-economic, cultural, and historical environments in which jurists formulated their positions, acknowledging that legal reasoning is often influenced by societal realities, the availability of resources, and evolving institutional needs (Lapidus, 2019).

Through this comprehensive methodological structure, the study aims to uncover the underlying reasons for juristic differences in waqf fiqh, as well as their practical implications for contemporary waqf development. This analytical framework is essential for bridging classical fiqh positions with modern waqf innovations, including cash waqf, corporate waqf, waqf-linked sukuk, and digital waqf platforms, which require fiqh-based legitimacy to achieve broader socio-economic impact (Mannan, 2020). Ultimately, by integrating epistemological, methodological, and contextual analyses, this study produces a nuanced and well-founded understanding of *ikhtilaf al-fuqaha'* in waqf jurisprudence, ensuring that the conclusions drawn contribute meaningfully to both academic discourse and practical policymaking in the modern era.

## RESULTS AND DISCUSSION

### Epistemological Dimension: The Source of Knowledge from the Foundation of Knowledge

The discussion on the *ikhtilaf* of classical and contemporary scholars in the fiqh of waqf constitutes a fundamental entry point for understanding the dynamic character of Islamic law and its implications for developing waqf instruments in the modern era. The findings of this study indicate that the divergences among the *fuqaha* are not merely *furu'iyah* disagreements but originate from deeper epistemological,



methodological, and contextual differences that shape the legal reasoning of each school of law. These variations reflect not only the intellectual richness of the Islamic legal tradition but also its inherent flexibility in responding to socio-historical transformations. As emphasized by modern scholars of Islamic law, legal disagreements in fiqh often emerge not solely from textual ambiguity but also from differing interpretive frameworks and socio-historical settings in which the jurists operated (Mousourakis, 2025). Accordingly, the following discussion analyzes three integrated dimensions of ikhtilaf: epistemological, methodological, and contextual.

The first dimension is epistemological, which concerns how scholars understand and interpret the sources of Islamic law. The most significant divergence appears in the interpretation of naqli evidence related to waqf, especially Qur'anic verses concerning spending and charity, such as Qur'an 3:92 and 2:267, both of which serve as normative foundations for the encouragement of waqf. These verses are general in nature, leaving ample room for interpretive expansion regarding the types of property that may be endowed. Scholars with a textualist orientation, particularly within the Shafi'i and Hanbali traditions, tend to restrict legal rulings to explicit textual directives and therefore demand specific, unequivocal evidence. In contrast, Hanafi and Maliki scholars adopt a more contextual reading that emphasizes maqasid al-shariah and legal causation (illah), giving broader interpretive space for determining waqf rulings (Ibn Bayyah, 2020). Textualist approaches typically emphasize caution and strict adherence to literal meaning, whereas contextualist approaches allow the expansion of meaning in line with public interest (maslahah).

A key example illustrating this epistemological divergence is the hadith on Umar ibn al-Khattab's endowment of the Khaibar orchard. Reported by Bukhari and Muslim, this hadith articulates the principle of *habs al-asl* and *tasarruf al-manfa'ah*—preserving the corpus of endowed property while distributing its benefits. The central point of debate is the interpretation of the “corpus” itself. The Shafi'i and Hanbali schools define the corpus as something permanent, non-consumable, and enduring, leading to a preference for immovable property such as land or buildings as valid objects of waqf. In their view, movable assets such as money or consumable goods fail to meet the criteria of perpetuity (Zarqa, 2018). Conversely, the Hanafi and Maliki schools argue that the essential purpose of waqf is not the physical permanence of the asset but the sustainability of its benefits. Therefore, money waqf is considered valid as long as it can be managed productively to generate continuous returns, even though its physical form is not permanent (Cizakca, 2019). This reasoning has provided the foundational logic for modern forms of productive waqf.

Another epistemological factor contributing to ikhtilaf pertains to the evaluation of hadith authoritativeness. Even when a hadith is deemed sahih, scholars may assign different argumentative weights to it. For instance, the hadith concerning the waqf of horses or weapons is interpreted by some jurists as a general legal basis for the permissibility of movable waqf. Others, however, treat it as an exceptional case applicable only to the context of jihad and therefore unsuitable for broad analogical extension. This illustrates that epistemological debates are not limited to assessing hadith authenticity but also involve determining the scope of their applicability (Abou El Fadl, 2019).

