

Istihsān-Based Waqf in The Carotai Tradition in Tanang River Community, Agam District, West Sumatera

doi [10.15408/ajis.v24i2.37582](https://doi.org/10.15408/ajis.v24i2.37582)

Nofiardi*¹ and Muhammad Irfan Helmy²

¹Universitas Islam Negeri Sjech M. Djamil Djambek, ²Universitas Islam Negeri Salatiga

nofiardi@uinbukittinggi.ac.id

Abstract

The people of Nagari Sungai Tanang, Banuhampu District, have long performed waqf by raising fish in a large pond that the community calls Tabek Gadang. When the waqf fish are ready to be harvested, thousands of fishermen catch some of the fish several times, and the money from fishing can be used to finance mosques, prayer rooms, and other things. Some fish are sold to traders, and others are shared or fought over by the community. It is important to conduct this study to analyze Carotai Waqf in the Nagari Sungai Tanang community by exploring the values that the community considered in carrying out this tradition and how was *istihsān* view towards it, considering that this activity originated from land waqf in the form of Tabek Gadang, produced through the *istihsān* approach. A qualitative method with an ethnographic approach was used to answer the focus of this research. The result showed that people carried out Carotai Waqf to pass on the values of togetherness and kinship and to foster the nature of trust to the next generation. Even though in terms of general arguments, no one regulated or allowed it, turning to other arguments based on *istihsān* with *ijmā'*, this can be used to continue the tradition of Carotai Waqf.

Abstrak

Masyarakat Nagari Sungai Tanang Kecamatan Banuhampu sudah lama melaksanakan wakaf dengan pemeliharaan ikan di sebuah kolam ikan besar yang oleh masyarakat disebut Tabek Gadang. Setelah ikan-ikan dari wakaf itu siap panen, sebagian dipancingkan beberapa kali pemancingan dengan ribuan para pemancing dan uang hasil pemancingan tersebut dapat dipergunakan untuk pembiayaan masjid, mushalla dan peruntukkan lain. Sebagian dijual kepada para pedagang, dan sebagian lain dicarotakan atau diperebutkan oleh ribuan masyarakat. Penelitian ini dilakukan untuk mengkaji tentang carotai wakaf pada masyarakat Nagari Sungai Tanang dengan mendalami nilai-nilai yang menjadi pertimbangan masyarakat melakukan budaya tersebut dan bagaimana pandangan *istihsān* mengingat ia berasal dari tanah wakaf berupa Tabek Gadang yang diproduksi. Metode kualitatif dengan pendekatan etnografi dipergunakan untuk menjawab fokus penelitian ini. Hasil penelitian menunjukkan bahwa masyarakat melakukan carotai wakaf tersebut untuk mewariskan kepada generasi berikutnya nilai-nilai kebersamaan, kekeluargaan dan memupuk sifat amanah, meskipun dari segi dalil umum tidak ada yang mengatur dan membolehkannya. Akan tetapi, dengan beralihnya kepada dalil lain berdasarkan *istihsān* dengan *ijmā'* dapat dijadikan pertimbangan untuk terus berlanjutnya budaya atau tradisi carotai wakaf ini.

Keywords:

Productive Carotai Waqf; Istihsān; Community Traditions

How to Cite:

Nofiardi., Helmy, Muhammad Irfan, (2024). Istihsān-Based Waqf in The Carotai Tradition in Tanang River Community, Agam District, West Sumatra. AHKAM: Jurnal Ilmu Syariah, 24(2). <https://doi.org/10.15408/ajis.v24i1.37582>

Introduction

Waqf plays a significant role in community life (Choeri, 2022; Anggareni, et.al., 2024; Sulistiani, 2021). The need for mosques and prayer rooms as places of worship has had a positive impact, and the provision of land waqf has become a habit (Syaikhu, et.al, 2021). As it develops, waqf in the form of educational facilities with the establishment of Islamic boarding schools and Islamic schools, health services, and the establishment of orphanages without reducing the waqf for places of worship are still being carried out, including ones in Nagari Sungai Tanang, Banuhampu District, Agam Regency. The people of Nagari Sungai Tanang build the “*sumarak*” (glory) of their nagari, including with waqf. They have built a mosque, prayer room, and small *surau* with waqf funds provided by the community. They have also built village Islamic schools to educate children to study the Quran and religion and provided burial grounds (Yumarni et al., 2021).

In addition to the mosque and prayer room, places of religious study, and burial grounds, it is exciting that there was a waqf for 1 (one) large fish pond by the community called Tabek Gadang, which is about 800 meters long and about 75 meters wide, which is right in front of the Nagari Jami’ Mosque. This large fish pond, which is rarely found elsewhere in the Minangkabau area, is utilized by mosque administrators, *nāzīr*, and community leaders to raise fish. After the pet fish are grown, they discuss the timing of fishing. The money earned from fishing can be used for mosque operations, prayer rooms, and other purposes.

After about five times of fishing, there are usually two things that the mosque administrators, *nāzīr*, and community leaders do: they put tens of thousands of fish seeds back into the tank Gadang or *Carotai*. When the agreement is reached between the mosque management, the Waqf *Nāzīr*, and the community leaders, some fish are sold to *toke* (traders), and some are distributed to the community. This activity is attended by the people of Nagari Sungai Tanang and by many outsiders, such as people from Bukittinggi, Padang Luar, Pakan Sinayan, and other villages around the Tanang River. It is even more interesting because not only people from their hometowns participated, but also people from different cities, such as Jakarta, Medan, Lampung, and Padang, who deliberately returned to their hometowns to participate in the excitement of Carotai Waqf.

