

## The Implications of Islamic Law Related to the Implementation of Cash *Waqf* / Money

Mughtar Anshary Hamid Labetubun<sup>\*)</sup> La Ode Angga<sup>\*\*)</sup>

<sup>\*)</sup> Faculty of Law, Universitas Pattimura, Ambon

E-mail: [mahlabetubun@gmail.com](mailto:mahlabetubun@gmail.com) <mailto:mohammadbarkaharrohim@gmail.com>

<sup>\*\*)</sup> Faculty of Law, Universitas Pattimura, Ambon

E-mail: [laodeangga@yahoo.com](mailto:laodeangga@yahoo.com)

**Abstract.** Cash *Waqf* is a term that is becoming familiar in today's society, because Cash *Waqf* usually refers to cash deposits in financial institutions such as banks, where Cash *Waqf* is usually invested in profitable business activities, profits from the investment results are used for everything that is socially and religiously useful. The purposes of this research to analyze Cash *Waqf* that is carried out by a person, group of people, and institutions or legal entities in the form of cash/money. Also included in the interpretation of money are securities, such as shares, checks, and others. The method used in this study was normative juridical for analyzing legal issues contained in legislation related to the problem under study with qualitative analysis. The results showed that endowments in the form of cash are permissible as long as the money is invested in a business for results (*Mudharabah*), after which the profits are distributed according to the endowments. So that the money represented is always, on the contrary, what is informed to the *mauquf 'alaih* is the result of developing the endowment of the money. However, there are several main challenges in developing the potential of Cash *Waqf* in Indonesia in addition to governance challenges, including the low literacy of the Indonesian people about Cash *Waqf* and limited financial instruments in developing the value (assets) of Cash *Waqf*.

*Keywords: Cash; Implications; Implementation; Money; Waqf.*

### 1. INTRODUCTION

The poverty that exists is not caused by a weak work ethic, but is caused by the injustice of the system. The poverty of this model is very dangerous for the survival of a society so it is necessary to have a mechanism that is able to channel the wealth owned by the rich to the poor.

Islam offers various concepts of economic empowerment for citizens who can get out of the *ribawil* multiple economic webs. Many facilities are provided and are considered

capable of minimizing the economic disparity of the people, is to optimize the role of Islamic economic empowerment institutions such as *Waqf*.<sup>1</sup>

There has been an increased public interest in *Waqf* institution transparency and accountability. The public has continued to demand the best standard of services and greater transparency from *Waqf* institutions.<sup>2</sup> In addition, the pattern of raising *Waqf* is university-based for community empowerment.<sup>3</sup> Endowments can support the progress of civilization in Indonesia, so *Waqf* fundraising needs to be continuously encouraged. Surely this can be started from universities, because higher education, especially those based on Islam, can be started in raising *Waqf* funds.

Facing the economic crisis which is always discussed as a solution in an effort to raise contributions from Muslims in the form of *Waqf* funds.<sup>4</sup> The existence of Cash *Waqf* in Indonesian laws and regulations has shown significant progress in the field of legislation. This is evidenced by the regulation of the Cash *Waqf* issue in the form of a law, namely the enactment of Act No. 41 of 2004, which was followed up by Government Regulation 42/2006.<sup>5</sup> Through this law, Muslims make efforts to reform the *Waqf* law.<sup>6</sup> The issuance of regulations on *Waqf* illustrates a new paradigm that must be developed in *Waqf* governance in Indonesia and also provides space for the management of Cash *Waqf* as part of *Waqf* development in Indonesia.

The special body, which is defined as the Indonesian *Waqf* Board (BWI), as regulated in Article 47(1) of Act No. 41 of 2004 concerning *Waqf* stated that: "In the context of promoting and developing national representation, an Indonesian *Waqf* Board is formed." The agency is expected to manage *Waqf* productively and reliably, especially money endowments sourced from the new *Fiqh Waqf* formulation. In managing money *Waqf*, the Indonesian *Waqf* Board will later be required to work with professional institutions and Islamic banks. Thus, *Waqf* property can grow well, and the results can truly be experienced for its citizens' benefits.

Collection of *Waqf* assets has essential roles in the development of *Waqf* management organisations to collect *Waqf* from the community. The success of *Nazhir Waqf* is indicated by the strategies used and the number of *Waqf* assets collected from the waqif.<sup>7</sup> Goods that are represented should not be limited to objects that are not only involved, but also movable objects such as endowments of money, stocks, and others. Based on the formulation in Article 1 of Act No. 41 of 2004 on *Waqf* states that *Waqf* is

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<sup>1</sup> Achmad Djunaidi and Thobieb Al-Asyhar, (2006). *Menuju Era Wakaf Produktif Sebuah Upaya Progresif Untuk Kesejahteraan Umat*, Jakarta: Mitra Abadi Press

<sup>2</sup> Muhammad Iqmal et al., (2018). "Waqf Management Practices: Case Study in a Malaysian Waqf Institution," *World Journal of Social Sciences*

<sup>3</sup> Miftahul Huda, (2014), "Manajemen Fundraising Wakaf: Potret Yayasan Badan Wakaf Universitas Islam Indonesia Yogyakarta dalam Menggalang Wakaf", 11:1 *Justicia Islamica* 97–118.

<sup>4</sup> M Wahib Aziz, (2017), "Wakaf Tunai Dalam Perspektif Hukum Islam" 19:1 *International Journal Ihya' Ulum al-Din* 1-24.

<sup>5</sup> Suhrawardi K Lubis, (2010), *Wakaf & Pemberdayaan Umat*, Jakarta: Sinar Grafika.

<sup>6</sup> Wawan Hermawan, "Politik Hukum Wakaf Di Indonesia," *Taklim: Jurnal Pendidikan Agama Islam* 12, no. 2 (2014): 147–61, <http://jurnal.upi.edu/taklim/view/4016/politik-hukum-wakaf-di-indonesia.html>.