A third epistemological source of divergence is the use of rational evidence (*adilla aqliyyah*), such as *qiyas*, *istihsan*, and *maslahah mursalah*. *Qiyas* plays a central role in waqf jurisprudence due to the proliferation of modern cases without direct textual precedent. Differences arise in identifying the illah underlying a ruling. Schools that associate the illah of waqf with the permanency of the asset's essence reject the application of *qiyas* to money waqf, while those focusing on the sustainability of benefits accept it (R. H. Hasan et al., 2021). *Istihsan*, frequently used within the Hanafi tradition, allows jurists to depart from strict analogical reasoning in favor of a more equitable outcome, enabling the acceptance of innovative practices such as cash waqf and waqf through modern financial instruments. Meanwhile, *maslahah mursalah*, widely embraced by the Maliki school and many modern Hanbali scholars, legitimizes new legal formulations as long as they do not contradict established shariah principles. This has become a strong foundation for contemporary innovations such as waqf of shares, sukuk waqf, and digital waqf (Mannan, 2020).

The second dimension concerns methodology, namely the *usul al-fiqh* principles adopted by each school in deriving legal rulings. The methodological frameworks of the four Sunni schools vary considerably, resulting in diverse applications of waqf law. The Shafi'i school, for example, adheres to strict criteria for applying *maslahah* unless it has strong textual support, leading to a more conservative stance on new forms of waqf. By contrast, the Maliki school recognizes *maslahah mursalah* as an independent source of law,

making it inherently more accommodating to legal innovation. These methodological differences generate divergent legal conclusions: classical Shafi'i jurists typically reject cash waqf due to its non-permanent nature, whereas Maliki jurists accept it based on broader considerations of societal benefit (Idlilalène, 2021). A similar debate surrounds temporary waqf (waqf mu'qqat). Some schools insist on perpetuity as an essential requirement, but Hanafi jurists permit temporary waqf based on practical necessity and benefit (Ermawati et al., 2025).

Methodological differences also appear in defining the legal conditions of waqf, such as the qualifications of the endower (waqif), the endowed asset (mauquf), and the beneficiaries (mauquf 'alaih). These differences significantly affect the implementation of waqf in contemporary legal systems across Muslim-majority countries. For instance, the question of whether legal entities may act as waqif or whether waqf can be directed to institutions not explicitly mentioned in classical texts is debated across schools. Modern Hanbali scholars and many contemporary jurists now allow endowments for public institutions such as schools and hospitals, considering them modern manifestations of *maslahah* aligned with the objectives of shariah (Thompson, 2022).

The third dimension is contextual, referring to the socio-economic and political environments shaping juristic reasoning. Scholars living in agrarian societies—such as during the early Islamic period—naturally emphasized land as the primary object of waqf due to its central economic role. However, as Muslim societies developed into urban and commercial centers, scholars became more open to movable and commercial assets. In the contemporary era, economic systems based on finance and investment have encouraged scholars to accept newer forms of waqf, such as share waqf, sukuk waqf, or digital waqf, as these better reflect the realities of modern economic structures (Jafar et al., 2025).

Socio-political conditions also influence the development of waqf law. In some regions, waqf has evolved as a community-based welfare mechanism, resulting in more pragmatic legal interpretations. In others, waqf is closely regulated by state authorities, leading to standardized administrative systems and the institutionalization of waqf governance. Modern legal frameworks—such as Indonesia's Waqf Law or waqf regulations in the Middle East—reflect contemporary needs for transparency, accountability, and economic productivity, all of which have stimulated the emergence of new waqf models not explicitly discussed in classical literature (Bakri, 2020). This demonstrates that waqf jurisprudence continually evolves at the intersection of normative doctrine and socio-economic realities.

The findings of this study affirm that *ikhtilaf* in waqf fiqh is not a doctrinal weakness but an epistemological strength that allows Islamic law to adapt to changing contexts. These differences produce a spectrum of legal options enabling policymakers and waqf practitioners to select rulings most appropriate for contemporary needs. Through a comprehensive understanding of the epistemological, methodological, and contextual dimensions of *ikhtilaf*, waqf jurisprudence can be developed in a manner that is adaptive, productive, and consistent with the *maqasid al-shariah* in promoting public welfare (M. Abdullah, 2020b).

