



Beyond Legal Validity: Family Endowment (Waqf Ahli) and the Governance of Family-Based Islamic Boarding Schools in Merangin Regency, Indonesia

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ABSTRACT

This study analyzes the implementation of family endowment (waqf ahli) from the perspective of Islamic law in family-based Islamic boarding schools (pesantren) in Merangin Regency, Jambi Province, Indonesia. The central problem is that pesantren assets originating from the founding family's property intersect with the concept of waqf ahli yet frequently face difficulties of legality and governance, so that legal validity in fiqh does not automatically translate into accountable management. Employing a qualitative, socio-legal design and a multi-case study of three pesantren—Sayyid Musthafa, Azzakariyah, and Al Aziziah—data were generated through participant observation, in-depth interviews, and documentation, and analyzed inductively through data condensation, display, and verification, with credibility secured through source and method triangulation. The findings show, first, that waqf ahli is a valid institution in fiqh, agreed upon across the four Sunni schools, consistent with maqāṣid al-sharī'ah, and recognized in Indonesian positive law. Second, its field implementation forms a spectrum of three models: a formal-productive model (Sayyid Musthafa), a traditional-social model (Azzakariyah), and a grant-institutional (hibah) model (Al Aziziah). cultural factor most dominant in traditional settings. Fourth, the practice substantively conforms to maqāṣid al-sharī'ah but does not yet fully satisfy the principles of good waqf governance, particularly transparency, horizontal accountability, and legal certification. The study's central contribution is the thesis that the legal validity of waqf ahli does not by itself guarantee optimal governance; maqāṣid and governance stand in a relation of ends and means that must advance together if the endowment's sustainable benefit is to be realized.

INTRODUCTION

The waqf, or Islamic endowment, occupies a strategic position within the social and economic system of Muslim societies. Conceptually, it is a legal act

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that withholds the corpus of an asset and channels its usufruct to a charitable purpose on a perpetual basis. In the classical construction of fiqh, the waqf is not merely an act of individual piety but an institutional instrument with long-term social consequences, and it is precisely this character of perpetuity that distinguishes it from other forms of giving such as ordinary alms (*sadaqah*) or gift (*hibah*).

Historically, the waqf functioned as a foundation for the provision of public goods. Educational institutions such as madrasas and universities, health facilities, waystations, and even water and road infrastructure were financed through endowment schemes, so that the waqf served less as a private religious practice than as a decentralized system of social financing that sustained Muslim communal life (Kuran, 2001; Çizakça, 2000; Hoexter, 1998). In several regions, the waqf even became a relatively autonomous pillar of a social economy that operated at arm's length from state power, providing property owners with a credible commitment device in exchange for social services (Kuran, 2001).

In the Indonesian context, waqf regulation developed significantly with the enactment of Law Number 41 of 2004 concerning Waqf, which emphasizes the professionalization of the *nāzir* (waqf administrator), administrative registration, and supervision by the Indonesian Waqf Board (Badan Wakaf Indonesia, BWI). This legal reform sought to integrate the waqf into the national legal system and to encourage transparent and productive management. In practice at the local level, however, implementation is frequently not yet aligned with the ideals of the regulation: many waqf assets remain undocumented and uncertified, administrators are not yet professional, and reporting to the BWI does not run optimally.

By its designation of beneficiaries, the waqf is classically divided into the charitable endowment (waqf *khairī*) directed at the public, the family endowment (waqf *ahli* or *dhurri*) directed at the founder's descendants and kin, and the mixed endowment (waqf *mushtarak*). This study focuses on waqf *ahli*, an institution that is valid and permitted in fiqh yet contested in modern scholarship. Where its distribution is confined to the family circle without a tangible contribution to the wider community, a number of critics argue that it narrows the social purpose of the endowment and, in the extreme, may harden into a defensive instrument for freezing family wealth or a disguised quasi-gift that evades public oversight (Layish, 1983; Baer, 1997; Kuran, 2001).

The controversy surrounding waqf *ahli* is also reflected in the international literature. Several modern Muslim states once restricted or reformed the family endowment on the ground that it obstructed a more equitable distribution of economic resources and preserved the concentration of assets within a single line of descent (Layish, 1983; Baer, 1997). The critique centers on the tendency of the family endowment to freeze assets within a kinship structure and to reduce the potential for broader social redistribution. Although the Indonesian context has characteristics of its own, this global discourse indicates that waqf *ahli* is not an institution free from theoretical or policy contestation, and that a purely normative-descriptive treatment risks overlooking precisely the critical dynamics that constitute the academic problem.

