

Inalienable Land: *Waqf*-Based Land Tenure Security for Cooperative Urban Housing in Indonesia

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ABSTRACT

The provision of affordable community-driven cooperative housing models presents a promising alternative in Indonesia, optimizing land use by separating building costs from land ownership. However, the viability of this model is fundamentally undermined by land tenure insecurity. Residents who invest in the construction of their houses remain vulnerable, as the land held under a long-term lease can be sold, mortgaged, or alienated by the original landowner, risking their long-term security. This study conceptualizes Islamic legal framework of waqf (endowment) as a direct legal remedy to this specific vulnerability. This study employs a qualitative socio-legal analysis, collecting data through classical fiqh text that further analyzed for its feasibility within Indonesia's contemporary Law No. 41 of 2004 concerning waqf, and used the Rujak Center for Urban Studies (RCUS) cooperative housing model as a case study. The results demonstrate that by synthesizing the principles of perpetuity and inalienability with the separation of corpus and usufruct, the risk from landowner default or third-party sale is mitigated. This study contributes a novel legal framework that reconceptualizes waqf not merely as a charitable act, but as an instrument for land tenure security.

ABSTRAK

Penyediaan model perumahan berbasis koperasi yang terjangkau menghadirkan alternatif yang menjanjikan di Indonesia, dengan mengoptimalkan penggunaan lahan melalui pemisahan biaya pembangunan gedung dari kepemilikan tanah. Namun, kelayakan model ini secara fundamental memiliki ketidakpastian hak penguasaan tanah. Warga yang berinvestasi dalam pembangunan rumah mereka tetap berada dalam posisi rentan, karena tanah yang dikuasai melalui sewa jangka panjang dapat dijual, diagunkan, atau dipindahtangankan oleh pemilik tanah. Studi ini mengkonseptualisasikan kerangka hukum Islam wakaf sebagai solusi hukum terhadap kerentanan ini. Studi ini menggunakan analisis sosio-legal kualitatif, dengan mengumpulkan data melalui teks fiqh yang selanjutnya dianalisis kelayakannya dalam Undang-Undang No. 41 Tahun 2004 tentang Wakaf yang berlaku di Indonesia, menggunakan model perumahan koperasi Rujak Center for Urban Studies (RCUS) sebagai studi kasus. Hasil penelitian menunjukkan bahwa dengan mensintesis prinsip perpewaitas dan inalienabilitas dengan pemisahan antara aset pokok dan hak manfaat, risiko akibat gagal bayar pemilik tanah atau penjualan kepada pihak ketiga dapat dimitigasi. Studi ini memberikan kontribusi berupa kerangka hukum yang mengkonseptualisasikan wakaf bukan semata sebagai tindakan amal, melainkan sebagai instrumen untuk jaminan kepastian hak atas tanah.

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A. INTRODUCTION

The rapid growth of Indonesian urbanization has created a critical and persistent challenge for the government to provide adequate, affordable housing for its citizens. In metropolitan centres like Jakarta, the subsequent rise in land values pushed homeownership beyond the reach of a significant portion of the population.¹ While the government has implemented various subsidized housing programs, such as the Housing Financing Liquidity Facility (FLPP), these top-down solutions often come with shortcomings and are structurally inadequate.² The primary government initiatives, such as subsidized landed houses (*Rumah Tapak*) and high-rise apartments (*Rumah Susun*), are often defined by severe spatial limitations. The recent construction concept by the housing-developer partners submitted to the Ministry of Housing and Settlement for the landed units can be as small as 14 – 26 m² while the vertical housing units typically capped at 36 m².³ Ironically, the proposed subsidised landed house is even smaller than the national standards for decent living spaces, compromising the quality of life for resident families, where the minimum space for four adults is 36 m², or 9 m² per person, based on Indonesian National Standard (SNI) 03-1733.⁴ Furthermore, these housing projects are frequently relegated to peripheral locations far from economic centers and public transportation hubs, which traps the residents in long and costly commutes.

A more fundamental issue is that these programs often fail to serve the missing middle-income bracket that earns too much to qualify for low-income (MBR) subsidies but not enough to compete in the open market, which per 2024 span 66.35% from the total Indonesian population that contribute 81.49% of the consumption.⁵ This condition puts this middle-class group in a state of uncertainty regarding permanent house ownership and prevents them from securing a household within the city. The inadequacy of the state-led program is a systemic failure to provide housing that is adequate, affordable, and securely located, which necessitates the exploration of alternative community-driven models.

In response to these systemic shortcomings, innovative bottom-up solutions have begun to emerge. Among the most promising is the community-driven cooperative housing model in

¹ Per 2022, only 50.67% of Jakarta resident live in their own houses. See Badan Pusat Statistik DKI Jakarta, "Persentase Rumah Tangga menurut Status Kepemilikan Bangunan Tempat Tinggal yang Ditempati di Provinsi DKI Jakarta," 2023, <https://jakarta.bps.go.id/id/statistics-table/2/MTA4NCMy/persentase-rumah-tangga-menurut-status-kepemilikan-bangunan-tempat-tinggal-yang-ditempati-di-provinsi-dki-jakarta.html>.

² Peraturan Menteri PUPR No. 20 Tahun 2014 Tentang Fasilitas Likuiditas Pembiayaan Perumahan (FLPP) (2014).

³ Setkab RI, "Rumah Susun Disubsidi Pemerintah, Harga Maksimal Rp 250 Juta, Luas Maksimal 36 m²," *Sekretariat Kabinet Republik Indonesia*, January 14, 2016, <https://setkab.go.id/rumah-susun-disubsidi-pemerintah-harga-maksimal-rp-250-juta-luas-maksimal-36-m2/>; DPRKP DKI Jakarta, "Informasi Ketersediaan Unit Sewa Rusunawa," 2020, https://dprkp.jakarta.go.id/?cmd=product-rusunawa_unit; Tempo, "Berapa Harga Rumah Subsidi 14 Meter Persegi Buatan Lippo Group?," Tempo, June 16, 2025, <https://www.tempo.co/ekonomi/berapa-harga-rumah-subsidi-14-meter-persegi-buatan-lippo-group-1715317>.

⁴ Keputusan Menteri Pemukiman Dan Prasarana Wilayah No. 403 (2002); Mahatma Sindu Suryo, "Analysis of Minimum Space for Low Cost Landed House in Indonesia," *Jurnal Permukiman* 12, no. 2 (2017); Dalhar Susanto et al., "Rethinking the Minimum Space Standard in Indonesia: Tracing the Social, Culture and Political View through Public Housing Policies," *Journal of Housing and the Built Environment* 35, no. 3 (2020): 983–1000, <https://doi.org/10.1007/s10901-020-09770-4>.

⁵ Badan Pusat Statistik, "Kelas Menengah Indonesia Krusial sebagai Bantalan Ekonomi Nasional," 2024, <https://www.bps.go.id/id/news/2024/10/25/622/kelas-menengah-indonesia-krusial-sebagai-bantalan-ekonomi-nasional.html>; Peraturan Menteri PUPR No. 20 Tahun 2019 Tentang Kemudahan Dan Bantuan Pemilikan Rumah Bagi Masyarakat Berpenghasilan Rendah (MBR) (2019).

