

# Juridical Study on the Optimization of Cash *Waqf* Management by Islamic Bank in Indonesia\*

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## Abstract

Cash *waqf* is an innovative instrument of *waqf* aiming to create social welfare. It is expected that cash *waqf* enables extensive public participation to support social welfare. However, in reality, cash *waqf* management in Indonesia has not yet resulted optimal benefit. Based on the Law Number 41 of 2004 on *Waqf*, three institutions carry out cash *waqf* management. They are the Indonesian *Waqf* Board as the collector and the developer, *Nazhir* as the manager, and the Islamic Financial Institution as the collector. The three institutions make the cash *waqf* management and development ineffective and not optimal. Based on the data from the Indonesian *Waqf* Board, of the total potential cash *waqf* IDR180 Trillion, only IDR400 billion was realized. This study is a normative juridical legal study employing descriptive method. The results reveal that the role of the Islamic Financial Institution, Islamic bank, as collector can actually be expanded. Thus, it covers the management and distribution roles like a *Waqf* Bank in Bangladesh, the Social Islami Bank Ltd. (formerly known as Social Investment Bank Ltd). Islamic bank has capability and professionalism of management and distribution of funds generated from the cash *waqf*.

**Keywords:** Cash *Waqf*, Islamic Bank, Optimization

## *Studi Yuridis tentang Optimalisasi Manajemen Wakaf Uang oleh Bank Syariah di Indonesia*

## Abstrak

*Wakaf uang merupakan salah satu instrumen inovatif dari wakaf dalam menciptakan kesejahteraan sosial di masyarakat. Dengan wakaf uang, partisipasi masyarakat umum akan terbuka lebih lebar dalam menunjang pemerataan kesejahteraan sosial. Akan tetapi, dalam kenyataannya pengelolaan wakaf uang di Indonesia masih belum dirasakan manfaatnya secara optimal. Berdasarkan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf, pengelolaan wakaf uang dilakukan oleh tiga lembaga yakni Badan Wakaf Indonesia (BWI) sebagai penghimpun dan pengembang, Nazhir sebagai pengelola, dan Lembaga*

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*Keuangan Syariah (LKS) sebagai penghimpun. Pengelolaan Wakaf Uang oleh tiga lembaga tersebut menjadikan pengelolaan dan pengembangan Wakaf Uang tidak efektif dan optimal. Hal ini terbukti dari data BWI, bahwa di tahun 2017 dengan total potensi Wakaf Uang keseluruhan yang mencapai Rp180 Trilyun, hanya terealisasi sebesar Rp400 Milyar. Penelitian ini bersifat deskriptif analitis dengan menggunakan pendekatan yuridis normatif. Hasil penelitian menunjukan bahwa fungsi LKS dalam hal ini perbankan syariah sebagai penghimpun wakaf uang, sesungguhnya dapat diperluas sehingga mencakup fungsi pengelolaan dan penyaluran seperti Bank Wakaf yang ada di Bangladesh yakni Social Islami Bank Limited (sebelumnya dikenal sebagai Social Investment Bank Ltd). Perbankan syariah memiliki kompetensi dan profesionalisme dalam pengelolaan dan penyaluran dana yang berasal dari wakaf uang tersebut.*

**Kata kunci:** *Optimalisasi, Perbankan Syariah, Wakaf Uang*

## **A. Introduction**

The Preamble of the 1945 Constitution of Indonesia states that one of the national objectives of the people of Indonesia is public welfare. This objective is based on economic democracy by relying on a fair market mechanism.<sup>1</sup> To achieve the ideal, the State needs to play an active role in carrying out national economic development by making efforts to renew the economic legal system to be suitable with the values that live within society

In the fields of law and justice, Indonesia is the largest Muslim country in the world that cannot be separated from Islamic law. In the context of national economic development, Islamic Law is urgently needed to be the foundation of economic activities within society adhering to Islamic values such as cooperation, tolerance, and justice. The existence of Islamic economic law in the national economic legal system was strengthened by the enactment of the Islamic Law system in banking activities with the presence of Islamic bank. Therefore, Indonesia has dual legal system governing the same material.<sup>2</sup>

The enactment of the Law Number 41 of 2004 on *Waqf* is a form of Islamic Law in the field of economy to achieve the welfare objective. The utilization of *waqf* is not only for the purposes of ceremonial worship but also carries out social functions for equal distribution of public welfare. The principles of *waqf* management are to maintain the eternity of the substance of property and to maximize the results. They are effective means of realizing public welfare.

The existence of *waqf* has the potential to continue to be developed in Indonesia. Realizing the potential, the Indonesian Government establishes efforts to regulate *waqf*. Initially, the Law on *Waqf* and Government Regulation Number 42 of 2006 on the Implementation of the Law Number 41 of 2004 on *Waqf* was

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<sup>1</sup> Syaugi Mubarak, "Demokrasi Ekonomi dalam Hukum Ekonomi Syari'ah", *Risalah Hukum Fakultas Hukum Unmul*, Vol. 6, No. 2, 2010, p. 89.

<sup>2</sup> Lastuti Abubakar and Tri Handayani, "Perkembangan Transaksi Perbankan dan Implikasinya terhadap Pembaruan Hukum Perdata Indonesia", *Justitia Jurnal Hukum*, Vol. 1, No. 2, 2017, p. 251.

enacted. Subsequently, it has been amended by the Government Regulation Number 25 of 2018 on the Amendments of Government Regulation Number 42 of 2006 on the Implementation of the Law Number 41 of 2004 on *Waqf*.

Currently, people's understanding of *waqf* is still very restricted on physical goods, such as Land or Building. Consequently, the benefit on economic welfare is limited. In fact, even though *waqf* is a *Maliyah*<sup>3</sup> instrument, it can also be classified as a humanitarian effort.<sup>4</sup> Therefore, *Waqf* must be maximized to realize public welfare.