Many previous studies have been conducted on waqf, which can generally be divided into three forms. First, in the form of cash waqf with a slightly different location and approach. Yuli Yasin states that temporary cash waqf is needed because many waqf assets are poorly managed. Since it is temporary, it is a solution to develop waqf in addition to the existing perpetual waqf (Hosen et al., 2022; Nour Aldeen et al., 2022; Yasin, 2017). Rysda Nurul believes it is important to create a community in the campus environment that promotes Waqf by involving various parties so that Waqf can provide more significant benefits (Qolbi, 2021). Rudy Haryanto emphasizes that the waqf money collected by *nāzīr* is invested in halal productive businesses to use the profits for the community's and dawah's needs (Haryanto, 2013).

Scholars have different opinions regarding cash waqf, as stated by Mustafa Kamal. According to the Indonesian Ulama Council, cash waqf is permissible based on considerations of following the opinion of Ḥanafī school, which allows dinar and dirham waqf. In contrast, according to Shāfi’iyyah scholars, it is not permissible because the waqf must be eternal and not expire after use (Kamal, 2015). Suryani explains that the Indonesian Ulama Council’s Fatwa on cash waqf aligns with Sharia principles because it benefits society (Suryani & Isra, 2016). Garut ulama also agrees that cash waqf is permissible because it does not conflict with the essence of waqf (Hermawan, 2013) and so that Muslims have the opportunity to organize Waqf well (Victoria, 2018).

Second, the management and exchange of waqf lands. Amimah Oktarina gave an example of the successful management of productive waqf in the Great Syuhada Mosque in Yogyakarta. The existence of cash waqf in the mosque required professional management so that the hope of making a more significant contribution could be realized (Oktarina, 2018). Meanwhile, according to Chairul Huda, the management model with sole ownership, partnership, and a combination of the two was like the one used by the Sultan Agung Semarang Foundation (Huda, 2016; Saad et al., 2019). This differs slightly from Abdurrahman Kasdi, who divides managers into individuals, organizations, and unified legal *nāzir* (Kasdi, 2014). Meanwhile, according to Lutfi El Falahi, the transfer of the function of the Waqf land based on Islamic law and Law No. 41 of 2004 concerning Waqf is permitted under the applicable provisions and has better benefits for the community's benefit and interests (Falahy, 2016).

Third, the waqf management model is similar to the waqf for testamentary policies at the Al-Azhar Waqf Institution in Jakarta. According to Siska Lis Sulistiani, the insurance policy bequest waqf at this institution did not fully follow the fatwā of the National Sharia Council of the Indonesian Ulema Council in 2016, which was socialized in 2017, while the insurance policy bequest waqf has existed since 2012 (Iman, 2018; Shulthoni & Saad, 2018; Sulistiani, 2018). Besides political waqf in the form of optimizing waqf assets through waqf sukuk, sukuk and waqf are two different instruments. The joint effort between the two aims to achieve more excellent utility value.

Long before that, the *ṣaḥābah* (the Prophet Muhammad's PBUH companions) had also given away the best of their possessions. The income from a piece of land in Khaybar from 'Umar ibn al-Khattāb's waqf was given to the poor, *Sabīlillāh*, *Ibn Sabīl*, and the servants without accumulating wealth. Abū Ṭalḥah donated his beloved Bairahā garden, 'Usmān bin 'Affān bought the Raumah well, which was given to the community, and the water was also channelled to the date palm garden, thereby improving the welfare of the community during his time, and there were many more waqfs made by *ṣaḥābah* and people after them.

At first glance, this research seems almost similar to the productive waqf carried out by the *ṣaḥābah* with the donation of gardens and wells of which the water was beneficial. Still, from the beginning, the produce of these gardens and the water of the wells seemed to have been intended for people in need, including *nāzir* who was allowed to use some of the proceeds. Similarly, previous research has shown that there were also some overlaps. However, the fundamental difference in the Carotai Waqf in Tabek Gadang, Nagari Sungai Tanang, is the original intention of its use, which is for the running costs of mosques, prayer rooms, and other needs. If the provisions of waqf had carried out the original intention in general, there would have been no problems. However, it became unique when more than two thousand people fought over half of the fish harvest from the Waqf. Furthermore, therein lies the importance of research on the Nagari Sungai Tanang community.

The calculation was that if each participant of Carotai got, on average, about 2 kilograms of fish, then it could be estimated that the Carotai of Tabek Gadang fish was about four thousand kilograms if the price of the fish was IDR. 40,000 (Forty Thousand Rupiah) per kilogram in Bukittinggi was approximately IDR. 160,000,000,- (One Hundred and Sixty Million Rupiah) if it was cashed out to be distributed to the community. The problem was not only the monetary value of the fish, but it was more specific, considering that the *Carotai* fish came from a fish pond donated by the former residents of the Nagari Sungai Tanang community. At the same time, the purchase of fish seeds and their maintenance also came from the mosque's waqf money.

This article specifically examined the values contained in the Carotai Waqf tradition in the Big Fish Pond (*Tabek Gadang*) in Nagari Sungai Tanang, Banuhampu District, Agam

Regency, West Sumatra. It explored the *istihsān* view of the Carotai Waqf tradition in this community. A qualitative method with an ethnographic approach to the Nagari Sungai Tanang community was used in this research, and the *istihsān* approach was used to analyze it. The data were collected through interviews with mosque administrators, community leaders, religious scholars, and youth leaders. Apart from interviews, the author also tried to complement it with documentary data. In this article, the author's initial picture saw values of community life and *istihsān* that they wanted to preserve and pass on to the next generation, even if it was through Carotai Waqf (fought over the harvest of waqf) carried out by the people of Nagari Sungai Tanang.