Jakarta initiated by organizations like the Rujak Center for Urban Studies (RCUS) by establishing a four-floor flat-house model consisting of seven units for seven families, ranging from 40 to 90 m² floor space.⁶ In this establishment, RCUS negotiated the long advocacy of the outdated regulation of detailed aerial planning (RDTR) of DKI Jakarta in 2014 to a new regulation in 2022, allowing the construction low-rise vertical building in smaller land area of 250 to 800 m² from the minimum area of 3,000 m² for the construction, feasible for the cooperative flat-house model.⁷

This model shifted from conventional development by directly addressing the primary driver of urban housing unaffordability: the cost of the land. The core innovation of the cooperative model is the legal and financial separation of the building from the land. Rather than purchasing both, collective residents form a legal cooperative (*Koperasi*) that collect sources to finance and develop only for the physical building.⁸ The land itself is not purchased but it secured through a 60 years long-term lease agreement with an option to extend with the landowner.⁹ This strategic separation unlocks three transformative benefits. First, it dramatically increases affordability. By removing the land, as single largest capital expenditure, the high entry-barrier cost of homeownership is removed, making it accessible to the urban middle class. Second, it allows for more adequate and spacious living units. With capital freed from land acquisition, the cooperative can invest in higher-quality construction and design, creating homes that comfortably meets national standards and foster a better quality of life. Finally, this model enables the development of housing in central, transit-oriented-development housing where residents are easily connected to jobs, schools, and urban necessities.¹⁰ This approach offers a potential to deliver what state programs often cannot covered: affordable, high-quality housing in the center of metropolitan city.

Despite the innovative approach to affordability and space, the cooperative model exercises a critical flaw, the tenure security. The model's foundation rests upon a conventional long-term lease agreement, which creates a fundamental dependency on the landowner. While the cooperative members collectively own the building, their right to occupy the land beneath their homes is merely contractual, not perpetual. This contract-ownership exposes the resident to risks from the landowner's financial activities. In urban real-estate market like Jakarta, the land is highly valuable asset. The landowner could go into bankruptcy, potentially leading to the liquidation of the land by creditors. They also could be tempted by offer to sell the property to a new developer, or they could use the land as collateral for a loan and subsequently default triggering foreclosure. In any of these scenarios, the residents face

⁶ BBC News Indonesia, "Rumah Flat Menteng: Kisah sekelompok orang kelas menengah bisa punya rumah di Menteng Jakarta di bawah Rp1 Miliar," BBC News Indonesia, July 6, 2025, <https://www.bbc.com/indonesia/articles/cy0wygk41o>; *Rumah Flat: Solusi Kreatif Masalah Hunian (Feat. Elisa Sutanudjaja)*, directed by Fellexandro Ruby, 2025, 58:44, <https://www.youtube.com/watch?v=dUeB5HgwBvs>. Further detailed information related to RCUS visit <https://rujak.org>

⁷ Peraturan Gubernur DKI Jakarta No. 13 Tahun 2022 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Provinsi DKI Jakarta (2022).

⁸ *Rumah Flat Menteng: Inisiatif Kelas Menengah Punya Rumah Di Menteng Seharga Kurang Dari Rp1 Miliar*, directed by BBC News Indonesia, 2025, 09:55, <https://www.youtube.com/watch?v=4omivNRieJ8>; *Rumah Flat*, at 21:19.

⁹ The term is calculated based on the regulation of *Hak Guna Bangunan* (HGB) regulated under Peraturan Pemerintah (PP) No. 18, 2021.

¹⁰ For more detailed research on transit-oriented-development (TOD) on how such concept advocates for affordable and adequate housing further can be found in the works of Susanto et al., 2020; Hasibuan & Mulyani, 2022; Abadi et al., 2024.

catastrophic consequences. The homeownership of the resident fundamentally vulnerable undermining the stability and security, if their right to occupy the land is revoked.

In Indonesian context, the case of tenant vulnerable position instanced by the case of PT Bank Pembangunan Daerah (BPD) Sumatera Selatan and Bangka Belitung v. Muginem bt. M. Siroh in the Supreme Court Decision No. 804/K/PDT/2019.¹¹ In this case, the BPD entered into a valid notarized lease agreement for two shophouse units in Prabumulih, South Sumatra, paying the full rent in advance to landowner Muginem. Without the tenant knowledge, the landowner mortgaged the same property to Bank Mandiri through a Deed of Granting Mortgage Rights (APHT No. 293/2015) dated 10 July 2015 and Certificate of Mortgage Rights (SHT No. 543/2015) dated 14 September 2015. When the landowner defaulted on the mortgage obligation, Bank Mandiri announced a public execution auction in the *Sriwijaya Post* newspaper on 27 September 2017, intending to sell the mortgaged property including the tenant-occupied buildings.

Despite the BPD's attempt to stop the auction to protect their lease term claiming protection under Article 1576 of the Civil Code, the Supreme Court rejected the BPD's cassation petition. The Court upheld the lower court's decision that the tenant's opposition was procedurally premature (*Niet Ontvankelijke Verklaard*) because the auction was a direct execution without a prior court-ordered seizure. This case demonstrates lease contract vulnerability, even with advance rent payment, and formal notarized agreements, tenants remain exposed to creditor seizure when landlords secretly mortgage leased property. Furthermore, the conflict between Article 1576 Civil Code and the Circular Letter of the Supreme Court (SEMA) No. 4/2014 in allowing creditor executed mortgage enforcement without prior court judgment meant the tenant's valid contractual right was subordinated to the creditor's security right. This illustrates how legal uncertainty itself becomes a form of tenure insecurity.

Another case that matches the long-lease agreement that risk the tenant security to the object of lease from landowner default is the case of Sing Ken Ken Hotel bankruptcy owned by PT Rendamas Reality.¹² The case is filed to Denpasar District Court No. 1341/PDT.G/2025 involving David Yore 30 years lease to the Hotel in 2009 for a condotel unit, paid rent in advance for multiple years, and occupied the unit for seven years before PT Rendamas Reality was declared bankrupt in 2017 with outstanding debt exceeding IDR 28 billion, followed by director Jane Christina Tjandra personal bankruptcy in 2018. Under the Law No. 37/2004 Bankruptcy Law, the bankruptcy curator gained authority to liquidate all company assets that further threatens Yore's lease security. The dispute centers on whether a 30-year lease agreement, valid and documented under Article 1576 Civil Code, can survive the bankruptcy curator's liquidation authority and the subsequent ownership transfer that follows asset auction. However, the case remains unresolved through mediation because Indonesian bankruptcy law creates a legal vacuum where there is no clear statutory hierarchy

¹¹ District Court Prabumulih Decision No. 11/PDT.BTH/2017/PN PBM; Supreme Court Decision No. 804 K/PDT/2019.

¹² Donny Tabelak, "Australian Investors Take Legal Action Over Bankruptcy of the Sing Ken Ken Hotel in Seminyak, Bali (*Imbas Polemik Kepailitan Hotel Sing Ken Ken di Seminyak Bali, Investor Australia Berang, Ambil Langkah Hukum*)", *radarbadung.jawapos.com*, accessed December 13, 2025, <https://radarbadung.jawapos.com/nasional/2636914765/imbaspolemikkepailitanhotel-singkenken-di-seminyak-bali-investor-australia-berang-ambil-langkah-hukum>.

determining whether an insolvent company's bankruptcy law liquidation override a tenant's civil law lease protections.

Although these judicial instances reside within the commercial sector, they constitute a critical legal precedent for the cooperative housing model. The underlying legal architecture is identical to the cooperative model. If commercial entities like BPD or substantial investors can have their leasehold rights extinguished by a landowner's default or bankruptcy, the risk to a community-based housing cooperative is more acute. For policymakers and the stakeholders these cases serve as a warning where the current reliance on standard lease agreements is insufficient to protect residents' investments. Without a legal mechanism to immunize the land from the landowner's financial liabilities, the cooperative model remains a fragile solution.