Cash *waqf* is an innovative instrument of *waqf* to realize public welfare. It enables public participation to support the equitable distribution of public welfare. The Law on *waqf* based on *Ijtihad* can be understood as the development of the provision. Despite the fact that cash is not mentioned directly in the valid texts, the Holly Quran and Hadith, as a form of *waqf*, Islamic scholars have no dissenting opinion regarding the practice of cash *waqf*. The difference is only in the sense of the essence that must be eternal or not about assets that may be represented.<sup>5</sup> Thus, the law of cash *waqf* is included in the concept in which appropriate with the thoughts of *Malikiyah* and *Hanafiyah* scholars wherein the treasure of *waqf* category can also include the items that may not always be perpetual. In this case, the analogy against the law of *mubah* (be allowed) turn out to be appropriate for relevance to the position of the cash *waqf* based on the principle that all the problems are basically *mubah* as long as there is no argument that prohibits it.

Cash *waqf* also has the potential to advance the national economy. According to Nasution, the potential is estimated to reach three trillion in a year.<sup>6</sup> However, the management of the cash *waqf* is still not reach the peak. According to data from the Indonesian *Waqf* Board (BWI – *Badan Waqaf Indonesia*), in 2017, of the potential IDR180 trillion, only IDR400 billion was realized.<sup>7</sup> This is undeniably very far from the calculation. As a modification of *Waqf*, the cash *waqf* management cannot be treated equally with the general *waqf* management. Because of the differences with *waqf* management in general, problems or obstacles often arise in the management institutions and developers of cash *waqf*. Under the Law on *Waqf*, there are three parties acting as cash *waqf* managers and developers. They are the BWI, *Nazhir*, and the Islamic Financial Institutions. The division of management and development of cash *waqf* into these three different institutions

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<sup>3</sup> *Maliyah* Instruments or *Maliyah* Worship, is the deed of worship carried out by means of property or manifested in the form of giving assets or related to assets, such as *Waqf*, *Zakat*, *Infraq*, and *Shadaqa*.

<sup>4</sup> Ali Amin Isfandiar, "Tinjauan Fiqh Muamalat dan Hukum Nasional tentang Wakaf di Indonesia", *La Riba*, Vol. 2, No. 1, 2008, p. 52.

<sup>5</sup> Imam Suhadi, *Wakaf Untuk Kesejahteraan Umat*, Yogyakarta: PT. Dana Bhakti Prima Yasa, 2002, p. 80.

<sup>6</sup> *Ibid.*

<sup>7</sup> Umi Nur Fadhillah, "Potensi Wakaf Tunai Capai Rp 180 Triliun", *Republika*, <https://www.republika.co.id/berita/dunia-islam/wakaf/18/10/16/pgovmd384-potensi-wakaf-tunai-capai-rp-180-triliun>, accessed on 02 November 2018.

has led to the failure of cash *waqf* in Indonesia. Another problem is the competency of cash *waqf* management that cannot accommodate all interests.

As a step to realize social welfare, optimization of cash *waqf* needs to be done in a structured, systematic, and massive manner. Institutional *waqf* is important to realize the optimization of cash *waqf* in Indonesia. Therefore, an exclusive management institution should include collection and distribution. Therefore, obstacles and constraints of the role of cash *waqf* can be addressed effectively and efficiently. The potential of Islamic Financial Institutions as the collector of cash *waqf*, as regulated in the Law on *Waqf*, can actually be expanded so that it also covers the management and distribution functions because the Islamic Financial Institutions have competence in collection and management of professional social funds. Based on the background, this study aims to analyze the revision of regulations to facilitate the Islamic bank to become *Nazhir* as an effort to optimize cash *waqf* in Indonesia.

This study used normative juridical approach method that prioritizes library research to be secondary data material in the form of positive law in this case governing the cash *waqf* and Islamic bank.<sup>8</sup> The normative juridical approach method used in this study includes research on the legal principles, legal systematics, and legal synchronization.<sup>9</sup> This research is descriptive method of analysis which describes the facts of the data obtained based on reality in this case the implementation of cash *waqf* in Indonesia. These facts are then analyzed by the applicable law and conclusions are drawn. The research phases are carried out in two stages, the first is Library Research, this study aims to examine and trace secondary data in the form of primary, secondary and tertiary material. The second is Field Research, this research is conducted to obtain primary data in the field as a result of secondary data collection and interviews with practitioners, academics and other professionals who have competence with research material in legal writing.

## B. Cash *Waqf* as *Waqf* Innovation

Etymologically, *waqf* is derived from the word *waqafa-yaqifu-waqfan*, which means to stop or to hold (*al-habs*).<sup>10</sup> Terminologically, Islamic scholars have provided the definition of *Waqf*. A scholar of Shafi'i School, Imam Nawawi, mentions that *Waqf* is to hold back the assets that can be taken advantage of, while the object remains and the benefits are used for good and draws closer to Allah. According to a scholar of the Hanafi School, Imam Syarkhasi, *waqf* is to hold back property from the reach

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<sup>8</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: PT. Raja Grafindo Persada, 2003, p. 13.

<sup>9</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia 2008, p. 51.

<sup>10</sup> Said Agil Husin al-Munawwar, *Hukum Islam dan Pluralitas Sosial*, Jakarta: Penamadani, 2004, p. 122.

of other people. Ibn Arafah of the Maliki School defines *Waqf* as provision of something, at the time limit of its existence, at the same time as an estimate.<sup>11</sup>

According to the Indonesian Compilation of Islamic Law (KHI –*Kompilasi Hukum Islam*), *Waqf* is a legal act of a person or group of people or legal entity that separates part of property and institutionalizes it eternally for the interests of worship or other public purposes in line with Islamic teaching. Furthermore, the Law Number 41 of 2004 on *Waqf* states that *waqf* is a legal act of a *wakif* to separate and/or to submit a portion of property to be used evermore or for a certain period in accordance with interests for the purposes of worship and/or public welfare based on sharia. Article 16 Paragraph (3) regulates *Waqf* property not only limited to immovable objects; it also covers movable objects such as money, precious metals, securities, vehicles, intellectual property rights, rights of lease, rights of movable objects, and further movable objects based on Islamic laws and applicable laws and regulations.