Religious and Social Orientation of the Waqf in Islamic Law

Waqf, as an Islamic doctrine, is religiously and socially oriented. From a religious perspective, the hope of rewards that continue to flow even after the death of the person who donated the waqf because the donated assets are still intact and preserved is a motivation. From a social perspective, waqf is an economic tool with great potential to support the community's welfare (Qurrata et al., 2019). As stated in Article 5 of the Waqf Law No. 41 of 2004, the function of the Waqf is to realize the potential and economic benefits of the Waqf property for worship and promoting the welfare of the community (Abdullah, 2020; Ismail & Pratomo, 2021). These two sides, religious and social, are unique to Carotai Waqf in Nagari Sungai Tanang, as shown in the following table.

Table 1: Waqf and Carotai Traditions in the Nagari Sungai Tanang Community

No	Waqf According to Ulama and Community Trends
1.	Imām Abū Hanīfah states that waqf involves objects that remain the property of the wāqif and can be withdrawn, sold, or inherited.
2.	Imām Mālik holds that waqf involves objects that cannot be released from the wāqif's ownership or withdrawn but is permitted for a specific period.
3.	Imām Shāfi'ī and Imām Aḥmad bin Ḥanbal assert that waqf involves objects permanently, releases the wāqif's ownership, cannot be withdrawn, and serves the community's benefit.
4.	The people of Sungai Tanang view waqf as a permanent object, valid indefinitely, regardless of the wāqif's ownership, as it cannot be withdrawn, pawned, granted, or inherited.

According to Islamic law, waqf is a form of giving that is carried out by preserving its origin (*tahbīs al-aṣlī*) and giving its benefits to others (Rosadi et al., 2013). *Tahbīs al-aṣlī* (Oktarina, 2018) is by holding waqf objects from being sold, granted, rented, and inherited (Muhamad Firdaus Ab Rahman & Rahim, 2022), while the manner of its use is under the wishes of the wāqif without any compensation (Sulistiani, 2021). According to Imām Abū Hanīfah, waqf is the holding of an object that remains the property of the wāqif by law and the use of its benefits for good. According to Imām Abū Hanīfah, the ownership of waqf property cannot be separated from the person who donates it, and the wāqif can even take it back or sell it, including becoming an inheritance for its heirs when the wāqif dies.

This differs slightly from Imām Mālik, who stated that waqf did not release waqf assets from the wāqif's ownership. However, waqf prevented the wāqif from taking actions that could release his ownership to other people, and he was obligated to give the benefits and could not take them back. Imām Shāfi'ī and Imām Aḥmad ibn Ḥanbal believe that by releasing assets

from the *wāqif's* ownership and giving the benefits to the community, the *wāqif* cannot pass them on to heirs and cannot give them to other people, even by exchanging them. (Esa et al., 2021; Masdar, 2018). If the *wāqif* limits its time by saying, “I will donate this land for 5 years, or I will donate the land as long as I do not need it and withdraw it when I need it,” then such words do not belong to the waqf, especially according to this scholar (Mohd Thas Thaker et al., 2021).

Meanwhile, Mālikī stated that waqf did not have to be valid forever but could be subject to a time limit, such as 5 years in the example above, and after the time had expired or reached the time as stated, the waqf objects would return to the person who donated them. At first glance, Mālikī's opinion is quite relevant to the current conditions with the right to use a contract system. If Mālikī's opinion is implemented, waqf will have an expanded meaning and opportunities for people who do not have permanent assets while they want to do waqf. In addition to opening opportunities for potential waqf owners, waqf assets will increase and can be developed optimally.

Based on the above opinions, waqf must fulfill several elements in the form of pillars and conditions. The Ḥanafī school states that there is only one pillar of waqf, it is *ṣīgah*, which shows the meaning of waqf. Meanwhile, according to Mālikī, Shāfi'ī, Ḥanbalī, and general scholars, there are four pillars of waqf. They are the person who gives the waqf (*wāqif*), the person who receives the waqf (*mauqūf 'alaih*), the object that is donated, and the *ṣīgah* of the waqf.

Although at first glance there may appear to be differences of opinion among the ulama regarding the pillars of waqf, there is no difference when one considers that *ṣīgah*, there is indeed the person who does it, with whom he does *ṣīgah*, what is the object of *ṣīgah*, and the *ṣīgah* of the waqf itself. Indirectly, it is implied that the ulama agree that the four pillars of waqf must be present when the waqf is implemented.

In addition to the pillars of waqf that must be fulfilled, there are also conditions for each pillar. A *wāqif* must be able to act, weigh the good and the bad and be the true owner of the donated property. The ability to act is important because waqf is '*aqd al-tabarru*,' which means giving away assets without hope of return. The *tabarru'* agreement means that the person making the waqf must be mature, rational, based on his own will, and not someone bankrupt.

Fiqh scholars agree that the conditions for waqf assets are that the waqf objects are apparent and belong to the person who is *wāqif*. There are differences in the requirements for movable and immovable property. Some Ḥanafīyyah and Shāfi'iyah scholars require that the waqf objects be immovable or fixed. In contrast, Ḥanābilah and Mālikīyyah scholars provide broader conditions that, in addition to immovable objects, it is also permissible to endow waqf with movable objects.

Mawqūf 'alaih is a person who has the right to maintain and use waqf objects, with the conditions that he must be present when the waqf objects are handed over, that he must have the ability to own the donated assets, and that the person receiving the waqf must not be someone whose authenticity is doubted. The presence of the *mawqūf 'alaih* at the time of waqf is because, according to the ulama, waqf is not valid for unknown persons or someone who is not present. Another requirement for the *mawqūf 'alaih* is that he may own assets to account for and maintain the waqf assets well.