In this sense, the vulnerability of the cooperative model does not negate its strengths, rather demands a more solid legal foundation for the land it stands on. The conventional long-term lease is inadequate for providing the permanent security that residents require. This condition leads to the central question of this study on how can Islamic legal framework of *waqf* conceptualized as legal instrument to mitigate the tenure insecurity in lease-based cooperative housing? I argue that the core jurisprudential principles of perpetuity and inalienability, separation of corpus and usufruct, and publication for legal certainty of *waqf* offers solid legal remedy to the tenure vulnerabilities of the lease-based cooperative model. By transforming the land from a tradable commercial asset into a permanent endowment, *waqf* effectively immunize the resident's house from the risk of landowner bankruptcy, sale, or third-party claims. Further, I posit that *waqf* could be reconceptualized beyond its traditional scope as a devotional act of charity and leveraged as a sophisticated legal mechanism capable of ensuring permanent tenure security. This shift is essential to the framework of affordable urban housing in Indonesia. Accordingly, this study establishes the necessary jurisprudential and statutory foundation for stakeholders to operationalize *waqf* as a tenure instrument adapted to the needs of modern urban housing.

Indonesia as one of the largest Muslim populations, *waqf* is closely related to religious institutions. For decades, it has served as the financial foundation for communities with millions of hectares of land and countless buildings dedicated for devotional purposes.¹³ However, based on Ministry of Religious Affairs data, the popular and predominant understanding of *waqf* associated for pious purposes, for instance, Masjid and *Musallā* is dominant with 71.4% of the total registered *waqf* property, followed by School and *Pesantren*, and the remaining other social purposes only at 9.3%.¹⁴ This focus historically rooted in the prevalent Shāfi'ī school in *Nusantara* archipelago, which shaped the interpretation of Islamic law for centuries. While Shāfi'ī *madhhab* provides detailed legal framework for *waqf*, the application in this region has historically prioritized *waqf* for public charity, where endowed asset provides a direct non-monetized public good. The primary objective is fulfilling a communal religious or social obligation such as providing place for prayer or education.¹⁵

¹³ Badan Wakaf Indonesia, *Indeks Wakaf Nasional* (2022); Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia*, vol. 1 (Brill, 2013).

¹⁴ Direktorat Pemberdayaan Zakat dan Wakaf Kementerian Agama RI, *Data Tanah Wakaf*, n.d., <https://siwak.kemenag.go.id/siwak/index.php>.

¹⁵ Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern "Ulama" in the Seventeenth and Eighteenth Centuries* (University of Hawaii Press, 2004).

Consequently, this led to a perception of *waqf* assets as being static and underutilized, as a challenge that contemporary scholars and religious institutions like Indonesian *Waqf* Board (BWI) are actively trying to address through the promotion of advanced development of productive *waqf*.¹⁶ The traditional view, while essential for maintaining the community's spiritual infrastructure represent only one side of versatile legal instrument, where the potential *waqf* as a tool for broader social development largely unattended.

In contrast to the prevalent paradigm in Indonesia, the historical application of *waqf* within the Mālikī school, dominant across North and West Africa, offers much broader and more functional conception. While also recognizing the importance of public charity, Mālikī jurist and society placed significant emphasis on the practice of *waqf al-ahli* (family endowment) whose beneficiaries are the descendants or particular designated individuals.¹⁷ One of the most notable scholarly works by David S. Powers revealed that *waqf al-ahli* evolved into a sophisticated instrument for an estate planning and asset protection, particularly in Algeria. For wealthy families, endowing the property as a family *waqf* was a strategic legal instrument: (1) to preserve family wealth by preventing the fragmentation of large estates through the law of inheritance. (2) to protect assets from potential confiscation by the estate or mismanagement by the heirs. (3) Ensuring a continuous stream of usufruct as the benefits or revenue for designated family members across generations, while keeping the corpus of the asset perpetually intact and inalienable.¹⁸

This historical practice is a crucial precedent and starting point for this study, where *waqf* was not conceived solely as an act of devotion for charitable purposes, but possibly utilized as legal instrument to secure long-term interest of a specific group of beneficiaries.¹⁹ The application of *waqf* under Mālikī school demonstrates deliberate and strategic use of *waqf*'s core principle of inalienability and the separation of corpus from usufruct for asset management and security.²⁰ This historical versatility serves as a jurisprudential fundamental basis for extending the application of *waqf* beyond the traditional pious act and applying it to solve contemporary challenges like cooperative housing tenure.

The previous existing studies on *waqf* related to housing development primarily used the instrument as a source of capital to finance the housing development in multiple form

¹⁶ Firman Muntaqo, "Problematika Dan Prospek Wakaf Produktif Di Indonesia," *Al-Ahkam*, 2015, 83–108; Veithzal Rivai Zainal, "Pengelolaan Dan Pengembangan Wakaf Produktif," *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam* 9, no. 1 (2016): 1–16; Rahman Ambo Masse et al., "Social Entrepreneurship Model in Cash Waqf: An Evidence from Kurir Langit and Dompot Dhuafa," *Cogent Arts & Humanities* 11, no. 1 (2024): 2418727, <https://doi.org/10.1080/23311983.2024.2418727>; Wuryan Andayani et al., "Assessing the Financial Sustainability of Micro Waqf Banks: Insights from Indonesia," *Cogent Social Sciences* 11, no. 1 (2025): 2488117, <https://doi.org/10.1080/23311886.2025.2488117>.

¹⁷ Haim Gerber, *Islamic Law and Culture, 1600-1840*, vol. 9 (Brill, 1999); Timur Kuran, "The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the *Waqf* System," *Law & Society Review* 35, no. 4 (2001): 841–97, <https://doi.org/10.2307/3185418>.

¹⁸ Aharon Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*, 1983; David S. Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, no. 3 (1989): 535–71, <https://doi.org/10.1017/S0010417500016030>; David S Powers, "The Maliki Family Endowment: Legal Norms and Social Practices," *International Journal of Middle East Studies* 25, no. 3 (1993): 379–406, <https://doi.org/10.1017/S0020743800058839>.

¹⁹ Powers, "Orientalism, Colonialism, and Legal History."

²⁰ Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*.

including utilizing productive *waqf*.²¹ The purpose of this model is often for revenue generation or charitable purposes. Kurniati and Nova Lita (2019) focused on the legal principle of Horizontal Separation as the fundamental basis for developing flats on *waqf* land. Their study argued that this principle allows for the separation of land ownership (held by the *Nāẓir*) from the ownership of the building units held by investors or residents, thereby enabling productive cooperation with third parties without violating Sharia principles.²² Similarly, Setiawati (2018) addressed the regulatory vacuum in utilizing *waqf* for public housing by proposing the Build, Operate, and Transfer (BOT) model. Her research concluded that BOT, combined with a *Mushāraka* contract, offers a viable cooperation pattern between *Nāẓir* and investors to productive *waqf* land, despite the absence of specific government regulations governing such partnerships.²³ This study limits the discussion of *waqf* as an instrument for tenure legal security to protect the rights of resident, excluding *waqf* function as financial instrument or utilizing idle asset to optimize the potential economic value,²⁴ or *waqf* as an instrument to achieve home-ownership affordability,²⁵ which already covered by the cooperative-housing model.²⁶

In this sense, Cania and Juliati (2024) emphasized the role of Productive *Waqf* as a financial instrument to address the housing backlog for Low-Income Families (MBR) in urban areas. Their research highlighted that *waqf* can serve as a strategic source of funding and land supply to reduce housing costs, provided there is synergy between the government, private

²¹ Nia Kurniati, *Kajian Hukum Pembangunan Rumah Susun di atas Tanah Wakaf untuk Memenuhi Kebutuhan Rumah Tinggal bagi Masyarakat Berpenghasilan Rendah*, 1, no. 2 (2022); Ema Saswita Cania and Yenni Samri Juliati, *Pengembangan Wakaf Perumahan bagi Keluarga Berpenghasilan Rendah di Perkotaan Indonesia*, 1, no. 2 (2024).