<sup>7</sup> Fahmi Medias and Eko Kurniasih Pratiwi, "Evaluation of Muhammadiyah *Waqf* Assets Utilization in Magelang Regency," *IQTISHADIA* 12, no. 1 (July 29, 2019): 101, <https://doi.org/10.21043/iqtishadia.v12i1.3208>.

a legal act of endowment to separate and/or surrender a portion of his property to be used forever or for a certain period following his interests for worship and/or welfare general according to sharia. The definition of the endowment as referred to in Article 1 of Act No. 41 of 2004 on Endowments, is further extended in relation to Endowment Property (endowment objects) regulated in Article 16(1) which states Endowments include: a) Unmoving objects; and, b) Moving objects.

*Waqf* objects are immovable or movable which have a durability that is not only used and has value according to Islamic teachings<sup>8</sup>. Throughout Islamic history, *Waqf* has played a very important role in the development of social, economic, and cultural activities of Islamic society. In the Islamic Economic system, *Waqf* has not been explored as much as possible, even though *Waqf* is very potential as an instrument for the economic empowerment of Muslims<sup>9</sup>. Cash *Waqf* can also be an economic instrument for solving convoluted economic problems. At the very least, the endowments of money introduced by Mannan through the establishment of Social Investment Bank Limited in Bangladesh. Social Investment Bank Limited sets a milestone in the banking world by introducing a Cash *Waqf* Certificate or a Cash *Waqf* certificate.

Money *Waqf* is an innovation in the Islamic financial system in the voluntary sector in addition to *zakat*, *infaq*, and *sadaqah*. This instrument breaks the ice of the meaning of *Waqf* institutions in various Muslim countries and is also an extraordinary opportunity for the development of the whole community's social economy.<sup>10</sup> Along with the need for funds for poverty, alleviation is very large, and its location is spread outside the *Waqf* area, then came the thought to represent with money.<sup>11</sup> It can be said that this Cash *Waqf* is the origin of funding generated from non-governmental organizations because this *Waqf* certificate is to raise social savings and transform it as social capital & help develop social capital markets. Furthermore, this certificate means setting aside some of the profits according to the origin of the rich to the poor. Thus it will foster their social responsibility to the surrounding people who will ultimately enhance the welfare of the people. *Waqf* productive money is considered to be the origin of funds that are very capable of being relied upon for the welfare and benefit of the Islamic ummah in general.

The development of Cash *Waqf* has contributed to the presence of Micro *Waqf* Bank in Indonesia. Micro *Waqf* Bank is one of the intermediary institutions that has enormous potential to increase the economic growth of underprivileged people and Micro, Small and Medium Enterprises, both in terms of volume and number of businesses. Through the Micro *Waqf* Bank, the target market being targeted by the Financial Services Authority is the underprivileged people who have a willingness to work and are trustworthy and educated.<sup>12</sup> The existence of a Micro *Waqf* Bank business with a Sharia

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<sup>8</sup> Barzah Latupono et al., (2020), *Buku Ajar Hukum Islam Edisi Revisi*, Yogyakarta: Deepublish

<sup>9</sup> Nurhafid Ishari & Nur Lailiah Sakinah, "Manajemen Wakaf Tunai Dalam Upaya Pemberdayaan Ekonomi Umat Di Pos Keadilan Peduli Umat (PKPU) KCP Lumajang" (2016) 7:1 *Iqtishoduna* 121–147.

<sup>10</sup> Aam S Rusydiana & Solihah S Rahayu, "Bagaimana Strategi Pengembangan Wakaf Tunai Di Indonesia?" (2019) 5:1 *Jurnal Ekonomi dan Bisnis Islam (Journal of Islamic Economics and Business)* 1–15.

<sup>11</sup> M Wahib Aziz, "Wakaf Tunai Dalam Perspektif Hukum Islam" (2017) 19:1 *International Journal Ihya' Ulum al-Din* 1.

<sup>12</sup> Hari Sutra Disemadi and Kholis Roisah, "Kebijakan Model Bisnis Bank Wakaf Mikro Sebagai Solusi Pemberdayaan Ekonomi Masyarakat," *Law Reform* 15, no. 2 (2019): 179–80, <https://doi.org/10.14710/lr.v15i2.26176>.

Microfinance Institution platform to bring together parties who have excess funds (donors) to donate to people who need business financing with very low yields.

Movable object *Waqf* if managed properly is actually very potential for raising funds in order to trigger the national economic growth rate and in an effort to improve the welfare of the people.<sup>13</sup> *Waqf* productive money is considered a very reliable source of funds for the welfare and benefit of Muslims in general, so the Financial Services Authority created an innovative pilot project part of the Syariah-based Micro Finance Institution called Micro *Waqf* Bank which provides facilities for providing funds to meet the needs of parties who need funds.<sup>14</sup> This is to avoid misuse of loan funds and inappropriate distribution of funds.

The presence of the Micro *Waqf* Bank is due to the urgency of the economic condition of the community, especially Muslims who really need it. When the poor find it difficult to reach formal financial services (banking), even though they really need capital, media for storing funds, media for sending funds (transfers) and insurance. So microfinance becomes a primary need for them,<sup>15</sup> to realize the potential and economic benefits of *Waqf* property for the benefit of worship and to promote public welfare.

## 2. RESEARCH METHODS

The method used in this research was normative juridical to analyze the legal problems contained in the legislation related to the problem under study with descriptive-analytical nature. The problem approach used the statute approach and conceptual approach. According to Peter Mahmud Marzuki, the legislative approach was carried out by examining all laws and regulations relating to legal issues.<sup>16</sup> The conceptual approach moves from the views and doctrines developed in the science of law to find ideas that give birth to legal concepts, legal understandings, and legal principles needed to complete research

## 3. RESULTS AND DISCUSSION

### 3.1. Arrangement of *Waqf* in The Form of Cash/Money

In line with the enormous need for funds for poverty alleviation and its location which is spread outside the area of the *Wakif*s, an idea has emerged for *Waqf* with money. Money is more flexible and knows no boundaries of distribution areas.<sup>17</sup> *Waqf* money is a new innovation in the Islamic financial system in the voluntary sector *besides zakat, infaq, and shadaqah*.<sup>18</sup> This instrument not only breaks the icy meaning of the institution of

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<sup>13</sup> Boedi Abdullah, "Hukum Wakaf Benda Bergerak (Uang) Menurut Fatwa Ulama Dan Undang-Undang Nomor 41 Tahun 2014 Tentang Wakaf," *Asy-Syariah* 20, no. 1 (2018): 1–14, <https://doi.org/10.15575/as.v20i1.2967>.