Finally, the waqf *ṣīgah* takes the form of a declaration of consent by the *wāqif* upon the transfer of his donated assets and *qabūl* from the *mauqūf 'alaih*. This *ṣīgah* is certainly very important, considering that waqf is in the form of relinquishing property rights and transferring ownership to other people and the community. Although they differ from alms, gifts, and

grants, they are similar. The nature of waqf transactions is similar and can be grouped with alms. In alms transactions, there is a simultaneous transfer of objects and their benefits, where the recipient can spend the donated assets, whereas in waqf, they cannot be paid. However, only the results can be used by the community.

The Carotai Waqf in Nagari Sungai Tanang Community

Tanang River is one of the Nagari located in Banuhampu District, Agam Regency, West Sumatra, with a distance of about 8.6 kilometres from the center of Bukittinggi City and a distance of about 3 kilometres to the center of the sub-district, which has a large fish pond known to the local community as Tabek Gadang (the length is about 800 meters with a width of 75 meters).

The people of Nagari Sungai Tanang, with their Tabek Gadang Waqf, raise fish from seedlings until they are big and ready to be harvested. The fish pond is irrigated with a spring about 100 meters above it (so-called *kapalo tabek*). Apart from irrigating Tabek Gadang, clean water of the Tanang River has also been known as a source of drinking water for Bukittinggi people since a long time ago up to this day, as in the verse of Minangkabaunese song “*Janiah aianyo Sungai Tanang, minuman urang Bukittinggi*” (what a clear water of the Tanang River, a source of drink for Bukittinggi people). Following the verse of the Minangkabaunese song, the outsiders often visited this Nagari (area) with the verse “*ba bendi-bendi ka Sungai Tanang.*” *Bendi* (horse-drawn carriage) illustrates the means of transportation for people who visited Nagari Sungai Tanang.

The outsiders keep visiting Nagari Sungai Tanang up to this day. Many people also visit it for recreation, bringing their children to feed the fish while looking at the beautiful scenery, even not only on holidays. Apart from being fed by visitors, the fish in Tabek Gadang are also looked after by the Nagari community and their caretakers. *Niniak Mamak*, religious scholars, the Nagari government, traditional leaders, community leaders, youth, and the community take care of the fish. Even if residents are in dire need, they are committed not to taking the fish in Tabek Gadang. The people of Nagari will shame them if they take the fish.

After waiting quite a long time for the fish to be big and ready to be harvested, the people of Sungai Tanang, through their administrators such as the Ulama, *Niniak Mamak Pasukuan* (traditional leaders of the tribes), Nagari Government, Traditional Leaders, Community Leaders, and Youth Delegates, have a meeting to hold a fishing expedition in which anglers participated. The money from fishing is used for mosques and prayer rooms, including other needs that have also been regulated based on the agreement of the management. When the fish in Tabek Gadang are caught by thousands of anglers, not just once, but at least 5 times every Sunday, most of the fish still in Tabek Gadang are taken and sold before the Carotai tradition is held among the community. Even though the Carotai is not done after every fishing trip, it is at least one of the processes that must be followed when the Carotai is done, as stated by Elfiandi, the head of Bamus Nagari (Elfiandi, 2023).

Carotai Waqf (fighting to catch fish together) with simple fishing gear is a long-standing cultural heritage or tradition passed down from generation to generation and is eagerly awaited by the people of Nagari Sungai Tanang. On a long-awaited day for *Carotai*, usually on Sundays or holidays, people are already at the bank of a large pond (Tapien Tabek Gadang) around 6:00 a.m. local time, waiting for the sound of the tabular as a sign of the start of *Carotai*, which usually ends around noon (Dhuhr time).

The waqf carotai held on Sunday, September 30, 2018, was very lively. According to Ferry Nata Kusuma (Kusuma, 2023), this tradition was followed by more than 2,000

participants. Ferry says this illustrates the high level of public interest in following it; even the author, as a Nagari child, has participated in it many times before.

The Carotai Waqf Tradition from the Perspective of Istihsān Theory *Istihsān* in Legal Reform

Istihsān linguistically means to consider something good (Zaman, 2018). In terms of terminology, this means a mujtahid's change from *qiyās jalī* to *qiyās khafī* or change from *kullī* law to *juz'ī* law based on rational rules and principles. *Qiyās jalī* is a *qiyās* it's ill aitis clear, but its influence in achieving the goals of sharia is weak; this is often called *qiyās*. Meanwhile, *qiyās khafī* is the opposite; the *qiyās* that it is ill at is vague, but it is ill at achieving the goals of sharia is strong.

The disagreement among *uṣūl* fiqh scholars lies in the nature and form of *istihsān*. Ḥanafiyah scholars have proposed the *ta'rif* of *istihsān*, including the following:

“Doing good deeds with ijtihād and a strong opinion in determining what is syar'i itself has handed it down to us.”

If this is what is called *istihsān*, then there will be no ulama who reject it. Ḥanbali scholars say that *istihsān* is a shift from *qiyās* to another, stronger proposition. Mālikīyyah ulama who use *istihsān* as a legal proposition also express it with *ta'rif*: “Doing good deeds with one of the two strongest propositions, or adhering to general propositions if those propositions can still be applied, and adhering to *qiyās* if the *qiyās* are generally valid (Noorwahidah, 2017). Based on this *ta'rif*, the Mālikīyyah ulama practice *istihsān* by dividing it into four types there are *istihsān* with *'urf*, *istihsān* with *maṣlahah*, *istihsān* with *ijmā*, and *istihsān* with the rules of *raf' al-ḥarj wa al-mashaqqah* (eliminating difficulties and hardships).