²² Nia Kurniati and Helza Nova Lita, "Pengembangan Wakaf Tanah dan Rumah Susun Berdasarkan Asas Pemisahan Horizontal," *Sosiohumaniora* 21, no. 2 (2019), <https://doi.org/10.24198/sosiohumaniora.v21i2.9901>.

²³ Anda Setiawati, "Tanah Wakaf Untuk Rumah Susun Umum," *Hukum Pidana dan Pembangunan Hukum* 1, no. 1 (2018), <https://doi.org/10.25105/hpph.v1i1.3578>.

²⁴ Abdurrahman Kasdi, "Model Pemberdayaan Wakaf Produktif Di Indonesia," *ZISWAF: Jurnal Zakat Dan Wakaf* 1, no. 1 (2016): 1–15; Zainal, "Pengelolaan Dan Pengembangan Wakaf Produktif"; Gemala Dewi and Irvan Saputra, "Utilizing the Function of *Waqf* Land for Development of Flats Building for Public Housing (Study of Cooperation Agreement Between the Indonesian Government with the Executive Board of Nahdlatul Ulama)," paper presented at International Conference on Law, Governance and Islamic Society (ICOLGIS 2019), Banda Aceh, Indonesia, *Proceedings of the International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)*, Atlantis Press, 2020, <https://doi.org/10.2991/assehr.k.200306.228>; Dini Selasi, "Membangun Negeri Dengan Wakaf Produktif," *TAWAZUN: Journal of Sharia Economic Law* 4, no. 1 (2021): 84–103.

²⁵ Nurzafira Zainul Abidin and Noraliza Basrah, "Development Framework for Affordable Housing on *Waqf* Land," in *Islamic Development Management*, ed. Noor Zahirah Mohd Sidek et al. (Springer Singapore, 2019), https://doi.org/10.1007/978-981-13-7584-2_14; Syukqran Kamal and Rashid Ating, *Proposed Waqf Model for an Affordable Housing Mechanism in Malaysia*, 2, no. 2 (2020); Sefer Kahraman, "Waqf and the Urban Housing Question: Islamic Land Donations for Housing in Bangkok," *The American Journal of Economics and Sociology* 80, no. 2 (2021): 637–63, <https://doi.org/10.1111/ajes.12389>.

²⁶ Martin Roestamy, "Providing Affordable Housing for Low-Income People in Indonesia (Development of Model on Housing Law)," *IJASOS-International E-Journal of Advances in Social Sciences* 3, no. 9 (2017): 1094–103; Ivo Balmer and Jean-David Gerber, "Why Are Housing Cooperatives Successful? Insights from Swiss Affordable Housing Policy," *Housing Studies* 33, no. 3 (2018): 361–85, <https://doi.org/10.1080/02673037.2017.1344958>; Meaghan M. Ehlenz, "Making Home More Affordable: Community Land Trusts Adopting Cooperative Ownership Models to Expand Affordable Housing: Journal of Community Practice, 2018," in *The Affordable Housing Reader* (Routledge, 2022); Muhammad Kashif Khan et al., *Waqf Cooperative Housing Model (WCHM) as an Innovative Solution for Affordable Housing*, 12, no. 2 (2019); Muhammad Kashif Khan et al., "Framework of Affordable Cooperative Housing through an Innovative *Waqf*-Based Source of Finance in Karachi," *Journal of Islamic Accounting and Business Research* 14, no. 3 (2023): 379–97, <https://doi.org/10.1108/JIABR-05-2021-0140>.

sector, and *waqf* institutions.²⁷ This aligns with the work of Abidin and Basrah (2019), who developed a development framework for affordable housing on *waqf* land in Malaysia. Their study focused on the administrative and legislative processes required to unlock the value of undeveloped *waqf* land to solve urban poverty, proposing a structured flow from pre-development to post-development phases.²⁸ Furthermore, Dewi and Saputra (2020) conducted a normative legal analysis of a specific cooperation agreement between the Indonesian Government and the Executive Board of Nahdlatul Ulama (PBNU) for constructing flats. Their findings revealed that while the cooperation was valid under Sharia principles, the agreement itself was legally flawed under Indonesian Notary Law because it was executed as a private deed rather than an authentic deed before a notary.²⁹

While researchers extensively explored *waqf* for financing development, the scholarly works related to the use of *waqf* as a direct legal instrument is not systematically explored. In this context, I aim to fill this gap by conceptualizing legal depth of the Islamic jurisprudential tradition (*fiqh*) with the practical needs of a modern cooperative housing-model, and moves beyond the financing debate. Further, this study seeks to analyze *waqf*-based model that address the vulnerability of resident, offering a novel contribution to the field. By shifting the analytical lens from financial viability where *waqf* is typically viewed as a capital funding source to legal durability, this research offers a distinct and novel contribution. This study argues that the Islamic concept of inalienability is the missing legal key required to transform temporary affordable housing into permanent, secure urban assets

B. METHODS

This study employs qualitative socio-legal analysis to assess the application and feasibility of *waqf* for urban-housing security in a long-term land tenure. According to this approach, the legal analysis is closely linked to the social context in which it operates, where the legal rules are not autonomous but deeply embedded within societal context.³⁰ This approach is chosen to bridge the gap between normative legal theory and social praxis. To ensure the framework for the proposed *waqf*-based housing model, the research process is divided into three distinct phases: data collection, functional analysis, and statutory validation.

The primary data collection focuses on a doctrinal investigation into classical Islamic jurisprudence (*fiqh*) from authoritative classical texts. The collection process prioritizes the extraction of three fundamental legal constructs: *ta'bid* (perpetuity) and the prohibition of alienation (*lā yūhab wa lā yubā'*), the separation of *al-aṣl* (corpus) from *manfa'a* (usufruct), and public registration. Secondary data is drawn from the contemporary housing context, utilizing the case of the Rujak Center for Urban Studies (RCUS) regarding the cooperative

²⁷ Cania and Juliati, *Pengembangan Wakaf Perumahan bagi Keluarga Berpenghasilan Rendah di Perkotaan Indonesia*.

²⁸ Abidin and Basrah, "Development Framework for Affordable Housing on *Waqf* Land."

²⁹ Dewi and Saputra, "Utilizing the Function of *Waqf* Land for Development of Flats Building for Public Housing (Study of Cooperation Agreement Between the Indonesian Government with the Executive Board of Nahdlatul Ulama)."

³⁰ David N. Schiff, "Socio-Legal Theory: Social Structure and Law," *The Modern Law Review* 39, no. 3 (1976): 287–310, <https://doi.org/10.1111/j.1468-2230.1976.tb01458.x>; Naomi Creutzfeldt et al., "Socio-Legal Theory and Methods: Introduction," in *Routledge Handbook of Socio-Legal Theory and Methods*, 1st ed. (Routledge, 2019), <https://doi.org/10.4324/9780429952814>.

housing model in Jakarta, as well as relevant laws, court decisions regarding land and lease regulation.