<sup>14</sup> Nourma Dewi, "Regulasi Keberadaan Baitul Maal Wat Tamwil (BMT) Dalam Sistem Perekonomian Indonesia," *Jurnal Serambi Hukum* 11, no. 1 (2017): 96–110, <http://journal.uniba.ac.id/index.php/SH/index>.

<sup>15</sup> Ahmad Subagyo, *Manajemen Operasi Lembaga Keuangan Mikro Syariah* (Depok: Mitra Wacana Media, 2015).

<sup>16</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016).

<sup>17</sup> Aziz, "WAKAF TUNAI DALAM PERSPEKTIF HUKUM ISLAM."

<sup>18</sup> Abrista Devi and Aam Rusydiana, "Islamic Group Lending Model (GLM) and Financial Inclusion," *International Journal of Islamic Business Ethics* 1, no. 1 (2016): 80–94, <https://doi.org/10.30659/ijibe.1.1.80-94>.

*Waqf* in various Muslim countries, but also represents a tremendous opportunity for the development of the social economy of the ummah as a whole. Cash *Waqf* also provides an opportunity for people from all walks of life to participate in Cash *Waqf*, even if not in large amounts.

Cash *Waqf* for Muslims in Indonesia is still relatively new. This can be seen from the underlying regulations. The Indonesian Ulama' Council only gave its fatwa in mid-May 2002 issued on May 11, 2002. At that time, the Indonesian Ulama' Council's fatwa commission also formulated a (new) definition of *Waqf*. In understanding and interpreting, the Cash *Waqf* can be taken from the results of the Indonesian Ulama' Council fatwa on May 11, 2002, regarding the concept and understanding of Cash *Waqf* as follows.<sup>19</sup>: 1) Cash endowments are endowments made by a person, group, institution, or legal entity in the form of cash, 2) Included in the definition of money is securities, 3) *Waqf* for legal money is permissible, 4) *Waqf* money can only be distributed and used for things that are permitted voluntarily, 5) the principal value of the endowments of money must be guaranteed its sustainability, may not be granted and or bequeathed.

According to the explanation above, it can be reviewed that Cash *Waqf* is a *Waqf* in the form of money or securities which are represented by the origin of a person, group, or other legal entity that is managed by a sharia financial institution. The concept of Cash *Waqf* is still being debated among the scholars, there are pros, and there are cons to this Cash *Waqf*. The reason for scholars who oppose Cash *Waqf* is<sup>20</sup>: 1) That money can be used up in disposable substances. Money can only be used by spending so that the object disappears while the core teachings of *Waqf* are on the continuity of the results of the eternal basic capital. Therefore, there is a requirement that the object to be represented is an object that is durable, not used up; 2) Money is a currency created as an easy transaction tool, including buying and selling, not to withdraw its benefits by renting out the substance.

On October 27, 2004, Act No. 41 of 2004 concerning Endowments was enacted. The law has an urgency to emphasize the need for productive empowerment of *Waqf* for social interests (welfare of the people). Following this, the Republic of Indonesia Government Regulation Number 42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Endowments was passed.

The *Waqf* Act also regulates the discourse of *Waqf* of movable objects, that is, the property not used up due to consumption, such as money, precious metals, securities, and so on. Any object, as long as it cannot be destroyed after its benefits are taken, can be represented. Money also includes objects that can be represented (Cash *Waqf*), as long as the money is used according to the purpose of the endowment contract and is not used up or destroyed. Money can be represented by the procedure of spending money on objects that have the nature of not being destroyed.

Cash *Waqf* can also be interpreted as donating assets in the form of money or securities managed by an institution (bank or Islamic financial institution) whose profits will be donated, provided that the capital cannot be reduced for alms, while the accumulated *Waqf* funds can then be rolled out and invested by *Nazhir* into various lawful and productive business sectors, so that the benefits can be utilized for the development of

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<sup>19</sup> Majelis Ulama Indonesia, *Himpunan Fatwa MUI Sejak 1975* (Jakarta: Erlangga, 2011).

<sup>20</sup> Heri Sudarsono, *Bank Dan Lembaga Keuangan Syariah Deskripsi Dan Ilustrasi* (Yogyakarta: Ekonisia, 2007).

the ummah and the nation as a whole<sup>21</sup>. The urgency of Cash *Waqf* is for economic improvement and benefits in the world and the hereafter.<sup>22</sup> In addition, Cash *Waqf* as an Islamic economic institution has an important role in the development of society, both in the fields of education, religion and in the economic and social fields.

The *Nazhir Waqf* institution must be managed with trust, trustworthiness, transparency, and professionalism. To achieve all of that, proper management is needed. There are four frameworks as a process and function of management, including planning, namely the activity of setting organizational goals. The next term is organizing, which involves coordinating resources, tasks, and authority among members of the organization. The next step is direction, which is to make how the organization members worked to achieve organizational goals. The management process's final element is supervision or control, which aims to see whether the activities of the organization are synchronous using planning.

In the context of the organization, planning can be interpreted as a process of deciding goals and objectives, determining the choices of actions to be taken, and learning the best ways to achieve future goals that have been set. In Islam, the conception of planning is launched based on the concept of learning and the results of deliberations with competent, careful, and broad views in completing various dilemmas.