The *ulamā* allows waqf for movable objects such as cars and similar things, even though according to the regulations, waqf is for fixed objects such as land and buildings (Efendi, 2018). This permission is related to the fact that it has become *'urf* for the community to donate its movable objects. Based on the category of *istihsān* with *'urf*, Mālikīyyah ulama allows waqf for movable objects even though there is a time limit.

Raf' al-ḥarj wa al-mashaqqah, in eliminating difficulties and hardships, includes rules that are *qaṭ'ī* in nature. One thing that often happens in society is the use of public toilets without regulations regarding the rental price, the time of use, and the amount of water used. According to *aṣl* (general rules), this example is prohibited because it involves *gharar*. However, based on *istihsān*, this rental is permitted with the consideration of eliminating difficulties because public bathrooms have become a communal necessity that isn't easy to avoid.

It is abandoning general arguments because of problems such as the problem of dependents or guarantees for cooperating workers. Based on the rules of *aṣl*, a worker who enters a cooperation agreement is trustworthy. Thus, there is no need for guarantees unless it appears that one of them has not kept his promise. Imām Mālik, with *istihsān*, believed that one who cooperates with other people is still burdened with collateral coverage by abandoning the basic rules because there is a benefit to be achieved.

Istihsān bi al-ijmā', such as abandoning general rules or arguments based on *ijmā'* (Salenda, 2013). Among the examples is the obligation of someone who cuts off the tail of another person's donkey. According to the general rule, one who cuts off the tail of another person's donkey must pay according to what he has done. However, based on *ijmā'*, someone

who damages a part of another person's donkey must replace the entire thing, not just the part of the damaged donkey. Imām Mālik made *ijmā'* the basis for *istiḥsān* in this example, with the obligation for those who cut off the tail of another person's donkey to pay the price of the donkey.

Indirectly, some people also practice it. When someone else's property or object is damaged by someone else, he does not want just the damaged part to be replaced. However, the person whose item or object was damaged asks for a complete replacement or even a new one while giving the damaged part to the person who broke it. The original rule is that the replacement is only for the damaged part. However, considering that the damage means the item or object is not functioning properly, it is a departure from the original rule with a full replacement.

Based on the above examples, Mālikiyyah ulama uses *istiḥsān* with Islamic arguments and leaves other Islamic arguments. They move from the requirements of one Sharia proposition to another, such as *ijmā'*, *maṣlahah*, *'urf*, and eliminate difficulties. The author also agrees to use *istiḥsān* when it is understood as moving from one argument to another stronger argument or from the provisions of one general argument to another more specific argument.

Al-Bazdawī, a prominent Ḥanāfiyyah ulama, stated that *istiḥsān* is a form of *qiyās*, one that is weak in influence but strong in evidence is called *jalī*, and the other that is strong in influence but weak in evidence is called *khafī* (Habibullah, 2016). The first is called *qiyās*, and the second is called *istiḥsān*, in the sense that *istiḥsān* is the strengthening of *qiyās khafī* against *qiyās jalī*. The ulama who most strongly rejects *istiḥsān* in this second sense is Imām Shāfi'ī, who said that anyone who practices *istiḥsān* is the same as making up the sharia (Hasan, 2018).

No definition of *istiḥsān* could be found among the *Shāfi'iyyah* scholars because, from the beginning, they did not accept *istiḥsān* as one of the arguments for establishing sharia. In this case, Imām Shāfi'ī stated that whoever uses *istiḥsān* has made up the sharia (Repelita, 2021). Imām al-Ghāzalī also did not use *istiḥsān* (*ibṭāl al-istiḥsān*) because sharia is not made for servants other than those justified by miracles. Using the term *istiḥsān* tends to lead to making up one's own sharia (Nabilah, 2021).

Slightly different from the Mālikiyyah scholars above, Ḥanāfiyyah scholars also use *istiḥsān* that is divided into *istiḥsān bi al-naṣ*, *istiḥsān bi al-ijmā'*, *istiḥsān bi al-qiyās al-khafī*, and *istiḥsān bi al-darūrah*. *Istiḥsān bi al-naṣ* is a mujtahid that turns away from the law desired by general rules to the text that explicitly requires it (Nasirudin, 2009). In principle, the general rules cover almost the same issues. However, in practice, there are special arguments that differ from the general arguments, such as the issue of drinking water during the month of Ramaḍān. Based on the general rules, drinking water in the month of Ramaḍān breaks the fast. For people who forget that they are fasting, drinking water will not break their fast because there is a special reason.

Istiḥsān bi al-ijmā' means abandoning *qiyās* and general rules because of *ijmā'*, which establishes a different law from the previous law established by *qiyās*. *Istiḥsān* type of buying and selling is void according to *qiyās* and general rules because buying and selling is done without any objects or goods. However, based on *istiḥsān with ijmā'*, buying and selling like this is permissible, which is what the community follows. Finally, *istiḥsān bi al-darūrah* gives an ancient example that can be indirectly applied to other examples that society faces. If a well is impure, the well water cannot be used for cooking or ablution for prayer, based on *qiyās*. If you pour several buckets of water into the well, the water you pour will indirectly mix with the unclean well water (Maulana & Rozak, 2021). According to some Ḥanāfiyyah scholars, by

using *istihsān bi al-darūrah*, the well can be cleaned and used as usual by pouring several buckets of clean water into the well.