Furthermore, the collected data is subjected to a functional legal analysis. In this phase, the extracted fiqh principles are re-contextualized from their traditional devotional settings into a modern law framework. The analysis operates by mapping the vulnerabilities of the leasehold model, specifically the risk of landowner default and third-party seizure against the protective mechanisms of *waqf*. This synthesis aims to construct a theoretical model where *waqf* acts as a direct legal remedy for tenure insecurity.

Lastly, to ensure the proposed model is feasible, the final phase involves a statutory feasibility test. The synthesized fiqh framework is validated against the positive law of Indonesia, specifically Law No. 41 of 2004 concerning *Waqf* and Government Regulation No. 42 of 2006. This validation process assesses whether the proposed "tenure security" functions of *waqf* are legally enforceable within the state's administrative system. This includes verifying the legality of designating cooperative members as specific beneficiaries (*mauqūf 'alaihim*) and the procedural requirements for public registration to bind third parties. This step confirms that the *waqf*-based cooperative model is legally viable and enforceable within Indonesia's current regulatory environment.

C. RESULTS AND DISCUSSION

1. Core Fiqh Principles on *Waqf*

In this part, I begin by establishing analytical groundwork for the proposed housing model by defining the foundational principles of Islamic jurisprudence (*fiqh*) that make *waqf* a viable instrument for tenure security. The analysis moves beyond the prevalent perception of *waqf* as devotional act of charity or financial resource to a solid legal structure for asset management. In this context, the proposed *waqf*-based model for the cooperative-housing relies on the application of the following foundational *waqf* principles:

a. Perpetuity and Inalienability

The core fundamental principle of *waqf* is the nature of perpetuity which dictates the endowment is established with the intention of lasting indefinitely.³¹ According to Islamic law, *waqf* refers to the arrangement where *wāqif* (the endower) endows his property in favor of particular persons or objects. Such property is perpetually reserved for the stated objectives and cannot be alienated by inheritance, sale, gift, or otherwise.³² The act of *waqf* itself also referred as *ḥabs* or particular prescribed words signifying the notion of perpetuity such as *ṣadaqa maḥbūsa* (a dedicated in trust charity), *muḥarrama* (made inviolable), *mu'abbada* (made perpetual).³³

³¹ Powers, "The Maliki Family Endowment," 379; Muhammad Zubair Abbasi, "The Classical Islamic Law of *Waqf*: A Concise Introduction," *Arab Law Quarterly* 26, no. 2 (2012): 130, <https://doi.org/10.1163/157302512X629124>.

³² Abbasi, "The Classical Islamic Law of *Waqf*," 124.

³³ Ibn Qudāma, *Al-Mughnī* (Dār 'Ālim al-Kitāb, 1997), 189; Abbasi, "The Classical Islamic Law of *Waqf*," 125; Powers, "The Maliki Family Endowment," 382.

The majority of jurists (*jumhūr al-‘ulamā’*) regard perpetuity as mandatory condition for the validity of *waqf*.³⁴ Abū Ḥanīfa agrees that a valid *waqf* must be created for a perpetual purpose. He further equates *waqf* with *‘āriya* (lending) which revocable at the option of *wāqif* becomes void with his death, with the exception where *waqf* is testamentary or intended to take effect after death as *waṣiyya* is effective on up to one-third of the founder's (*wāqif*) wealth unless the legal heirs consent otherwise.³⁵ Mālikī jurist, Ibn ‘Arafa defined *waqf* as the grant of the usufruct of a thing that is binding nature by stating that the grant of endowment is binding on the donor “for the duration of its existence.”³⁶ In this sense, *wāqif* typically designate the property for public charitable purposes, commonly religious institutions like Masjid or the Madrasa (Islamic school) for the needs, ensuring the function of perpetuate benefit.

Interestingly, Mālikī school offers unique doctrines that permit temporary and revocable *waqf* which stand in contrast to the principle of strict perpetuity found in the majority schools who regards perpetuity as mandatory condition for the validity of *waqf*.³⁷ The concept of temporary *waqf* in the Mālikī school primarily based on the principle of reversion, originated in early Medinan's legal thought which regulates the endowed property when the line of designated beneficiaries ends or failed to serve its purpose.³⁸ Upon reversion, the status of the returned property divided into two legal opinion among Mālikī jurists. Some jurist hold that the heirs acquire full ownership of the property. In this case, the property ceases to be a *waqf* and is divided among the heirs according to the rules of succession, making the *waqf* truly temporary. Other jurist argue that the reverting property retains as *waqf*, where the heirs who receive are new set of beneficiaries, bound by the same restrictions i.e. prohibition of sale.³⁹

Furthermore, Mālikī school allows the revocation of *waqf* in two main contexts: (1) where the will only become effective upon the death of the testator, the founder retains full ownership and the right to “revoke” *waqf* at any point during their lifetime. (2) when the purpose of established *waqf* is lapsed, some Mālikī jurist hold that the right to revoke not only belong to the founder rather extent to their heirs.⁴⁰ In this sense, it is important to distinguish between the operation of family *waqf* and the concept of temporary *waqf*. In family *waqf*, the usufruct (benefit) is transferred from one generation of heirs as beneficiaries to the later within the ongoing purpose of endowment. While in the concept of “temporary” *waqf* applies to the corpus (the property) and only applicable when the entire line of family beneficiaries diminishes.⁴¹

³⁴ Ibn ‘Ābidīn, *Radd Al-Muḥtār ‘alā al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār* (Dār al-Kutub al-‘Ilmiyya, 2003), 21,532; Qudāma, *Al-Mughnī*, 17,192; Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*, 131.

³⁵ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuhu* (Dār al-Fikr, 2004), 13, 7604–5; Abbasi, “The Classical Islamic Law of *Waqf*,” 131.

³⁶ Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*, 3; Powers, “The Maliki Family Endowment,” 382.

³⁷ ‘Ābidīn, *Radd Al-Muḥtār ‘alā al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 21,532; Abbasi, “The Classical Islamic Law of *Waqf*,” 131.

³⁸ When there are no more beneficiaries left to receive *waqf* benefits or the reason for which *waqf* established can no longer be fulfilled, the property reverts to its original owner, or if he died, to his heirs.

³⁹ Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*, 5.

⁴⁰ Ibid.

⁴¹ Ibid., 13.

In contrast, majority of jurist includes Shāfi'ī, Aḥmad b. Ḥanbal, Abū Yūsuf, and al-Shaybānī consider perpetuity and irrevocability to be mandatory conditions for a valid *waqf*. The foundational argument is that the act of *waqf* signifies complete and final extinction of the founder's ownership to dedicated asset.⁴² Once *waqf* is declared, the founder's connection to the property is severed, and can no longer be sold, gifted, or inherited by him or his heirs. This immediate termination of rights makes the act inherently perpetual and irrevocable. Aḥmad b. Ḥanbal further specifies that the ownership of *waqf* property is transferred directly to the beneficiaries.⁴³ This view reinforces the final act of the founder as the property become legally belongs to others, making it impossible for the founder to revoke the endowment.