Initially, *waqf* assets that have been deemed in a narrow manner include only immovable property such as land and buildings. However, the coverage is developed to include movable property such as cash. In accordance with the *fatwa* of the Indonesian Ulema Council (MUI –*Majelis Ulama Indonesia*) on May 11, 2002, the *Waqf (al-Nuqud Waqf/Cash Waqf)* is a *waqf* by a person, a group of people, an institution, or a legal entity in the form of cash. This is one of the productive *Waqf*. Didin Hafidhuddin, in Anshori,<sup>12</sup> explains that productive *Waqf* is a gift in the form of something that can be cultivated or rolled out for the good and benefit of people.

The cash *waqf* is similar to other Islamic financial instruments, namely *zakat*, *infaq*, and *shadaqa* (ZIS). Still, there are some differences between them. Unlike the cash *waqf*, ZIS can be distributed directly to the beneficiary. On the contrary, cash *waqf* should be invested so that people always have available funds that increase along with the increase in the number of *wakif* who do charity. The investment profits from the principal can be reused to fund the needs of people. Therefore, the cash *waqf* instrument can be a public fundraising instrument.

Essentially, *Waqf* is charity from benefits and profits obtained from the assets of *Waqf* with the provision of holding object not to be traded, granted, and inherited to remain lasting (*dawam al-intifa*). The reward continues to flow to the *wakif*. The eternal principle of benefits is the main principle of *waqf*.<sup>13</sup>

The Law of cash *waqf* can be understood as the development of thought from the original provision. The cash *waqf* is not mentioned in the Holy Quran and the Hadith. However, there is no difference of opinion among scholars in the practice of *waqf*. The dissenting opinion (*khilafiah*) only covers whether the asset must be

<sup>11</sup> Elsi Kartika Sari, *Pengantar Hukum Zakat dan Wakaf*, Jakarta: Grasindo, 2007, p. 55.

<sup>12</sup> Abdul Ghofur Anshori, *Hukum dan Praktik Perwakafan di Indonesia*, Yogyakarta: Pilar Media, 2006, p. 90.

<sup>13</sup> Rashedul Hasana and Siti Alawiah Siraj, "Complexities of *Waqf* Development in Bangladesh", *Journal of Emerging Economies and Islamic Research*, Vol. 4, No. 3, 2016, p. 19.

eternal or not.<sup>14</sup> Therefore, the law of cash *waqf* is included in the understanding of the Schools of *Malikite* and *Hanafite* that allow the asset of *Waqf* also to include items that may not always be eternal. In this case, the analogy to the law of *mubah* (be allowed) turn out to be appropriate to the position of cash *waqf* based on the principle that all things are basically *mubah* as long as there is no prohibition.

### C. Cash *Waqf* as a Representation of Economic Democracy

The Economic Democracy System is an economic system that refers to the mandate of the national constitution. According to Article 33 of the 1945 Constitution, the Economic Democracy System is based on society's, not individual, prosperity. It is structured as a joint effort based on the principle of kinship.

National economic development must be sustainable based on economic democracy.<sup>15</sup> The Economic Democracy System involves all strengths of people's economy. Therefore, it needs to be held not only as an alternative but as the main of the economic system of a nation. According to Baswir,<sup>16</sup> the economic democracy can be defined as a national economic system that is structured as a joint venture based on the principle of kinship, where the production is carried out by all, for all, under the leadership or surveillance of society members to increase the ability of the society to control the economy. To be precise, it is an economic governance aiming to achieve people's welfare and economic democracy progress—an overall economic activity carried out by modest people.<sup>17</sup>

Essentially, the principle is in line with the practice of *waqf* of Islamic economy. The main purposes of both systems are welfare and economic justice for everyone.<sup>18</sup> The assets of *waqf*, as an Islamic social institution, essentially carry a function of economic resource. This means that the use of *waqf* assets is not only limited to the needs of conventional activities, such as education, mosques, hospitals, orphanages, and others. The assets of *Waqf*, in a broader sense, can be used for economic activities, such as agriculture, livestock, industry, mining, real estate, offices, hotels, restaurants, and others.

Cash *waqf* is one of the potential economic resources that are closely related to the welfare of the people (*ummah*). The other resources, to be mentioned, consist of *zakat*, *infaq*, and *shadaqa*. It is spiritual institution that is closely related to socio-economic conditions. In general, *waqf* has significantly the developments of human resources and socio-economic resources.

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<sup>14</sup> Imam Suhadi, *op.cit.*, p. 80.

<sup>15</sup> Teguh Tresna Puja Asmara, Isis Ikhwanasyah, and Anita Afriana, "Ease of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi di Indonesia", *University of Bengkulu Law Journal (UBELAJ)*, Vol. 4, No. 2, 2019, p. 126.

<sup>16</sup> Revisond Baswir, *Ekonomi Kerakyatan sebagai Sistem Indonesia*, Yogyakarta: Pustaka Pelajar, 1995, p. 111.

<sup>17</sup> *Ibid.*

<sup>18</sup> Sofyan Rizal, "Titik Temu dan Sinergi Ekonomi Islam dan Ekonomi Kerakyatan", *Al-Iqtishad*, Vol. 3, No. 1, 2011.

#### D. The Function and Role of Islamic Bank in Economic Development

Well-structured financial management patterns strongly influenced economic development of a country. Financial management, especially banking, is an effort to realize national development. In general, banks manage public fund in a structured and institutionalized state. A bank is an institution that aims to satisfy the needs of people for credit, both with money (funds) received from other people, and by circulating money in the form of common money and check.<sup>19</sup>

Banking system continues to develop and currently presenting a form called Islamic bank, which uses the principles of Islamic values based on the National Legal System. According to Article 1 point 7 of the Law Number 21 of 2008 on Islamic Banking, Islamic bank carries out their business activities based on Islamic Principles; and, according to their type, it consists of Islamic Commercial Banks and Public Islamic Financing Banks. The Islamic Principles referred to above are part of Islamic teachings related to economy based on the values of justice, expediency, balance, and universality (*rahmatan lil 'alamin*).

