

Formal and Substantive Compliance of Nazhir in the Use of Waqf Principal Funds for Operational Costs

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Abstract

This study aims to evaluate the formal and substantive legal compliance of a Nazhir in using waqf principal funds for institutional operational expenses. It employs an empirical legal method with a socio-legal approach and a critical single-case study of Waqf Institution X in Jakarta. Primary data were obtained through a semi-structured interview with a Nazhir involved in fundraising, fund management, and institutional decision-making, while secondary data were derived from waqf regulations, Indonesian Waqf Board guidelines, fatwas, fiqh literature, scholarly publications, and publicly available institutional documents. The data were analysed qualitatively by comparing law in books with law in action through formal and substantive compliance frameworks. The findings indicate that the institution demonstrates elements of formal compliance through its reported registration, organizational structure, and productive waqf activities. However, the reported option to deduct operational expenses directly from the initial waqf contribution raises a substantive compliance problem because Nazhir remuneration should derive from management returns rather than be deducted from the designated principal. Contractual consent does not, by itself, legitimize such deductions because it remains subject to mandatory norms protecting waqf perpetuity. Limited written documentation and unclear separation between principal, returns, and operational expenses also create risks to legal certainty, transparency, and wakif protection. This study contributes a formal-substantive compliance framework for evaluating operational financing practices in contemporary waqf governance.

Keywords: Legal Compliance; Nazhir; Waqf Governance; Waqf Perpetuity; Waqf Principal

Abstrak

Penelitian ini bertujuan untuk mengevaluasi kepatuhan hukum formal dan substantif Nazhir dalam penggunaan dana pokok wakaf untuk membiayai operasional kelembagaan. Penelitian ini menggunakan metode hukum empiris dengan pendekatan sosio-legal dan desain studi kasus tunggal kritis pada Lembaga Wakaf X di Jakarta. Data primer diperoleh melalui wawancara semi-terstruktur dengan Nazhir yang terlibat dalam penghimpunan, pengelolaan, dan pengambilan keputusan terkait dana wakaf. Data sekunder bersumber dari peraturan perwakafan, pedoman Badan Wakaf Indonesia, fatwa, literatur fikih, publikasi ilmiah, dan dokumen kelembagaan yang tersedia untuk publik. Data dianalisis secara kualitatif dengan membandingkan hukum tertulis dan praktik kelembagaan melalui kerangka kepatuhan formal dan substantif. Hasil penelitian menunjukkan bahwa lembaga tersebut memiliki unsur kepatuhan formal berdasarkan keterangan mengenai pendaftaran, struktur organisasi, dan pelaksanaan wakaf produktif. Namun, pilihan untuk mengambil biaya operasional secara langsung dari setoran awal wakaf menimbulkan persoalan kepatuhan substantif karena

imbalan Nazhir seharusnya berasal dari hasil pengelolaan, bukan mengurangi dana yang telah ditetapkan sebagai pokok wakaf. Persetujuan kontraktual tidak secara otomatis melegitimasi pengurangan tersebut karena kebebasan berakad dibatasi oleh norma imperatif yang melindungi keabadian wakaf. Keterbatasan dokumentasi tertulis dan ketidakjelasan pemisahan pokok, hasil pengelolaan, dan biaya operasional juga berisiko terhadap kepastian hukum, transparansi, dan perlindungan wakif. Penelitian ini menawarkan kerangka kepatuhan formal–substantif untuk mengevaluasi pembiayaan operasional dalam tata kelola wakaf kontemporer.
Kata kunci: Keabadian Wakaf; Kepatuhan Hukum; Nazhir; Pokok Wakaf; Tata Kelola Wakaf

Introduction

The development of *waqf* in Indonesia over the last two decades has undergone significant transformation, especially in the form of productive *waqf* and the digitalization of *waqf* institution management (Widiastuti et al., 2025). Online platform-based fundraising models, integration of digital payment systems, and innovations in productive programs such as agriculture, livestock, and commercial asset development have become new characteristics of contemporary *waqf* governance (I. Hasanah, 2021). This phenomenon is in line with the drive to optimize national *waqf* potential, which, in theory, can serve as an instrument of economic redistribution and the strengthening of the *ummah*'s welfare (Busro, 2012). This transformation simultaneously places the *Nāzīr* as a central actor in the national *waqf* system (Syuhada' & Munir, 2020).

In the Indonesian legal system, the position of *Nāzīr* is explicitly regulated in Law Number 41 of 2004 concerning *Waqf* (hereinafter referred to as the *Waqf* Law). This law emphasizes that the *Nāzīr* is tasked with managing and developing *waqf* assets in accordance with their purpose, function, and designation (Article 11) (Republic of Indonesia, 2004). This norm implies the consequence that *waqf* management is not only administrative in nature but also substantive—namely, maintaining the essence and *shari'ah* objectives of the *waqf* institution itself (Fajriyansyah, 2004; Hafizd, 2021).