A further problem lies in the disjunction between regulation and implementation. Law 41/2004 and its implementing regulations provide a fairly comprehensive normative framework governing the position of the founder, the *nāzir*, and the management and supervision of the endowment; yet in empirical practice many endowed assets remain uncertified, administrators are not yet professional, and reporting to the BWI does not run optimally. From the standpoint of the sociology of law, this lack of synchrony between law in books and law in action shows that normative validity is not identical with empirical effectiveness, so that the problem of waqf ahli is at once a religious question and a question of legal effectiveness and asset governance (Friedman, 1975).

This tension between the sanctioned validity of waqf ahli and its potential deviation of function frames the present inquiry. From the standpoint of *maqāṣid al-sharī'ah*, the endowment aims to protect wealth (*ḥifẓ al-māl*) while generating sustainable social benefit; the critical question is whether a family endowment confined to kin still realizes those higher objectives, or whether it reduces the social telos of the *sharī'ah* to a private arrangement with minimal accountability. From the standpoint of the sociology of law, the recurrent gap between law in books and law in action indicates that normative validity is not identical with empirical effectiveness (Friedman, 1975).

Merangin Regency presents an instructive case. According to the Ministry of Religious Affairs' Waqf Information System (SIWAK), the regency records 928 waqf parcels covering roughly 166 hectares, of which only a small share – about 193 parcels, or some 21 percent – has been certified, leaving nearly four-fifths of the endowed land uncertified and therefore vulnerable to dispute and change of status where legal protection is not enforced. Against this backdrop, several *pesantren* in Merangin receive and manage assets that originate from their founding families and intersect with the concept of waqf ahli, so that questions of *ikrar* (endowment declaration), asset management, benefit distribution, and legal compliance converge in a single institutional setting.

Accordingly, this study addresses four research questions. First, what is the concept and legal position of waqf ahli in Islamic law, considered from the *fiqh* of waqf, *maqāṣid al-sharī'ah*, and Indonesian waqf regulation? Second, how is waqf ahli implemented in the *pesantren* of Merangin Regency across the dimensions of *ikrar*, asset management, benefit distribution, and legal compliance? Third, what normative, structural, and cultural factors determine that implementation? Fourth, to what extent does the practice conform to the objectives of Islamic law and to the principles of good waqf governance? The study's contribution is an empirically grounded diagnosis of the distance between the formal legitimacy of waqf ahli and its substantive managerial capacity, and an integrative thesis that reframes the study of the family endowment from a question of validity toward a question of governance and sustainable benefit.

THEORETICAL FRAMEWORK

Waqf and the Doctrine of Ḥabs al-Aṣl wa Tasbīl al-Manfaʿah

Etymologically, waqf derives from the Arabic waqafa, meaning to withhold, to stop, or to remain standing. In the terminology of the shariʿah it denotes withholding the corpus of an asset (ḥabs al-aṣl) and channeling its usufruct (tasbīl al-manfaʿah) toward a charitable end as a means of drawing near to God. This principle is the animating spirit of every form of endowment—whether khairī or ahli—and it is what distinguishes the waqf from gift and ordinary alms, in which the recipient acquires ownership rather than mere benefit (al-Zuhaylī, 1985; Mughniyah, 2011).

The distinguishing feature of waqf ahli lies in the beneficiary (mauqūf ʿalaih), which is restricted to the founder's designated family or descendants. When a person endows a plot of land to his children, then to his grandchildren, and so on, the endowment is valid and the usufruct belongs to those named in the declaration; yet the essence of the waqf as an act of worship and as a withholding of the corpus remains intact, so that the endowed property may not be sold, gifted, or inherited. Its scriptural basis is customarily traced to the Prophet's guidance to Abū Ṭalhah to direct the benefit of his most beloved property to his kin, and to the well-known endowment of ʿUmar ibn al-Khaṭṭāb at Khaybar, whose usufruct was directed, among others, to relatives—an indication that giving priority to family in the distribution of benefit has a foundation in the practice of the first generation of Islam (al-Zuhaylī, 1985; Kasdi, 2017).

Maqāṣid al-Shariʿah and the Purposes of the Waqf

The theory of maqāṣid al-shariʿah holds that Islamic law is oriented not only toward formal legality but toward the substantive objectives it seeks to realize, chief among them the protection of religion, life, intellect, lineage, and property (al-Syātibī, n.d.; Auda, 2008). Read through this lens, waqf ahli embodies two of these objectives directly: the protection of property (ḥifẓ al-māl), by shielding the continuity of family economic life, and the protection of lineage (ḥifẓ al-nasl), by preserving the bonds of kinship. Where the endowment sustains an educational institution, it further touches the protection of religion (ḥifẓ al-dīn) and of the intellect (ḥifẓ al-ʿaql).