Both conventional and Islamic banks in general have almost similar purpose. Based on Article 4 of the Law Number 7 of 1992 on Banking, which has been amended by the Law Number 10 of 1998, the objective of Indonesian Banking is to support the implementation of national development to increase equity, economic growth, and national stability towards increasing people's welfare. To improve the distribution of public welfare, Islamic bank is based on economic democracy, the principle of prudence, while maintaining justice and togetherness. In other words, in addition to be an agent of development maintaining monetary stability, Islamic bank also strives to maintain the economy, which is bound by *aqeeda*, *sharia*, and moral values as well as to create a balance between individual and universal objectives.<sup>20</sup>

The functions of bank in general determine its activities. They include collecting and distributing public funds. Besides the mandatory functions, Islamic bank have a social function in receiving funds from *Zakat*, *Infraq*, *Shadaqa*, *Waqf*, etc. Furthermore, Article 4 Paragraph (3) explains that Islamic banks can collect social funds originating from the cash *waqf* and distribute them to the *Nazhir* in accordance with *Wakif's* will.

The Government must consider an important solution to recover Indonesia's economy by the implementation of Islamic economy. One of the efforts is the management of Islamic bank. The Islamic economy principles, compared to conventional banking systems, contain excellent concepts to deal with monetary fluctuation. The global economic experts such as Rodney Shakespeare, Volker Nienhaus, and others recognized the Islamic Economy to be effective and resistant in times of crisis.<sup>21</sup> Based on the principle of profit sharing offered, Islamic bank

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<sup>19</sup> Syamsuddin Mahmud, *Dasar-Dasar Ilmu Ekonomi dan Koperasi*, Banda Aceh: PT. Intermasa, 1986, p. 194.

<sup>20</sup> Mardani, *Hukum Ekonomi Syariah di Indonesia*, Bandung: Refika Aditama, 2011, p. 12.

<sup>21</sup> *Ibid.*

forms a healthy and fair investment climate because all parties can share both benefits and risks so that banks and its customers gain a balanced position. In the future, it could encourage national economic equality because both capital owner and capital managers enjoy profits.

#### **E. Social Islami Bank Limited (formerly known as Social Investment Bank Ltd) as the Model of *Waqf* Bank**

Social Islami Bank Limited (SIBL), formerly known as Social Investment Bank Ltd., is a model of bank that covers three service sectors: formal, informal, and voluntary aiming to alleviate poverty and empower families through social investment based on participatory economics.<sup>22</sup> The SIBL's banking and financial activities use a humanitarian approach and operationalization based on interest-free transactions through financing and participation.<sup>23</sup> The SIBL offers socio-economic programs in the form of a spirit of sharing and participation, social responsibility, and mutual needs. This concept avoids individualistic behavior to produce loyalty as the concept of essential economic democracy. The SIBL also offers modern banking services with the deposit concept. In the concept, depositors participate in various financing model activities and some investments projects such as profit-sharing projects, trade leasing projects, lease purchase agreements etc. These projects do not only reflect economic activity but also as social and moral activities.

The SIBL was pioneered by Bangladesh's leading Islamic economist, Prof. Dr. M. A. Mannan, who introduced the Cash *Waqf* Certificate as a new voluntary product in the history of the voluntary banking sector. This Cash *Waqf* Certificate is used as a financial instrument in the banking sector to manage social funds, including *Waqf* funds. The SIBL's operation receives cash *waqf* as donation based on Islamic teaching. Their role is to manage the *waqf* in the name of *Wakif*. The *Wakif* has the freedom to choose the objective or the target of the *waqf* in line with the list provided by SIBL or other objectives permitted by Islamic teachings. Against the quantity of the *waqf*, it must remain intact and only the profits are spent on the *wakif's* objectives. The profits that are not spent is automatically added to the *Waqf* so that the profits always increase. Afterward, the cash *waqf* deposit is given a receipt or, after the amount of the *waqf* reaches the specified amount, the certificate is issued.<sup>24</sup>

The establishment of SIBL through its Cash *Waqf* Certificate provides latest paradigm for *waqf* that opportunities for representation are not only for rich people but also for all people in general. The role of cash *waqf* is very important to sustain national development efforts by increasing society participation. The SIBL

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<sup>22</sup> M. A. Mannan, "Cash-waqf Certificate: Global Opportunities for Developing the Social Capital Market in 21st -Century Voluntary-sector Banking," Third Harvard University Forum on Islamic Finance, Harvard University, 2011, p. 6.

<sup>23</sup> Jafril Khalil, "Social Investment Bank Limited (SIBL) di Bangladesh", *Al-Awqaf*, Vol. II, No. 02, 2009, p. 56.

<sup>24</sup> *Ibid*, p. 56.



also makes the role of banks as facilitators to optimize the development and management of cash *waqf* to realize its goal.

The SIBL basically has a model that is very adaptable and can be applied in both Muslim and non-Muslim states that wish to eradicate poverty by avoiding interest that have strangled people's lives. In Bangladesh, the SIBL provides new experiences within the framework of poverty alleviation through society participation and their role as the initiator of the establishment of *waqf* banks in various countries, including Indonesia.

#### **F. The Implementation of Cash *Waqf* in Advancing the Economic Democracy**

The Economic Democracy System is an economic system that refers to the mandate of the national constitution. Article 33 of the 1945 Constitution states that the Economic Democracy system is based on the prosperity of society, not individual. This is structured as a joint effort based on the principle of kinship.

