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Paradigm Shift in Indonesian Waqf Law: The Transformation of Traditional Waqf Toward Benefit-Based Monetary Waqf from A Utilitarian Perspective

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Abstract
The development of waqf law in Indonesia reflects a paradigm shift from traditional waqf centred on immovable property to productive, cash-based models oriented toward realising social and economic benefits. Therefore, this study aimed to analyse the transformation of the cash waqf law through Law No. 41 of 2004 on Waqf from the perspective of the utilitarianism of Jeremy Bentham and John Stuart Mill. A normative legal methodology was employed, drawing on legislative, conceptual, and philosophical approaches. The results showed that Law No. 41 of 2004 on Waqf shifted the legal orientation of waqf from asset preservation toward optimising benefits through the expansion of objects, productive management, and the development of monetary waqf as an instrument for the economic empowerment of the Muslim community. From Bentham's perspective, the transformation was reflected in the increased number of beneficiaries, the speed at which benefits were delivered, and the certainty generated by productive waqf. Meanwhile, Mill's perspective was evident in the concept's orientation toward improving public welfare through education, health, and economic empowerment in Indonesia. The application of utilitarianism to waqf law was constrained by several limitations, including the potential to marginalise minority rights, the inability to adequately safeguard the intentions of both the donor and the beneficiaries, and the failure to account for the spiritual dimension, which was not reduced to a utility-based calculus. The development of the law balanced the principle of social utility with Sharia values, which serve as the philosophical foundation of waqf.

Keywords: benefit; monetary waqf; transformation; utilitarianism; waqf.

Abstrak
Perkembangan hukum wakaf di Indonesia menunjukkan pergeseran paradigma dari wakaf tradisional yang berorientasi pada harta tidak bergerak menuju wakaf produktif berbasis uang yang berorientasi pada kemanfaatan sosial dan ekonomi. Penelitian ini bertujuan untuk menganalisis transformasi hukum wakaf uang melalui Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dalam perspektif utilitarianisme Jeremy Bentham dan John Stuart Mill. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual dan filosofis. Hasil penelitian menunjukkan bahwa Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf memberi pergeseran orientasi hukum wakaf dari preservasi aset menuju optimalisasi manfaat perluasan objek wakaf, pengelolaan produktif, serta pengembangan wakaf uang sebagai instrumen pemberdayaan ekonomi umat. Dalam perspektif Bentham, transformasi wakaf tercermin pada meningkatnya luas penerima

manfaat, kecepatan manfaat, dan kepastian manfaat yang dihasilkan oleh wakaf produktif. Sementara itu, perspektif Mill terlihat melalui orientasi wakaf terhadap peningkatan kualitas kesejahteraan masyarakat melalui pendidikan, kesehatan dan pemberdayaan ekonomi di Indonesia. Penerapan utilitarianisme memiliki kelemahan dalam menaungi hukum wakaf di Indonesia karena berpotensi mengabaikan hak minoritas, memerlukan perlindungan terhadap kehendak wakif dan penerima manfaat, serta belum mampu mengakomodasi dimensi spiritual wakaf yang tidak dapat diukur dalam kalkulus kemanfaatan. Pengembangan hukum wakaf di Indonesia perlu menyeimbangkan prinsip kemanfaatan sosial dengan nilai-nilai syariah sebagai landasan filosofis wakaf.

Kata Kunci: manfaat; transformasi; utilitarianisme; wakaf; wakaf uang.

Introduction

Waqf is an instrument of Islamic philanthropy that possesses unique characteristics compared to other religious-social instruments.[1] The concept is designed as a mechanism for managing assets used to generate sustainable benefits for society, unlike *zakat* and *sadaqah*, which are distributive and consumptive in nature. Waqf is a social funding instrument in Islamic economics, along with *zakat*, *infaq*, and *sadaqah*. The act of establishing a waqf embodies the principle of public interest (*maslahah*), as Islamic law aims to promote it. Teaching the concept is an act of worship that aims to help fellow human beings.[2] This naturally includes social and economic dimensions that benefit society, provided that Sharia law is not violated.[3] The classical conception in Islamic law holds that waqf is a legal act to retain the principal asset (*habs al-asl*) and channel the benefits (*tasbil al-manfa'ah*) for religious purposes.[4] This concept leads to a dimension in which waqf can serve as a vehicle for worship while also fulfilling socioeconomic functions. The existence of assets serves as a means of drawing closer to God and a mechanism for the equitable distribution of prosperity in society.

The formulation of a regulation or the amendment of a law must be based on and reflect the objectives. According to Gustav Radbruch, the objectives of the law are to realise justice as the primary value, followed by utility and legal certainty. These three values form the foundation of an ideal legal system. However, justice must be accorded primacy to preserve the law's essential

1 Mursal and others, "Peran Wakaf Dalam Mewujudkan Kesejahteraan Sosial: Perspektif Dari Tafsir Ekonomi Islam," *Journal El-Kahfi* 5, no. 1 (2024): 103–11, https://doi.org/10.58958/elkahfi.v5i01.234; Arie Rachmat Sunjoto and others, "Peran Wakaf Produktif Dalam Perekonomian," *Istiqro: Jurnal Hukum Islam, Ekonomi Dan Bisnis* 11, no. 2 (2025): 177, https://doi.org/10.30739/istiqro.v11i2.3365.

2 Nafisah Maulidia Chusma, Halimatus Sa'diyah, and Fitri Nur Latifah, "Wakaf Sebagai Instrumen Pengembangan Ekonomi Islam," *Economica: Jurnal Ekonomi Islam* 9, no. 1 (2018): 151–77, https://doi.org/10.30762/wadiah.v6i1.3946.

3 Ulya Kencana, "Konsep Hukum Pengelolaan Dan Pengembangan Wakaf Uang Berbentuk Saham Dalam Perseroan Terbatas," *Jurnal Wakaf Dan Ekonomi Islam* 8, no. 1 (2015): 2.