One of the fundamental principles in *waqf* law is the perpetuity of the *waqf* principal (*hifz al-aşl*), while its benefits (*al-manfa'ah*) are distributed to the *mawqūf 'alayh* (Rozalinda, 2015). This principle has long been a doctrine of classical fiqh and is reflected in the national legal system through the *Waqf* Law. Normatively, the *waqf* principal must not decrease or be transferred in such a way that removes its substance. The productive *waqf* model is permitted as long as it does not erode the principal value, but rather develops it to produce sustainable benefits (Jannah & Safitri, 2025).

In the context of institutional management, the state also provides the *Nāzīr* with a means to obtain compensation. This provision is affirmed in Government Regulation Number 42 of

2006 as the implementing regulation of the *Waqf* Law, which states that the *Nāzīr* may receive a maximum compensation of 10% of the net results of the management and development of *waqf* assets. The phrase “net results of management” becomes a key normative term because it indicates that the source of compensation derives from benefits or profits, not from the principal substance of the *waqf* assets (Government of Indonesia, 2006).

However, the development of institutional practices in the field shows dynamics that require critical examination. Based on empirical interviews conducted by the author with representatives of *Waqf* Institution X in Jakarta (Interview, 10–11 February 2025), it was found that the institution has the right to take up to 10% of incoming *waqf* funds for operational costs. When asked further regarding the source of the deduction, the institutional representative stated that the 10% collection can be done from the management results at the end of the period, but the *wāqīf* is also given the choice to deduct it at the beginning from the principal funds based on the *aqad* (contract) agreement. This statement indicates the existence of practical flexibility that could shift the normative meaning of the source of *Nāzīr* compensation (N. L. W. X, 2025).

Conceptually, if 10% is taken directly from the funds deposited by the *wāqīf* before productive management is carried out, then a reduction of the principal occurs from the beginning. This raises a normative question: whether such a reduction can still be categorized as compensation from management results, or instead constitutes a reduction of the substance of the *waqf* assets? This problem becomes increasingly relevant when the institution states that the validity of the practice depends on the *aqad* agreement between the *wāqīf* and the *Nāzīr*. In other words, the flexibility of the *aqad* is used to justify the reduction of principal funds.

Waqf is not merely a private contract but a social-religious institution involving public interests (Sunuwati, 2022). Therefore, contractual consent cannot override mandatory waqf principles, necessitating a distinction between formal administrative compliance and substantive compliance with waqf law. The Indonesian Waqf Board supervises the *Nāzīr* to ensure conformity with Sharia principles and statutory regulations (U. Hasanah, 2018). Accordingly, the reported deduction of principal funds based on contractual flexibility raises a substantive issue because it may shift *Nāzīr* remuneration from management returns to a reduction of the waqf principal, thereby affecting the principle of waqf perpetuity.

Recent scholarship on waqf governance can be grouped into four themes. The first examines *Nāzīr*'s capacity, including managerial competence, human resources, and institutional cooperation in productive waqf management (Husni, Badrul Munir, 2024; Shiddiqy, 2022). The second focuses on productive waqf governance and institutional performance, particularly the strategic management of assets to generate sustainable returns and

social benefits (I. Hasanah, 2021; Ikram et al., 2024). The third addresses accountability, transparency, stakeholder participation, financial reporting, and public trust as foundations of good waqf governance (Budiman, 2011). The fourth explores Sharia compliance, digitalization, and contemporary innovation, including cash waqf technologies and Sharia governance frameworks, with compliance generally assessed through institutional efficiency, maqasid al-shariah, and technological adaptation (Pradini, 2023; Pratama, 2025).

Although these studies have significantly contributed to the development of waqf governance literature, they predominantly focus on governance effectiveness, institutional capacity, accountability, and innovation. Limited attention has been devoted to examining the normative boundary between contractual consent and the preservation of waqf principal assets. In particular, there remains a lack of empirical legal studies investigating whether the deduction of waqf principal funds for operational purposes, even when supported by the wakif's consent, complies with the principle of waqf perpetuity (*hifz al-ashl*) and the positive legal framework governing waqf in Indonesia (Nofianti et al., 2024).

The novelty of this study lies in the development of a formal-substantive compliance framework for evaluating Nazhir practices concerning the utilization of waqf principal funds for operational costs. Unlike previous studies that focus on governance performance, accountability, and institutional effectiveness, this research critically examines the legal legitimacy of principal fund deductions of intersecting legal compliance theory, Islamic legal doctrine, and Indonesian waqf law. By doing so, this study contributes to Islamic economic law scholarship by deepening understanding of substantive compliance in contemporary cash waqf governance.