The Carotai Waqf in the View of *Istihsān*

Table 2. Waqf and *Istihsān* in Community Tradition

No	Waqf According to Ulama and Community Trends	<i>Istihsān</i> According to Scholars and Society
1.	Imām Abū Ḥanīfah: waqf holds objects, remains the property of the <i>wāqif</i> , and can be withdrawn, sold, and inherited.	Ḥanafiyah scholars argue with <i>istihsān</i> using <i>qiyās khaft</i> against <i>qiyās jalī</i> while dividing it into <i>istihsān bi al-naṣ</i> , <i>istihsān bi al-ijmā'</i> , <i>istihsān bi al-qiyās khaft</i> , and <i>istihsān bi al-darūrah</i> .
2.	Imām Mālik: waqf holds objects and does not release them from the <i>wāqif</i> 's ownership, but they cannot be withdrawn, and waqf may be subject to a time limit.	Mālikiyyah scholars use <i>istihsān</i> by dividing it into <i>istihsān with 'urf</i> , <i>istihsān with maṣlahah</i> , <i>istihsān with ijmā'</i> , and <i>istihsān with raf' al-ḥarj wa al-mashaqqah</i> .
3.	Imām Shāfi'ī and Imām Aḥmad ibn Ḥanbal: waqf holds objects forever, releases the ownership of the wākif, cannot be withdrawn, and provides benefits to society.	Shāfi'iyyah scholars do not accept <i>istihsān</i> as evidence in establishing sharia law, while some Ḥanābilah use it.
4.	The people of Sungai Tanang: waqf is generally a permanent object, regardless of the ownership of the <i>wāqif</i> . It is valid forever because it cannot be withdrawn, pawned, donated, or passed on to heirs.	In general, the people of Sungai Tanang do not understand <i>istihsān</i> as a legal proposition, but with many considerations, they carry out <i>Carotai Waqf</i> , which, in a sense, uses <i>istihsān</i> .

Regarding the implementation of Carotai Waqf in the Nagari Sungai Tanang community, the *istihsān* thinks that it needs to be further investigated, considering that Carotai Waqf comes from the Tabek Gadang fish, which was a waqf from the previous *wāqif*. The land used as Tabek Gadang has remained the same from the past until now. The Tabek Gadang has never been donated, exchanged, or withdrawn by its previous heirs, let alone waqf by many tribes in Nagari Sungai Tanang. Apart from fish farming, the water from Tabek Gadang continues to flow down to irrigate the farmers' fields, and this function has not changed. The intention of the waqf rewards to provide convenience to the farmers continues to this day, which is very much in line with Imām Shāfi'ī's opinion.

Similarly, in terms of time, the people of Nagari Sungai Tanang understand that no waqf is limited by a period. The waqf granted by the *wāqif* is valid forever, and this is well known to the Nagari community. Meanwhile, the management of the waqf assets is not specifically determined. However, it seems that the waqf assets are managed and administered by *nāzir*, mosque administrators, community and youth leaders, the Nagari government, as well as traditional leaders from each tribe in the Nagari. In general, the management is not determined by a permanent team but depends on who the delegates and respective administrators are.

One of the fundamental questions of this research is what to do with the fish allocated (disputed) by the Waqf. The main results expected from Tabek Gadang were fishing and selling fish. If the fish were taken away, price, value, and income would be lost. However, from the perspective of *istihsān*, this seems to fall under the category of *istihsān bi al-ijmā'* because it can be seen that all the people of Nagari Sungai Tanang, represented by *nāzir* waqf, *niniak mamak* (traditional leaders of each tribe), religious scholars, intellectuals, traditional leaders,

community leaders and youth, agreed to hold Carotai Waqf. This is especially considering that Carotai activities are still being carried out today.

Istihsān bi al-ijmā' is a division of *istihsān* by Ḥanāfiyyah ulama, who use it as a postulate in enforcing the law. When it comes to waqf, according to Imām Abū Ḥanīfah, the waqf holds the waqf objects, but the waqf objects remain the property of the *wāqif*, and he can withdraw them, sell them, or even pass them on to heirs. Mālikiyah clerics also use *istihsān*, whether it is *istihsān with 'urf*, *istihsān with maṣlahah*, *istihsān with ijmā'*, or *istihsān raf' al-ḥarj wa al-mashaqqah*. However, when it comes to waqf, it is a little different because Mālikiyah clerics believe that the waqf continues to exist. Waqf assets cannot be separated from the ownership of the *wāqif*, but the waqf cannot be withdrawn, donated, or bequeathed to heirs.

Shāfi'iyyah ulama and some Ḥanābilah ulama who do not postulate with *istihsān* are very much in line with the people of Nagari Sungai Tanang in implementing waqf. The community believes that waqf objects must be held indefinitely, regardless of the waqf's ownership, and the *wāqif* and his family cannot withdraw, donate, sell, or pass on to their heirs. If it is related to such an understanding, the community does not carry out the Carotai tradition from the proceeds of the Tabek Gadang waqf.

In Carotai Waqf in the Nagari Sungai Tanang community, it is understood that there is a combination of two different opinions of the ulama because in terms of the waqf rules, it seems that they use the opinion of Imām Shāfi'ī, while in terms of the implementation of Carotai Waqf, they use the opinion of Imām Abū Ḥanīfah, even though in the Nagari Sungai Tanang community, Imām Abū Ḥanīfah's opinion is not as well known as Imām Syāfi'i's opinion.

Social Cohesion Growing out of Carotai Tradition

Carotai Waqf in Tabek Gadang Nagari Sungai Tanang is estimated to have started around 1950 and taught the values of life to the residents of the Nagari community, as stated by Kusuma (2023) and Firdaus (2023). First, it teaches nephews, nieces, and children the value of trust in protecting and raising the fish in Tabek Gadang. They remind each other of their respective roles and make them aware that even though the fish in Tabek Gadang are not prohibited, they must take care of them together.