### **Methodological Dimension: The Fiqh Pattern of Each Madhhab**

The methodological dimension represents the locus where epistemological premises of each madhhab become operational in the formulation of waqf law. While epistemology provides the philosophical foundation for understanding the nature and hierarchy of legal proofs, methodology (*manhaj*) translates these foundations into concrete mechanisms of legal inference. In the study of *ikhtilaf al-fuqaha*, particularly in the domain of waqf, the methodological patterns of the four Sunni legal schools demonstrate distinct trajectories shaped by the interaction between textual fidelity, rational reasoning, contextual norms, and socio-economic realities. Recent scholarship confirms that the divergence of legal methodologies among the *madhāhib* is not merely a matter of interpretive preference but is rooted in complex socio-intellectual ecosystems that shaped their founders' approaches to *usul al-fiqh* (Gould, 2015). Thus, the study of methodological patterns in waqf law requires an excavation of the normative logic underpinning each madhhab and how it affects the construction of legal rulings, especially in the contemporary discourse that increasingly calls for reform and renewal in waqf governance (M. Abdullah, 2020a).

The Hanafi madhhab represents the school with the most pronounced use of *ra'y* and rational legal reasoning, supported by the methodological tool of *istihsan*, which functions as corrective reasoning when strict *qiyas* threatens to produce hardship or conflict with public benefit. This methodological openness

significantly influences Hanafi approaches to waqf, particularly in relation to objects of waqf that are movable or not explicitly regulated in early textual sources (Hennigan, 2004). Contemporary studies highlight that Hanafi jurisprudence, due to its reliance on rational deduction and empirical social considerations, became the foundation for early innovations in waqf, including the permissibility of cash waqf (waqf al-nuqud), a position famously attributed to Imam Abu Yusuf who argued that dinar and dirham may be invested for productive returns that benefit the mauquf 'alaih (Islahi, 2014). This approach reflects an intuitive understanding of waqf as an economic mechanism with distributive potential rather than a purely devotional act bound by rigid textual limitations. As modern scholars have noted, the Hanafi emphasis on *maslahah* and pragmatic reasoning has made this madhhab particularly compatible with contemporary waqf institutions that involve financial instruments, corporate entities, and structured investments (Lamido & Haneef, 2021).

In contrast, the Maliki madhhab grounds its methodology heavily in the practice ('amal) of the people of Madinah and in the principle of *maslahah mursalah*, which serves as one of the most influential tools in Maliki legal reasoning. This approach leads to a dynamic understanding of waqf that prioritizes communal benefit over strict literalism. Recent research emphasizes that Maliki jurists exhibit considerable flexibility in waqf rulings when clear public interest is evident, even in the absence of explicit textual proof (Al-Qarāfi, 2004). Their acceptance of waqf mu'qqat (temporary waqf) under specific circumstances stems from a methodological inclination to evaluate legal acts based on their functional contribution to the welfare of society. In the contemporary context, the Maliki perspective becomes crucial for designing time-bound productive waqf projects such as waqf for infrastructure development, educational institutions, or temporary humanitarian support programs, all of which require legal elasticity to adapt to changing economic environments (Rasyid et al., 2023). The methodological preference for *maslahah* makes the Maliki school one of the most future-ready frameworks in waqf innovation.

The Shafi'i madhhab stands as the most textually rigorous among the four schools, emphasizing strict adherence to Qur'an, Sunnah, *ijma*, and calibrated *qiyas*. Methodologically, the Shafi'i approach is marked by a high degree of precision in the use of textual proofs, clarity in legal causation ('illah), and insistence on linguistic exactitude. These methodological characteristics result in a generally conservative position in waqf law. The Shafi'i school requires *ta'bid* (perpetuity) of the waqf object and insists that the *ashl* (principal property) must be something durable and non-perishable, normally interpreted as immovable property (Zaenal et al., 2022). Furthermore, Shafi'i jurists emphasize strict conditions on *sighat* (pledge recital), requiring explicit and unambiguous wording, rejecting *kinayah* unless accompanied by clear intention. Modern legal analysts argue that although the Shafi'i approach safeguards the doctrinal purity of waqf, it generates practical limitations in modern financial systems where asset forms and legal instruments have significantly diversified (Malik, 2024). This methodological rigidity continues to influence waqf legislation in regions historically shaped by Shafi'i jurisprudence, including Southeast Asia, where land-based waqf remains dominant despite increasing demand for more flexible productive waqf instruments.

The Hanbali madhhab, while sharing methodological proximity with the Shafi'i school, adopts a more dualistic approach in its reliance on textual evidence and the opinions of the companions. While conservative in many legal aspects, Hanbali fiqh shows occasional flexibility in issues where hardship or necessity is involved. Recent comparative research indicates that Hanbali jurists, despite prioritizing immovable properties as objects of waqf, permit certain exceptions when the evidence supports ease (*taysir*) and when the practice aligns with early Islamic community traditions (Ayub et al., 2024). Methodologically, the Hanbali approach to waqf retains a strong commitment to preserving the essence of devotional acts, while simultaneously employing pragmatic reasoning when circumstances necessitate accommodation. This dual orientation positions the Hanbali school between the strict textualism of the Shafi'i and the pragmatism of Hanafi and Maliki approaches.