As the economic democracy system that involves all strengths of people's economy, it needs to be the main of the economic system of a nation, not only as an alternative. According to Baswir<sup>25</sup>, the economic democracy is a national economic system that is structured as a joint venture based on the principle of kinship, where production is carried out by all, for all, under the leadership or surveillance of members of society to increase the ability of the society to control the economy. In other words, the management of economic democracy is the implementation of an economy that affects the welfare of people. The progress of the economic democracy lies on overall economic activities that are carried out by people.<sup>26</sup>

Essentially, the system is in line with the practice of *Waqf*. Both place welfare and justice of economy for everyone as the main objective.<sup>27</sup> The assets of *waqf* can be used as an economic resource. This means that the use of the *waqf* asset is not only limited to the needs of conventional activities, such as education, mosques, hospitals, orphanages, etc. The assets can also be used for economic activities, such as agriculture, livestock, industry, mining, real estate, offices, hotels, restaurants, etc. Cash *waqf* is a potential economic resources that is closely related to the welfare of the people, in addition to *zakat*, *infaq*, and *shadaqa*.

Prior to formal legal arrangement, on May 11, 2002, the MUI released a *fatwa* that the law of cash *waqf* was *jawaz* (allowed). Based on the *fatwa*, the *Nazhir Waqf* institutions were established to accommodate collection and management of cash *waqf*. They consisted of *Tabung Wakaf Indonesia* (TWI), *Pos Keadilan Peduli Umat* (PKPU), and *Baitul Mal Muamalat* (BMM).<sup>28</sup> The existence of the *waqf*, after

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<sup>25</sup> Revrison Baswir, *Ekonomi Kerakyatan sebagai Sistem Indonesia*, Yogyakarta: Pustaka Pelajar, 1995, p. 111.

<sup>26</sup> *Ibid.*

<sup>27</sup> Sofyan Rizal, "Titik Temu dan Sinergi Ekonomi Islam dan Ekonomi Kerakyatan", *Al-Iqtishad*, Vol. 3, No. 1, 2011, p. 10.

<sup>28</sup> Muhyar Fanani, "Pengelolaan Wakaf Tunai", *Jurnal Walisongo*, Vol. 19, No. 1, 2011, p. 180.

the establishment of the *waqf* Law, was then realized by three institutions. The first is BWI as an independent government agency to develop the *waqf* system in Indonesia, the appointment of Islamic Financial Institutions as an institution to collect the cash *waqf* and *nazhir* as the *waqf* manager. However, this management mechanism was not able to optimize the potential of cash *waqf* in Indonesia. The management of *waqf* funds under many parties resulted in less effective management of cash *waqf* up to now. Based on the data from the BWI, of the total potential cash *waqf* IDR180 Trillion, only IDR400 billion was realized.<sup>29</sup> According to Nasution, the potential for cash *waqf* in Indonesia ranges from around IDR3 trillion.

**Table F.1 : Potential of Cash *Waqf*<sup>80</sup>**

Income Level/Month	The Amount of Muslim	Time Rate/ Month	Potential of Cash <i>Waqf</i> / Month	Potential of Cash <i>Waqf</i> / Year
IDR500.000	4 Million	IDR5000	IDR20 Billion	IDR240 Billion
IDR1 million – IDR2 million	3 Million	IDR10.000	IDR30 Billion	IDR360 Billion
IDR2 million – 5 million	2 Million	IDR50.000	IDR100 Billion	IDR1,2 Trillion
IDR5 million – 10 million	1 Million	IDR100.000	IDR100 Billion	IDR1,2 Trillion
<b>TOTAL</b>				<b>IDR3 Trillion</b>

Based on the Table F.1 and by looking at the goals and contributions that can be provided by the *Waqf* institution, the existence of Cash *Waqf* in Indonesia, especially in realizing social welfare, is very crucial. Masyita<sup>31</sup> reveals that if the *waqf* fund collection increases, for example, around IDR50 million in a day, assuming that the collected funds are constant, the development of cash *waqf* has an economic strategy value in overcoming poverty for 11,000 days (30 years) and 21,000 days (57 years) to improve the quality of Indonesian population. Different simulation models can be built up on various assumptions for mobilization of Cash *Waqf* Fund. For example, Cash *Waqf* of one US dollar per Muslim in one month can generate US\$1.6-billion, US\$260 million in Indonesia, US\$160 million in

<sup>29</sup> Umi Nur Fadhillah, *loc.cit.*

<sup>30</sup> Mustafa Edwin Nasution, *Wakaf Tunai dan Sektor Volunteer*, Jakarta: PSTTI-UI, 2006, pp. 43-44.

<sup>31</sup> Dian Masyita, (et.al), "A Dynamic Model for Cash *Waqf* Management as One of The Alternative Instruments for the Poverty Alleviation in Indonesia", *The 23rd International Conference of The System Dynamics Society, Boston*, 17–21 July 2005, p. 28.

Bangladesh, US\$176 million in Pakistan, US\$80 million in Turkey, and US\$30 million in Malaysia, etc.<sup>32</sup>

Cash *waqf* needs to be managed by competent and professional institution so that the purpose to improve social welfare can be realized. The presence of TWI, PKPU, BMM, and other *Nazhir* organizations or institutions actually reflects the form of independent institution in the management of the Indonesian Cash *Waqf* System. However, the institutions currently still have obstacles in the managerial operational of the Cash *Waqf* System. *Nazhir* as an asset manager currently has not been carried out professionally. For instance, one of the tasks is to carry out the obligation to secure principal assets but the institutions have not involved in Islamic deposit insurance.<sup>33</sup> In addition, the BWI has too many functions and authorities, including regulation, supervision, socialization, management, collection, and distribution. The BWI functions as the main *nazhir* manager become inefficient and lack of effectiveness in socializing and collecting cash *waqf*. In fact, the two important functions can be the key point to success.