Auda's (2008) systems reading of maqāṣid cautions, however, that the higher objectives are realized only within an institutional configuration that is open, purposeful, and accountable; a formally valid act that is severed from its purposes, or a purpose pursued without adequate means, both fall short. This furnishes the analytical bridge of the study: maqāṣid supplies the ends, while governance supplies the means, and the two cannot be assessed in isolation from one another.

Friedman's Legal-System Theory and the Effectiveness of Law

To explain why sound regulation does not always yield orderly practice, the study draws on Lawrence M. Friedman's (1975) theory of the legal system, which distinguishes three interacting components: legal substance (the norms and rules), legal structure (the institutions and personnel that operate them), and legal culture (the values, attitudes, and perceptions of the community toward law). The effectiveness of any legal arrangement depends on the alignment of

these three components; strong substance alone cannot guarantee compliance if structure is weak or if the surrounding legal culture resists it.

Applied to the waqf, this framework predicts that the observed variation among pesantren will not be explained by doctrine – whose validity is settled – but by differences in institutional capacity (structure) and in the values and perceptions that shape everyday practice (culture). The framework thus directs analytic attention away from the question of whether waqf ahli is valid and toward the question of why its implementation differs across otherwise similar institutions.

Principles of Good Waqf Governance

Finally, the study operationalizes the notion of accountable management through six widely used principles of good governance adapted to the waqf: transparency, accountability, participation, effectiveness, efficiency, and the rule of law (Anshori, 2005; Shomad, 2010). In the waqf setting, transparency concerns open financial reporting; accountability concerns both vertical reporting to the BWI and horizontal answerability to the community of beneficiaries; participation concerns the involvement of stakeholders beyond the founding family; and the rule of law concerns certification and documentary certainty. These principles are treated in this study not as a secular imposition alien to the endowment but as the operational articulation of the shari'ah's own commands to safeguard trust (amānah) and to preserve property.

Prior Studies and the Position of This Research

Prior scholarship on the Indonesian waqf has concentrated overwhelmingly on the charitable endowment and, more recently, on productive and cash waqf as instruments of economic empowerment (Kasdi, 2017; Mubarak, 2008). Where the family endowment has been treated at all, it has often been read dichotomously – either defended as a valid act of piety or criticized as a device for freezing family wealth – without close empirical attention to how it is actually administered within a living institution. The comparative and historical literature on the family waqf, meanwhile, has illuminated its role in succession strategy and asset protection in the Ottoman and North African contexts (Layish, 1983; Baer, 1997; Hoexter, 1998), but has rarely examined the family endowment as the financial backbone of a contemporary educational institution.

This study is positioned in that gap. By taking the family-based pesantren as its locus and by integrating four analytic frameworks – the fiqh of waqf, maqāsid al-shari'ah, Friedman's legal-system theory, and the principles of good governance – it seeks to explain not merely whether waqf ahli is valid, but how it is implemented, why implementation differs across otherwise comparable institutions, and how far it aligns with both the objectives of the shari'ah and the demands of modern governance. The integration of these four lenses is intended to move the analysis beyond the validity debate toward a governance-oriented account of sustainable benefit.

METHODOLOGY

This study employed a qualitative approach with a socio-legal (juridical-empirical) research design and a multi-case study of three sites, intended to generate an in-depth account of waqf ahli as it is actually practiced rather than to test a predetermined hypothesis. The socio-legal design was chosen because the research questions concern the living operation of law—how ikrar, asset management, benefit distribution, and compliance actually unfold within an institution—which is better recovered through sustained field engagement than through instruments that presuppose the variables in advance.

Three pesantren in Merangin Regency were purposively selected to represent a spectrum of asset-management practice: Pondok Pesantren Sayyid Musthafa in Tabir District, Pondok Pesantren Azzakariyah in Renah Pembrap District, and Pondok Pesantren Al Aziziah in Muara Siau District. Participants were drawn from three vantage points on the endowment process—administrators and nāẓir (chairpersons and foundation officers), family members and managers, and members of the beneficiary community—allowing triangulation of the institutional, managerial, and lived perspectives on the same practice.

Table 1. Research sites and institutional profile

Pesantren (district)	Institutional role	Asset status	Documented condition
Sayyid Musthafa (Tabir)	Family foundation; productive waqf	Certified waqf (Akta Ikrar Wakaf)	Nursery enterprise and cooperative; benefit distribution moving toward mixed (mushtarak) type
Azzakariyah (Renah Pembrap)	Family foundation as legal-entity nāẓir	Endowed, largely uncertified	Predominantly oral, trust-based ikrar; strong educational orientation approaching charitable (khairī) type
Al Aziziah (Muara Siau)	Youngest institution; asset division in formation	Family gift (hibah), not yet converted to waqf	Structural readiness and openness enabling early ordering of asset status

Source: processed from field data, 2026.