4 Prihadi Anas, "Wakaf Klasik Dan Implementasi Wakaf Di Indonesia," *ZISWAF ASFA JOURNAL* 1, no. 1 (May 31, 2023): 69–89, https://doi.org/10.69948/ziswaf.7.

function as an instrument for advancing the common good and promoting social justice.[5] Waqf is an instrument of worship in Islam that holds great significance for the social, economic, cultural, and religious lives of the Muslim community.[6] The word "*waqf*" derives from the Arabic "*waqafa*", which means to hold back, stop, remain in place, or stand firm. In Islamic legal terminology, waqf can be understood as the act of retaining ownership of productive assets. Therefore, the principal remains intact, and the benefits can be widely distributed in accordance with the purpose of waqf for the benefit of individuals, the community, religion, or the public at large.[7]

The concept of *waqf* was originally based on the ownership of physical fixed assets such as land and buildings.[8] This is reflected in the classification of waqf assets, specifically immovable property. The purposes of assets are also largely consumptive or one-time, including the construction of mosques, madrasahs, or cemeteries. After the physical structures were in place, issues often arose regarding the financing of routine and ongoing management, maintenance, and operations.

In line with global economic developments, the growing need for social financing, and the demand to optimise Sharia-compliant economic instruments, waqf law must adapt to current circumstances. This can be achieved through a series of efforts aimed at shifting the paradigm from traditional to modern. The idea expands the scope of waqf to include various types of productive assets, such as cash waqf, securities, intellectual property rights, and other financial instruments. An idea gaining attention is cash waqf, a form of waqf in which the principal is preserved. The proceeds from management are used for social, educational, and health purposes, as well as for the community's economic empowerment.[9]

Mill's utilitarianism complements the shift toward modern waqf described above by emphasising the quality of "higher pleasure" in the context of waqf.

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5 Dino Rizka Afdhali and Taufiqurrohman Syahuri, "Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (December 12, 2023): 555–61, https://doi.org/10.56301/csj.v6i2.1078.

6 Salman Ahmed Shaikh, Abdul Ghafar Ismail, and Muhammad Hakimi Mohd Shafiai, "Application of Waqf for Social and Development Finance," *ISRA International Journal of Islamic Finance* 9, no. 1 (2017): 5–14, https://doi.org/10.1108/ijif-07-2017-002.

7 Ahmad Irham Tajhi, Syafril Warman, and Zuhri Arif, "Legal Transformation of Movable Waqf: Contemporary Legal and Regulatory Perspectives in Modern Indonesia," *Islamijah: Journal of Islamic Social Sciences* 6, no. 1 (March 24, 2025): 1–13, https://doi.org/10.30821/islamijah.v6i1.16814.

8 Dodi Yarli Rusli and others, "Perkembangan Wakaf Uang Di Indonesia Dampaknya Terhadap Kemajuan Pesantren," *Jurnal Ekonomi Syaria Dan Bisnis Islam* 7, no. 1 (2023): 37–48, https://doi.org/10.30868/ad.v7i01.4049.

9 Muhammad Zulfikar Yusuf, "Optimalisasi Manajemen Wakaf Uang Di Indonesia: Analisis Kesenjangan Antara Potensi Dan Realisasi," *Journal of Islamic Economics and Philanthropy* 8, no. 4 (May 13, 2026): 269–86, https://doi.org/10.21111/jiep.v8i4.10.

This study is important for analysing whether the expansion of waqf norms and the paradigm shift are consistent with the concept of utility and have a more positive impact on society than previous norms. The utility of monetary waqf, in line with evolving policies, implies that a paradigm shift has become a fundamental necessity. *Waqf* would lose social relevance, theoretical legitimacy, and contribution to supporting the goal of a prosperous nation without a utility-based theoretical orientation.

A literature review written by Khairuddin titled "The Paradigm Shift in Waqf Regulation from a Progressive Legal Perspective" has reported a paradigm shift in legal regulation, namely the transition from a conventional and positivist paradigm toward a more progressive law through the enactment of Law No. 41 of 2004 on *Waqf*. This recognises immovable and movable property, such as money, securities, and intellectual property rights, as objects of waqf.[10] Similarly, the literature review in an article written by Muslihun titled "Shifts in the Understanding of Waqf in the Global Era and the Legal Implications" stated that changes in the understanding of waqf occurred due to the influence of globalisation, regarding the development of monetary waqf, productive waqf, and the shift of *waqf* from the *tabaru'* contract toward economic instruments.[11] The literature shows a gap in the analysis, as these studies place greater emphasis on legal and regulatory reform than on analysing the benefits of monetary waqf as a social welfare instrument. Therefore, this study examines the transformation of traditional waqf into a benefit-based monetary type through utilitarianism. The philosophical reasons why monetary waqf can be considered relevant, given that the concept can generate the greatest benefit for the broader community, are analysed alongside changes in legal rules.

Methods

This study uses a normative legal methodology that emphasises doctrinal analysis by examining, interpreting, and comparing legislation and relevant legal concepts. A philosophical approach is adopted to examine the substance of waqf regulations contained in Law No. 41 of 2004, Government Regulation No. 28 of 1977, and the Compilation of Islamic Law (KHI), to assess the coherence of legal reform in the principles of utility, justice, and legal certainty as formulated by Radbruch. In addition, a conceptual utilitarian framework derived from Jeremy Bentham and John Stuart Mill serves as the analytical basis for developing indicators of utility, including quantitative dimensions (extent and propinquity) and qualitative dimensions (higher pleasures), as well as for evaluating the professionalisation of *Nazhir* governance. This study analyses both primary and secondary legal materials.

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10 Khairuddin, "Pergeseran Paradigma Pengaturan Wakaf Dalam Perspektif Hukum Progresif," *Jurnal Al-'Adalah* 11, no. 1 (2014): 135–54, https://doi.org/10.24042/adalah.v12i1.180.

11 Muslihun Muslim, "Pergeseran Pemahaman Terhadap Waqaf Di Era Global Dan Implikasi Hukumnya," *Jurnal Istinbath Hukum Islam IAIN Mataram* 14, no. 2 (2015): 221–42.