Second, to teach family values and togetherness. Many of the people of Nagari Sungai Tanang have migrated to Jakarta, Medan, Padang, and other cities that are almost the same as other Nagari in the Minangkabau circle. These overseas communities rarely return home together (so-called *pulang basamo*) to their hometown in Nagari Sungai Tanang unless there are activities that the children of the three *orong* (villages) do together, such as this Carotai event.

Third, to re-energize the spirit of cooperation and a sense of togetherness. According to Elfiandi (2023) and Pendi A (2023), there was no difference among people regarding whether they had lower or higher social status when carrying out Carotai Waqf. Everyone was covered in mud; their bodies and clothes were wet, but they still had time to talk to each other. Happy smiles were given to people who caught big fish, and those who caught small or medium fish were still enthusiastically looking for them.

Firdaus added that the Carotai strengthen their sense of belonging to their hometown. The community sees that their hometown has assets in the form of land waqf used as a fishpond, as well as the gratitude of the next generation to their predecessors, including the preservation of Carotai Waqf.

Apart from that, Wandrizon (2023), chairman of *nāzir* of Tabek Gadang, explained that Carotai Waqf was carried out when the Tabek needed repairs, such as the edge of the pool was leaking, while the time for carrying out the repairs was still a matter of deliberation, so that Carotai Waqf can be participated in by as many people as possible in Nagari Sungai Tanang, both those in their hometown and people who are overseas by going home together (so-called *pulang basamo*).

Conclusion

Performing Carotai Waqf in Tabek Gadang (a large fish pond) in Nagari Sungai Tanang, on the one hand, sought to realize the values of social cohesion in the community, while on the other hand, the fish that was Carotai (disputed) was waqf assets. There were several positive values for the people based on several series of activities before the implementation of the waqf carotai and the deliberations that took place before the decision of the Tabek Gadang Carotai. Even though there is no evidence to support it, at least with some considerations, it can be understood that they were trying to find good from Carotai Waqf activities with an agreement that is more similar to *istihsān bi al-ijmā'*.

References

- ‘Abdullah, A. (2020). Waqf and State Interference: A Phenomenology Study in Al-Azhar University, Egypt. *Journal of Finance and Islamic Banking*, 3(1), 38–56.
- Al-Harethi, A. R. S. (2019). Perception from Students in Kolej University Insaniah. *IKONOMIKA: Jurnal Ekonomi Dan Bisnis Islam*, 4(1), 53–59.
- Anggareni, E. et.al. (2024). Utilizing the Banking System For Digital Waqf Behavioral Approach of Millennial Muslims. *El-Usrah: Jurnal Hukum Keluarga*, 7(1), 390-405.
- Choeri, I. (2022). Optimalisasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kabupaten Jepara Imron Choeri Universitas Islam Nahdlatul Ulama Jepara. *El-Usrah: Jurnal Hukum Keluarga*, 5 (1), 23-40.
- Efendi, M. (2018). Menakar Progresivitas Hukum Wakaf dalam Pengembangan Wakaf Uang di Indonesia. *Al-Ahkam Jurnal Ilmu Syariah dan Hukum*, 3(2), 191-204.
- Elfiandi. (2023). *personal communication*, Bukittinggi, 15 April.
- Esa, A., Al, A., Esa, A., & Al, A. (2021). *The Role Of Sukuk Al Waqf In Education And Islamic Media*. 12(4), 500–507.
- Falahy, L. El. (2016). Alih Fungsi Tanah Wakaf Ditinjau Dari Hukum Islam dan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf. *Al Istimbath: Jurnal Hukum Islam*, 1(2), 121–140.
- Firdaus. (2023). *personal communication*, Bukittinggi, 06 February.
- Habibullah, E. S. (2016). Pandangan Imām Abū Ḥanīfah dan Imām Syāfī’i Tentang Al-Istihsān. *Al Mashlahah Jurnal Hukum Dan Pranata Sosial Islam*, 4(7), 451–466.
- Haryanto, R. (2013). Pengentasan Kemiskinan Melalui Pendekatan Wakaf Tunai. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 7(1), 178–200.
- Hasan, B. (2018). Penolakan Imām Syāfī’i Terhadap Istihsān Sebagai Salah Satu Metode Istimbāt Hukum Islam. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 15(01), 58–73.
- Hermawan, W. (2013). Pandangan ulama Garut tentang wakaf uang dan wakaf mu‘aqqat. *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 13(1), 49-64.
- Hosen, M. N. et al. (2022). Evaluating the Fundraising Process of the World’s First Cash Waqf-Linked Sukuk in Indonesia. *QIJIS (Qudus International Journal of Islamic Studies)*, 10(1), 175.