Three complementary techniques were used. Participant observation captured management practice, the condition of assets, and the interaction between founding families and the wider institution. In-depth, semi-structured interviews explored how the endowment declaration, asset management, and benefit distribution were understood from each vantage point. Documentation review covered endowment deeds (Akta Ikrar Wakaf), land certificates, foundation charters, and management records, providing a corroborating, historically anchored layer of evidence.

The three sites were chosen not only for accessibility but because, taken together, they span the range of asset-management practice the study sought to explain. Sayyid Musthafa, an older institution operating under a legally constituted foundation with certified assets, anchors the formalized end of the range; Azzakariyah, a traditional pesantren grown from local scholarly initiative and communal support, represents the trust-based end; and Al Aziziah, the youngest of the three, represents an institution still forming its asset arrangements and therefore able to illuminate the earliest, most malleable stage of the process. Merangin Regency itself provides an apt setting, since its social life still upholds the *adat bersendi syarak, syarak bersendi kitabullah* philosophy in which custom is grounded in the *sharī'ah*, so that endowment practice is embedded in a living religious culture rather than in administrative routine alone.

Data were analyzed inductively through an iterative flow of data condensation, display, and conclusion drawing/verification, repeated until conclusions were consistently supported across sources. Analytic rigor was supported through source triangulation—cross-checking administrator, family, and community accounts against documentary records—and method triangulation combining observation, interview, and documentation. Informed consent was obtained from all participants, identifying details were handled confidentially, and a summary of findings was returned to the participating institutions as a form of member-checking.

FINDINGS AND ANALYSIS

The Concept and Legal Position of Waqf Ahli

The first finding concerns the concept and legal position of *waqf ahli*, and it is unambiguous: the family endowment is a valid and well-established institution in Islamic law. As a species of *waqf*, it must satisfy the four pillars agreed by the majority of jurists—the founder (*wāqif*), the endowed asset (*mauqūf*), the beneficiary (*mauqūf 'alaih*), and the declaration (*ṣighah*)—together with their attendant conditions. In *waqf ahli* the condition attaching to the beneficiary receives particular emphasis: the recipients must be identifiable and existent kin, so that the trans-generational transfer of benefit proceeds in an orderly fashion and does not generate disputes among heirs.

Although the four Sunni schools differ on the status of ownership after endowment and on whether the *waqf* is binding and perpetual, they converge on the validity of *waqf ahli*, since giving priority to kin in the distribution of benefit is a form of charity the *sharī'ah* commends. That convergence is summarized in Table 2.

Table 2. Positions of the four Sunni schools on the waqf and the validity of waqf ahli

School	Ownership after endowment	Nature of the waqf	Waqf ahli
Ḥanafī	Remains the founder's property	Not binding (Abū Ḥanīfah); binding per his two leading disciples	Valid
Mālikī	Remains the founder's, but he is barred from disposal	Binding; may be time-limited (mu'aqqat)	Valid
Shāfi'ī	Leaves ownership; becomes God's	Binding and perpetual	Valid
Ḥanbalī	Leaves the founder's control	Binding and perpetual	Valid

Source: adapted from al-Zuhaylī (1985), Mughniyah (2011), and Shomad (2010).

A point of governance significance already surfaces at the doctrinal level. Although the majority of jurists do not count the nāzir among the pillars of the waqf, they agree that the founder must appoint one to manage and supervise the endowed asset, and that the nāzir may be the founder himself, the beneficiary, or a third party (al-Zuhaylī, 1985). In the family endowment this creates a recurrent overlap between the roles of beneficiary and manager, since the appointed nāzir is frequently drawn from the founder's own kin. That overlap—benign in doctrine—becomes, at the level of governance, the precise point at which transparency and the separation of functions must be secured, and it is the point at which the field data below reveal the sharpest tension between validity and accountability.

Two further conceptual points anchor the analysis. First, waqf ahli must be distinguished from gift (hibah): the endowment is irrevocable and its corpus leaves the founder's private ownership, whereas the beneficiaries of a family endowment hold only the usufruct and can neither sell, inherit, nor gift the corpus. Where a family endowment is administered informally, without transparency and accountability, the boundary between waqf and gift blurs and the arrangement risks degenerating into a disguised quasi-gift—precisely the deviation the classical critics feared. Second, from the standpoint of maqāṣid, waqf ahli carries a legitimate double benefit, protecting both the family's economic continuity (ḥifẓ al-māl) and the bonds of kinship (ḥifẓ al-nasl); it cannot, therefore, be read narrowly as a negative device for freezing family assets. The conclusion of this first question is thus a conditional one: waqf ahli is valid in fiqh, consistent with maqāṣid, and grounded in Indonesian positive law through Law 41/2004 and Article 30 of Government Regulation 42/2006—but its validity demands accountable governance if the objectives of the shari'ah are genuinely to be realized.