Primary legal materials consist of Law No. 41 of 2004, Government Regulation No. 28 of 1977, and the Compilation of Islamic Law, while secondary legal materials include legal literature, scholarly books, and journal articles concerning productive waqf and utilitarianism. These materials were collected through a systematic literature review, including searches of legal databases, the cataloguing of relevant legal norms, and the selection of authoritative and reliable sources. The collected materials were analysed qualitatively using descriptive-comparative analysis and conceptual interpretation. This analytical process was carried out to identify differences in the legal norms governing the designation and objects of waqf, interpret the objectives of Law No. 41 of 2004 from the perspective of public benefit, and evaluate the implications of the differences through the utilitarian frameworks of Bentham and Mill to formulate an argumentative conclusion regarding the effectiveness of expanding the scope of waqf in promoting holistic public benefit and community empowerment.

The procedure further included mapping the chronology of waqf regulations, conducting external and internal source criticism, triangulating the relevant literature, constructing legal propositions, and operationalising indicators of output, outcome, and impact for productive waqf. The validity was supported by the consistency of legal argumentation, the traceability of citations, and the transparent, replicable cross-verification between primary and secondary legal materials.

Result and Discussion

The Old Paradigm vs. the New Paradigm of Waqf in Indonesia

Waqf in Indonesia reflects a paradigm shift from a traditional method of worship to an economic instrument oriented toward public welfare. Historically, the practice dates back to the early days of Islam's arrival in the Indonesian archipelago and has developed on the basis of classical *fiqh* principles without the support of comprehensive state regulations. During the period, waqf consisted only of land and buildings designated for mosques, Islamic boarding schools, madrasahs, and cemeteries. The main characteristics of the early period were a focus on consumption and social-religious activities, with management that remained relatively simple.[12]

The Dutch East Indies government began regulating waqf through various official gazettes published in 1905, 1931, 1934, and 1935 in the colonial era.[13] The regulations served only as administrative instruments for overseeing waqf land. This was because colonial policy was not aimed at developing waqf as a means of economic empowerment for the Muslim community, but rather at ensuring

[12] Nurul Faizah Rahmah, "Manajemen Pengembangan Wakaf Era Digital Dalam Mengoptimalkan Potensi Wakaf," *Jurnal Al-Awqaf* 14, no. 2 (2021): 139–54, https://doi.org/10.47411/al-awqaf.v14i2.153.

[13] Heru Susanto, "Sejarah Perkembangan Undang-Undang Wakaf Di Indonesia," *Jurnal Bilancia* 10, no. 2 (2016): 59–90, https://jurnal.uindatokarama.ac.id/index.php/blc.

that the activities did not conflict with the interests of the colonial government. Therefore, *waqf* continued to be understood as a ritual institution and social service with a very limited scope.

These limitations were gradually addressed after Indonesian independence. The government paid attention to *waqf* regulation. This was marked by the enactment of Law No. 5 of 1960 on Agrarian Principles (UUPA). Land waqf was first regulated in Article 49, Paragraph (3) of UUPA.[14] In this context, UUPA has recognised waqf land and stipulates that the regulation will be further addressed through government regulations. Therefore, UUPA has not provided provisions regarding the governance of waqf or the managing institutions.

After the enactment of UUPA, the Indonesian government implemented more concrete measures through Government Regulation No. 28 of 1977 on the Endowment of Privately Owned Land (PP 28/1977), which specifically regulates the endowment of privately owned land. This regulation served as a significant milestone in the systematic establishment of a legal framework for waqf land. GR 28/1977 regulates the procedures for waqf establishment, the status of *Nazhir*, the registration of waqf land, and legal protection for assets. However, the scope is limited to the *waqf* of privately owned land and does not accommodate the development of other forms of waqf. The government's approach to the utilisation of waqf land remains predominantly focused on the religious and social-religious sectors.

The development of waqf regulations following the issuance of Government Regulation No. 28 of 1977 was marked by the issuance of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI). In this context, KHI expanded the scope of waqf objects, which are no longer limited to land but include other assets of value and durability. The prevailing paradigm of waqf management remains conservative and has not fully positioned waqf as an instrument for the economic development of the Muslim community. The most fundamental change occurred during the Reformation era with the enactment of Law No. 41 of 2004 on Waqf (Law 41/2004), which regulates waqf and marks a turning point toward a new, more progressive, and productive understanding. Waqf has become an instrument of economic development and social welfare. This change is evident in Article 16, Paragraphs (2) and (3) of Law 41/2004, which expand the scope of waqf assets to include immovable and movable property, including cash waqf, securities, precious metals, intellectual property rights, and various other productive assets.[15]

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14 FX. Sumarja, "Perkembangan Pengaturan Objek Wakaf Dalam Perspektif Hukum Tanah Nasional Dan Hukum Islam," *LITIGASI* 14, no. 2 (February 1, 2016): 1908–36, https://doi.org/10.23969/litigasi.v14i2.78.

15 Dimas Fahmi Fikri and Afif Noor, "Reformasi Hukum Wakaf Di Indonesia: Studi Terhadap Wakaf Hak Atas Kekayaan Intelektual," *Jurnal Al-Ahkam* 22, no. 1 (2012): 43–60, https://doi.org/10.21580/ahkam.2012.22.1.3.

The expansion of waqf assets under Law No. 41 of 2004 has accommodated the concept of a time-bound waqf (*waqf mi'qqat*), which was previously unknown in practices oriented toward the principle of perpetuity. This provision demonstrates the openness of national waqf law to various fiqh perspectives emerging in the Islamic world, while providing flexibility for the development of modern instruments. Another important aspect is marked by the professionalisation of waqf management through the strengthening of the *Nazhir* role. Law No. 41 of 2004 also provides detailed regulations regarding the duties, rights, and obligations of Nazhir, as well as mechanisms for professional development. *Waqf* management is viewed as a professional endeavour that demands competence, accountability, and transparency. Law No. 41 of 2004 mandates the establishment of the Indonesian Waqf Agency (Badan Waqf Indonesia (BWI)) as an independent institution responsible for the guidance, supervision, and development of waqf at the national level to support a new paradigm for waqf law.[16]

The approach to strengthening the protection of waqf assets is outlined in Law No. 41 of 2004 through provisions governing certification mechanisms, oversight, and the enforcement of strict criminal penalties for the misuse of waqf assets. The strengthening of these institutional and law-enforcement aspects has led to a shift in the state's orientation from the old paradigm toward sustainable and productive waqf management. This shift is referred to as the new paradigm of waqf law. Therefore, the development of regulations reflects an evolution from an administrative, conservative approach to a more modern, professional, and public-interest-oriented one.[17]

This transformation can be understood in the context of Law No. 41 of 2004, which recognises waqf as a strategic instrument in national socioeconomic development. Therefore, the principal issue in the development of waqf law concerns the establishment of effective governance mechanisms, the optimisation of productive assets, the strengthening of the institutional capacity and legal status of Nazhir, the utilisation of waqf as an instrument for economic empowerment, and the promotion of sustainable community welfare.