To make maximum use of *Waqf*, its management must be done in a professional, transparent, and accountable manner. Also, for Cash *Waqf* to convey real benefits to the wider community, the forum for Cash *Waqf* managers should use professional management that involves three parties, namely *Waqf*, *Waqf* managers (*Nazhir*), and citizens who are given *Waqf* (*Mauquf 'alaih*).

The development of *Waqf* in the form of money, known to use Cash *Waqf* or Cash *Waqf*, has been done long ago. Even in the history of Islam, Cash *Waqf* has been practiced since the second century Hijriyah. Imam Bukhari narrated that Imam az-Zuhri, one of the leading scholars and lawyers of the *tadwin al-hadith*, conveyed his fatwa for speaking with the Dinar and Dirham so that it could be utilized as a means of development, propaganda, social, and Islamic education. The way to do this is to make money a struggle capital (productive capital) and channel the benefits into *Waqf*<sup>23</sup>. The ability of Cash *Waqf* was also expressed by the Hanafi and Maliki schools. Even some Syafi'i scholars also allow cash endowments, as claimed by Al-Mawardi. "Abu Tsaur narrated from Imam Shafi'i about the ability of *Waqf* dinar and dirham *Waqf*<sup>24</sup>. Cash *Waqf* has potential if it can be managed properly, especially if it is handed over to professional managers and invested in productive sectors.

The Indonesian Ulama' Council fatwa Commission quoted this opinion on legitimizing Cash *Waqf*. In Indonesia at this time, sitting the case may the endowment of money. There is no problem anymore. It began since the issuance of the fatwa of the Indonesian Ulama' Council on May 11, 2002. The contents of the fatwa of the Indonesian Ulama' Council are as follows: 1) Endowments of money (Cash *Waqf* *Waqf Al-Nuqud*) are

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<sup>21</sup> Asep Dadan Suganda, "Konsep Wakaf Tunai," *Islamiconomic: Jurnal Ekonomi Islam* 5, no. 1 (2014): 1–15, <https://doi.org/10.32678/ijeiv5i2.25>.

<sup>22</sup> Asri, Khaerul Aqbar, and Azwar Iskandar, "Hukum Dan Urgensi Wakaf Tunai Dalam Tinjauan Fikih," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 1, no. 1 (2020): 79–92, <https://doi.org/10.36701/bustanul.v1i1.132>.

<sup>23</sup> Abu Su'ud Muhammad, *Risalah Fi Jawazi Waqf Al-Nuqud* (Beirut: Dar Ibn Hazm, 1997).

<sup>24</sup> Al-Mawardi Al-Hawi al-Kabir, *Tahqiq, Mahmud Mukhraj* (Beirut: Dar al-Fikri, 1994).

endowments made by a person, group of people, institutions or legal entities in the form of cash<sup>25</sup>; 2) Included in the definition of money are securities; 3) *Waqf* legal money is jawaz (allowed); 4) *Waqf* money may only be distributed and used for things that are permitted in a syar'i manner<sup>26</sup>; 5) The principal value of the endowments of money must be guaranteed its sustainability, It may not be sold, granted, or bequeathed; 6) The ability of Cash *Waqf*, from the Indonesian Ulama' Council, does not contradict the definition of *Waqf* that has been formulated by the dominant ulama by referring to the hadiths regarding *Waqf*. Indonesian Ulama' Council committee meeting on March 23, 2002, deems it necessary to review and refine (develop) the definition of *Waqf* that has not been known by taking into account the intent of the hadith, including the history of Umar: "Hold the Source (the main) and make the fruits (the results)"; 7) Based on the hadith, the Indonesian Ulama' Council formulated the definition of *Waqf* as follows: "postponing assets that can be used without the loss of the object or principally using no legal action against the purpose (selling, giving, passing down), for distribution of the results to something immovable (not haram); 8) This cash or Cash *Waqf* has received a positive response from the Indonesian Ulama' Council, previously in 2001, M. A Mannan, chairman of Social Investment Bank Ltd, gave a seminar in Indonesia about *Waqf* money. Finally, on May 11, 2002, the Indonesian Ulama' Council issued a fatwa regarding the endorsement of the endowment of money (*Waqf Al-Nuqud*), using the condition of the principal value of *Waqf* must be guaranteed its sustainability. <sup>27</sup> So it can't be sold, donated and or inherited.

The Indonesian Ulama' Council through the fatwa commission issued a fatwa on endowments of money containing: a) Cash *Waqf* (Cash *Waqf* / *Waqf Al-Nuqud*) is *Waqf* made by a person, group of people, institutions or legal entities in the form of cash; b) Included in the definition of money are securities; c) *Waqf* legal money jawaz (allowed); d) Endowments of money may only be distributed and used for things that are permitted syar'iy; e) The principal value of the endowments of money must be guaranteed. Its sustainability may not be sold, granted, or inherited.

The issuance of the fatwa of the Indonesian Ulama' Council, after first listening to the views and opinions of the fatwa meeting of the Indonesian Ulama' Council on Saturday March 23, 2002, included the need for a review and refinement (development) of the definition of *Waqf* that had not been known, by showing the purpose of hadith including narrated by Ibn Umar ra., he said Umar bin Khattab ra. To the Prophet Muhammad "I have one hundred land/gardens to Khaibar that I have never received a treasure that I admire more than that land, I intend to offer it." (H.R. al-Nasai).