There is also an overlap of authority, especially between the regulatory function and the management function. As the manager, BWI has the role to manage and develop *waqf* assets. Unfortunately, BWI has also regulatory authority both for itself, as the manager, and for the *Nazhir*. This is inappropriate because the function of regulation and management should not be in one body. Thus, the overlapped authority causes the management of Cash *Waqf* ineffective.

According to Article 28 of the Law on *Waqf*<sup>34</sup>, fundraising can be done through Islamic Financial Institutions. However, the optimization of cash *waqf* as a means of social welfare is hampered. In the Indonesian *waqf* system, the LKS-PWU only serves as the “recipient” of the cash *waqf* based on the mandate of the Law. The Management function is still limited to the Religious Social Institutions. Therefore, the LKS-PWU does not take an active attitude and tends to be passive in capturing *Wakif* because the determination of the forms of *Waqf* management and its designation is not their authority. This then affected the level of productivity of the *waqf* because the LKS-PWU is unable to explain concretely and clearly the allocation of collected *Waqf*.<sup>35</sup>

The roles of *waqf* institutions, in the form of regulators, collector, managers, and distributors, that are shared between the BWI and the Ministry of Religion, the Ministry of Religion and the Coordinating Ministry for Economic Affairs, BWI with

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<sup>32</sup> M. A. Mannan, “Linking Islamic Commercial and Social Finance with Special Reference to Cash-*Waqf* as New Strategy of Interest-Free-Micro-Credit for Family Empowerment of The Poor Towards Establishing World Social Bank: A Case Study Approach”, *Journal of Islamic Monetary Economics and Finance*, Vol. 3, Special Issue, 2018, p. 9.

<sup>33</sup> Muhyar Fanani, *op.cit.*, p. 192.

<sup>34</sup> See Article 28 of the Law Number 41 of 2004 on *Waqf*.

<sup>35</sup> Ahmad Furqon, “Analisis Praktik Perwakafan Uang pada Lembaga Keuangan Syariah”, *Jurnal Walisongo*, Vol. 19, No. 1, 2011, p. 159.

LKS-PWU, have not been aligned. They are still running partially.<sup>36</sup> Therefore, the management of *Waqf* must be carried out under one institution to accelerate and make simple the system. An integrated institution performing *waqf* system can be effective and optimal. In addition, it should be noted that the management of cash *waqf* is different with conventional *waqf*.

### G. Legal Studies on the Position of Cash *Waqf* in Indonesian *Waqf* System

Since *waqf* is an instrument originating from Islamic Law, the discussion must always involve Islamic Law. The word *waqf* comes from Arabic, which means to stop or stand up. According to the Law, *waqf* is to hold back assets without spending or damaging the object that is used for good purposes. In general, *waqf* is a gift that is carried out by holding the original ownership (*tahbisul ashli*) so that the benefits can be received generally. *Tahbisul Ashli* holds goods that are not inherited, leased, and mortgaged to others. The goods may be used based on the will of the *wakif* without compensation.

In Indonesia, *waqf* has been known since before the independence. Moreover, Indonesians have known it since the early days of Islam in Indonesia. In the independence era, *Waqf* has received more attention so that it accommodated in the Law on *Waqf*. Previously, it was regulated in Book III of the Compilation of Islamic Law on *Waqf*.

Provisions regarding property or goods that can be represented are explained in the Law. Specifically, Article 16 Paragraph (1) reads that property can be in the form of either immovable or movable properties or goods. Cash *Waqf* is a type of *Waqf* that is regulated in the Law specifically. The inclusion and arrangement of cash *waqf* in the Law is based on the *fatwa* MUI on May 11, 2002 on cash *waqf* as follows.

1. Cash *waqf* (*al-nuqud waqf*) is a *waqf* by a person, group of people, institution, or legal entity in the form of cash.
2. Securities can be included in cash *waqf*.
3. The principle of cash *waqf* is *jawaz* (allowed).
4. Cash *waqf* can only be distributed and used for things that are allowed by Islamic principle.
5. The principal value of *waqf* must be guaranteed for sustainability. The goods or property cannot be sold, granted, and/or inherited.

The MUI has released a *fatwa* on the status of cash *waqf* and it is adopted into the Government Regulation Number 42 of 2006 on the Implementation of the *Waqf* Law. In the Regulation, cash *waqf* is given a narrow meaning covering only cash in the form of Rupiah. If the money is not Rupiah, or in foreign currency, the money must be converted first.

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<sup>36</sup> *Ibid*, p. 64.

The regulation also arranges requirements of *wakif* as follows:

1. *Wakif* presents at the LKS-PWU to declare the cash *waqf*;
2. *Wakif* explains ownership and origin of money;
3. *Wakif* deposit cash to the LKS-PWU; and
4. *Wakif* fills out form containing the statement of intention, which functions as the *Waqf* Pledge Deed.

Regarding the right to manage *waqf*, the Law of *Waqf* mentions that the party entitled to manage the *waqf* is *nazhir*. Article 9 divides *nazhir* into three types: individual, organization, and legal entities. To develop *waqf* in Indonesia, the Law regulates that an independent institution is formed as the main institution that manages *waqf*. It is the Indonesian *Waqf* Board (BWI –*Badan Wakaf Indonesia*). The BWI is based in the capital state of the Republic of Indonesia and can form representatives in provinces and/or districts/cities according to their needs. As the main institution, BWI has several functions to develop *waqf*. Article 49 Paragraph (1) reads that it is to:

- (1) nurture *nazhir* in managing and developing *waqf* properties;
- (2) manage and develop national and international *waqf* assets;
- (3) give approval and/or permission for changes in designation and status of *waqf* property;
- (4) dismiss and replace *nazhir*;
- (5) give approval for the exchange of *Waqf* property;
- (6) provide advice and consideration to the Government in the formulation of policies in the field of *waqf*.