Utilitarianism and the Development of Waqf Regulations in Indonesia

The shift in the legal conception of waqf represents a departure from the old paradigm, as reflected in the history of waqf. In the traditional understanding, waqf is viewed as an Islamic social financial instrument that is incompatible with development policies and does not make a significant contribution at the macro

16 Muhammad Irvan Septadiono and Gemala Dewi, "Peran Badan Wakaf Indonesia (BWI) Dalam Peraturan Wakaf Di Indonesia Sebagai Regulator Dan Operator," *Jurnal Cessie Ilmiah Hukum* 4, no. 1 (2025): 199–208, https://doi.org/10.55904/63ch8k59.

17 Ahmad Burhannudin, Miswanto, and Arif Fikri, "Badan Wakaf Indonesia Dan Moderasi Beragama; Transformasi Tata Kelola Wakaf Dalam Perspektif Hukum Islam Dan Regulasi Nasional," *Jurnal HEKSA: Hukum, Ekonomi Dan Studi Agama* 1, no. 1 (2025): 47–64, https://ejournal.tarqi.or.id/index.php/heksa/article/view/21.

level. BWI reports that the total amount of cash waqf collected nationwide in November 2024 has reached Rp 2.9 trillion. This achievement is a concrete result of the national "*Gerakan Indonesia Berwakaf*" (Indonesian Waqf Movement) program developed by BWI. The figure serves as an important indicator of the success of waqf outreach and education efforts among the public.[18]

The Ministry of Religious Affairs' Waqf Information System (SIWAK) has recorded 440,512 waqf land locations with a total area of 57,763 hectares for immovable waqf, particularly land. The latest data from BWI in 2023 showed that the growth of immovable waqf assets in the form of land reached 8% per year, indicating a continuous increase in the quantity.[19] The utilisation of waqf land spans various categories, reflecting the multifunctional role of these assets in supporting religious, educational, social, and productive economic activities.

The utilisation of waqf assets for religious purposes remains predominant, with 43.51% (191,000 sites), 27.90% (122,630 sites), and 4.35% (19,135 sites) designated as mosques, prayer rooms, and cemeteries, respectively. The majority of waqf land is focused on religious and socio-spiritual functions. The utilisation of waqf assets for education, social services, and productive economic activities remains comparatively limited. Educational purposes account for 10.77% of all waqf sites, with approximately 47,366 locations used for schools. Islamic boarding schools and socio-economic activities account for 4.10% and 9.37%, respectively, equivalent to 18,018 and 41,183 sites.

The Waqf Centre for Indonesian Development and Studies (WaCIDS) shows that waqf plays a role in Indonesia's economic growth.[20] In the contemporary pattern of waqf utilisation and the expanding allocation of assets beyond traditional religious purposes to include education, social services, and productive economic activities, utilitarianism offers a relevant analytical framework for assessing the extent to which legal reforms promote public welfare. As an ethical theory, utilitarianism evaluates the moral and legal legitimacy of actions according to the consequences, to maximise utility or welfare for the greatest number of people. Jeremy Bentham and John Stuart Mill are central figures who formulated and developed this theory. An analysis of the allocation of waqf assets under Government Regulation No. 28 of 1977 and Law No. 41 of 2004 can be conducted through the utilitarian framework of these two philosophers to examine how the principles of utility and happiness are implemented.

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18 Hanif Hawari, "Wakaf Uang 2024 Capai Rp 2.9T, BWI: Mudah-Mudahan Tahun Depan Bisa Rp. 5T," 2024, https://www.detik.com/hikmah/ziswaf/d-7652209/wakaf-uang-2024-capai-rp-2-9-t-bwi-mudah- mudahan- tahun-depan-bisa-rp-5-t.

19 Admin Redaksi BWI, "Tingkatkan Kesadaran Berwakaf Masyarakat, BWI, Kemenag Dan BAZNAS Gelar Waqf Run 2024," 2024, https://www.bwi.go.id/9509/2024/06/09/gerakan-indonesia-berwakaf/.

20 Sugiharto Purnama, "WACIDS: Wakaf Berkontribusi Besar Dalam Pertumbuhan Ekonomi Nasional," 2024, https://www.antaranews.com/berita/3961983/wacids-wakaf-berkontribusi-besar-dalam- pertumbuhan- ekonomi-nasional.

The principle of utility is a central pillar of Jeremy Bentham's utilitarianism, in which the moral value of an action is determined by its capacity to increase happiness or mitigate suffering. In this framework, an action is classified as "good" when happiness and pleasure are produced for the agent and others affected. Conversely, an action that causes pain, loss, or suffering is categorised as "bad." The concept of utility encompasses all forms of benefit, gain, satisfaction, and happiness, as well as anything that prevents loss, discomfort, or sadness.[21]

Bentham distinguishes between two spheres of utility analysis: the happiness of the individual and that of the community. Therefore, public norms or policies should be designed to maximise utility for people. Bentham's fundamental utilitarian axiom, "the greatest happiness of the greatest number," was first articulated in *A Fragment on Government* (1776) and developed in greater depth in *An Introduction to the Principles of Morals and Legislation* (1789). This principle views the function of law as an open instrument aimed at optimising utility. Therefore, the dynamics of regulation and social behaviour are directed toward the quantitative achievement of the common good.[22] Government Regulation No. 28 of 1977 essentially regulates waqf as a religious institution for worship or other public needs. Article 1, paragraph (1) of Government Regulation No. 28 of 1977 defines waqf as a legal act including the separation of a portion of assets in the form of land ownership, followed by the permanent institutionalisation for worship or other public needs, in accordance with the principles of Islamic teachings. Article 2 of Government Regulation No. 28 of 1977 emphasises the function of waqf to ensure the continued benefit of the property in accordance with the established purpose. In the general explanatory notes to the regulation, this policy governs social waqf for the public interest, including privately owned land, and does not cover family waqf. The purpose of enacting the regulation is to realise spiritual and material welfare and achieve a just and prosperous society in accordance with Pancasila, the philosophy of the Indonesian nation.