Similarly, the goal of perpetuity would be unattainable without corresponding the principle of inalienability, which dictates that once the property is endowed, it is permanently removed from the private domain of commerce and personal ownership transfer. This legal status often explicitly declared in the endowment deed with phrases like *lā yūhab wa lā yubā'* meaning "it neither to be gifted nor to be sold."⁴⁴ In the context of family *waqf*, by making the asset inalienable, the founder achieves the primary objective to halt the fragmentation of capital, instead of being divided among numerous heirs with passing generations, the endowed property remains a whole, economically viable unit preserving its capital value for the sustained benefit of future beneficiaries.⁴⁵ This notion of perpetuity and inalienability to preserve an asset for the sustained benefit of a specific group (legal heirs) aligns with the contemporary need for land tenure security in cooperative housing for the residents. In this sense, by locking the land asset and removing landowner commercial control, the principle of inalienability directly mitigates the primary risk faced by residents into a secure leasehold perpetual right of occupation.

b. Separation of Corpus and Usufruct

The second crucial principle is the separation between the endowed asset (the corpus, *al-aṣl*) and the benefits or use-rights that follows (the usufruct, *al-manfa'a*) as central legal distinction that defines the institution of *waqf*. Majority of the jurists agree on this fundamental concept on *waqf*, where "the substance of property is reserved while its usufruct is spent for specific purposes."⁴⁶ This principle essentially splits the concept of ownership into two distinct parts as the core asset and the benefit. The legal basis for this separation comes directly from cited tradition where Prophet Muḥammad advised 'Umar on how to make the best use of his property. The Prophet advised was to "*ḥabbis al-aṣl wa sabbili al-thamra*" (sequester the substance and donate the usufruct).⁴⁷

This advice established the core legal framework of *waqf*, into: (1) The Corpus (*al-aṣl*) is the "substance" of the property i.e. the land, the building, etc. is reserved and made perpetually inalienable, cannot be sold, gifted, or inherited. (2) The Usufruct (*al-manfa'a* or *al-thamra*) is the "benefit" or "fruit" generated by the corpus i.e. corps form land, rental income

⁴² 'Ābidīn, *Radd Al-Muḥtār 'alā al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 6,157; Abbasi, "The Classical Islamic Law of Waqf," 126.

⁴³ Qudāma, *Al-Mughnī*, 17, 188; Abbasi, "The Classical Islamic Law of Waqf," 128.

⁴⁴ Powers, "The Maliki Family Endowment," 382.

⁴⁵ Powers, "Orientalism, Colonialism, and Legal History," 536.

⁴⁶ Abbasi, "The Classical Islamic Law of Waqf," 126.

⁴⁷ al-Shāfi'ī, *Al-Umm* (Dār al-Fikr, 1990), 5, 108; al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī* (Dār al-Ṭawq al-Najāh, n.d.), 2737.

from a building, etc. This is the portion that is spent or donated outlined by the founder. Majority of the jurists agreed that the corpus must be reserved, however, the legal debate situated in the status on who holds the ultimate ownership of the reserved corpus as more complex legal and theological matter. According to al-Shaybānī and Abū Yūsuf, the ownership of the corpus passes to God, while Abū Ḥanīfa along with Shāfi'ī jurists held a different view. They argued that *wāqif* retain the right of ownership but legally prevented from exercising it; in other words, the corpus is ownerless (*ghayr mamlūk*). The third opinion, held by some Shāfi'ī jurists and Aḥmad b. Ḥanbal argue that the ownership of *waqf* property is passes to directly to the beneficiaries.⁴⁸

This legal distinction fundamentally divides the concept of ownership and use. Once *waqf* is declared, the corpus is reserved and the founder's ownership right is extinguished. In this condition, the property is permanently removed from the subject of private property and commerce. Concurrently, the beneficiaries have a vested and legal-right to the usufruct, entitling them to exercise the property's benefit without holding the "ownership" to the underlying asset ⁴⁹. Further practical implication of this distinction is; a valid *waqf* cannot be created from the usufruct of property alone without dedicating the physical substance as the two are conceptually distinct but legally bound together for the purpose of creating the endowment.⁵⁰ Second, the beneficiaries rights are strictly limited to the exercise of usufruct. For instance, the beneficiaries who has the right of residence in *waqf* property as form of usufruct cannot rent it out to others, as their right is limited to personal residence, not as the owner of the property.⁵¹

Furthermore, in the context of family *waqf*, the practical implication of this legal distinction is the preservation of *waqf's* capital. By legally separating the corpus from the usufruct, the founder ensures that the original asset cannot be sold or disposed by the beneficiaries (heirs) as the corpus is reserved and removed from the exercise of private commerce, which protects it from partial fragmentation or seized by the creditors in case of the heir's default.⁵² This ensures that the corpus' usufruct remains intact in perpetuity. Additionally, while the corpus is fixed and the usufruct is fluid, the founder can allocate usufruct entitlements to specified people, amounts, and the transmission of the entitlements from one generation of beneficiaries to the next, creating a detailed long-term financial plan, that allows effective circumvent the rigid inheritance rules that would otherwise fragment the property.⁵³

This legal distinction between the corpus and usufruct provides the ideal legal framework for the cooperative-housing model. In this proposed model, the land is designated as the inalienable *waqf* corpus, permanently secured from sale or private transfer. The cooperative members, as the designated beneficiaries are granted the usufruct, which is defined as the perpetual right to construct, and reside in the physical flat-house building upon that land. This

⁴⁸ Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press, 1964); Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*, 3; Abbasi, "The Classical Islamic Law of Waqf," 139.

⁴⁹ Abbasi, "The Classical Islamic Law of Waqf," 126.

⁵⁰ al-Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuhu*, 13, 7637; Abbasi, "The Classical Islamic Law of Waqf," 135.

⁵¹ Ibn al-Humām, *Sharḥ Faṭḥ Al-Qadīr 'alā al-Hidāya*, ed. 'Abd al-Razzāq Ghālib Mahdī (Dār al-Kutub al-'Ilmiyya, 2003), 17, 208; Abbasi, "The Classical Islamic Law of Waqf," 142.

⁵² Layish, *The Mālikī Family Waqf According to Wills and Waqfiyyāt*, 31; Kuran, "The Provision of Public Goods under Islamic Law," 847.

⁵³ Powers, "The Maliki Family Endowment," 394.

structure resolves the core economic barrier of homeownership by removing the immense cost of land acquisition to the long-lease model, and decisively elevates cooperative-members legal position from long-leaseholder to perpetual endowment beneficiaries. Furthermore, this arrangement allows them to exercise secure long-term use of land without exercising the financial burden of its purchase, achieving the objectives of affordability and tenure security.

c. Legal Certainty and Public Registration

The principle of legal certainty and public registration is the procedural foundation that gives *waqf* legally binding and gives protection from external claims. For a *waqf* to be considered valid and permanent, the founders intent had to be formally and publicly declared; in the form of registration to the Islamic court, typically through professional legal notary to draft the *waqf* deed (*waqfiyya*).⁵⁴ The registered deed was the primary source of legal certainty detailing the specific asset being endowed, the designated purposes and the beneficiaries and the precise rules for the management and the succession of the administrator.⁵⁵ According to Powers, in the Mālikī school, the creation of *waqf* had to be declared formally in a legal ceremony known as *hiyāza* which translates to “conveyance or taking possession.” *Hiyāza* was a public declaration of the actual physical transfer from the founder to the beneficiaries with the presence of two notary witnesses who formally attested the transfer.⁵⁶

Furthermore, public registration is also the key to protect *waqf* from third-party claims. This system is essential in defining legal relationship between the founder and the third parties such as creditors. According to Mālikī school, a *waqf* created by an insolvent person is considered void, as the law did not permit *waqf* to be used to defraud creditors.⁵⁷ Once *waqf* created by a solvent and formally registered, it was legally protected from future claims against the founder, including subsequent confiscation resulted from default. The significant historical example of this principle is when an Ottoman imperial decree issued by Sultān Sulaymān (1520-1566) explicitly prohibited judges (*qāḍīs*) from validating and registering the property of a debtor as *waqf*.⁵⁸

In the context of family *waqf*, once the deed was registered, the endowment was legally shielded from claim of the heirs who often materially harmed by the endowment that could not easily reclaim the property as part of their inheritance. Any legal dispute would be resolved by the *qāḍī* based on the intent of registered deed.⁵⁹ Furthermore, registration of the *waqf* is the strongest defense against confiscation. The public and legally documented nature of the endowment made it difficult for rulers to seize the property without violating the law. This difficulties in exercising the land experienced by the French colonial authorities when more than one-half of the land in Algeria was endowment land.⁶⁰

This principle of achieving legal certainty through public registration provides a direct and comprehensive solution to the core vulnerabilities of the lease-based cooperative model. By formally transforming the land into a *waqf* asset under a modern legal framework such as

⁵⁴ Ibid., 389–91; Kuran, “The Provision of Public Goods under Islamic Law,” 861.