Article 28 to Article 31 specifically regulates the management of general and cash *waqf*. Cash *waqf* must be deposited in Sharia Financial Institution Receiving Cash *Waqf* (LKS-PWU –*Lembaga Keuangan Syariah Penerima Wakaf Uang*). The Minister of Religious Affairs of the Republic of Indonesia determines the institution. The Islamic Financial Institution is Indonesian legal entity formed in accordance with the applicable laws and regulations that are engaged in Islamic finance—for instance, an Islamic bank. The possibility of moving cash *waqf* into Islamic Financial Institution is intended to enable *wakif* to gather the cash easier.

The Minister determines the LKS based on advice and consideration from the BWI. Previously, the selected LKS-PWU have several tasks. First, the LKS-PWU announce their existence publicly through various means of communication. Subsequently, the LKS-PWU can receive written statement from *wakif* containing statement of intention. After the *waqf* is received, the money is placed in a deposit account (*wadi'ah*) in the name of *nazhir*. The LKS-PWU is also obliged to provide a blank Certificate of Cash *Waqf* (SWU –*Sertifikat Wakaf Uang*) to be issued and submitted to *wakif* as a proof of *Waqf* submission. The copy is submitted to *nazhir* who is appointed by *wakif*. According to Indonesian *Waqf* Board Regulation

Number 01 of 2009, the certificate can be given to *wakif* who has donate the money of at least Rp1.000.000 (one million Rupiah) by including a description of the origin of the money and the complete identity of the *wakif*. To be concluded, LKS-PWU must register cash *waqf* to the Minister on behalf of *nazhir*.

Essentially, the status and the arrangement of cash *waqf* is clear and has a strong legal basis for further development. Unfortunately, in the practice, cash *waqf* management still faces various obstacles ranging from technical management, community paradigms, and internal problems of cash *waqf* management-institution.

#### **H. Juridical Research on the Optimization of Cash *Waqf* Management by Islamic Bank in Indonesia**

In terms of regulation and legal aspects of cash *waqf*, Indonesia is very detail. The management of cash *waqf* under the Law on *Waqf* determines that three parties involve in managing cash *waqf*. First, it is the BWI to manage and develop. Second, Islamic Financial Institutions acts to collect and distribute fund. Third, *Nazhir* is the cash *waqf* fund manager.

In fact, the management of *waqf* through a single institution has not been effective and efficient. Therefore, the potential of cash *waqf* has not been optimized yet. Many people cannot feel the benefits of cash *waqf*, which has the potential to reach 3 trillion per year.

Islamic bank that acts as the *nazhir*, or *waqf* bank, can be a solution to overcome the problems related to cash *waqf*. Bank system enables the utilization of bank function in terms of professional fund management, public trust, and the reach of bank that has many branches to socialize cash *waqf*.

According to Mannan, *Waqf* Bank is a bank that holds *waqf* in the form of cash *waqf*. In this case, it could turn as a supplement to fund various social projects.<sup>37</sup> The *waqf* bank shall have full authority as *nazhir* that performs tasks to receive, to manage, and to distribute *waqf* funds. It is possible based on Article 9 of the Law on *Waqf*, which states that *Nazhir* can also be an organization or a legal entity.

The bank that can be a *waqf* bank in Indonesia is an existing Islamic bank that receives expansion of authority not only to become a fund collector but also to manage and distribute cash *waqf*. Based on the Law Number 21 of 2008 on Islamic bank, Islamic bank is a bank that carry out their business activities based on Islamic Principles. According to the type, there are Islamic Commercial Banks and Islamic Society Financing Banks. Both are to support the implementation of national development to improve justice, togetherness, and equal distribution of people's welfare. The definition and purpose of Islamic bank is in line with the definition of *waqf* bank, which also aims to improve the welfare of society.

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<sup>37</sup> F. Prihatini, (et.al.), *Hukum Islam Zakat dan Wakaf*, Jakarta: Collaboration between the Papas Sinar Mentari Publisher and the University of Indonesia's Faculty of Law Publishing Board, 2005, p. 151.

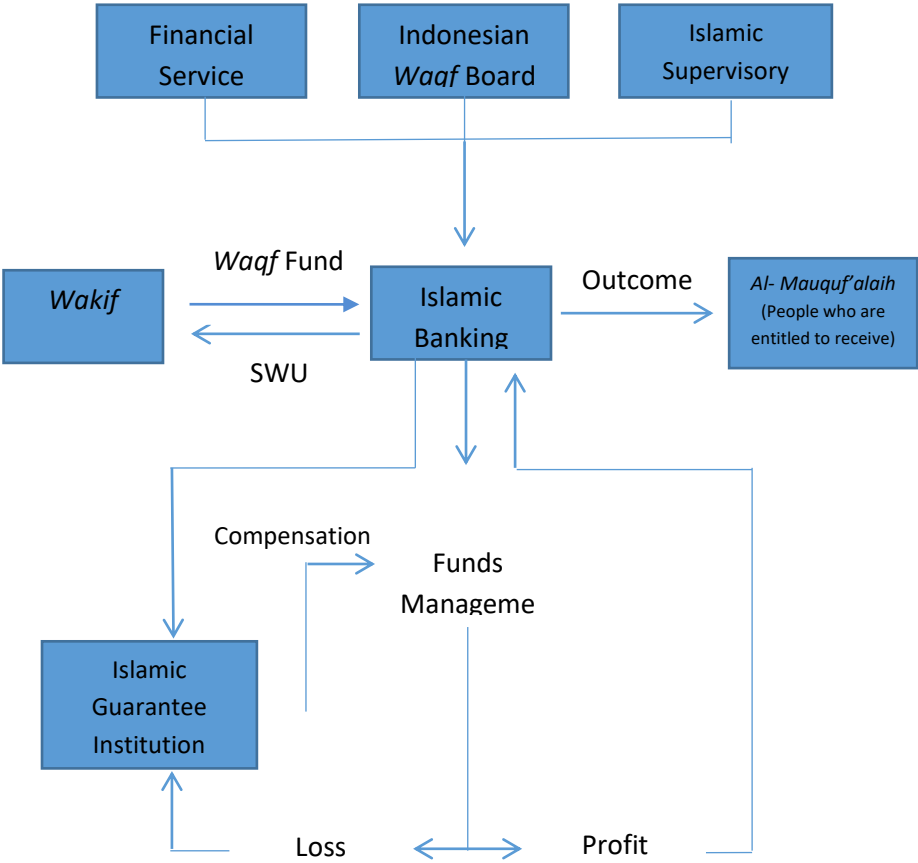
Islamic bank currently has a social function to collect cash *waqf*. However, the social function has not been able to optimize cash *waqf* in Indonesia because trustworthy and professional institution must collect it. The role of Islamic bank to manage cash *waqf* has at least several advantages to optimize *waqf* as follows:

