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IMPLEMENTATION OF CASH WAQF IN INDONESIAN SYARIAH BANK IN THE PERSPECTIVE OF LAW 41/2004 AND SHARIA BUSINESS LAW

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Abstract

Cash waqf is an Islamic philanthropic instrument with strategic potential in strengthening an inclusive and sustainable economy, particularly in the post-pandemic period. In Indonesia, cash waqf has gained legal legitimacy through Law Number 41 of 2004 concerning Waqf and the support of a fatwa from the National Sharia Council of the Indonesian Ulema Council. However, there is a gap between the potential of cash waqf and its implementation in Islamic financial institutions. This study aims to analyze the implementation of cash waqf at **Bank Syariah Indonesia** and assess its contribution to the development of Islamic business law in Indonesia. This study uses an empirical juridical method with a qualitative approach, through an analysis of laws and regulations, fatwas, policy documents, and cash waqf management practices. The results show that normatively, the implementation of cash waqf is in accordance with positive law and Sharia principles. However, substantively, its management is not optimal in supporting real sector financing and empowering the community's economy. The main obstacles include low literacy in cash waqf, limited professionalism of nazhir (managers), and suboptimal technical regulations. This research emphasizes the need for strengthening regulations, increasing institutional capacity, and synergy between authorities so that cash waqf functions optimally as a legal instrument for socially just sharia business.

Keywords : cash waqf; Islamic banking; Islamic business law; productive waqf; inclusive economy.

INTRODUCTION

Waqf is an instrument of Islamic philanthropy with unique characteristics, encompassing both worship and socio-economic dimensions. From a modern Islamic economic perspective, waqf is no longer understood merely as a static religious charity, but rather as an Islamic social financial instrument with significant potential to promote inclusive, equitable, and sustainable economic development. This paradigm shift in waqf is becoming increasingly relevant in the context of post-COVID-19 economic recovery, where the state and society face the challenges of economic inequality, rising poverty rates, and limited sustainable social financing instruments (Asy'arie, Djalaludin, & Ambarwati, 2024; Ulum, Astari, Setiawati, & Yanti, 2024). One form of waqf innovation that is highly adaptable to the needs of the modern economy is cash waqf . Cash waqf allows for broader community participation because it does not require ownership of large immovable assets such as land or buildings. The flexible nature of cash waqf makes it a potential instrument to support the economic empowerment of the community, financing the real sector, and strengthening Sharia-compliant micro, small, and medium enterprises (MSMEs). In the context of an inclusive economy, cash waqf can function as a wealth redistribution mechanism that is not only consumptive, but also productive and long-term oriented. In Indonesia, the legitimacy of cash waqf has gained a strong legal basis through Law No. 41 of 2004 concerning Waqf, which explicitly recognizes money as a movable waqf asset. This regulation is reinforced by a fatwa from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), which states that cash waqf is permissible (*jaiz*) provided that the principal value of the waqf must be maintained. Normatively, this legal framework demonstrates the state's commitment to promoting more modern, professional, and accountable waqf management. Cash waqf is positioned not only as an instrument of worship, but also as part of the national sharia economic and business legal system (Law No. 41 of 2004 concerning Waqf; DSN-MUI Fatwa No. 29/DSN-MUI/III/2003). However, there is a significant gap between the potential and realization of cash waqf in Indonesia. Various policy reports indicate that the potential for national cash waqf reaches hundreds of trillions of rupiah per year, yet the realization of its collection remains relatively low. This condition reflects structural and cultural issues in the implementation of cash waqf, including low public literacy, limited capacity and professionalism of nazhir (managers), and the suboptimal integration of cash waqf with the Islamic financial system and the real sector. This gap indicates that the existence of regulations alone is not sufficient to guarantee the effectiveness of cash waqf as an inclusive economic instrument (Indonesian Waqf Agency, 2016; see also the latest data from the Ministry of Religious Affairs & BWI, 2025). Within the institutional framework, Islamic financial institutions play a strategic role as Islamic Financial Institutions Receiving Cash Waqf (LKS-PWU). The presence of Islamic financial institutions is intended to ensure the security, transparency, and accountability of cash waqf management (Roisah, 2023) . In this context, **Bank Syariah Indonesia** occupies a central position as the largest Islamic bank in Indonesia, normatively designated as an LKS-PWU. Institutionally, BSI is expected to act as a catalyst in optimizing the collection and distribution of cash waqf and integrating it with the national Islamic economic and financial ecosystem. However, in practice, BSI's strategic role in cash waqf management has not yet fully generated optimal economic impact. Although cash waqf collection shows an increasing trend, the collected funds have not been significantly converted into productive and sustainable financing for the real sector. This raises critical questions about the effectiveness of cash waqf governance, the synergy between Islamic financial institutions and nazhirs, and the adequacy of regulations governing the technical aspects of cash waqf management. This situation also highlights the challenges in translating waqf legal norms into Islamic business practices that have a tangible impact on community welfare.