Implementation across the Three Pesantren: A Spectrum of Three Models

The second finding maps how waqf ahli is actually implemented across the three pesantren. Far from a uniform practice, implementation forms a spectrum that can be organized into three complementary models of family-based Islamic educational asset management, distinguished chiefly by the degree of formalization of the ikrar and by administrative compliance rather than by any difference in doctrinal validity.

At Pondok Pesantren Sayyid Musthafa the practice is formal-productive: the endowment has been formalized through an Akta Ikrar Wakaf and land certification, the asset is developed productively through a nursery enterprise and a cooperative, and the distribution of benefit moves toward the mixed (mushtarak) type, combining family and public benefit. At Pondok Pesantren Azzakariyah the practice is traditional-social: the ikrar is largely oral and trust-based, management runs through a family foundation acting as a legal-entity nāzir, and benefit distribution approaches the charitable (khairī) type with a dominant educational orientation. At Pondok Pesantren Al Aziziah the practice is grant-institutional: the land is held under family gift (hibah) status and has not yet been converted into waqf, yet it is managed with a family character that resembles waqf ahli, and the institution's youth and structural readiness make it well placed to convert its asset status early. Table 3 summarizes the three models.

Table 3. Three Models Of Family-Asset Management In The Studied Pesantren.

Dimension	Formal-productive (Sayyid Musthafa)	Traditional-social (Azzakariyah)	Grant-institutional (Al Aziziah)
Ikrar	Written deed + certification	Largely oral, trust-based	Gift (hibah) deed, not yet waqf
Management	Productive (nursery, cooperative)	Family foundation as nāzir	Family-managed; asset division forming
Benefit	Moving toward mixed (mushtarak)	Approaching charitable (khairī)	Family character resembling waqf ahli
Compliance	High administrative compliance	Certification still pending	Conversion of status still pending
Key risk	Concentration of family roles	Weak legalization	Gift status and transparency

Source: processed from field data, 2026.

The three models are best read as points along a single continuum rather than as isolated types. At one end, Sayyid Musthafa develops the endowed asset productively – through a nursery enterprise and a cooperative whose returns support the pesantren – so that the family endowment edges toward the mixed (mushtarak) form in which family and public benefit are interwoven. At the other end, Azzakariyah concentrates the benefit on education, so that its practice edges toward the charitable (khairi) form, with family involvement expressed institutionally through the foundation rather than through direct economic participation. Al Aziziah, the youngest institution, occupies an earlier position on the same continuum: its assets remain under gift status, but its structural readiness and cultural openness position it to regularize that status before management patterns harden. What unites the three is that the family character of stewardship is placed at the service of an educational mission, which is what distinguishes the pesantren case from the conventional image of the family endowment as a device of private asset protection.

The contrast between the sites also reveals two distinct types of legal consciousness. Sayyid Musthafa exhibits a high administrative legal consciousness, expressed through the written endowment deed and certification, whereas Azzakariyah displays a religious legal consciousness that grounds validity in the sufficiency of an oral declaration under fiqh. Both are valid, but their implications for legal certainty diverge sharply: a written, certified ikrar affords far stronger protection against future dispute, particularly at moments of generational succession, disagreement among heirs, or a change in the function of the asset. Notably, the internal governance picture cuts across the administrative one. Sayyid Musthafa, though administratively advanced, faces a higher concentration of family roles, while Azzakariyah, through a foundation structure that separates patrons, managers, and supervisors, holds greater latent potential for institutional oversight – so that each pesantren's strengths and weaknesses are complementary rather than absolute.

Across the four examined dimensions – ikrar, asset management, benefit distribution, and legal compliance – the three pesantren are uniformly valid in fiqh but differ in their compliance with positive law. The dimension of declaration and administrative compliance is the sharpest point of difference: Sayyid Musthafa is markedly ahead because its assets are certified, whereas Azzakariyah and Al Aziziah still face challenges of legalization. The validity of the endowment in fiqh, by contrast, is the common ground among them. Implementation therefore cannot be judged in black-and-white terms as either conforming or deviant; it sits within a dynamic process between normative ideals and social reality, in which written ikrar and certification confer a substantially stronger protection against dispute than oral declaration, even though both are valid.