1. Islamic bank's network is wider compared to other Islamic Financial Institutions. This is an important factor to optimize socialization of *waqf* collection and distribution.
2. Bank has an ability to be a fund manager. A bank is a public fund management institution. It has the ability to manage funds and is expected to be able to act as an alternative institution capable of managing cash *waqf* funds to be accounted to the public, especially *wakif*.
3. The facilities of several Islamic banks are relatively complete. For instance, the availability of widely spread cash machine networks, SMS Banking, Internet Banking, Phone Banking, and auto debit facilities from customer accounts can make it easier for people to make cash *waqf* deposits. Currently Islamic banks have more than 10,000 cash machine facilities.
4. Professional human resources in Islamic Banks guarantee that *waqf* funds are received and managed optimally, reliably, honestly, and transparently. They are expected to maximize the benefits of managing cash *waqf*.
5. Cash *waqf* funds, either in the form of *nazhir* deposit funds (*wadi'ah*) or *nazhir* managed funds (*mudharabah*) are part of the third-party funds of Islamic banks guaranteed by the Indonesia Deposit Insurance Corporation (IDI, or in Indonesia: LPS – *Lembaga Penjaminan Simpanan*). Thus, cash *waqf* funds in Islamic banks are more secure and guaranteed.
6. The distribution map and information network of Islamic banks is full of extensive experience so that the management of cash *waqf* is expected to not only optimize fund management, but also can streamline the distribution.
7. Positive image of Islamic banks is expected to create a positive image on the cash *waqf* movement. The alternative role of Islamic banks in cash *waqf* includes as *Nazhir* recipients, distributors, and *waqf* fund managers.

The change in the status of Islamic bank, which was previously only tasked with accommodating funds to become managers and distributors, is a common feature of the *waqf* bank model in Bangladesh. In addition, the situation in Bangladesh has some similarities with Indonesia. They are, among others, the majority of Muslim population and still shrouded in poverty. Islamic banks will later have full authority to become *nazhir*, starting from the recipients, managers, and distributors of cash *waqf*. This is none other than that in the implementation of collection, management, and distribution related to cash *waqf* to be carried out progressively because it is in a single door of an institution that is focused and based on a banking system that already has customers with principles of professionalism and trust.

The fractions of the Cash *Waqf* Certificate (SWU) issued by Islamic banks can later be reached by all people, since the fractions ranging from IDR10.000, IDR25.000, IDR50.000, and IDR100.000. Fund management is also accompanied by cooperation with Islamic Guarantee Institutions to ensure no reduction in the principal value of cash *waqf*.

The Islamic bank can later carry out the management and development of cash *waqf* by distributing the funds collected in the form of soft loans as well as financing various types of investments, both in the form of *mudharabah*, *musyarakah*, etc. It must be realized that the *waqf* will be distributed to the public. For this reason, the management must be carried out professionally and accountably in a regulatory basis.



**Image H.1: Management and Distribution of Cash *Waqf* in Islamic Banks in Indonesia**



Funding is carried out through the streamlining information networks and distribution maps. In terms of the distribution target, Islamic banks distribute it according to *wakif* and if *wakif* does not have any requirements, Islamic bank can determine unilaterally by prioritizing business capital, empowering education, health, and other economic empowerments. Islamic banks, in carrying out their activities, are monitored through integrated supervision between the Financial Services Authority (OJK), the Islamic Supervisory Board, and BWI. In terms of the mechanism of accountability to the public, the Islamic banks can rely on the accountability of the banking system and if necessary can take a way to report regularly to *wakif* and can request the services of independent public accountants to audit the Islamic bank.

The successful implementation of SWU in Bangladesh can be used as an example for Indonesia to carry out the management of this cash *waqf*. Islamic bank can support the development of cash *waqf* in Indonesia by collecting funds from the society, which consists of donating cash *waqf* directly and cash *waqf* deposits while still keeping the basic funds from the society to be managed over. The proceeds from the management of *waqf* funds are used to overcome problems related to education, health, economy, and social services. Hence, this is expected to realize social welfare in Indonesia.

## I. Conclusion

Islamic banks currently are able to collect social funds that come from cash *waqf*. However, the social function of Islamic bank is limited only to raising funds. It has not been able to optimize the cash *waqf* in Indonesia. In addition to be collected by trusted and professional institutions, cash *waqf* must also be managed and distributed by a trusted and professional institution, one of which can be done by Islamic bank.

Assigning authority to Islamic bank as a *nazhir* can be a greatest solution to overcome the problem of cash *waqf* that has not been managed optimally nowadays. By becoming *nazhir*, Islamic bank can raise the funds and have the authority to manage and distribute the cash *waqf*. Furthermore, this system enables the advantages of bank to be maximized, in terms of professional ability in fund management, public trust, and networking. The success of the *waqf* bank in Bangladesh, the SIBL, can be used as a comparison and be adopted into a system of Islamic bank in Indonesia.

In order to realize the idea of converting the authority of Islamic Banking to become the *nazhir*, it is necessary to have a legal reform that regulates the authority of Islamic bank in managing cash *waqf*, both in Law Number 21 of 2008 on Islamic Banking and in Law Number 41 of 2004 on *Waqf*.

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