From a Sharia business law perspective, cash waqf has strategic potential as a social financial instrument capable of bridging social and economic interests within a single legal framework. Cash waqf requires the application of basic principles of Islamic business law, such as fairness, transparency, accountability, and the prohibition of riba (usury), gharar (gharar), and maisir (gambling). Therefore, the implementation of cash waqf can be assessed not only in terms of normative compliance with laws and regulations, but also in terms of its contribution to the development of an adaptive and equitable Sharia business legal system. To date, research on cash waqf in Indonesia has tended to focus on normative or conceptual aspects, such as the sharia legitimacy of cash waqf and its economic potential. Research that empirically examines the implementation of cash waqf in specific Islamic financial institutions and directly links it to its contribution to the development of Islamic business law remains relatively limited. Thus, a research gap exists *between* the normative framework of cash waqf and the reality of its implementation in Islamic banking practices. Based on this background, this study aims to analyze the implementation of cash waqf at Bank Syariah Indonesia in light of Law No. 41 of 2004 concerning Waqf and assess its contribution to the development of sharia business law in Indonesia (Law No. 41 of 2004 concerning Waqf, Article 16). This research is expected to provide theoretical contributions to the development of waqf and sharia business law studies, as well as practical contributions for policymakers, sharia financial institutions, and waqf managers in optimizing the role of cash waqf as an inclusive economic instrument post-pandemic.

LITERATURE REVIEW

The Concept of Cash Waqf and Productive Waqf from the Perspective of Islamic Economics

Cash waqf *is* a form of waqf development that allows cash waqf assets to be managed productively while maintaining their principal value. From a muamalah jurisprudence perspective, cash waqf is understood as the retention of asset value (*habs al-ashl*) and the distribution of its benefits (*tasbil al-manfa'ah*) for the benefit of worship and public welfare. This concept emphasizes that the essence of waqf lies not in the physical form of the assets, but rather in the sustainability of the benefits generated (Ulum et al., 2024; Zakariya, Istiqomah, & Aji, 2021). In the history of Islamic thought, the practice of cash waqf has been known since the early development of Islamic civilization. Several classical scholars, such as Imam az-Zuhri, permitted the waqf of dinars and dirhams by using them as business capital and then distributing the proceeds to the beneficiaries. This approach demonstrates that waqf has had a productive orientation from the outset and is not limited to immovable assets. In the contemporary context, cash waqf is seen as an instrument of Islamic philanthropy that is adaptive to the modern financial system and capable of addressing the need for sustainable social financing. (Asy'arie et al., 2024) . The concept of productive waqf positions waqf as an economic instrument managed professionally to generate added value. Productive waqf requires efficient, transparent, and accountable management, as well as the use of investment instruments in accordance with Sharia principles. Within this framework, cash waqf has advantages over traditional waqf due to its flexibility in allocation to various productive sectors, such as financing MSMEs, education, health, and community economic development. Therefore, cash waqf is often positioned as one of the pillars of Islamic social finance with the potential to strengthen an inclusive economy.