Furthermore, the opinion of the meeting of the Indonesian Ulama' Council Fatwa Commission on Saturday, May 11, 2002, regarding the formulation of the definition of *Waqf*, namely: holding assets that can be used without the loss of the object or its principal, using no legal action against the object (for example: selling, delivering, or

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<sup>25</sup> Ong Argo Victoria, (2018) *Waqf Al-Nuqud In Indonesia (In Law Perspective)*, Jurnal Pembaharuan Hukum Vol 5, No 1 Universitas Sultan Agung, <http://jurnal.unissula.ac.id/index.php/PH/article/view/2999>

<sup>26</sup> Sukarmi, S., & Victoria, Argo. (2018). Cash Waqf in Sustaining of Indonesian Society "In Legal & Economic Perspective". *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES*, IRKHS-IIUM, Malaysia, 2(1), 83–97. <https://doi.org/10.31436/al-itqan.v2i1.43>

<sup>27</sup> Direktorat Jenderal Bimas Islam dan Penyelenggaraan Haji, *Panduan Pemberdayaan Tanah Wakaf Produktif Strategi Di Indonesia* (Jakarta: Proyek Peningkatan Zakat dan Wakaf, Depag-RI, 2003).

bequeath it), to be distributed (the result) in something that is permissible (not haram). Residents welcomed the issuance of the MUI fatwa.<sup>28</sup> The struggle to make a legal umbrella of endowment activity in the form of applicable law.

The law functions as a protection of human interests. For human interests to be protected, laws must be implemented<sup>29</sup>. The importance of strong legal support to enhance the role of Islamic banks in collecting money endowments<sup>30</sup>. The endowment for objects acting in the form of money is carried out by the waqif in writing to the management of a Sharia Financial institution. Then issued a *Waqf* certificate of money, then a certificate of *Waqf* money that was issued was delivered by Islamic Sharia financial institutions on waqif and *Nazhir* as proof of the surrender of assets. Furthermore, the Sharia Finance forum on behalf of *Nazhir* registered the endowments in the form of money with the Minister no later than 7 (seven) working days since the issuance of the endowment certificate.

Furthermore, in Government Regulation Number 42 of 2006 concerning the implementation of Act No. 41 of 2004 concerning Endowments, the procedure for the endowment of movable objects in the form of money is affirmed in this regulation, it is emphasized that the endowment of the represented currency means the rupiah currency. If the money to be represented is still in a foreign currency, it must first be converted into the rupiah currency.

Regulation of the Minister of Religion of the Republic of Indonesia Number 4 of 2009 concerning Administration of the Registration of the Endowment of Money, states that the public can supervise the application of *Nazhir* duties. For a *Wakif* who will endow the money is obliged to: a) Present at the Sharia Financial Institution Receiving Money *Waqf* to declare the will of the endowment for the money; b) Explain ownership and origin represented; c) Deposit in cash a sum of money to the Sharia Financial Institution that receives the endowment; d) Fill out the *Wakif* will statement form that functions as the Pledge of Endowment Pledge.

Related to the case of *Wakif* not present to the Islamic Financial Institution Receiving Money *Waqf*, then the *Wakif* can appoint a representative or proxy, and the representative of the origin of the *Wakif* can declare a pledge of endowment in the form of movable money in the form of money to *Nazhir* in the presence of the Official of the Endowment Pledge Acts. Then *Nazhir* submits the endowment pledge to the Sharia Financial Institution for Recipient *Waqf* Money. Several articles of statutory provisions above show that endowments of money are recognized in positive law in Indonesia.

The enactment of Act No. 41 of 2004, the position of *Waqf* money is increasingly clear, not only in terms of *Fiqh* (Islamic law), but also in terms of the tidiness of national law. With the enactment of the Act, cash endowments are already a positive rule. As a result the khilafiyah issue regarding cash endowments has been resolved.

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<sup>28</sup> Lubis, *Wakaf & Pemberdayaan Umat*.

<sup>29</sup> Sabri Fataruba, "Implikasi Hukum Terkait Dengan Pelaksanaan Pasal 24 Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *SASI* 24, no. 1 (2018): 19–29.

<sup>30</sup> Rizanti Khairunisa, Nashr Akbar, and Abrista Devi, "Exploring Strategies To Enhance Islamic Banking's Role To Raise Cash *Waqf* Funds," *IQTISHADIA* 10, no. 2 (2017): 1–28, <https://doi.org/10.21043/iqtishadia.v10i2.2863>.

### 3.2. The Legal Implications of Cash *Waqf*

*Waqf* is one of the Islamic institutions closely related to using the socio-economic problems of the people. In some countries that have developed *Waqf* productively, for example, Mesir, Turkey, Jordan, *Waqf* has a significant role in advancing the fields of education, health, research, poverty alleviation, improving the economic community, and so forth.

This Cash *Waqf* can be used as a means of empowering small businesses, by providing qardhul hasan loans. So that small businesses do not need to apply for a loan from a bank as business capital.<sup>31</sup> Although the history of *Waqf* has played a significant role in the development of the people, studies that will occur on the management of *Waqf* lately show that there are still *Waqfs* that do not have a positive impact because they are not appropriately managed. This is partly due to mismanagement, not even sporadic misappropriation of *Waqf* assets. As a result, there are countries where the management of *Waqf* assets will decrease so that it is not enough to maintain the assets of the *Waqf* assets, let alone convey benefits to the poor, or in other terms, they cannot achieve the goals set by *Waqf*. About these conditions, many scientists are reviewing *Waqf* management strategies, with the hope that in the future, *Waqf* can function as it should.

Also, the practices of *Waqf* in the Muslim minority communities are dynamic and respond to the community's needs compared to the majority of Muslim countries<sup>32</sup>. For countries where *Waqf* is underdeveloped, in general, the government and local scientists examine the factors that cause it. When the founding factors are found, the countries formulate tactics and policies to restore the function of *Waqf* as it should to realize the welfare of the people. In some states, *Waqf* will occur in general, aside from being used for religious purposes, raising the people's economy, health, and education. It is also used for public purposes, such as providing drinking water to shopping centers, building roads, providing public facilities, and other infrastructure. Once the importance of *Waqf* for solving various problems faced by the people, then at this time, *Waqf* is one of the Islamic institutions as material for study by scientists.