Methods

This study employs an empirical legal method using a socio-legal approach and a critical single-case study design to examine the interaction between waqf legal norms and their implementation at Waqf Institution X (Banakar & Travers, 2005). The analysis combines statutory, conceptual, and case approaches. The statute approach examines Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006, while the conceptual approach applies legal compliance theory and the principle of waqf perpetuity (*hifz al-ashl*) as normative benchmarks. The case approach focuses on the reported use of waqf principal funds for operational expenses based on contractual flexibility. The institution's identity is anonymized, and the case was purposively selected because it provides critical context for assessing the consistency between institutional practices and waqf law (Yin, 2018).

Primary data were obtained through a semi-structured interview conducted on 11 February 2025 with a Nazhir directly involved in fundraising, fund management, and institutional decision-making (Kallio et al., 2016). Secondary data comprised statutory regulations, BWI regulations and guidelines, fatwas on cash waqf, classical and contemporary fiqh literature, scholarly publications, and publicly available institutional documents. Because the study did not obtain internal financial reports or written contracts, its analysis relies on interview data and public documents. Data validity was strengthened through source and document triangulation by comparing the interview findings with legal materials, fiqh literature, and institutional information (Carter et al., 2014). The data were analyzed qualitatively using a descriptive-critical method that compared the law in books with the law in action and evaluated the findings against formal and substantive compliance frameworks.

Analytical Framework of Legal Compliance and Waqf Perpetuity

This study integrates legal compliance theory, waqf perpetuity, and legal protection theory to assess the use of waqf principal funds for operational expenses. Legal compliance theory distinguishes formal from substantive compliance, while waqf perpetuity serves as the normative benchmark and legal protection theory assesses certainty, transparency, informed consent, and wakif protection. Together, these perspectives evaluate whether Nazhir practices satisfy institutional requirements while preserving the waqf principal and stakeholder interests.

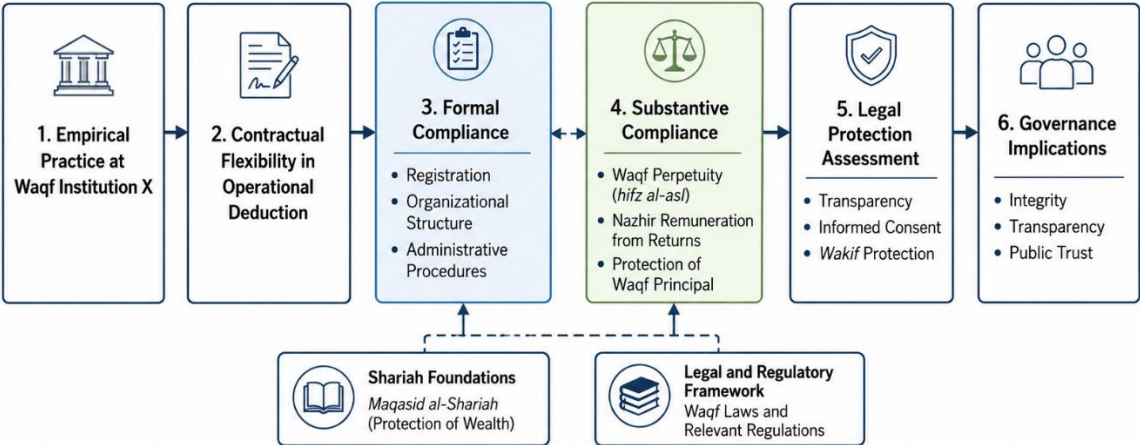


Figure 1 Analytical Framework of Formal and Substantive Compliance in Waqf Governance

As illustrated in Figure 1, the analytical framework links empirical institutional practices with formal compliance, substantive compliance, legal protection, and broader governance implications. The framework guides the assessment of whether the Nazhir's operational deductions satisfy administrative requirements while remaining consistent with waqf perpetuity and the protection of wakif interests.

First, legal compliance theory distinguishes between formal compliance and substantive compliance. Formal compliance refers to adherence to administrative procedures and textual provisions, while substantive compliance emphasizes the conformity of conduct with the objectives and fundamental values of legal norms (Etienne, 2011; Soekanto, 1982; Rosana, 2014; Tyler, 1990). In the context of waqf, an institution may be officially registered and follow administrative procedures, yet its management practices must still be assessed to determine whether they align with the normative objective of preserving the perpetuity of waqf assets.

Second, the principle of perpetuity of *waqf* assets (*hifz al-aşl*). In classical *fiqh*, *waqf* is understood as the retention of the principal asset and the distribution of its benefits (Jaharuddin, 2015; Sunuwati, 2022). This principle is internalized into the national legal system through Law Number 41 of 2004 concerning *Waqf*, which emphasizes the social function and sustainability of *waqf*. The provision regarding *Nāzir* compensation in Government Regulation Number 42 of 2006 must be read within the framework of maintaining the principal substance.