The provisions regarding waqf assets in Law No. 41 of 2004 have significantly revised, restructured, and expanded the concept and purpose of waqf,[23] going beyond the regulations in the previous Government Regulation. Article 1(1) of Law No. 41 of 2004 defines waqf as a legal act through which a donor (*wakif*) separates or transfers a portion of property to be used permanently or for a specified period, in accordance with the designated purpose for religious activities or the advancement of public welfare. Article 5 of Law No. 41 of 2004 explains that waqf plays a role in optimising the potential and economic benefits of assets for religious purposes and improving the welfare of the community. The general explanation of

[21] Atip Latipulhayat, "Khazanah: Jeremy Bentham," *Ilmu Hukum* 2, no. 2 (2015), http://jurnal.unpad.ac.id/pjih/article/download/7342/3375.

[22] J. S. Mackenzie, Jeremy Bentham, and F C Montague, "A Fragment on Government.," *The Economic Journal* 1, no. 2 (June 1891): 434, https://doi.org/10.2307/2956271.

[23] Khairuddin, "Pergeseran Paradigma Pengaturan Wakaf Dalam Perspektif Hukum Progresif," 38.

this regulation emphasises that waqf focuses on providing facilities for worship or social services and possesses significant economic power in supporting the progress of society. Article 22 of Law No. 41 of 2004 reports the designated uses of waqf assets, which include: (a) providing facilities and supporting the practice of religious worship; (b) supporting educational and health facilities, infrastructure, and activities; (c) assisting community groups such as the poor, children in need, and orphans, as well as awarding scholarships; (d) promoting the progress and economic advancement of Muslim community; and (e) promoting other forms of public welfare in accordance with Sharia principles and applicable laws and regulations.

Law No. 41 of 2004 has expanded the types of waqf assets to include land and movable property such as money, precious metals, securities, vehicles, intellectual property rights, and leasehold rights. A fundamental difference in the intended use of waqf assets shows that Government Regulation No. 28 of 1977 limited waqf objects to land ownership and emphasised religious functions and broad public needs, without an explicit focus on productive aspects, with general-purpose designations and an exception for family waqf.[24] Therefore, waqf possesses significant economic potential when managed productively to enhance the welfare of the Muslim community.

The designated purposes include a broad range of activities, such as places of worship, educational institutions, healthcare services, and social assistance programs, while recognising *waqf ahli* and *waqf khairi*. (1) Scope of Types of Waqf Assets, (a) Government Regulation No. 28 of 1977 regulates land as an object of waqf. (b) Law No. 41 of 2004 expands the scope of waqf objects to include immovable and movable property, including money, precious metals, securities, vehicles, intellectual property rights, and leasehold rights. (2) Emphasis on Economic and Productive Benefits (a) Regulation No. 28/1977 places greater emphasis on religious purposes and other general public needs, as well as "preserving benefits." The orientation toward the economic utilisation of waqf is less clearly articulated than Law No. 41 of 2004. (b) Law No. 41/2004 explicitly adds and emphasises "economic potential and benefits" and promotes the productive management of waqf. This is clearly evident in the provision regarding "the economic progress and improvement of the Muslim community." (3) Detail of Land Use Designation, (a) Government Regulation No. 28 of 1977: The designated purposes are more general in nature ("religious purposes or other public needs"). (b) Law No. 41 of 2004 specifies the allocation of funds in greater detail, covering places of worship, education, health care, social assistance for the poor, orphans, and scholarships, as well as the economic advancement of the Muslim community. (c) Family Waqf (*Waqf Ahli*). (d) Government Regulation No. 28 of 1977: Explicitly limits the scope of the regulation to "social waqf for

[24] Aswandi Aswandi et al., "Praktik Perwakafan Di Indonesia Analisis Komparatif Era Pasca Kemerdekaan Hingga Implementasi UU No. 41 Tahun 2004," *JPeHI (Jurnal Penelitian Hukum Indonesia)* 5, no. 02 (December 28, 2024): 1–18, https://doi.org/10.61689/jpehi.v5i02.669.

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the public" and does not include family waqf. (e) Law No. 41/2004 does not distinguish between *Waqf ahli* and *waqf khairi* for the relatives and public good, respectively. Therefore, *waqf ahli* is recognised under the law, provided the concept is consistent with the purpose and function of a *waqf*.

Table 1.1

Bentham's Dimensions	Government Regulation No. 28 of 1977	Law No. 41/2004	The Implementation of Bentham's Utilitarianism
Extent (in terms of the nlumber of waqf beneficiaries)	Limited to mosque congregants and madrasah students	Harnessing the potential of the entire community through socioeconomic programs to promote people's welfare and economic development.	BWI reports that the total amount of cash waqf collected nationwide as of November 2024 has reached Rp 2.9 trillion.[25]

Source: *Author Frameworks, 2026*

Provisions in the laws and regulations emphasise that two (2) types of cash waqf can be used: fixed-term and long-term. This is further regulated in Article 48(3) of Government Regulation No. 42 of 2008. The regulatory framework distinguishes between time-limited and perpetual cash waqf with respect to fund management. Time-limited cash waqf must be invested in banking products to safeguard the principal and ensure the return to *wakif* upon maturity. In contrast, perpetual cash waqf prioritises the productive utilisation of the endowed funds, with the Nazhir vested with broad authority to manage, invest, and develop the assets in furtherance of the waqf's objectives.[26]

Jeremy Bentham argued that the moral goal was to maximise happiness for the greatest number.[27] Happiness was measured quantitatively using a "hedonistic calculus" that accounted for intensity, duration, certainty, proximity, fertility, purity, and extent. For Bentham, the law serves as a tool to achieve four primary goals, namely subsistence, abundance, security, and equality. Bentham rejected individual or natural rights and subordinated justice to utility.[28]

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25 Admin Redaksi BWI, "Tingkatkan Kesadaran Berwakaf Masyarakat, BWI, Kemenag Dan BAZNAS Gelar Waqf Run 2024," 2024, https://www.bwi.go.id/10937/2024/11/22/tingkatkan-kesadaran-berwakaf-masyarakat-bwi-kemenag-dan-baznas-gelar-waqf-run-2024/ .