Beyond methodological differences in legal reasoning, the fiqh of waqf is also shaped by divergent conceptions of ownership (*milik*) and its transformation upon the declaration of waqf. The Hanafi school conceptualizes waqf as the transfer of property into a state of "Allah's ownership" (*tamlik lillah*), meaning that the property becomes inalienable and not owned by any human being (R. Abdullah & Ismail, 2017). This doctrinal stance renders waqf binding, irreversible, and immune from sale or inheritance. By contrast, the Shafi'i and Hanbali schools interpret waqf as *ta'bid al-manfa'ah*, meaning that while the principal property does not leave the ownership orbit entirely, its benefits are permanently transferred to the

beneficiaries (*mauquf 'alaih*). This distinction is crucial because it dictates the rules governing *nazhir* authority, asset replacement (*istibdal*), and liability. Modern scholarship notes that the Hanafi conceptualization creates stronger legal protection for *waqf* property but may restrict managerial flexibility, whereas the Shafi'i-Hanbali model offers greater operational space but requires stricter supervision to prevent misuse (Jafar et al., 2025).

The divergence extends further into the pillars and conditions of *waqf*, particularly in relation to *sighat*, *ta'bid*, and object of *waqf*. The Shafi'i requirement for explicit and unequivocal *sighat* reflects its methodological emphasis on linguistic clarity and legal certainty. By contrast, Hanafi and Maliki jurists accept *kinayah* (figurative expressions) provided that intention is demonstrably clear, an approach aligned with their broader methodological inclination toward contextual interpretive reasoning (Darby et al., 2019). The debate around *ta'bid* illustrates another methodological divide. While most schools consider perpetuity as essential to *waqf*'s devotional nature, the Malikis and some Hanafis permit *waqf mu'qqat* under certain conditions, especially when temporary dedication serves a specific *maslahah*. Contemporary *waqf* experts emphasize that temporary *waqf* offers significant strategic advantage for modern *waqf* enterprises that may require time-bound commitments for business cycles, loan repayments, or developmental projects (Johari et al., 2025).

Overall, the methodological patterns of each *madhhab* do not only reflect classical doctrinal commitments but continue to shape the legal architecture of *waqf* in the modern era. The Hanafi emphasis on rational adaptability supports the expansion of financial *waqf* instruments; the Maliki prioritization of *maslahah* enhances flexibility for developmental *waqf*; the Shafi'i fidelity to *nash* ensures doctrinal integrity; and the Hanbali balanced textualism provides a moderating perspective. Recent scholarship increasingly calls for synergizing the strengths of each methodological tradition to support the development of a unified contemporary framework for *waqf* governance that is both authentic and future-oriented (Moneim, 2018). Such synthesis is not only possible but necessary, given the complexity of modern economic systems and the growing demand for *waqf* to play a more active role in poverty alleviation, education, social welfare, and sustainable development.

### Contextual Dimension: The Relevance of Fiqh in the Dynamics of the Times

The study of *waqf* jurisprudence has never developed in a social vacuum; rather, it has always evolved in tandem with societal dynamics, technological advancement, and changing economic needs. The classical framework of *waqf* constructed by early scholars emerged from social conditions vastly different from those of the modern world, making the methodological reinterpretation and reassessment of inherited legal constructions an urgent necessity. Contemporary Islamic legal scholars emphasize that rapid social transformation demands that *fiqh* possess adaptive capacity without abandoning fundamental *sharia* principles, particularly the *maqasid al-shariah*, which places public interest as the central orientation of legal reasoning (Syarifuddin, 2021). Therefore, contextual study of *waqf* jurisprudence requires not only examination of textual sources and classical opinions but also a comprehensive interpretation of social realities as a "second text" that must be read integrally.