Determinants of Implementation: Normative, Structural, and Cultural Factors

The third finding identifies the determinants of implementation, analyzed through three interacting factors that correspond to Friedman's (1975) legal-system components. The normative factor – the substance of fiqh and positive law – supplies a strong and harmonious legal foundation and tends to be

constant, since the underlying rules are already available. The structural factor – the capacity of the nāzir, the foundation, and the roles of the Office of Religious Affairs (KUA), the National Land Agency (BPN), and the BWI – determines whether the administration of the endowment is orderly. The cultural factor – the authority and charisma of the kiai, the culture of trust, kinship ties, and the community's perception of the waqf as a private matter – determines both the character and the continuity of the endowment.

The analysis yields a crucial observation: each factor is double-edged, functioning simultaneously as an enabler and a constraint. The authority of the kiai and the culture of trust sustain the endowment, yet they also inhibit administrative order by fostering the perception that formal documentation is unnecessary. A registered family nāzir supports management, yet the concentration of family roles can weaken oversight. Table 4 arranges these determinants by their enabling and constraining aspects.

Table 4. Enabling and Constraining Determinants Of Waqf Ahli Implementation

Aspect	Enabling	Constraining
Normative	Clear fiqh basis and harmonized norms	Low regulatory literacy and governance gaps
Structural	Registered nāzir/foundation, asset division, state agencies (KUA, BPN, BWI)	Limited access, capacity, and financing
Cultural	Kiai authority, trust, solidarity, openness (younger generation)	Perception of the waqf as private; low administrative literacy

Source: processed from field data, 2026.

The structural factor deserves particular emphasis because it is where state institutions enter the endowment process. The Office of Religious Affairs (KUA) records the endowment declaration and issues the pledge deed; the National Land Agency (BPN) certifies the endowed land; and the BWI registers nāzir and receives their reports. Where these channels are engaged, as at Sayyid Musthafa, the endowment acquires documentary certainty; where they are not, as at Azzakariyah and Al Aziziah, the asset remains exposed. The structural factor is thus the decisive variable distinguishing the administratively orderly pesantren from the rest, and it is also the most tractable, since it can be strengthened through capacity-building and facilitation without disturbing the cultural fabric of the institution.

This dual character has an important methodological implication: intervention cannot proceed by simply removing the constraining factors, because they are often the reverse side of the enabling ones. The kiai's authority cannot be eliminated, for it is itself a pillar of the endowment's continuity. What is required is a transformative approach that channels the positive side of each factor while minimizing its negative side. Among the three, the cultural factor exerts the strongest influence in traditional settings such as Azzakariyah, while

the structural factor distinguishes the administratively orderly pesantren from those that are not. The most strategic leverage point for improving implementation therefore lies in strengthening structure and gradually transforming culture, as the case of Al Aziziah illustrates: where structure is ready and culture is open, the ordering of asset status proceeds more easily.

Conformity with Maqāṣid al-Sharī'ah and Good Waqf Governance

The fourth finding assesses the practice against two yardsticks – maqāṣid al-sharī'ah and good waqf governance – and arrives at the study's central thesis. Substantively, all three pesantren conform to the maqāṣid: their assets are devoted to education and communal formation, touching the protection of religion, intellect, property, and lineage. Procedurally, however, when measured against the six governance principles, the three still exhibit a gap, particularly in the transparency of financial reporting, in horizontal accountability to the BWI, and in part in the rule of law as expressed through certification. Table 5 presents the integrated assessment.

Table 5. Integrated Assessment Of Conformity Across The Three Pesantren

Dimension	Sayyid Musthafa	Azzakariyah	Al Aziziah
Maqāṣid conformity (substantive)	High	High	High
Governance conformity (procedural)	Moderate → high	Moderate	Moderate → high
Strength	Legality & productivity	Social capital & education	Structural readiness & productivity
Weakness	Transparency & role separation	Legalization & transparency	Gift status & transparency
Overall	Conforms, with notes	Conforms, with notes	Conforms, with notes

Source: processed from field data, 2026.

The relationship revealed by this assessment is one of ends and means. Maqāṣid al-sharī'ah sets the objective to be attained; good governance provides the means to attain it effectively and sustainably. An asset that conforms substantively to the maqāṣid but is weak in governance faces a risk to its continuity, since without transparency and accountability the attainment of the sharī'ah's objectives becomes fragile; conversely, sound governance without a maqāṣid orientation loses its meaning and degenerates into dry procedural formality. The application of transparency and accountability is therefore not a secular demand foreign to the waqf but the operational articulation of the sharī'ah's own command to safeguard trust and preserve property. The three assessments are complementary and show that no practice is flawless: Sayyid Musthafa must strengthen transparency and the separation of roles; Azzakariyah must accelerate certification and documentation; and Al Aziziah must convert its

gift status into waqf—while, for all three, horizontal accountability through periodic reporting to the BWI is a shared need.