⁵⁵ Kuran, “The Provision of Public Goods under Islamic Law,” 861.

⁵⁶ Powers, “The Maliki Family Endowment,” 382.

⁵⁷ Abbasi, “The Classical Islamic Law of *Waqf*,” 146–47.

⁵⁸ Ibid., 152.

⁵⁹ Kuran, “The Provision of Public Goods under Islamic Law,” 871.

⁶⁰ Powers, “Orientalism, Colonialism, and Legal History,” 537.

Indonesian Law No. 41 of 2004, the property is legally reserved and detached the property from the private estate. Consequently, the land is immunized from the very risk that undermine the leasehold model i.e. the property cannot be seized by the landowner creditors, sold, or reclaimed by his legal heirs. This act of public registration further elevates the resident's security into a permanent and publicly recorded legal status, ensuring the long-term ownership of their flat-houses.

2. The Baseline Model: Menteng Flat-House by RCUS Cooperative

The practical baseline for this study is the cooperative-housing model initiated by Rujak Center for Urban Studies (RCUS), a Jakarta-based urbanist think-act-tank.⁶¹ In early 2025, RCUS completed its landmark project; a four-floors cooperative flat-house for seven families in Menteng, Central Jakarta. This project realization was a direct outcome of RCUS' successful advocacy, which culminated in the 2022 revision of Jakarta's Detailed Spatial Plan (RDTR).⁶² This crucial regulatory change permits the construction of low-rise vertical buildings on smaller plots into 250 to 800 m² from the minimum area of 3,000 m² for the construction of vertical building,⁶³ directly addressing the fact that the vast majority of Jakarta's residential land is characterized by low Floor Area Ratios (FAR) and is underutilized for multi-family housing.⁶⁴ The proposed RCUS multi-family housing model is strategically designed around several core principles aimed at solving urban housing challenges. These include (1) vertical densification to increase housing capacity and counter urban sprawl; (2) the integration of transit-oriented development (TOD) for better urban connectivity; (3) the promotion of social inclusivity across generations and economic classes; and (4) a commitment to sustainability and equity.⁶⁵

Furthermore, the cooperative-model achieves affordability in a prime urban location primarily through the legal and financial separation of the building from the land. The legal framework is structured where the landowner retains the freehold title (SHM), while the housing cooperative, formed by the residents, holds a Right to Build certificate (SHGB) for the flat-house building itself. This arrangement means residents collectively own the structure but not the land beneath, thereby removing the immense cost of land acquisition from the equation of homeownership. The residents pay a one-time construction cost, which serves as their mandatory deposit into the cooperative, ranging from Rp380 million for a 40m² unit to Rp790 million for a 90m² unit.⁶⁶

The contractual agreement between the residents and the landowner is governed by a 60-year lease agreement with an option to extend. The terms are designed to prioritize stable residency, with a collective land rent of Rp90 million per year, which is divided among residents based on their unit size and adjusted for inflation every five years. Beyond this core structure, the cooperative model employs further cost-reduction strategies. First, it eliminates substantial legal and administrative fees by forgoing the process of issuing individual

⁶¹ RCUS, "About Rujak Center for Urban Studies," accessed September 15, 2025, <https://rujak.org/about/>.

⁶² Pergub DKI Jakarta No. 13.

⁶³ BBC News Indonesia, "Rumah flat Menteng."

⁶⁴ Vidya Tanny, "Hunian Berbasis Kolektif: Alternatif Bagi Generasi Tua Di Jalan," Adequate Housing, *Rujak*, July 29, 2022, <https://rujak.org/hunian-berbasis-kolektif-alternatif-bagi-generasi-tua-di-jalan/>.

⁶⁵ Elisa Sutanudjaja, "Perjalanan Rumah Flat Kami: Solusi Hunian Untuk Jakarta," Adequate Housing, *Rujak*, December 12, 2024, <https://rujak.org/perjalanan-rumah-flat/>.

⁶⁶ BBC News Indonesia, "Rumah flat Menteng"; *Rumah Flat*.

ownership certificates for each unit, relying on a legally binding inter-party agreement within the cooperative.⁶⁷ Second, by being a self-financed, resident-driven project which bypasses the commercial development market entirely, eliminating developer profit margins, marketing expenses, and interest payments on construction loans.⁶⁸

Despite the significant innovation proposed by RCUS cooperative model, the core legal structure of the tenure contains inherent vulnerability. The affordability achieved by the model centered on separating the residents ownership of the building via (SHGB) from the land, which is secured through long-term lease. However, while the landowner retains a private ownership (SHM), the land remains within the domain of private alienable asset. This exposes the resident to critical tenure security. the landowner retains the legal power of alienability i.e. the right to sell, mortgage, or transfer. These vulnerabilities, which are intrinsic to any private leasehold agreement, can be directly mitigated by applying the principle of *waqf*. by transforming the land's legal status from a private, alienable asset into a permanent endowment, the *waqf* model offers a path to secure residents tenure in perpetuity, protecting their homes from the commercial and third-party risks that the current lease-based model cannot eliminate.

3. Applying *Waqf*-Based Cooperative-Housing in Indonesian Context

While the cooperative-model initiated RCUS with the contractual long-term lease agreement circumvent the immense cost of land acquisition which initially makes homeownership affordable, it simultaneously embeds a fundamental long-term insecurity within its legal foundation. A 60-years finite lease, regardless of its length is by nature temporary, and the optional extension is not a guarantee of a future negotiation subject to the landowner's discretion and prevailing market condition. This situation creates state of uncertainty where the landowner incentives inclined to develop the land for more profitable use, as the resident's security diminishes. Furthermore, the residents are also in perpetual risk from third-party claims against the land-owner, including claims by subsequent heirs or seizure by creditors. For instance, according article 1917 of Indonesian Civil Law (KUH Perdata) in the context of landowner's default, the land can be the subject to a court-ordered seizure that should be obeyed.⁶⁹

In direct contrast to the finite nature of a long-term lease, the *waqf* model is built upon the jurisprudential principle of perpetuity. By endowing the land as *waqf*, the legal status of the land permanently altered makes the resident's tenure vulnerability is eliminated. This choice to adopt the principle of perpetuity, as advanced by the majority of jurists including the Shāfi'ī and Ḥanbalī schools, is a functional necessity. This application of perpetuity transforms and elevates the residents' legal status entirely, and no longer subject of "temporary" lessees holding a subordinate-contractual right that is dependent on a commercial relationship with a landowner. In *waqf*-based model, they become perpetual beneficiaries of the *waqf*, holding a vested, legally recognized right to the land's usufruct. Their security is no longer contingent on a renewable contract but is anchored in the permanent, unchangeable purpose of the endowment itself. This shift from a finite contract to a perpetual right provides the absolute and lasting tenure security that the lease-based model cannot guarantee.