One of the most significant determinants in the evolution of *waqf* *fiqh* is the influence of local economic realities, which have historically shaped the diversity of *waqf* practices. In agrarian societies, land predominated as the principal object of *waqf* because of its central role in economic production. Conversely, in trade hubs, *waqf* in the form of shops, markets, caravanserais, or commercial capital became more prevalent. This principle is reflected in the use of '*urf* (local custom) as a basis for *ijtihad* in the Hanafi and Maliki schools, which recognize customary practices as a legitimate component of legal reasoning, provided they do not conflict with *sharia* principles (Andriyaldi, 2022). These historical patterns demonstrate that *waqf* *fiqh* is fundamentally a normative framework with significant elasticity, rather than a static structure detached from societal dynamics. This understanding forms a crucial foundation for contemporary scholars in formulating modern *waqf* law.

Entering the twenty-first century, social and technological transformations have introduced new challenges for *waqf* jurisprudence. The emergence of novel assets such as shares, *sukuk*, intellectual property, and digital assets like cryptocurrencies necessitates a reexamination of what constitutes a valid *waqf* object. Recent studies indicate that the paradigm of *waqf* has shifted from a conservative focus on



fixed assets to a productive framework emphasizing sustainable benefit regardless of the asset type (M. Ali & Hassan, 2022). Within this context, the fatwa issued by the Indonesian Ulema Council (MUI) permitting cash waqf represents a milestone, opening interpretive space that aligns more closely with Hanafi and Maliki approaches, which historically legitimized movable waqf. This approach is rooted in the principle of *maslahah mursalah*, which prioritizes communal benefit as a central indicator in determining legal permissibility. Consequently, the new paradigm affirms that modern waqf is no longer merely concerned with physical substance but with the asset's ability to generate sustainable social and economic benefits.

Another major development shaping contemporary waqf practice is the professionalization of waqf management. Whereas classical waqf was typically administered by individuals or local institutions, modern waqf increasingly involves formal bodies such as the Indonesian Waqf Board, Islamic financial institutions, and corporate entities. One of the most innovative developments is the establishment of Cash Waqf Linked Sukuk (CWLS), which allows cash waqf to be invested in secure state instruments, while returns are directed toward social and economic programs (Laila et al., 2025). This transformation has shifted waqf jurisprudence from asset preservation toward productivity and empowerment, enabling waqf to contribute meaningfully to education, healthcare, economic development, and poverty alleviation. Such models also pose critical fiqh questions regarding investment compliance, risk management, *nazhir* accountability, and equitable profit distribution.

In the context of modern nation-states, governmental regulation plays an increasingly prominent role in waqf governance. Many Muslim-majority countries now have waqf legislation regulating administration, certification, oversight, and *istibdal* authority. These interventions raise jurisprudential questions regarding the extent to which the state can interfere with waqf assets traditionally regarded as irrevocable religious endowments. In practice, state-led *istibdal* often generates debate. Some contemporary scholars legitimize *istibdal* when such changes generate greater communal benefit and do not compromise the essence of waqf (Asni et al., 2024). Others remain cautious, fearing that extensive state intervention may pave the way for excessive commercialization. These discussions illustrate the necessity of harmonizing sharia principles with state regulation to prevent overlaps and conflicts of authority.

The potential of waqf to contribute to sustainable development is another critical consideration in contemporary jurisprudence. Numerous studies indicate that waqf can significantly support the Sustainable Development Goals (SDGs), ranging from poverty alleviation, educational advancement, healthcare provision, to social infrastructure development (Khan & Hassan, 2019). Consequently, waqf fiqh increasingly emphasizes social impact and sustainability rather than merely formal contractual compliance. Fiqh overly focused on textual formalities without considering social utility risks being irrelevant in the contemporary context. Here, *maqasid al-shariah* functions as an essential epistemological framework, ensuring that *ijtihad* in waqf remains oriented toward broad public benefit.

Classical *ikhtilaf* (juristic disagreement) continues to serve as a valuable intellectual resource for contemporary scholars. Differences among the imams, rather than being obstacles, provide legal flexibility and methodological options. For instance, to legitimize cash waqf, modern scholars frequently adopt Hanafi and Maliki opinions due to their compatibility with contemporary financial systems (Jafar et al., 2025). In the case of *istibdal*, some scholars favor the more permissive Maliki stance, allowing modification of waqf assets in pursuit of communal benefit. Such applications illustrate that fiqh is dynamic, employing processes of *talfiq* (combining opinions) and *tarjih* (prioritizing evidence) to maintain social relevance. This integrative approach demonstrates that classical jurisprudence remains highly significant for addressing complex modern issues, provided it is applied with methodological caution.