Cash Waqf in the National Regulatory Framework in Indonesia

In Indonesia, the regulation of cash waqf gained legal legitimacy through Law No. 41 of 2004 concerning Waqf (Law No. 41 of 2004 concerning Waqf, Article 28) . This law explicitly recognizes money as a legitimate movable waqf asset, thus opening up space for institutional and professional management of cash waqf. This recognition marks a paradigm shift in waqf from a traditional approach to a modern approach integrated with the national legal and financial system (DSN-MUI Fatwa No. 29/DSN-MUI/III/2003) . Law Number 41 of 2004 stipulates that waqf management must be carried out for the benefit of worship and public welfare, and must be managed in accordance with sharia principles and statutory provisions. In the context of cash waqf, the law regulates the role of Sharia Financial Institutions Receiving Cash Waqf (LKS-PWU) as institutions authorized to receive cash waqf deposits from waqifs. The existence of LKS-PWU is intended to ensure the security of waqf funds, orderly administration, and legal certainty for the parties involved.

In addition to the law, the regulation of cash waqf is also reinforced by a fatwa from the National Sharia Council of the Indonesian Ulema Council, which states that cash waqf is permissible (*jaiz*) provided that the principal value of the waqf must be maintained and not diminished. This fatwa plays a strategic role in bridging the normative aspects of sharia and the institutional practices of cash waqf. Thus, the regulatory framework for cash waqf in Indonesia is built through a synergy between positive law and sharia norms. However, several studies indicate that cash waqf regulations in Indonesia still face implementation challenges. Law No. 41 of 2004 is considered to have failed to regulate in detail the technical aspects of cash waqf management, such as professional standards for nazhir (manazir), cash waqf investment mechanisms, fiscal incentives, and the use of digital technology. This lack of technical regulation has the potential to lead to differences in practice in the field and hinder the optimization of cash waqf as a productive economic instrument (DSN-MUI Fatwa No. 29/DSN-MUI/III/2003).

Cash Waqf and the Development of Sharia Business Law

From the perspective of Sharia business law, cash waqf holds a strategic position as a social financial instrument that integrates religious values and economic activities. Sharia business law not only regulates contractual relationships between business actors but also emphasizes the principles of social justice, sustainability, and social responsibility. Cash waqf, with its characteristics of preserving principal values and distributing benefits sustainably, aligns with these principles. Cash waqf has the potential to broaden the spectrum of Sharia business legal instruments, particularly in social financing and the real sector. Unlike zakat, which is obligatory and consumptive, cash waqf is voluntary and productive, allowing it to be developed through various safe and halal Sharia investment schemes. In this context, cash waqf can serve as an alternative financing source, complementing commercial Sharia financial instruments, such as bank financing and sukuk.

The integration of cash waqf with the Islamic banking system also reflects the development of Islamic business law, which is adapting to the dynamics of the modern economy. The role of Islamic financial institutions as LKS-PWU (Islamic Financial Institutions) demonstrates that cash waqf is no longer managed individually and traditionally, but through institutional mechanisms that adhere to the principles of prudence, transparency, and accountability. This confirms that cash waqf can be positioned as part of a structured and modern national Islamic business legal system. Nevertheless, the integration of cash waqf into the Sharia business legal system still faces various challenges. One major challenge is the suboptimal conversion of cash waqf funds into financing for the real sector with a broad impact. Furthermore, there is a potential tension between the principle of banking prudence and the need for productive, long-term waqf management. These challenges require a legal and policy framework that balances the protection of waqf funds with the optimization of their economic benefits.

Previous Research and Research Gap

Several previous studies have shown that cash waqf has significant potential to support sharia economic development and social welfare. These studies generally highlight the conceptual aspects of cash waqf, its sharia legitimacy, and its economic potential for social financing. Several studies also emphasize the importance of professional nazhir (manager) and strengthening the role of waqf management institutions in increasing the effectiveness of productive waqf (Asy'arie et al., 2024; Ulum et al., 2024; Roisah, 2023; Zakariya et al., 2021). However, most previous research remains normative or macro in nature, focusing on national policies or the conceptual framework of cash waqf. Research specifically examining the implementation of cash waqf in specific