26 Dimyati and Ahmad Zainul Abidin, "Potensi Pemanfaatan Wakaf Tunai Untuk Pembiayaan Startup Bisnis Syariah," *Jurnal Ekonomi Dan Manajemen Syari'ah* 1, no. 1 (2025): 3, https://ejournal.stiesbabussalam.ac.id/index.php/ifadah/index.

27 Harun Ni'am, "Utilitarianism: History, Concepts and Roles," *Jurnal Ilmu Politik Hubungan Internasional* 5, no. 2 (2008): 89–108, https://doi.org/10.31942/spektrum.v5i2.490.

28 Jeremy Bentham, "An Introduction to the Principles of Morals and Legislation (Excerpt)," *Problemos* 8 (2013): 188–90.

Firstly, Government Regulation No. 28 of 1977, which focuses on waqf, including land owned and designated for religious worship or other public purposes, is consistent with efforts to maximise benefits. However, land constraints and less specific objectives may limit the extent of the impact on happiness. The goals of "spiritual and material welfare" and "a just and prosperous society" represent efforts toward collective happiness.

Secondly, Law No. 41 of 2004: This law reflects a more comprehensive effort to achieve the principle of "happiness for the greatest number," as articulated by Bentham. (a) The expansion of waqf assets to include movable property significantly increases the potential scope of the benefits generated. Money and other productive assets enable the attainment of benefits more quickly (propinquity) and with greater certainty (certainty) in achieving socioeconomic goals. (b) The emphasis on "economic benefits" and "improving the economic welfare of the community" is consistent with Bentham's goal, where the law should create sources of subsistence and abundance for society. The productive utilisation of waqf can quantitatively improve the material welfare of many people. (c) The breakdown of allocations for education, health care, and assistance to the poor indicates a more targeted approach aimed at reducing "pain" and increasing "pleasure" for the segments of society.

Table 1.2

Bentham's Dimensions	Government Regulation No. 28 of 1977	Law No. 41/2004	The Implementation of Bentham's Utilitarianism
Propinquity (In terms of the immediate benefits of the modern waqf paradigm)	Slow (takes time for physical construction) because its use is restricted	Quick (cash liquidity) as a form of emergency response	Cash *waqf* for disaster relief is evident in the disbursement of funds to disaster-affected communities.

Source: *Author Framework, 2026*

Cash waqf for disaster relief is reflected in the disbursement of funds to disaster-affected communities, with a processing time of less than 7 days. This was reported by the distribution of waqf funds to two disaster sites in West Sumatra in 2025. BWI distributed aid totalling Rp 50 million in 100 food packages, Rp 30 million to meet residents' urgent needs, and toiletries. The first batch was delivered in Guo, Karunji District, which is a zakat village known as a hub for MSMEs, agriculture, and fisheries.[29]

Law No. 41 of 2004, with the broader scope and emphasis on economic productivity, appears to be more "Benthamian" than Government Regulation No. 28 of 1977. This is because Law No. 41 of 2004 explicitly and effectively provides mechanisms to generate greater happiness for more people, through

[29] Tobroni, "Badan Wakaf Indonesia Salurkan Manfaat Wakaf Uang Bagi Korban Banjir Bandang Sumatera Barat," 2025, https://wakaf.bwi.go.id/news/bwi-salurkan-bantuan-sumatrabarat.

asset diversification and more specific objectives that support measurable improvements in material and social welfare.

John Stuart Mill reexamined the conception of utilitarianism, emphasising that the moral evaluation of an action depends on the intention to increase happiness and the quality of the experience. The highest ethical goal is to maximise collective welfare through the reduction of suffering, and to consider an action legitimate when the consequences enhance the welfare of society. Mill introduced a distinction between "higher" and "lower" pleasures. Higher pleasures include intellectual, moral, and emotional pursuits, such as scientific inquiry, appreciation of the arts, and critical dialogue. Meanwhile, lower pleasures are associated with physical and transient forms of gratification, including sensory enjoyment. The quality of happiness is more significant than its quantity, as asserted by the saying "it is better to be an unhappy Socrates than a happy pig". Mill stated the principle of self-sacrifice as an individual moral duty in the interest of enhancing the general happiness and developed the perspective of rule utilitarianism, in which consistent norms were adopted to promote the common good, without requiring a case-by-case calculation of benefits and costs each time.

Individual rights, rooted in the instincts of self-preservation and sympathy, are regarded as crucial instruments for ensuring the equitable distribution of welfare and preventing the happiness of the majority from dominating the interests of the minority. The implications of Mill's thought for economic activity demand that decisions regarding production, distribution, and consumption benefit a small group and make a tangible contribution to society's welfare. Therefore, utilitarianism functions as a framework for ethical evaluation and a normative foundation for equitable economic policy.

John Stuart Mill distinguished between "higher pleasures", comprising intellectual and moral aspects (such as science, culture, and social relationships), and "lower pleasures". In this context, individuals must be willing to make sacrifices for the common good, and the importance of protecting rights and ensuring justice as moral prerequisites is emphasised for collective happiness. Mill also leaned toward rule-utilitarianism, in which the moral rules followed would lead to greater overall happiness.[30]

Firstly, Government Regulation No. 28 of 1977: Even though the objective is "public welfare," the emphasis on religious worship and land ownership may be more oriented toward the sustainability of physical or spiritual functions. This can be interpreted as an effort to achieve happiness, but does not explicitly distinguish or promote "higher pleasure". The goal of "spiritual welfare" can be interpreted as a higher form of pleasure, without specifying any achievement in material terms.