Contemporary waqf practices reveal real divergences in areas such as cash waqf, temporary waqf, *istibdal*, waqf for public interest, and the status of waqf property ownership. Cash waqf has sparked debate, as some scholars argue that waqf must involve non-consumable fixed assets, with cash failing to meet this criterion. However, recent research highlights cash waqf's potential as an effective economic tool, especially when managed productively to enhance community welfare (Abdullah Nadwi, 2012). Temporary waqf, or waqf *mu'qqat*, similarly raises questions about the essential requirement of perpetuity (*ta'bid*), though contemporary jurists recognize its utility in meeting short-term communal needs.

*Istibdal*, or the replacement of waqf assets with more productive ones, remains a contentious issue. Some scholars advocate *istibdal* to maintain sustainable benefits, particularly in rapidly urbanizing areas where strategic waqf assets may become underutilized (Mohammed Noor et al., 2023). Conservative

scholars resist such changes, fearing that the permanence of waqf could be undermined. Debates around waqf for public interest center on defining the scope of *maslahah 'ammah*, with some advocating broader interpretations to meet modern social needs, while others suggest strict limitations to prevent misuse.

The legal status of waqf property ownership also presents a significant issue, especially in countries such as Indonesia where formal legal certainty is essential. Positive law requires certification of waqf land to ensure formal legitimacy and prevent disputes. Research indicates that certification enhances public trust in waqf management while providing legal protection (Asyari et al., 2024). Nevertheless, debates persist regarding whether certification aligns with Islamic conceptions of waqf ownership, which regard assets as property of Allah or communal benefit rather than personal possession. This underscores the necessity of a holistic approach integrating classical *fiqh*, social realities, and modern legal requirements. Overall, the contextual dimension of waqf jurisprudence demonstrates that Islamic law possesses considerable capacity to respond to changing circumstances while retaining its core principles. Classical *ikhtilaf* offers a rich intellectual resource, enabling contemporary scholars to construct adaptive, responsive waqf legal frameworks aligned with *maqasid al-shariah* (Ayub et al., 2024). Consequently, the dynamics of waqf *fiqh* in the modern era underscore that sharia is not a static legal system but a living, evolving framework that develops in harmony with human progress and societal transformation.

### Implications and Direction of Harmonization

The multiplicity of juristic opinions (*ikhtilaf*) in waqf *fiqh*, while historically regarded as a richness of Islamic legal tradition, can pose challenges if not properly managed. Left unstructured, such differences can result in confusion, inconsistency, and even fragmentation in the administration and practice of waqf. Contemporary scholarship emphasizes that the diversity of opinion should not be seen as a barrier but as a resource for constructing a more adaptive and socially relevant waqf legal framework (Saputra, 2025). The challenge lies in harmonizing these opinions in a way that remains faithful to the objectives of sharia while addressing contemporary social and economic realities. Harmonization, therefore, is not about erasing differences but about creating coherent guidelines that ensure waqf fulfills its intended purpose and serves the public interest effectively (H. Abdullah et al., 2025).

A foundational step in the harmonization process is a clear understanding of the *maqasid al-shariah*. The *maqasid* approach emphasizes that the ultimate purpose of waqf is to generate benefit (*maslahah*), ensure the sustainability of these benefits, and express devotion to Allah through social and economic empowerment (Syarifuddin, 2021). Every juristic opinion, regardless of its school of thought, must be evaluated through this lens. For instance, permissive Hanafi positions on movable waqf or Maliki endorsements of temporary waqf (*mu'auqqat*) gain relevance in contemporary society not merely for their technical permissibility, but for their alignment with the broader objectives of maximizing communal welfare (Karim et al., 2023). This evaluative framework shifts the focus of waqf jurisprudence from purely legalistic compliance to the impact and sustainability of benefits, thereby providing a substantive criterion for resolving differences among scholars.

Collective *ijtihad*, or *ijtihad jam'i*, emerges as a critical mechanism for achieving harmonization. In the contemporary era, institutionalized jurisprudential bodies play an essential role in synthesizing diverse opinions into practical guidance for waqf administration. Institutions such as Indonesia's National Sharia Council (DSN-MUI) and the *Majma' al-Fiqh al-Islami al-Duwali* (OIC Islamic Fiqh Academy) exemplify the potential of collective *ijtihad* to mediate between classical positions and modern needs. By bringing together scholars from different *madhhabs* and socio-cultural backgrounds, these institutions facilitate deliberation that accommodates multiple viewpoints while striving for the strongest, most socially beneficial rulings. The outcome of collective *ijtihad*, therefore, is not a mere compromise but a reasoned *fatwa* that reflects the holistic objectives of waqf, balancing legal fidelity with social utility (Setia, 2018).