- Huda, C. (2016). Model Pengelolaan Bisnis Syari'ah: Studi Kasus Lembaga Pengembangan Usaha Yayasan Badan Wakaf Sultan Agung Semarang. *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 24(1), 165-190.
- Iman, R. Q. (2018). The competence of the Religious Court in Indonesia and Syahadah Istifadhah (Testimonium De Auditu) in the Case of Itsbat Waqf. *Ahkam: Jurnal Ilmu Syariah*, 18(2), 395-416.
- Ismail, A. G., & Pratomo, W. A. (2021). Constitutional rules on waqf and fiscal policy outcomes. *Sriwijaya Law Review*, 5(2), 262-272.
- Kamal, M. (2015). Wakaf Tunai Menurut Pandangan Fiqh Syāfi'iyah dan Fatwā Majelis Ulama Indonesia No.2 Tahun 2002 Tentang Wakaf Uang. *Jurnal Ilmiah Islam Futura*, 15(1), 93-110.
- Kasdi, A. (2014). Peran Nazir dalam Pengembangan Wakaf. *Jurnal Zakat Dan Wakaf*, 1(2), 213-226.
- Kusuma, Ferry Nata. (2023). *personal communication*, Bukittinggi, 03 April.
- Masdar, M. (2018). Penerapan Hukum Wakaf Uang di Indonesia Perspektif Legal System Theory. *Al-Manahij: Jurnal Kajian Hukum Islam*, 11(1), 79-92.
- Maulana, D. F., & Rozak, A. (2021). Istihsan as a Finding Method of Progressive Islamic Law in the Industrial Revolution Era 4.0. *El-Maslahah*, 11(2), 127-145.
- Mohd Thas Thaker et al. (2021). Cash waqf model for micro enterprises' human capital development. *ISRA International Journal of Islamic Finance*, 13(1), 66-83.
- Rahman, Muhamad Firdaus Abd, et al. (2022). Bay' Mumtalakāt Al-Waqf: Dirāsah Tahliyyah fi Ḍau' Tashrī'āt Al-Waqf fi Ḥukumah Māliziyyā. *AHKAM*, 22(1), 473-498.
- Nasirudin, M. (2009). Istihsān dan Formulasinya (Pro Kontra Istihsan dalam pandangan Mazhab Ḥanafī dan Syāfi'ī). *Asy-Syir'ah*, 43(1), 170.
- Noorwahidah, N. (2017). Istihsān: Dalil Syara' Yang Diperselisihkan. *Syariah Jurnal Hukum Dan Pemikiran*, 16(1), 13.
- Nour Aldeen et al. (2022). Cash waqf from the millennials' perspective: a case of Indonesia. *ISRA International Journal of Islamic Finance*, 14(1), 20-37.
- Oktarina, A. (2018). Developing Models of Productive Waqf. *QLJIS: Qudus International Journal of Islamic Studies*, 6(1), 103-126.
- Pendi A. (2023). *personal communication*, Bukittinggi, 18 March.
- Qolbi, R. N. (2021). Gerakan Wakaf Kampus: Optimalisasi Gerakan Nasional Wakaf Uang (GNWU) Di Lingkungan Kampus Menuju SDGs. *AL-AWQAF Jurnal Wakaf Dan Ekonomi Islam*, 14(1), 65-86.
- Qurrata, V. A et al. (2019). Implementing and developing productive waqf in Indonesia: Case at malang islamic hospital. *Humanities and Social Sciences Reviews*, 7(4), 533-537.
- Repelita. (2021). *Istihsān Menurut Pandangan Al-Syāfi'ī dan Ibnu Ḥazm Al-Zāhirī*. *Journal Al-Ahkam* Vol. XXII Nomor 1, Juni 202, 71-88.
- Rosadi, A et al. (2013). The Development of Waqf Management Trought Waqf Act in Indonesia (Note on Republic of Indonesia Act Number 41 of 2004 on Waqf). *Journal of Institutional Economics*, 9(4), 469-490.
- Saad, A. Y. Q et. al. (2019). An overview of Waqf assets in yemen: Importance and challenges. *Humanities and Social Sciences Reviews*, 7(5), 1065-1072.
- Salenda, K. (2013). Kehujjahan Istihsan dan Implikasinya dalam Istinbāt Hukum. *Al-Daulah*, 1(2), 8-19.
- Syaiku, et. Al. (2021). The Empowerment of Infaq and Waqf Evaluation in light of Maqasid al-Sharia Perspective in Mosques in Palangka Raya, Indonesia. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 5(1), 1003-1020.
- Shulthoni, M., & Saad, N. M. (2018). Waqf fundraising management: A conceptual comparison between traditional and modern methods in the waqf institutions.

- Indonesian Journal of Islam and Muslim Societies*.
<https://doi.org/10.18326/ijims.v8i1.57-86>
- Sulistiani, S. L. (2018). Analisis implementasi wakaf wasiat polis asuransi syariah di lembaga wakaf al-Azhar Jakarta. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 17(2), 285-299.
- Sulistiani, S.L. (2021). The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 5(1), 5(1), 357-371.
- Suryani, S., & Isra, Y. (2016). Wakaf Produktif (Cash Waqf) Dalam Perspektif Hukum Islam Dan Maqāsid Al-Sharī‘Ah. *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 24(1), 17.
- Victoria, O. A. (2018). Waqf Al-Nuqūd in Indonesia (in Law Perspective). *Jurnal Pembaharuan Hukum*, 1(1), 1–8.
- Wardatun Nabilah, A. B. W. & N. A. O. (2021). Istihsān dalam Literatur Syāfi’iyah (Telaah Istihsān dalam Kitab Al-Mustaṣfa Al-Ghazālī) Wardatun Nabilah, 1 Arifki Budia Warman 2, Nurul ‘Aini Octavia 3 1. *Jurnal Ilmiah Syariah*, 29(1), 78–89.
- Wandrizon. (2023). *personal communication*, Bukittinggi, 15 April.
- Yasin, Y. (2017). Wakaf Uang Berjangka dan Urgensinya dalam Pengelolaan Aset Wakaf di Indonesia. *Jurnal Bimas Islam*, 10(4), 701–726.
- Yumarni, A., Dewi, G., Mubarak, J., Wirduyaningsih, & Sardiana, A. (2021). The implementation of Waqf as ‘Urf in Indonesia. *Sriwijaya Law Review*, 5(2), 287–299.
- Zaman, M. (2018). Analisis Istihsan Atas Pertimbangan Hakim Terhadap Saksi Non Muslim Pada Perkara Perceraian. *Al-Hukama’*, 8(2), 507–531.