Third, legal protection theory, which emphasizes the principles of legal certainty, transparency, and good faith (Irwan, 2016; Muchsin, 2013). In the wakif–*Nāzir* relationship, differences in access to information and institutional knowledge may create an unequal bargaining position that limits the wakif’s ability to make an informed and voluntary decision. Legal protection is therefore necessary to ensure transparency, prevent the stronger party from imposing disadvantageous terms, and enable the parties to exercise their rights fairly (Atikah et al., 2025). Therefore, such consent may lack substantive validity if the wakif does not understand its legal and financial consequences.

Based on the background and theoretical framework above, this research formulates three main questions: (1) how is the practice of utilizing *waqf* funds for operational costs at *Waqf* Institution X Jakarta; (2) is the practice of deducting principal funds in accordance with the principle of perpetuity of *waqf* assets in national law; and (3) what are the implications for the substantive compliance of the *Nāzir* and the protection of the *wāqif*. This research aims to identify the factual practices of *waqf* fund management at *Waqf* Institution X, analyse their compliance with the principles of national *waqf* law, assess the level of substantive compliance of the *Nāzir*, and formulate policy recommendations to strengthen *waqf* governance that is characterized by integrity and justice.

Institutional Status and Operational Deduction Practices at Waqf Institution X

According to its institutional representative, Waqf Institution X has been registered with the Indonesian Waqf Board as a *Nāzir*. This reported registration confers formal legitimacy

on the institution and may bolster public confidence in its management of collected waqf funds (Q. I. X, 2025). Normatively, the position and legal status of a Nazhir are regulated by Law Number 41 of 2004 concerning Waqf, which requires compliance with administrative qualifications, institutional competence, trustworthiness, and the capacity to manage waqf assets. The procedures for Nazhir registration, development, and institutional supervision are further elaborated in Government Regulation Number 42 of 2006.

Based on the informant's account, Waqf Institution X has an organizational structure comprising advisors, supervisors, and operational managers. This structure formally reflects the institutional governance principles recommended in the literature on productive waqf management (Jannah & Safitri, 2025). Nevertheless, the interview findings indicate that the internal supervision function has not been implemented systematically, particularly in relation to documentation, financial control, and the monitoring of fund utilization (N. L. W. X, 2025).

These findings suggest that Waqf Institution X has fulfilled several administrative requirements associated with its formal status as a Nazhir. However, verification of institutional registration and organizational structure alone is insufficient to determine the overall level of legal compliance. From the perspective of legal compliance theory, formal compliance with administrative procedures does not automatically establish substantive compliance with the purposes and fundamental values of waqf law. Therefore, the institution's operational practices must also be examined in relation to the principle of preserving the waqf principal and ensuring the sustainability of its benefits.

The interview results show that Waqf Institution X manages two types of *waqf*: social and productive. Social *waqf* is distributed for humanitarian and religious activities, while productive *waqf* is managed through business investment schemes, one of which is agricultural cultivation (the example mentioned by the informant is melon cultivation). This management model aligns with the concept of productive waqf as developed in contemporary literature, in which waqf assets are not only maintained but also optimized to generate sustainable economic benefits (I. Hasanah, 2021). Theoretically, productive *waqf* is intended to maintain the perpetuity of the principal (*hifz al-aṣl*) while developing the results (*al-manfa'ah*), which can be distributed to the *mawqūf 'alayh* (Abdurrohman Kasdi, 2021).

The interview findings indicate that Waqf Institution X manages both social and productive waqf. Social waqf funds are allocated to humanitarian and religious activities, whereas productive waqf funds are invested through business schemes, including agricultural cultivation such as melon farming. This management model is consistent with the contemporary concept of productive waqf, under which waqf assets are not merely preserved but are also

developed to generate sustainable economic benefits (I. Hasanah, 2021). Theoretically, productive waqf seeks to maintain the perpetuity of the principal through the principle of *ḥifz al-aṣl* while distributing the generated benefits, or *al-manfa‘ah*, to the *mawqūf ‘alayh* (Abdurrohman Kasdi, 2021).

In its agricultural investment scheme, the institution collects cash waqf funds and subsequently allocates them as business capital. The returns generated from these activities are then distributed according to the designated purposes of the waqf. Conceptually, such a model does not conflict with waqf law, provided that the principal remains protected and potential investment risks are managed prudently (Hafsah, 2009; Kasdi, 2015). However, the interview findings indicate that some investment schemes lack written risk assessments or comprehensive business projection documents. This condition differs from productive waqf governance standards, which emphasize risk management, financial accountability, and institutional prudence (Ikram et al., 2024).