The study of *Waqf* is not only in Islamic tertiary schools or colleges but also in global tertiary institutions. Even overseas, the issue of *Waqf* has received particular attention for scholars. This is because *Waqf* is one of the most potential Islamic institutions, so it needs to be explored and developed. Some scholars who at this time relatively talk a lot about *Waqf*, including Monzer Kahf (Islamic Finance Consultant USA), M.A. Mannan (Bangladesh), and others<sup>33</sup>. The development of *Waqf*, especially Cash *Waqf*, is feasible because it is an Islamic economic institution that has an important role in the development of society, both in the fields of education, religion, as well as in the economic and social fields. So that it helps and prosper the economy of the people, fulfills the rights of the community and becomes one of the efforts to revive the economy.

International seminars/workshops on *Waqf* have recently been held. In Indonesia, there have been three International Seminars / Workshops on Endowments held, namely

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<sup>31</sup> Ahmad Syafiq, "Wakaf Tunai Untuk Pemberdayaan Usaha Kecil," *ZISWAF: Jurnal Zakat Dan Wakaf* 1, no. 2 (2014): 404–28, <https://doi.org/10.21043/ziswaf.v1i2.1493>.

<sup>32</sup> Aimu Fadzirul Kamarubahrin and Abdullah Mohammed Ahmed Ayedh, "Critical Review on *Waqf* Experiences: Lessons from Muslim and Non-Muslim," *IQTISHADIA* 11, no. 2 (September 27, 2018): 332, <https://doi.org/10.21043/iqtishadia.v11i2.3272>.

<sup>33</sup> Direktorat Jenderal Bimas Islam dan Penyelenggaraan Haji, *Panduan Pemberdayaan Tanah Wakaf Produktif Strategi Di Indonesia*.

Seminars/workshops in Batam, Medan, and finally at UHAMKA. Seminar at the Singapore International *Waqf* Conference 2007, which was held at the beginning of March 2007. In general, the seminar/workshop held discussed various problems encountered in the problem of representation and its solutions <sup>34</sup>.

Islamic law on endowments is not limited to immovable objects but also immovable objects, including money. In several countries such as Mesir, Jordan, Saudi Arabia, Turkey, Kuwait, endowments in addition to the facilities and infrastructure of worship and education also in the form of agricultural land, plantations, flats, hotels, shopping centers, money, stocks, real estate, and others all of which managed productively.

Using this, the results can be used to realize the welfare of the people. Throughout Islamic history, *Waqf* has played a significant role in the development of social, economic, and cultural activities of Muslim citizens. It has also facilitated scholars and students with adequate facilities and infrastructure that enables them to carry out many activities such as research and complete their studies.

Quite a lot of funded programs come from *Waqf* results such as book writing, translation, and scientific activities in various fields, including health. *Waqf* not only supports the development of science but also provides different kinds of facilities needed by students and people. As a model, for example, in the health sector, *Waqf* institutions also offer facilities for improving citizens' health and educational facilities by constructing hospitals, medical schools, and the development of the pharmaceutical and chemical industries.

At this time, in Indonesia, an introduction to the endowment of money. In other countries such as Turkey, Kuwait, and Bangladesh, they have been relatively long developed and can share other *Waqf* properties. The management of *Waqf* results in these countries is constructive in solving many Ummah problems, especially the social and economic issues of citizens.

Classical scholars have known *Waqf* money. Scholars who allow endowments of money argue that money can be represented as long as the money is invested in profit sharing efforts (*Mudharabah*), then the benefits are distributed in sync with endowments purposes. Thus the money represented is fixed, while what is conveyed to the mauquf 'alaih is due to the development of endowment money (*Mudharabah*). At that time, there were relatively many new forms of money *Waqf* management.

The existence of forms of money *Waqf* management is unified as long as the emergence of various types of investment and different kinds of ways in economic management. One new form of money *Waqf* management is money *Waqf* managed by investment companies. Generally, *Waqf* money is managed on the principle of *Mudharabah*, in this case, the money is handed over to the agency or foundation that gets a profit-sharing business loan or to the foundation that is managed by the rental manager, while the results are given to mauquf falaih as good deeds by *Waqf* goals.

The fact that it is a *Musarakah* venture means profit will shared in accordance with the proportion of capital invested by the 3 parties<sup>35</sup>. In addition to providing mashlahah for the people from the results of their investments, Cash *Waqf* also provides maslahah for Islamic Sharia Financial Institutions, namely strengthening the capital composition or

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<sup>34</sup> Direktorat Jenderal Bimas Islam dan Penyelenggaraan Haji.

<sup>35</sup> Adamu Umar and Shehu Aliyu, "Sukuk: A Veritable Tool for Effective *Waqf* Fund Management in Nigeria," *IQTISHADIA* 12, no. 1 (June 12, 2019): 1, <https://doi.org/10.21043/iqtishadia.v12i1.4618>.

capital adequacy<sup>36</sup>. The main problems contained in *Musyarakah* are two or more parties, each party places capital, there is an agreed business object, there is a sharing of risks and profits from the results of the business.

The Prophet's hadith which as the fundamental basis for the existence of *Waqf* practices as mentioned above, basically the *Waqf* property must be maintained. The source, may not be transferred (sold, granted and bequeathed) or transferred for other types of uses other than those intended in the endowment pledge. Still, if the *Waqf* property is not transferred can be useful again, or it is possible to reduce its usefulness, from the opinion of Imam Ahmad bin Hanbal there is no obstacle for transferring, transferring the use of the *Waqf* property, as long as the results can be used again as a substitute, so that it can be used, otherwise if using a change in use. The result can not be used as a substitute or increasingly reduced usefulness, and this is not allowed. So the criteria for whether or not a change in the use of endowment assets other than listed in the endowment pledge means that whether or not the endowment property can be used by the purpose of the endowment.

So that there are thoughts about changes in the form of *Waqf* or expansion of the origin of objects that can be represented, namely movable objects including money<sup>37</sup>. Related to the existence of endowments, according to the author, the essence is what will happen from the development of endowments that have been there, which in practice endowments in the form of immovable objects (land) generally not all can be optimally empowered for the benefit of the people.