Islamic financial institutions, particularly using an empirical legal approach, is relatively limited. Furthermore, studies directly linking cash waqf practices to their contribution to the development of Islamic business law are also scarce. The research gap *lies* in the lack of integration of normative analysis of cash waqf regulations with empirical data on its implementation practices in Islamic financial institutions. Furthermore, there is still limited research that positions cash waqf as part of the dynamic Islamic business legal system, not simply as a philanthropic instrument. Therefore, this study offers a novelty by analyzing the implementation of cash waqf at Bank Syariah Indonesia as a LKS-PWU (Islamic Financial Institution) in light of Law Number 41 of 2004 and assessing its contribution to the development of Islamic business law in Indonesia. Thus, this literature review becomes a theoretical and normative basis for research to answer the problem of implementing cash waqf comprehensively, while also confirming the position of this research in the map of waqf studies and sharia business law.

RESEARCH METHODS

empirical juridical legal research method with a **qualitative approach.** The juridical approach is used to examine the legal norms governing cash waqf, specifically Law Number 41 of 2004 concerning Waqf, along with relevant regulations and fatwas within the legal framework of Islamic business. Meanwhile, an empirical approach is used to analyze the implementation of cash waqf based on practices within Islamic financial institutions. The research object focuses on the implementation of cash waqf at Bank Syariah Indonesia , a Sharia Financial Institution Receiving Cash Waqf (LKS-PWU). This object was selected based on BSI's strategic position as the largest Islamic bank in Indonesia, which plays a central role in collecting and distributing cash waqf nationally. Furthermore, this research also incorporates regulatory perspectives through data and policies issued by the Ministry of Religious Affairs of the Republic of Indonesia , specifically the unit that handles zakat and waqf.

The data used in this study comprises primary and secondary data. Primary data were obtained through in-depth interviews with sources familiar with cash waqf policies and practices, both from BSI and relevant government agencies. Secondary data were obtained through a literature review, including laws and regulations, fatwas from the National Sharia Council of the Indonesian Ulema Council, policy documents, institutional reports, and scientific literature in the form of books and journal articles relevant to cash waqf and Islamic business law. Data collection techniques were conducted through three methods: interviews, documentation studies, and literature review. Interviews were used to gather empirical information regarding the mechanisms, challenges, and practices of cash waqf management. Documentation studies were conducted on official documents, policy reports, and institutional archives. The literature review aimed to obtain a theoretical and normative basis to support the research analysis. Data analysis was conducted qualitatively using descriptive-analytical techniques. The data obtained were classified, interpreted, and analyzed by linking applicable legal norms with the implementation of cash waqf practices in the field. This analysis aimed to assess the compliance of cash waqf implementation with the provisions of Law Number 41 of 2004 and to examine its contribution to the development of Islamic business law in Indonesia. The results of the analysis were then presented in the form of a systematic, argumentative narrative to address the research objectives.

RESULTS AND DISCUSSION

Implementation of Cash Waqf at Bank Syariah Indonesia as LKS-PWU

The results of the study indicate that the normative implementation of cash waqf at Bank Syariah Indonesia has been running in accordance with the provisions of Law Number 41 of 2004 concerning Waqf. BSI functions as a Sharia Financial Institution Receiving Cash Waqf (LKS-PWU) by receiving cash waqf deposits from waqifs, issuing cash waqf certificates, and distributing the waqf funds to the designated nazhir. This mechanism demonstrates compliance with the legal-formal aspects and the principle of prudence in the management of waqf funds (Muhammad Syukron Habiby, 2026). From a legal perspective, BSI's role as LKS-PWU places cash waqf within a more structured and accountable legal framework. The waqif obtains legal certainty that the waqf funds are managed through an official institution, while the nazhir obtains legitimacy to manage the waqf funds according to their intended purpose. This relationship pattern demonstrates that cash waqf has shifted from traditional practices to institutional practices subject to modern governance principles. However, the research also shows that the implementation of cash waqf at BSI still tends to be administrative and not fully oriented towards optimizing economic impact. BSI's role is more dominant as a recipient and distributor of waqf funds, while the function of developing productive waqf rests entirely with the nazhir. This situation implies that the success of cash waqf is determined not only by the normative compliance of Islamic financial institutions, but also by the capacity of the nazhir to manage waqf funds productively.