The most significant empirical finding concerns the institution’s practice of allocating up to 10% of waqf funds for operational expenses. The Nazhir explained that operational funding may be obtained from both social and productive waqf schemes, although productive waqf constitutes the principal source of such funding. The informant further indicated that the deduction mechanism is determined through an initial *aqad* between the *wakif* and the Nazhir. In productive waqf management, the operational deduction may be taken after the investment generates returns or deducted at the beginning of the transaction, depending on the agreement reached with the *wakif* (Q. I. X, 2025).

These practices indicate that the institutional basis for operational deductions does not derive solely from returns generated by waqf asset management. Instead, the institution also relies on contractual flexibility and the consent of the *wakif* to justify deductions from the initial waqf contribution. This practice reveals a potential shift in the basis of legitimacy from regulatory standards governing Nazhir remuneration toward contractual agreement between the parties. Such a shift requires careful examination because the parties’ consent does not necessarily eliminate the obligation to comply with mandatory waqf norms.

Normatively, Law Number 41 of 2004 provides that a Nazhir may receive remuneration of no more than 10% of the net proceeds generated from the management and development of waqf assets. Government Regulation Number 42 of 2006 must consequently be interpreted within the same regulatory framework concerning the preservation and management of waqf property. The concept of net management proceeds indicates that the source of Nazhir remuneration should be the profits or benefits generated from asset management rather than the

principal waqf fund itself (UU Nomor 41 Tahun 2004; I. Hasanah, 2021). Accordingly, a deduction made directly from the initial waqf contribution raises a different legal issue from that arising from remuneration obtained from the proceeds of productive management.

The relationship between national waqf regulation and Sharia principles reflects a process of legal convergence in which positive law provides institutional enforceability, while Sharia establishes the ethical and substantive objectives of regulation. Such convergence should not be limited to the formal incorporation of Islamic legal concepts into statutory provisions but should ensure that institutional practices substantively realize justice, transparency, public benefit, and the protection of waqf assets (Hafizd et al., 2026). Accordingly, compliance with administrative provisions cannot legitimize a management practice that undermines the preservation of the waqf principal.

In fiqh literature, the perpetuity of the principal through the principle of *ḥifẓ al-aṣl* constitutes an essential characteristic that distinguishes waqf from other charitable contracts (Jannah & Safitri, 2025). A reduction in the principal may therefore undermine the basic legal and religious character of waqf, even when the wakif has agreed to the deduction. Although contractual agreement is an important principle in civil and Islamic transactions, an *aqad* cannot override mandatory norms inherent in waqf as a legally regulated religious and social institution. The flexibility of the *aqad* must therefore remain subject to the obligation to preserve the waqf principal and cannot automatically transform a principal deduction into a legally valid management expense.

Another significant issue concerns the form and documentation of the *aqad*. According to the interview findings, agreements concerning operational deductions are generally communicated orally during fundraising activities and are not always incorporated into detailed written clauses specifying whether the deduction is taken from the principal or from management returns (N. L. W. X, 2025). Waqf certificates are also issued only when the contribution reaches a particular nominal threshold, whereas wakifs contributing below that threshold receive only transfer receipts or digital confirmations. This differentiation in administrative treatment may affect legal certainty and the level of protection afforded to individual wakifs (N. L. W. X, 2025).

From the perspective of legal protection, legal certainty and transparency are essential parameters for evaluating institutional practices (Muchsin, 2013). Studies on waqf governance also emphasize that transparent information and written documentation constitute central elements of institutional accountability (Angraini et al., 2025; Budiman, 2011). The absence of detailed written provisions concerning the source and mechanism of operational deductions

may create interpretative ambiguity, weaken accountability, and increase the risk of future disputes between the wakif and the Nazhir.

Overall, the findings demonstrate a gap between law in books and law in action. The applicable regulatory framework limits Nazhir remuneration to the proceeds generated by waqf management, whereas institutional practices permit variations under contractual flexibility (Rahman et al., 2023). Although Waqf Institution X has reported formal registration and implemented productive waqf schemes, its practice of deducting operational expenses from the principal and its limited contractual documentation raise substantial questions concerning prudence, transparency, and substantive compliance. These empirical findings provide the basis for further analysis of whether the institution's practices merely satisfy formal administrative requirements or also conform to national waqf law, fiqh principles, and the fundamental obligation to preserve waqf assets.