[30] Ulma Roisa Azmi, Eka Rahmawati, and Marsudi Dedi Putra, "Measuring Happiness In Utilitarianism Teachings," *JURNAL HUKUM SEHASEN* 10, no. 2 (October 11, 2024): 489–94, https://doi.org/10.37676/jhs.v10i2.6751.

Secondly, Law No. 41 of 2004: This law is more in line with Mill's utilitarianism, particularly regarding the certainty that an action will produce the expected benefits. Therefore, the more certain the benefits are, the higher the utility of an action.[31] (a) The purpose of "the economic progress and advancement of the community" can be viewed from Mill's perspective. This is about meeting basic needs (lower pleasures) and creating a more intellectually and socially advanced society through economic empowerment. (b) Law No. 41 of 2004 recognises various types of movable property donated as waqf, allowing for greater flexibility in the management of monetary assets. This can support more adaptive regulations and generate sustainable, higher-quality benefits for the community. This implies that waqf funds are invested in relatively safe Sharia-compliant instruments. Investment returns are projected in measurable terms, economic benefits can be distributed periodically, and management is carried out by a professional institution supervised by the state.[32] (c) Even though Law No. 41 of 2004 does not explicitly address individual rights, the comprehensive provisions governing the management, supervision, and reporting of waqf reflect an effort to ensure that the benefits of waqf are distributed more equitably and transparently. This is in line with Mill's efforts to integrate justice as a means of achieving collective happiness and to minimise potential rights violations arising from mismanagement or embezzlement.

Table 1.3

Bentham's Dimensions	Government Regulation No. 28 of 1977	Law No. 41/2004	The Implementation of Bentham's Utilitarianism
Certainty (in cases where it is certain that the action will be beneficial)	Low (assets with a high risk of being neglected)	Higher (the existence of regulations adaptable to the maximum potential use of waqf, with BWI serving as an independent institution supervised by the state).	Cash waqf funds are placed in Sharia-compliant deposits to achieve a higher degree of certainty of utility, as their benefits are predictable and measurable. Law No. 41 of 2004 and its various implementing regulations have established this certainty by creating mechanisms for certification, oversight,

31 V Andri Hananto, "Utilitarianisme Dan Keseimbangan Antara Kepentingan Umum Dan Kepentingan Individu," *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 1 (2025): 86, https://doi.org/10.20885/iustum.vol32.iss1.art4.

32 Muliati Rezki Amalia, "Penerapan Dan Pelaporan Akuntansi Wakaf Pada Badan Wakaf Indonesia (BWI)," *Jurnal Aktiva* 7, no. 1 (2025): 52, https://doi.org/10.52005/aktiva.v7i1.286.

		auditing, management by professional trustees, and supervision by BWI.

Sources: Author Framework, 2026

The substance of Law No. 41 of 2004 reflects a more modern vision of utilitarianism in line with John Stuart Mill's utilitarianism. This waqf law maximises the quantity of happiness and improves the quality of the benefits derived from assets, **with a focus on** higher aspects of human welfare.[33]

Limitations of Utilitarianism in Waqf Governance

Utilitarianism holds that laws should be judged by the extent to which lawmakers produce the greatest benefit for society in practice. This shows that regulations on waqf must be evaluated based on social impact, the breadth of beneficiaries, management efficiency, and the sustainability of benefits. Normative utilitarianism would certainly view monetary waqf under Waqf Law as generating significant future benefits. However, several aspects can be criticised in the application of Bentham's utilitarian theory to Law No. 41 of 2004, particularly regarding its current, modern regulations.

Disregard for Minority Rights

Utilitarianism conceives happiness in terms of the welfare of the greatest number of people, where the maximisation of collective welfare serves as the principal criterion for the formulation of laws.[34] The idea that happiness is determined by the majority represented a groundbreaking development when Bentham outlined utilitarian thought. This has logical consequences for the interests of small groups or minorities, which may be sacrificed when deemed not to provide significant social benefits. In the context of waqf, this issue is reported by the example of a waqf for specific beneficiaries (*dzuri*). Article 22 of Law No. 41 of 2004 permits a waqf designated for places of worship, education, health, and the welfare of the community and the nation, as well as for specific beneficiaries, in accordance with the donor's wishes.[35]

Beneficiaries designated according to the donor's wishes would open the door to a waqf whose benefits may only be enjoyed by specific families or descendants. The principle of utility risks disregarding the donor's right to determine the waqf's purpose. Therefore, Bentham's utilitarian approach has limitations, as it tends to

[33] Miftah Farid, "Pembaruan Wakaf Dalam Undang-Undang No. 41 Tahun 2004 Tentang Wakaf Dan Relevansinya Dengan Pembaruan Wakaf Di Negara-Negara Muslim," *Jurnal Abhats Islam Ulil Albab* 6, no. 2 (2025): 120, https://doi.org/10.20885/abhats.vol6.iss2.art2.

[34] Endang Pratiwi, Theo Negoro, and Hassanain Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?," *Jurnal Konstitusi* 19, no. 2 (June 2, 2022): 275, https://doi.org/10.31078/jk1922.