Flexibility and adaptation are integral to harmonization. While classical jurisprudence provides the foundational principles of waqf, contemporary circumstances—such as urbanization, modern financial instruments, and technological innovation—necessitate that waqf practitioners and policymakers recognize the adaptive potential inherent in *fiqh*. *Nazhir*, as well as governmental and non-governmental authorities managing waqf, must understand that *fiqh* contains a range of permissible options that allow for creative solutions without violating core sharia principles (Pusparini et al., 2025). For example, the adoption of cash

waqf linked to sukuk or other investment instruments requires interpreting classical rulings in light of maqasid objectives. Such flexibility, grounded in rigorous scholarship, enables waqf to respond to contemporary social and economic challenges while maintaining legal integrity (Mohamed & Akande, 2025).

Supporting regulations are a complementary pillar of harmonization. Effective waqf practice requires an alignment between fiqh rulings and legal frameworks established by the state. Governments and regulatory authorities must formulate policies that do not merely replicate traditional jurisprudence, but that also facilitate innovation, optimize waqf asset utilization, and account for the diversity of existing fiqh opinions (Smith, 1988). For instance, policies regulating istibdal (replacement of waqf assets) must ensure that such interventions maximize benefit without undermining the sanctity of the original waqf. Similarly, regulations that promote transparency, accountability, and certification of waqf assets enhance public trust and enable waqf to function as an effective tool for sustainable development (R. Hassan et al., 2022). Harmonization, therefore, is a multi-layered endeavor involving both scholarly interpretation and legal structuring, ensuring that waqf remains a dynamic instrument of socio-economic empowerment.

The implications of harmonization extend beyond administrative efficiency. Properly aligned waqf jurisprudence and regulations enhance the capacity of waqf to contribute to the Sustainable Development Goals (SDGs), such as poverty reduction, access to education, and healthcare provision (Al Hashmi, 2022). By emphasizing social impact and long-term benefit, harmonized waqf frameworks promote ethical resource management and equitable distribution. For instance, ensuring that cash waqf, temporary waqf, or assets under istibdal are deployed strategically to address pressing social needs reflects a maqasid-oriented perspective that prioritizes the common good (M. Abdullah, 2018). Harmonization thus positions waqf as a socially responsive institution capable of addressing contemporary challenges while preserving its spiritual and legal essence.

The role of education and awareness is also central to successful harmonization. Both nazhir and beneficiaries must be educated about the objectives of waqf, the rationale behind collective ijtiḥad, and the permissible scope of innovation under sharia. Misunderstandings regarding flexibility or adaptation may lead to skepticism, mismanagement, or even conflict within communities (Roux et al., 2025). Structured education initiatives, alongside transparent regulatory mechanisms, ensure that waqf practitioners are not only legally compliant but also strategically oriented to maximize benefit (Ayub et al., 2025). Such knowledge dissemination reinforces harmonization by aligning community expectations with scholarly guidance and legal frameworks, fostering cohesive and effective waqf practice.

Furthermore, harmonization requires a principled approach to reconciliation between classical ikhtilaf and contemporary practice. Differences in opinion, whether on money waqf, temporary waqf, istibdal, or public interest waqf, should be systematically analyzed in light of societal context, feasibility, and alignment with maqasid al-shariah (Syarifuddin, 2021). By prioritizing the opinions that most effectively serve communal benefit, scholars can create a ranked hierarchy of rulings that allows for pragmatic implementation without abandoning foundational principles. For example, the Hanafi and Maliki approaches that permit movable or temporary waqf provide precedents for legitimizing contemporary cash waqf and investment-linked models, thereby resolving potential conflicts that might arise if only the more restrictive Shafi'i or Hanbali positions were applied. This selective application underscores harmonization not as suppression of diversity but as methodological refinement for functional jurisprudence (Mulder, 2017).

Another key implication is the need for cross-sectoral collaboration in the governance of waqf. Effective harmonization is not confined to jurisprudential deliberation; it also involves collaboration among religious authorities, governmental agencies, financial institutions, and community stakeholders. Such collaboration ensures that waqf management strategies are coherent, efficient, and socially accountable (Abdul Rahman, 2021). For instance, coordinated efforts between regulatory bodies and nazhir can streamline asset certification, facilitate investment in socially beneficial projects, and prevent disputes (Junaid Athar Khan et al., 2025). This multi-stakeholder approach enhances both legitimacy and performance of waqf, ensuring that legal harmonization translates into tangible social impact. In terms of policy direction, harmonization also emphasizes forward-looking strategies that anticipate emerging challenges. Rapid technological advancements, globalization of financial markets, and evolving social needs require waqf frameworks that are proactive rather than reactive (Jafar et al., 2025). Policies and jurisprudential guidance must anticipate questions regarding digital assets, intellectual property, and hybrid financial instruments while remaining anchored in maqasid-oriented reasoning (Mustapha & Malkan, 2025). This proactive approach positions

waqf as a resilient, adaptable institution capable of maintaining its relevance in complex and rapidly changing environments.