⁶⁷ *Rumah Flat*.

⁶⁸ BBC News Indonesia, "Rumah flat Menteng."

⁶⁹ Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek*).

Furthermore, the existing cooperative model creates a dependent ownership structure, as the landowner holds freehold title (SHM) and the cooperative holds the right-to-build certificate (SHGB). Although functional, this arrangement means the value and security of the residents building are contingent on the terms of lease and the stability of the SHM holder. The residents “own” their homes but this ownership fundamentally precarious. The Islamic legal distinction between the corpus and usufruct provides a clear and permanent resolution to this ownership ambiguity. In the proposed *waqf* model, this principle is applied as follows: (1) the land itself designated as the corpus, through the act of *waqf*, where the ownership is transferred from the private landowner to the endowment, removed from the private domain and commercial control. (2) the cooperative members as beneficiaries, are granted the usufruct. In this specific model, the usufruct is their perpetual right to construct, own, maintain, and reside in the building situated on the *waqf* land.

This legal distinction further has profound economic consequences where the *waqf* structure allows the residents to have secure permanent right to the building without having to bear the immense capital cost of the land. Subsequently, the residents effectively insulated from the speculative pressure of the land market, allowing their housing costs to be based on the real cost of construction, not land value. This principle creates a permanent and secure legal relationship giving the resident the ownership of the home on perpetual secured land through *waqf*.

a. Immunizing The Asset: Inalienability, Registration, And Governance

To address the fundamental weakness of the lease-based cooperative model as the land remains a privately owned, alienable asset, the application of a *waqf*-model is designed to serve as legal remedy by legally “immunizing” the asset. This condition achieved through the two principles of inalienability and public registration, both of which are explicitly codified in Indonesian law. The principle of inalienability provides the core legal protection, as mentioned in Article 40 of Law No. 41 of 2004.⁷⁰ The article legally transforms the land from a tradable commodity into a protected non-commercial endowment. The original landowner potential bankruptcy, urge to sell, or default on a separate loan becomes irrelevant to the land's status. The law effectively withholds the landowner's commercial rights, mitigates the residents vulnerability. However, this inalienable status is only legally enforceable upon the procedural act of public registration. This is the mechanism that gives *waqf* a significant legal certainty.

According Indonesian law of *waqf*, after the declaration of *waqf* deed before the officials (PPAIW), the official is obligated to register the matter to the National Land Affairs (BPN) within seven days after the deed being signed. Furthermore, The Indonesian *Waqf* Board (BWI) as the independent national body established by the law is then tasked with administering this registration and announcing it to the public. This public registration serves as a formal legally binding notices that the land has been permanently removed from the private commercial domain and immune from any future claims against the founder. A final critical component is the governance, as the law mandates that every *waqf* managed by an

⁷⁰ UU No. 41 Tentang Wakaf (2004). The article explicitly states that *waqf* property is prohibited from being: (a) mortgaged; (b) confiscated; (c) granted; (d) sold; (e) inherited; (f) exchanged; or (g) transferred in any other form of transfer of rights.

administrator (*nāẓir*), where the housing cooperatives itself need to serve as the *nāẓir*. Article 10 of Law No. 41 of 2004 accommodates this, permitting an organization or a legal entity to be a *nāẓir* as long as it is a legal Indonesian entity engaged in social, educational, community, and/or Islamic religious fields.

b. Navigating the Indonesian Legal Framework: A Feasibility Analysis

The conceptual model proposed in this paper, which synthesizes the principles of perpetuity and Mālikī-inspired usufruct management, is not merely a theoretical construct; it is fully feasible within the existing Indonesian legal framework. A systematic analysis of Law No. 41 of 2004 demonstrates its capacity to accommodate the core features of the *waqf*-based cooperative model. *First*, the law explicitly permits a *waqf* to be established for broad public interest purposes beyond purely devotional acts. Article 22 lists the permissible purposes, which include not only “facilities and activities of worship,” but also the “advancement and improvement of public welfare.” A cooperative housing project aimed at providing secure, affordable housing for the urban middle-class falls comfortably within these statutory objectives. *Second*, the law is flexible regarding the designation of beneficiaries and allowed to be designated to the members of the cooperative. This is perfectly consistent with the law, as the ultimate purpose is the public good of housing security. *Third*, the model aligns with the national strategy of promoting productive *waqf*. While the primary benefit of this model is direct use-right rather than cash generation, it is fundamentally productive to unlocks the economic potential of urban land, facilitates community-led capital investment in construction, and creates stable, appreciating housing assets.

While the previous studies have extensively covered financial viability,⁷¹ and the mechanism of development cooperation,⁷² they primarily view *waqf* as a means to facilitate construction or generate revenue. In contrast, this study shifts the analytical focus entirely toward tenure security. This research conceptualizes *waqf* as a protective legal instrument for the residents. By drawing on the Mālikī school's principles of asset protection, this study addresses a specific vulnerability in the cooperative housing model: the risk of landowner default. Thus, while previous scholars asked how *waqf* can finance housing, this study answers how *waqf* can immunize housing assets from commercial risk, offering a novel jurisprudential solution to the problem of long-term land tenure insecurity.

However, the primary focus of this study is limited to the normative and socio-legal architecture of asset immunization, deliberately excluding the financial dimensions of housing development, such as capital accumulation strategies, construction financing models, and the quantitative economic valuation of *waqf* assets. Furthermore, the analysis relies on a single qualitative case study of the RCUS cooperative model, while illustrative, does not capture the diverse operational complexities inherent in broader market applications. Consequently, future research should aim to bridge this gap by conducting quantitative financial modeling to assess the economic viability of securing construction loans on inalienable *waqf* land where

⁷¹ Abidin and Basrah, “Development Framework for Affordable Housing on *Waqf* Land”; Cania and Juliati, *Pengembangan Wakaf Perumahan bagi Keluarga Berpenghasilan Rendah di Perkotaan Indonesia*.

⁷² Kurniati and Lita, “Pengembangan Wakaf Tanah dan Rumah Susun Berdasarkan Asas Pemisahan Horizontal”; Setiawati, “Tanah Wakaf Untuk Rumah Susun Umum”; Dewi and Saputra, “Utilizing the Function of *Waqf* Land for Development of Flats Building for Public Housing (Study of Cooperation Agreement Between the Indonesian Government with the Executive Board of Nahdlatul Ulama).”

traditional collateral is absent. Additionally, further scholarly inquiry is needed to develop detailed governance frameworks that specifically address potential conflicts of interest between the *nāẓir* and the cooperative residents, ensuring that the theoretical legal security proposed here translates into practical operational stability.

D. CONCLUSION

This study addresses the critical vulnerability of tenure insecurity within innovative cooperative housing models in Indonesia, demonstrating that the Islamic legal framework of *waqf* offers a viable solution to transform precarious leaseholds into permanent tenure. By synthesizing the Shāfi'ī principle of perpetuity with the Mālikī framework of asset protection and usufruct separation, this research theoretically reconceptualizes *waqf* beyond its traditional charitable role into a mechanism for asset immunization. The analysis confirms that these core principles, when legally formalized through public registration under Indonesian Law No. 41 of 2004, effectively shield the land from commercial volatility, landowner default, and third-party claims. Consequently, this study provides a concrete legal blueprint for policymakers and stakeholders to elevate residents from vulnerable temporary lessees to perpetual beneficiaries. Ultimately, this research offers a pathway to secure affordable housing for the urban middle class, completing the cooperative housing model by ensuring that the benefit of affordability is matched with the essential element of legal permanence.

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