The separation of the pesantren's operating funds, the proceeds of the endowment, and the private income of managers is, in this light, more than a bookkeeping nicety; it is an application of *sadd al-dharī'ah*, the blocking of means that could lead to harm, since a blurred boundary among these funds is precisely what opens the door to conflict of interest and to the drift toward quasi-gift. Framed this way, good governance is not an external constraint upon the endowment but a safeguard internal to its religious purpose. When the community grasps that orderly administration and openness are themselves part of the trust (*amānah*) that the *sharī'ah* commands, compliance is likely to be adopted voluntarily rather than resisted as bureaucratic imposition—and the pesantren, as a respected institution, is well placed to model an asset management that unites juridical validity, conformity with the *maqāṣid*, and sound governance.

DISCUSSION

Taken together, the four findings reframe the problem of the family endowment. The shortfall in the governance of pesantren assets in Merangin is not primarily a deficit of doctrinal validity or of communal goodwill, but a structural gap between the formal legitimacy of waqf ahli and its substantive managerial capacity. This distinction matters because it points toward a different class of intervention than doctrinal instruction alone. Read through Friedman's (1975) framework, the variation among the three pesantren is explained not by *fiqh*—whose validity is a settled common ground—but by differences in structure and culture, exactly as the theory predicts. The finding that additional structural readiness (as at Al Aziziah) or administrative formalization (as at Sayyid Musthafa) changes the quality of management, while doctrine remains constant, confirms that the leverage lies in the structural and cultural components rather than in the normative one.

The *maqāṣid* framework, in turn, clarifies why substantive conformity does not by itself secure sustainable benefit. Auda's (2008) systems reading insists that the higher objectives are realized only within an accountable institutional configuration; an endowment that serves education yet lacks transparent reporting and a clear separation between family, foundation, and endowment assets remains exposed to the very risks—dispute, erosion of legitimacy, and drift toward quasi-gift—that the classical and modern critics of waqf ahli identified (Layish, 1983; Baer, 1997; Kuran, 2001). The pesantren case, however, qualifies that critical literature in an important way. Whereas the critique of family endowment developed largely around the freezing of private wealth, in the pesantren setting waqf ahli functions as a support for an educational institution that serves the wider community, so that the family character does not necessarily carry the negative connotation the conventional critique assumes. This contextual nuance is a theoretical contribution of the study: waqf ahli in a

pesantren is better read as a hybrid that channels family stewardship toward public educational benefit than as a mere device of asset protection.

The comparative reading of the three models also yields a practical lesson about the timing of asset ordering. Al Aziziah, the youngest of the three, has the best opportunity to regularize the legal status of its assets early, before management culture hardens and while the institutional structure is still forming; pesantren that order their assets from the outset avoid the protracted legalization difficulties experienced by Azzakariyah. The three cases thus offer both a preventive and a corrective lesson for the management of pesantren assets in Merangin, and the differentiated recommendations that follow from them – strengthening transparency and role separation where administration is already orderly, and accelerating certification and documentation where it is not – are complementary rather than competing.

The originality of the study lies at the intersection of these two contributions. Methodologically, it integrates four analytic frameworks – the *fiqh* of *waqf*, *maqāsid al-sharī'ah*, the theory of legal implementation and effectiveness, and the principles of good governance – into a single construction capable of explaining not only whether *waqf ahli* is valid but how it operates and why outcomes differ across institutions. Substantively, it identifies a spectrum of family-based Islamic educational asset management running from certified *waqf* (Sayyid Musthafa), through community-trust-based *waqf* (Azzakariyah), to family gift with potential for conversion into *waqf* (Al Aziziah). This spectrum enriches a typology that has hitherto been treated dichotomously, and it grounds the study's core thesis – that juridical validity is not identical with the guarantee of optimal governance, and that *maqāsid* and governance form an inseparable relation of ends and means.

The findings also carry a concrete policy implication for Merangin. Against the recorded backdrop of some 928 *waqf* parcels of which only around a fifth are certified, the three pesantren mirror the wider regency pattern: substantive commitment to the objectives of the endowment coexists with a large unmet demand for legal certainty. The differentiated roadmap the study proposes is therefore not only an institutional prescription but a template for regency-level intervention, in which the state agencies concentrate on policy and fiscal facilitation – certification, registration, and reporting infrastructure – while the pesantren retain responsibility for technical stewardship and the transmission of the endowment's religious purpose. Separating these responsibilities allows accountability for each component to be measured independently and reduces the risk that either the substantive or the procedural dimension is neglected in the name of the other.