Formal and Substantive Compliance of Waqf Principal Deductions: Perpetuity and Contractual Flexibility

The analysis of the practice of deducting *waqf* funds for operational costs must first be placed within the normative framework of national *waqf* law. Explicitly, Law Number 41 of 2004 concerning *Waqf* emphasizes that *waqf* assets are permanent and may not be sold, gifted, inherited, or transferred in any other form of transfer of rights, except under certain conditions regulated by law (Republic of Indonesia, 2004). Although these norms do not directly mention "principal fund deduction," their systematic construction shows that the perpetuity of the principal (*hifz al-aşl*) is a fundamental and non-negotiable principle (Yenni Samri Juliati & Maftah Rizki Addin HRP, 2024). Further provisions in Government Regulation Number 42 of 2006 state that the *Nāzir* is entitled to receive compensation of at most 10% of the net results of the management and development of *waqf* assets (Government Regulation, 2006). The phrase "net results" implies that the source of compensation comes from the economic benefits arising from management, not from the principal substance.

The relationship between national waqf regulation and Sharia principles reflects a process of legal convergence in which positive law provides institutional enforceability, while Sharia supplies the ethical and substantive objectives of regulation. Such convergence should move beyond formal reference to Islamic principles and ensure that institutional practices substantively realize justice, transparency, public benefit, and the protection of waqf assets (Hafizd et al., 2026). Accordingly, compliance with administrative provisions cannot justify a management practice that undermines the preservation of the waqf principal.

In *fiqh* literature, the principle of *waqf* perpetuity is understood as an ontological character that distinguishes *waqf* from other *tabarru'* (gratuitous) contracts (Hayatudin et al., 2020; Zuḥaylī, 2011). Sunuwati emphasizes that in the construction of the four *madhhabs* (schools of law), the principle of *waqf* assets must remain intact, while the benefits can be allocated according to their designation (Sunuwati, 2022). Thus, the reduction of the principal, even if approved by the *wāqif*, has the potential to blur the line between *waqf* and other forms of donation. In the context of contemporary cash *waqf*, Hasanah (2021) emphasizes the importance of accounting separation between principal and results to maintain the integrity of *waqf* assets (Aziz, 2017; I. Hasanah, 2021).

The principle of *waqf* perpetuity is also strongly recognized within the traditions of the four major schools of Islamic jurisprudence. In the Hanafi school, *waqf* is generally understood as the retention of the corpus of an asset while dedicating its benefits for charitable purposes. The Maliki school emphasizes the continuity of benefits, although there are some variations regarding the permanence of the asset itself (Ascarya et al., 2022). Meanwhile, the Shafi'i and Hanbali schools explicitly regard the preservation of the *waqf* principal as an essential characteristic that must not be diminished through utilization or management activities (Kahf, 2018). Although conceptual differences exist among the schools, all of them recognize the protection of the *waqf* principal as a fundamental element distinguishing *waqf* from other forms of charitable transfer (*tabarru'*). Consequently, any practice that potentially reduces the *waqf* principal must be rigorously examined against the principle of *hifz al-asl* as a primary objective of the *waqf* institution (Ali Hamdan & Mahamood, 2016; Mahamood & Rahman, 2015).

In the context of cash *waqf*, the principle of *waqf* perpetuity becomes even more significant than in immovable property *waqf*. Unlike land or buildings, which are physically easier to preserve, cash *waqf* is inherently more vulnerable to principal depletion through utilization, investment activities, or inadequate financial segregation. Consequently, contemporary *waqf* literature emphasizes the necessity of a clear separation between *waqf* principal and management returns. The sustainability of cash *waqf* benefits can only be ensured when the principal value remains intact while the generated returns are distributed according to the designated *waqf* objectives. From this perspective, any policy that permits the utilization of principal funds for operational purposes must be examined rigorously because it may undermine the perpetuity that constitutes the fundamental legitimacy of cash *waqf* (Nofianti et al., 2024; Rafiqi, 2019)

Based on the interview results, the practice at *Waqf* Institution X shows the existence of two deduction options: from management results or from the principal funds at the beginning,

depending on the *aqad* (contract) agreement (N. L. W. X, 2025). Administratively, these options are understood as a form of flexibility in accommodating the institution's operational needs. However, if tested through a systematic normative interpretation, the 10% provision in Government Regulation 42/2006 does not open explicit room for principal reduction. Therefore, the key question is not merely whether the practice is agreed upon, but whether that agreement aligns with the normative purpose of *waqf* as an instrument for protecting long-term social assets.

In the perspective of legal compliance theory, the difference between formal compliance and substantive compliance becomes relevant. An institution can be considered formally compliant if it has been registered and follows administrative procedures. However, substantive compliance requires that practices be suitable of the purpose of the norm (norm purpose). In this context, if the deduction from the principal causes a reduction in the base value of the *waqf*, there is a potential deviation from the principle of perpetuity, even though administratively no explicit violation exists.

Empirical findings show that the legitimacy of principal fund deduction is based on *aqad* (contract) flexibility and the *wāqif's* consent. Theoretically, the principle of freedom of contract indeed recognizes that the parties can determine the content of an agreement as long as it does not contradict the law, public order, and morality (Sulistyaningrum & Afrilia, 2020). However, in the context of *waqf*, the *aqad* is subject not only to private law but also to a public law regime, as it has been institutionalized in the national legal system through the *Waqf* Law (Nuridin & Hidayat, 2024).