[35] Firman Muntaqo, "Problematika Dan Prospek Wakaf Produktif," *Al-Ahkam* 1, no. 25 (April 25, 2015): 100, https://doi.org/10.21580/ahkam.2015.1.25.195.

assess the success of a waqf by the number of beneficiaries when the waqf is implemented under Law No. 41 of 2004. Waqf law must also respect the will of the donor as the owner of the property in the process of transforming the waqf.[36] This reports a weakness in Bentham's utilitarian theory since the concept applies to waqf law in Indonesia. This approach carries the risk of subordinating minority interests, particularly those of waqf donors (*wakif*) who choose to dedicate assets for the benefit of families or descendants through *waqf ahli*. Therefore, utilitarianism establishes happiness as the litmus test of morality, one that upholds impartial happiness or welfare experienced by everyone.[37]

Utilitarianism Requires the Protection of Rights

John Stuart Mill developed Bentham's ideas on utilitarianism. Specifically, Mill rejected the criticism that utilitarianism is a selfish ethical theory that prioritises only individual interests. There are two kinds of happiness in the human world: true and temporary.[38] The interests of the majority must not override individual rights, since utilitarianism must fulfil three elements: liberty, individual rights, and protection from the tyranny of the majority.[39] These three elements have become a subject of debate. Even though the waqf law, particularly Law No. 41 of 2004 as the regulatory framework, strongly promotes productivity, the question remains: Is the existing protection of the rights of the donor (*wakif*), the trustee (*Nazhir*), and the beneficiary (*mauquf alaih*) sufficient, or does the right fall short as a form of individual protection? Law No. 41 of 2004 permits changes to the designated purpose of waqf, the exchange of assets, and the productive development. These measures certainly represent a utilitarian approach aimed at maximising public benefit. What happens when the waqf donor's original intent changes or is disregarded? From Mill's utilitarian perspective, the success of a waqf cannot be assessed in terms of economic benefits. In this context, benefits are achieved at the expense of protecting the rights reflected in the waqf founder's (*wakif*) intentions. Therefore, the ongoing transformation of modern waqf law toward cash-based productive waqf must remain subject to legal safeguards that ensure the optimisation of economic benefits does not compromise the identity, objectives, and original purpose of waqf. Law No. 41 of 2004 should continue to provide a legal framework that safeguards fundamental principles while facilitating the productive development of waqf assets.

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36 Imtiyas Wizni Aufa and others, "Cash Waqf Linked Sukuk Through Securities Crowdfunding in Indonesia," *Jambura Law Review* 5, no. 1 (2023): 101, https://doi.org/10.33756/jlr.v5i1.15225.

37 A Mangunhardjana, *Isme-Isme Dalam Etika Dari A Sampai Z* (Yogyakarta: Kansius, 1999), 231.

38 Dina Aprilia and Nurhasanah, "Studi Komparatif Konsep Kebahagiaan Menurut John Stuart Mill Dan Al-Ghazali," *Jurnal Sains Student Research* 4, no. 1 (2026): 788, https://doi.org/10.61722/jssr.v4i1.8575.

39 Oktavianus M Yuda Pramana, "Kebebasan Berpendapat Menurut Stuart Dan Relevansinya Bagi Kebebasan Pers Di Indonesia," *Journal Lumen Veritas* 216, no. 2 (2025): 100, https://doi.org/10.30822/yfkcka49.

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The Spiritual Value of Waqf Cannot Be Measured by Utility Calculus

A significant limitation of utilitarianism is the lack of a clearly articulated framework for reconciling individual rights and interests with society's broader interests. The infinite and vast number of individual interests automatically serves society's interests.[40] In this context, Bentham measures the benefits in terms of intensity, duration, certainty, and the scope of beneficiaries.

The central issue is that waqf should not be understood primarily as an economic institution. In the original conception, waqf constitutes an act of religious devotion, a form of perpetual charity (*amal jariyah*), and a means of seeking closeness to Allah SWT through sincere dedication. The value of waqf cannot be assessed through a utilitarian calculus that prioritises utility and economic welfare. Therefore, an approach fails to capture the intrinsic spiritual purposes that underlie the institution of waqf. This can be reported by the example of a waqf donor who donates a small plot of land for a prayer hall in a remote village. The benefits to the recipients are minimal, and the financial gain will be nonexistent. This contrasts with Bentham's philosophy of the greatest possible happiness for the greatest number of people.

A utilitarian assessment may regard waqf as obtaining relatively limited utility due to the absence of readily quantifiable social or economic benefits. However, the value extends beyond material outcomes, resting on the donor's sincere intention, the prospect of perpetual spiritual reward (*amal jariyah*), and the fulfilment of religious devotion to Allah SWT. These dimensions are inherently qualitative and transcend the utility calculus proposed by Bentham, which is primarily concerned with assessing consequences in terms of measurable utility.

Conclusion

In conclusion, the paradigm shift from traditional, real-property-oriented to cash waqf represents a legal response to various historical and sociological issues. Before the enactment of Law No. 41 of 2004, waqf management tended to be stagnant and consumptive, and failed to deliver optimal welfare benefits to the broader community. The concept was largely understood as a static form of individual worship, resulting in many waqf assets remaining unproductive and leading to legal disputes. The enactment of the 2004 Waqf Law marked a significant transformation in national waqf law by expanding the scope of assets and shifting the focus of waqf toward productive, sustainable utilisation relevant to the socioeconomic development needs of the Indonesian people.

The provisions on monetary waqf reflect a legal orientation that prioritises social benefit as the primary goal. Cash waqf allows for broader, more flexible, and more equitable optimisation of benefits than waqf of immovable property. This is because the concept can be managed productively and directed toward

[40] Steven Shavell, *Foundation of Economic Analysis of Law* (Cambridge: Harvard University Press, 2004), 1–3.

strategic sectors such as education, health, economic empowerment, and poverty alleviation. Cash waqf is consistent with the principle of utilitarianism, which emphasises achieving happiness for the greatest number of people. The utilitarian effectiveness depends on the quality of implementation, Nazhir's profession-nalism, and the state's active role in ensuring that waqf management is grounded in accountability and measurable social impact. Therefore, strengthening regulations and implementation policies is key to ensuring that cash waqf truly functions as a legal instrument for social welfare capable of maximising benefits for society.

The theory of utilitarianism cannot be used as an analytical tool to explain the rationale behind the transformation of Indonesian waqf law toward a productive, monetary waqf oriented toward social benefit. Utilitarianism has limitations because the concept prioritises the interests of the majority, does not fully address the protection of individual rights, and struggles to accommodate the spiritual dimension inherent in the waqf institution. The development of Indonesian waqf law should be understood as a synthesis of social benefit (*maslahah*) and the protection of Sharia values, which form the philosophical foundation of waqf. In this context, the success of waqf is measured by the magnitude of the economic benefits, as well as the ability to uphold religious objectives, the donor's intentions, and the continued welfare of the community.

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