Several limitations qualify these conclusions. The qualitative, purposive design generates a rich, context-specific understanding of three coordinating sites rather than a statistically representative measure of the full population of pesantren in Merangin, and the financial and administrative figures reported here derive from interview and documentary evidence gathered during a bounded fieldwork period and should be read as indicative of institutional patterns rather than as audited data. These limitations point toward productive

directions for further inquiry: comparative testing of the three-model typology in other regencies, and longitudinal tracking of asset-status conversion and governance outcomes over time to test whether the differentiated recommendations in fact narrow the gap between substantive conformity and procedural governance.

Read as a whole, the discussion returns to the study's animating claim. The problem of waqf ahli in the Merangin pesantren is neither a problem of doctrine, which is settled, nor of intention, which is sincere, but of the institutional configuration that translates a valid and well-intentioned act into durable, accountable benefit. Where that configuration is present, as it is partially at Sayyid Musthafa and potentially at Al Aziziah, the endowment approaches its objectives; where it is thin, as at Azzakariyah, the endowment's substantive strength remains vulnerable. The task for policy and for the pesantren alike is therefore to build that configuration deliberately—treating transparency, documentation, and the separation of roles not as concessions to bureaucracy but as the very means by which the higher objectives of the shariah are secured across generations.

CONCLUSION

This study set out to explain the concept, implementation, determinants, and normative conformity of family endowment (waqf ahli) in the pesantren of Merangin Regency, and four conclusions follow directly from its four research questions. First, waqf ahli is a legally valid institution: it satisfies the pillars and conditions of the endowment, is agreed upon across the four Sunni schools, embodies the maqāṣid objectives of protecting property and lineage, and is expressly recognized in Indonesian positive law through Law 41/2004 and Article 30 of Government Regulation 42/2006—yet its validity demands accountable governance. Second, implementation across the three pesantren forms a spectrum of three complementary models—formal-productive at Sayyid Musthafa, traditional-social at Azzakariyah, and grant-institutional at Al Aziziah—uniformly valid in fiqh but differing in compliance with positive law, with the ikrar and administrative dimension the sharpest point of difference.

Third, implementation is determined by the interaction of normative, structural, and cultural factors, each double-edged; the cultural factor is most dominant in traditional settings, while the structural factor distinguishes the orderly pesantren from the rest, so that the most strategic leverage lies in strengthening structure and gradually transforming culture without dislodging the kiai's authority that constitutes the pesantren's social capital. Fourth, the practice substantively conforms to maqāṣid al-sharī'ah but does not yet fully satisfy the principles of good governance—particularly transparency, horizontal accountability, and certification—so that maqāṣid and governance are best understood as a relation of ends and means that must advance together.

On this basis the study offers differentiated recommendations calibrated to each institution's condition. For Sayyid Musthafa, the priority is to strengthen financial transparency and to enforce a clearer separation between the manager

(nāzir) and the beneficiary, including the separation of the pesantren's operating funds, the proceeds of the endowment, and the private income of managers, so as to foreclose potential conflicts of interest (sadd al-dharī'ah). For Azzakariyah, the priority is to accelerate the certification of endowed land, to regularize the documentation of declarations that have so far been largely oral, and to affirm the separation between endowment, foundation, and family assets. For Al Aziziah, the priority is to convert the status of the land from gift to endowment through declaration and certification, drawing on the readiness of its asset division. For all three, and for the offices of the Ministry of Religious Affairs, the National Land Agency, and the BWI in Merangin, the shared need is to intensify the socialization and facilitation of waqf-land certification through an approach rooted in religious value rather than mere bureaucratic obligation.

The study's central contribution is the thesis that the legal validity of waqf ahli does not by itself guarantee optimal governance, and that the study of the family endowment should accordingly shift from a preoccupation with validity toward the questions of governance and sustainable benefit. Theoretically, the study extends the literature on the management of non-formal religious institutions by demonstrating how the maqāṣid framework and Friedman's legal-system theory can jointly diagnose specific points of institutional weakness in a family-based pesantren. Practically, it offers nāzir, pesantren managers, and the offices of the Ministry of Religious Affairs, the National Land Agency, and the BWI in Merangin an evidence-based, differentiated roadmap: to separate endowment, foundation, and family assets and build transparent reporting where administration is already orderly, and to accelerate the certification and documentation of endowed land – framed as a religious duty of trust rather than a mere bureaucratic requirement – where it is not.

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