This change in the use of *Waqf* property was done by Umar bin Khattab who had replaced the old Kufa mosque with a new mosque, where he moved it to another place because the old site was used for the market<sup>38</sup>. According to Ibn Taymiyyah, what became the main guideline in the problem of changing the use of *Waqf* property was the guaranteeing of general benefit, as God told his servants to do good and to avoid damage<sup>39</sup>. Changes in the use of *Waqf* assets in the form of Cash *Waqf* are expected to be used productively and professionally, therefore management needs to be optimized, as one of the important tasks of *Waqf* managers in order to mobilize and develop the potential of *Waqf* to be more productive for the welfare of the people.

But Muhammad Abdullah al-Kabisi explained that the validity of the practice invited controversy among *Fiqh* scholars. Some allowed it to be taken into consideration so that it would still be of benefit and not a few who opposed it<sup>40</sup>. In *Fiqh* literature, it is explained that *Waqf* property which cannot be used anymore can be sold and replaced with other more productive objects. Therefore, the sale of *Waqf* property to take advantage so that the damaged *Waqf* property can be re-benefited.

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<sup>36</sup> Dwi Aditya. Gustani; Ernawan, "Wakaf Tunai Sebagai Sumber Alternatif Permodalan Lembaga Keuangan Mikro Syariah Di Indonesia," *Journal of Islamic Economics Lariba 2*, no. 2 (2016): 39–48, <https://doi.org/10.20885/jielariba.vol2.iss2.art2>.

<sup>37</sup> Nico Suroso; Ngatni, *Tinjauan Yuridis Tentang Perwakafan Tanah Hak Milik* (Yogyakarta: Liberty, 1984).

<sup>38</sup> Suroso; Ngatni.

<sup>39</sup> Ibid

<sup>40</sup> Tim Penulis Wakaf, *Tuhan Dan Agenda Kemanusiaan, Studi Tentang Wakaf Dalam Prespektif Keadilan Sosial Di Indonesia*, (Jakarta: Center for the Study of Religion and Culture, Universitas Islam Negeri, ) Syarif Hidayatullah Jakarta, 2006).

Since the arrival of Islam, *Waqf* has been implemented based on the understanding shared by the majority of the Indonesian Islamic community, namely the knowledge of Shafi'iyah and local cultural norms. The pattern of *Waqf* implementation before the issuance of Act No. 5 of 1960 concerning Basic Regulations on Basic Agrarian Affairs and Government Regulation Number 28 of 1977 concerning the Renewal of Owned Property using Act No. 41 of 2004, Indonesian Muslim citizens still use religious norms, such as the norm of carrying out the act of land representation in expressions based on mutual trust in a particular person or institution, the norm of looking at *Waqf* as pious deeds which have noble intentions in the presence of God Almighty without having to go through administrative procedures, and claimed *Waqf* property belongs to Allah alone, anyone will not dare to Interrupt the lawsuit without the permission of Allah SWT.

The understanding of the Indonesian people seemed innocent because of the high altitude of honesty and mutual trust between one using the other in the early days. Although, in the end, it can lead to disputes because no evidence can share that the relevant objects have been represented the existence of the land parcels at that time could be examined based on the evidence of records in the Office of Religious Affairs in the district/city and sub-district, the archaeological evidence of Candra Sangkala, the charter of the parcels and written history stories and expressions <sup>41</sup>.

In addition to the tradition of expression and great religion to the recipient of the mandate in making *Waqf*, Indonesian Muslims are more receptive to the opinion of the Shafi'iyah origin as they quote their schools, such as the discourse of the *Waqf* Pledge, assets that may be represented, the position of assets after being represented, *Waqf* assets are aimed at who and may not exchange *Waqf* property. The ability to manage land is minimal, in addition to factors that are not strategic location economically and arid soil conditions, a quite striking obstacle to managing *Waqf* land productively is the ability of human resources unprofessional cultivators experienced by many *Waqf Nazhir* in villages in almost all corners of the archipelago, that the ability of cultivators is still very minimal. Let's say that the *Waqf* land has been cultivated, according to the average capability standard in the environment of the *Waqf* land. However, the results are still not maximal or only return to the cultivation of capital. Actually, according to the views of Islamic scholars, empathy about the transfer of *Waqf* assets is quite dynamic and flexible. Still, Indonesian people are known for holding strong the opinion of Imam Shafi'i. For a comparison of views on this subject can be seen as follows. If the *Waqf* property does not provide any more benefits, such as *Waqf* a plot of land planted with oranges, while the oranges no longer bear fruit, or *Waqf* a plot of paddy land for rice plants, but if the rice is planted the results are not good. Can it be exchanged with other assets, in this case, the scholars differed:

According to Hanafiyah Ulama', In exchange for *Waqf* property, they divide into 3 (three) types <sup>42</sup>: a) If the *Waqf* at the time of donating assets requires that he or the *Waqf* property (*Nazhir*) has the right to exchange, then the exchange of the *Waqf* property may be done. Still, Muhammad argues that: "the *Waqf* is valid, the conditions are null"; b) If *Waqf* does not require that he or she have the right to exchange. It turns out that *Waqf* is not possible to take its benefits. For example, *Waqf* buildings that have collapsed and no one has rebuilt it or barren land, then it is permissible to exchange *Waqf* property with the judge's permission; c) If the assets are useful and the results exceed the

<sup>41</sup> Rachmat Djatmika, *Wakaf Tanah* (Surabaya: Al- Ikhlas, 1983).

<sup>42</sup> Direktorat Jenderal Bimas Islam dan Penyelenggaraan Haji, *Panduan Pemberdayaan Tanah Wakaf Produktif Strategi Di Indonesia*.

maintenance costs, but there is a possibility to be exchanged for something more beneficial, then, in this case, the Hanafiyah cleric opinion, Abu Yusuf argues: "may" exchange it because it is more beneficial to the *Wakif* and does not eliminate what is meant by the *Wakif*.