Finally, harmonization has a spiritual dimension that complements its social and legal implications. By ensuring that waqf practice remains aligned with maqasid al-shariah, harmonization preserves the devotional purpose of waqf. The legal, administrative, and policy-oriented strategies are not ends in themselves but means to ensure that waqf fulfills its ultimate objective: the continuous generation of benefit as an act of worship. Such an integrated approach emphasizes that harmonization is holistic, encompassing legal, social, economic, and spiritual considerations in a manner that strengthens the integrity and effectiveness of waqf in contemporary society (Ardo et al., 2024). The harmonization of waqf jurisprudence and practice is essential to transform ikhtilaf from a source of potential confusion into a productive instrument for social, economic, and spiritual benefit. By anchoring harmonization in maqasid al-shariah, employing collective ijthad, promoting flexibility, and supporting regulatory frameworks, waqf can effectively respond to contemporary challenges without compromising its foundational principles. Properly harmonized, waqf becomes not only a vehicle for sustainable development but also a demonstration of the dynamic capacity of Islamic law to adapt, innovate, and maintain relevance across time and context (Fadhilurrahman et al., 2025).

## CONCLUSION

This research confirms that scholarly disagreements in waqf jurisprudence cannot be understood merely as practical legal differences, but rather as manifestations of epistemological, methodological, and historical divergences that shape the structure of Islamic legal reasoning. The research question of how disagreements arise and how these differences can be directed toward a harmonized framework is answered through an analysis that demonstrates that scholarly differences are rooted in fundamental distinctions in the assessment of texts, the construction of divine law, the hierarchy of evidence, and the scope of *maslahah* (beneficial interests) in the *istinbat* process. Schools that prioritize rationality (Hanafi and Maliki) tend to open up space for modern waqf innovations, while schools based on strict textualism (Shafi'i and Hanbali) emphasize the need for normative protection of the permanence of assets and clarity of *sighat* as the core of the waqf worship. The research's main findings demonstrate that disagreements are not obstacles, but rather epistemic resources that enable waqf jurisprudence to develop as an adaptive legal system. When read through the perspective of *maqāṣid al-sharī'ah*, this diversity of opinions provides a spectrum of legitimacy that can be utilized to develop contemporary productive waqf models—from cash waqf, waqf-linked sukuk, corporate waqf, to digital waqf—without abandoning the normative integrity of classical *fiqh* traditions. Thus, this study confirms that *maqāṣid* can function as a framework for cross-school harmonization that combines the authority of tradition with modern social needs.

Theoretically, this study expands the discourse on the ontology of *ikhtilaf* in waqf *fiqh* and proposes a new understanding that harmonization is not synonymous with legal unification, but rather a process of constructing a hierarchy of preferences based on social utility, coherence of evidence, and the relevance of *maqāṣid*. This has important implications for the development of a modern Islamic legal epistemology that demands a combination of normative fidelity and an adaptive response to global economic transformation. Practically, this research emphasizes the urgency of collective *ijthād* as an institutional instrument for unifying diverse opinions that are legitimate according to *fiqh*. Strengthening the capacity of *nazhir* (manazir), standardizing governance based on *maqasid* (maqasid), optimizing *istibdal* regulations, and reconstructing sharia audit instruments are strategic elements necessary for waqf to function as an institution for sustainable socio-economic empowerment. Alignment between fatwas, state policies, and institutional practices is a prerequisite for creating a credible, productive, and accountable waqf ecosystem.

The limitations of this research lie in its normative and literature-based nature, which fail to capture the implementation complexities that arise from the variation of waqf practices across countries, institutions, and social settings. Therefore, further research is needed to integrate empirical methods, institutional interviews, cross-country comparative case studies, and political economy approaches to examine how *fiqh* understanding is articulated in public policy and modern governance. Future research should also examine the implications of artificial intelligence, blockchain, and asset digitization on the *maqasid* framework, as these transformations have the potential to modify the epistemic structure of waqf *fiqh* in the future.



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