Although the principle of freedom of contract allows parties to determine the content of their agreement, such freedom is not absolute. Both civil law and Islamic law recognize the existence of mandatory norms that cannot be set aside through private agreement. In the context of *waqf*, the principle of asset perpetuity and the limitation of *Nazhir* compensation constitute mandatory norms intended to protect public interests and ensure the sustainability of *waqf* benefits. Accordingly, the consent of the *wakif* does not automatically render a contractual clause normatively valid if such a clause contradicts the fundamental characteristics of *waqf* established by positive law and Islamic legal doctrine (Ali Hamdan & Mahamood, 2016).

From the perspective of Islamic law, the validity of a contract is determined not solely by the consent of the parties' consent but also by its conformity with the contract's objectives and essential characteristics of the contract itself. The doctrine of *shurūṭ fi al-'uqūd* provides that contractual conditions may not conflict with the contract's fundamental purpose of the contract or mandatory Sharia principles (Zuḥaylī, 2011). Furthermore, the position of the *Nazhir* as a

holder of *amānah* places the institution in a fiduciary role with the obligation to preserve the continuity and integrity of waqf assets. Viewed through the principles of *maṣlahah* and *ḥifẓ al-māl*, the protection of waqf principal serves not only the interests of the current wakif but also the sustainability of benefits for future beneficiaries (Rafiqi, 2019). Accordingly, the consent of the wakif to the reduction of principal funds cannot automatically be regarded as Sharia-compliant if it potentially weakens the protection of waqf assets as a perpetual social endowment.

The codification of *waqf* in national law shifts *waqf* from a purely religious realm into a public regulatory framework (Suryantoro, 2022). Consequently, imperative norms regarding the character of *waqf* cannot be overridden merely through individual agreements. Thus, the flexibility of the *aqad* must be tested against binding public norms. In the interview, the informant stated that the *wāqif* is given the choice to approve the deduction at the beginning. However, written documentation regarding such clauses is not always available in detail. In the perspective of legal protection, the principles of certainty and transparency become important indicators (Zaharullah, 2024; B. W. Indonesia, 2022). If the deduction clause is not formulated explicitly and in writing, there is a risk of interpretative ambiguity in the future.

Furthermore, this analysis needs to consider the dimension of information asymmetry. The *wāqif* might not fully understand the long-term implications of principal reduction on the *waqf* value. In this context, formal consent does not necessarily reflect substantive consent based on adequate understanding. Therefore, *aqad* flexibility cannot automatically be used as normative legitimacy to reduce the *waqf* principal, especially if it contradicts the fundamental principles that have been institutionalized in the law.

Governance Implications for Integrity, Transparency, and Public Trust

The reported practice of deducting operational expenses from the initial waqf contribution has broader implications for the integrity of waqf governance. The issue extends beyond institutional financing because it concerns the legal identity of waqf as an instrument intended to preserve the principal while distributing its benefits. If deductions from the principal are normalized through contractual flexibility, the distinction between waqf and other charitable instruments, such as *infaq*, *sadaqah*, or operational donations, may become increasingly unclear.

The integrity of waqf management depends on maintaining a clear balance between institutional sustainability and the perpetuity of waqf assets. Productive management is necessary to generate benefits and support the operational continuity of the *Nazhir*, but it should

not diminish the principal designated as waqf. The balance between asset productivity and principal perpetuity constitutes a fundamental paradigm in Sharia economic law (Jannah & Safitri, 2025). Therefore, operational efficiency cannot be pursued through mechanisms that potentially weaken the principle of *hifz al-aṣl*.

From a managerial perspective, the need to finance fundraising, administration, supervision, and investment management is understandable. Nevertheless, managerial necessity does not automatically provide legal legitimacy for deductions from the waqf principal. Institutional operational needs should instead be financed from sources legally distinct from the endowed principal, such as management returns, separate administrative contributions, or other permissible institutional funds. This separation is essential to prevent ambiguity regarding the value and status of the waqf assets managed by the Nazhir.

Transparency is particularly important when an institution applies deductions to funds received from wakifs. Literature on good waqf governance emphasizes that accountability, information disclosure, and the protection of wakif interests are fundamental elements of sustainable institutional management (Budiman, 2012; Ikram et al., 2024). Wakifs should receive clear information concerning the amount designated as the waqf principal, the source of Nazhir remuneration, and the portion, if any, allocated to operational expenses. Without such disclosure, contractual consent may not reflect a complete understanding of the legal and financial consequences of the transaction.