Furthermore, Hilal and Kamaluddin bin al-Himam argued, "may not" exchange it because the main law of *Waqf* is the retention of *Waqf* goods, not the benefits. But may exchange it in an emergency or indeed there is permission or conditions from the *Wakif*<sup>43</sup>. The exchange of *Waqf* assets can be allowed because what is in the spotlight is not the form, but the most important thing about *Waqf* is its function and purpose.

According to Malikiyah Ulama', The Malikiyah group argues, "it is not permissible" to exchange *Waqf* property consisting of immovable objects, even though the purpose will be damaged or not produce anything. But some argue, "may" as long as replaced with other immovable objects if it is felt that the object is no longer useful. As for moving objects, the Malikiyah group "allows," because with the exchange the purposes of the *Waqf* will not be in vain<sup>44</sup>. This provision is actually a significant new breakthrough in the world of *Waqf*, because *Waqf* in the form of money is an important variable in economic development.

According to Syalafi'iyah Ulama', Imam Asy-Shafi'i himself, in the matter of exchanging *Waqf* property, is almost the same as the opinion of Imam Malik, which is very preventing the exchange of *Waqf* property. Imam Shafi'i argues, "must not" sell the mosque absolutely, even if the mosque collapsed. However, the Shafi'iyah group differed in opinion about the immovable *Waqf* objects which did not benefit at all<sup>45</sup>: a) Some say "may" be exchanged so that the *Waqf* property has benefits; b) Some reject it.

In the book of al-Muhadzdzab, it is explained: "If there is a person who condemns a palm tree, then the tree is dry (dead), or cattle and then paralyzed or a pillar for the mosque then collapses or is damaged, in this problem, there are two opinions: a) Must not be sold, like a mosque; b) May be sold, because what is expected from the *Waqf* is the benefit. So it is better to sell than to be left alone, except for matters relating to the mosque. Because the mosque can still be occupied even though the prayer collapsed. Imam Ahmad Bin Hambali thinks that it is permissible to sell endowments, then to be replaced with other endowments<sup>46</sup>. Exchange or change of *Waqf* property is permitted if there is benefit, or in an emergency or to maintain benefits. With the condition that the exchange or sale of *Waqf* goods must be realized into substitute *Waqf* goods.

Imam Ahmad's opinion is more lenient than the idea of Imam Malik and Imam Shafi'i, although it is not as soft as the opinion of Imam Abu Hanifa. He explained more clearly that selling the mosque is permissible if the mosque is no longer in line with the main purpose of the mission, such as a mosque that is unable to accommodate its congregation and is unlikely to be expanded, or that a part of the mosque collapsed so that it cannot be utilized, then under conditions such as this mosque can be sold then the money is used to build another mosque<sup>47</sup>.

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<sup>43</sup> Direktorat Jenderal Bimas Islam dan Penyelenggaraan Haji.

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

Among the opinions of the madzhab scholars who still maintain the properties of *Waqf* in any circumstance are Imam Malik and Imam Shafi'i. The use of *Waqf* for social services and empowerment initiatives is not yet a trend of *Waqf* institutions. One of the weak functions of *Waqf* social service is one of which is caused by the ineffective utilization of *Waqf* for productive activities.

Hanafiyah scholars allow the endowment of money and permit other movable objects such as donating books, Mushhaf. In this issue, the Hanafiyah Ulama' require that the value of the money be fixed (*baqa'*), or not disappear. Hanafiyah scholars argue that they can endow dinar and dirham as long as they are invested in *Mudharabah* or *Musyarakah*.

Wahbah az-Zuhaily believes that giving money is permissible, but by making it a venture capital based on the *Mudharabah* principle, and the profits are given to the willing. Imam Bukhari citing Imam Zuhri, mentioned the ability of *Waqf* dinar and dirham as above.

Among the opinions of the madzhab scholars who still maintain the properties of *Waqf* in any circumstance are Imam Malik and Imam Shafi'i. The use of *Waqf* for social services and empowerment initiatives is not yet a trend of *Waqf* institutions. One of the weak functions of *Waqf* social service is one of which is caused by the ineffective utilization of *Waqf* for productive activities.

The advantages of the endowment of money compared to donations of fixed or non-permanent objects are If the grants of fixed or non-permanent objects can only be done by wealthy people, while the endowments of money can be done by many creamy and not rich people<sup>48</sup>. If it brings to the good and by the Shari'a, it can be done, and if it only brings damage it must be avoided or not done.<sup>49</sup> If mankind submits and implements the Shari'a of Allah SWT properly and correctly in accordance with the instructions given by Allah and the Rasulullah SAW, then happiness and safety in life in this world and in the hereafter will be realized.

Thus, according to the author that, scholars who allow the endowment of money argues, the funding of money allowed from the money is invested in profit sharing (*Mudharabah*), then the profits are channeled by the endowment objectives so that the money represented is fixed, while that delivered to the mauquf 'alaih is the result of developing the endowment of the money. Mauquf 'alaih on this matter is a poor child whose school is funded.

#### 4. CONCLUSION

The implementation of Cash *Waqf* is appropriate using Act No. 41 of 2004 concerning *Waqf* using the reason that the implementation of Cash *Waqf* is carried out by Islamic law and also the provisions of national legislation governing *Waqf* that the implementation is appropriate to use the law, namely Act No. 41 In 2004 concerning endowments in which the position of Cash *Waqf* is increasingly clear, not only from the origin of Islamic law but also from the origin of the national legal system, as a result, the khilafiyah discourse problem of Cash *Waqf* has been resolved.

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<sup>48</sup> Barmawi Mukri, "Implementasi Wakaf Produktif Dan Wakaf Tunai Di Indonesia," *Jurnal Hukum* 25, no. 11 (2004): 99–111.

<sup>49</sup> Iin Emy Tho'in, Muhammad; Prastiwi, "Wakaf Tunai Perspektif Syariah" (2015) 1:1 *Jurnal Ilmiah Ekonomi Islam* 61–74.

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