Written documentation also plays a central role in ensuring legal certainty and institutional accountability. An aqad should clearly distinguish between the waqf principal, management returns, Nazhir remuneration, and additional contributions intended to support operational activities. This distinction is particularly important because oral explanations or general contractual consent may create different interpretations regarding the source and purpose of deductions. Standardized documentation would therefore protect both the wakif and the Nazhir by reducing ambiguity and providing verifiable evidence of the parties' intentions.

Public trust represents an important form of social capital for waqf institutions because their fundraising activities depend heavily on perceptions of integrity, competence, and accountability. This study does not directly measure the perceptions of wakifs or the public regarding the practices of Waqf Institution X. However, ambiguity in principal deductions, contractual arrangements, and financial reporting may create a risk of weakening confidence in the security and integrity of waqf management. Transparent and consistent disclosure is therefore necessary to demonstrate that the institution manages waqf assets in accordance with both legal requirements and Sharia principles.

The findings also indicate the importance of strengthening technical standards and institutional guidance by the Indonesian Waqf Board. More detailed provisions concerning the sources of Nazhir remuneration, the separation of principal funds from management returns, and the minimum requirements for written waqf contracts could reduce divergent interpretations among institutions. Such regulatory strengthening should not be understood as restricting innovation in productive waqf management. Rather, it should ensure that institutional innovation remains consistent with waqf perpetuity, accountable governance, and sustainable asset development (Abdullah & Ismail, 2017; Ascarya et al., 2022).

Strengthening waqf governance requires convergence between positive regulatory standards and the substantive objectives of Sharia. This convergence does not seek to eliminate the distinctive character of either legal framework, but to create a functional interaction in which legal certainty and institutional supervision are aligned with justice, transparency, public benefit, and the protection of property (Hafizd et al., 2026). Therefore, technical regulations on Nazhir remuneration and operational financing should translate the principle of *ḥifz al-aṣl* into clear contractual, accounting, and supervisory requirements.

The use of separate accounting mechanisms is also necessary to strengthen financial accountability. Waqf institutions should maintain distinct records for the principal, investment returns, operational expenses, and other charitable funds to prevent commingling and facilitate institutional supervision. Periodic financial reporting, including accessible digital disclosure, could enable wakifs, regulators, and the public to understand how waqf funds are collected, managed, and distributed. These mechanisms would strengthen social oversight while supporting the professionalization of contemporary waqf institutions.

Overall, the issue of principal deductions should not be treated merely as a technical operational matter. It affects the preservation of the waqf's legal character, the protection of wakif interests, and the credibility of national waqf governance. A governance framework based on integrity, transparency, and accountability should accommodate legitimate operational needs without compromising the waqf principal. Through clearer contractual standards, separate financial management, effective supervision, and transparent reporting, waqf institutions can strengthen public trust while maintaining compliance with the fundamental principles of waqf law.

Conclusion

This study finds that Waqf Institution X reportedly finances part of its operational expenses of deducting up to 10% from waqf funds, which may be taken either from

management returns or from the initial waqf contribution, based on an agreement between the wakif and the Nazhir. Although the institution demonstrates elements of formal compliance through its reported registration, organizational structure, and productive waqf activities, a deduction made directly from funds designated as waqf principal raises a substantive compliance problem. Such a practice is not consistent with the normative direction of Law Number 41 of 2004 and Government Regulation Number 42 of 2006, which place Nazhir remuneration within the framework of returns generated from waqf management rather than the reduction of the principal. Contractual flexibility and the consent of the wakif cannot independently legitimize a principal deduction because freedom of contract remains limited by mandatory norms protecting the perpetuity of waqf assets through the principle of *ḥifz al-aṣl*. The limited use of written contracts and the lack of a clear distinction between principal funds, management returns, and operational expenses also create risks to legal certainty, transparency, wakif protection, and institutional integrity. These findings indicate that formal administrative compliance must be accompanied by substantive compliance through principal preservation, transparent contractual arrangements, separate financial records, and accountable reporting.

This study is limited by its critical single-case design and restricted access to institutional evidence. The analysis primarily relies on an interview with a Nazhir and publicly available institutional information without direct access to registration documents, written contracts, internal financial statements, transaction records, or perspectives from wakifs, beneficiaries, and regulators. Consequently, the findings should be understood as a critical legal assessment of a reported institutional practice and should not be generalized as representing all waqf institutions in Indonesia. Future research should employ comparative multi-case designs involving institutions with different governance models, operational financing mechanisms, and regional contexts. It should also triangulate interviews with written contracts, audited financial statements, transaction records, and evidence from the Indonesian Waqf Board, wakifs, and beneficiaries. Such studies would provide a stronger empirical foundation for developing substantive compliance standards, clarifying permissible sources of Nazhir remuneration, and designing governance mechanisms that reconcile institutional sustainability with the perpetuity and integrity of waqf assets.

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