Effectiveness of Cash Waqf Management and Empirical Challenges

Based on empirical data, the effectiveness of cash waqf management in Indonesia, including those facilitated by BSI, still faces a gap between potential and realization. Although cash waqf collection shows an increasing trend, the collected funds have not been optimally converted into productive activities that have a broad impact on the real sector. This indicates that cash waqf is still in its infancy as a social financial instrument integrated with the Islamic economic system (Muhammad Syukron Habiby, 2026) . One of the main factors influencing this situation is low public literacy regarding cash waqf. Many people still conventionally understand waqf as the donation of land or buildings for religious purposes. This understanding has resulted in low participation of waqif (religious endowments) in cash waqf, despite this instrument's legal and sharia legitimacy. This low literacy also results in a limited cash waqf fund base that can be managed productively (Ulum et al., 2024) . In addition to literacy, the professionalism of nazhir (Islamic waqf administrators) is a crucial challenge in the implementation of cash waqf. Research shows that some nazhir still have limitations in managerial skills, investment planning, and risk management. As a result, cash waqf funds tend to be managed conservatively and are not yet directed towards sustainable, productive financing schemes. In the context of Islamic business law, this condition indicates a gap between the normative objectives of waqf as a productive instrument and its management practices in the field (Judijanto et al., 2023) .

Analysis of Normative Compliance and Legal Certainty of Cash Waqf

From a normative compliance perspective, the implementation of cash waqf at BSI has met the requirements of Law Number 41 of 2004. BSI carries out its function of receiving cash waqf in accordance with the provisions, maintaining waqf administration, and ensuring that waqf funds are distributed to authorized nazhirs. From a legal perspective, this practice provides legal certainty for the parties involved and minimizes the potential for disputes related to cash waqf management. However, this normative compliance has not been fully accompanied by adequate technical regulations. Law Number 41 of 2004 does not yet provide detailed regulations on the mechanisms for productive cash waqf management, standards for the professionalism of nazhir (manazir), or the integration of cash waqf with other Islamic financial instruments. This lack of technical regulations has the potential to lead to variations in practice and hinder innovation in the development of cash waqf. From the perspective of Islamic business law, legal certainty is not only defined as compliance with written norms, but also as the law's ability to promote economic benefit and justice. In this context, cash waqf requires a regulatory framework that is not merely administrative but also encourages productive, transparent management that is oriented toward socio-economic impact (Achmad Soleh, 2026).

Cash Waqf and Its Contribution to the Development of Sharia Business Law

Cash waqf has a strategic contribution to the development of Sharia business law in Indonesia. First, cash waqf broadens the spectrum of Sharia financial instruments by providing a productive and sustainable social financing model. Unlike other philanthropic instruments that tend to be consumptive, cash waqf requires the preservation of the principal value and the utilization of the proceeds for the public good. These characteristics align with the principle of sustainability *in* Sharia business law. Second, the implementation of cash waqf through Islamic financial institutions demonstrates the integration of the Islamic philanthropic system and the Islamic banking system. This integration reflects the development of Islamic business law, which is adapting to the dynamics of the modern economy. Cash waqf no longer exists outside the financial system but has become part of a structured national Islamic legal and economic ecosystem.

Third, cash waqf encourages the strengthening of basic principles of Islamic business law, such as fairness, transparency, and social responsibility. Managing cash waqf requires good governance, accountable reporting, and effective oversight. These principles are not only relevant to waqf but can also serve as a normative model for the development of other Islamic business instruments. Despite this, the contribution of cash waqf to the development of Sharia business law remains potential and has not yet been fully realized. Limited technical regulations, low public literacy, and the suboptimal professionalism of nazhir (Islamic administrators) are key inhibiting factors. Therefore, strengthening the legal framework for cash waqf needs to be directed not only at formal compliance but also at creating a legal ecosystem that encourages innovation, productivity, and sustainability of cash waqf.

Legal and Policy Implications

The findings of this study indicate that cash waqf requires a more progressive policy approach within the legal framework of Islamic business. The state must not only provide a normative legal basis but also encourage the development of derivative regulations governing cash waqf management standards, the professionalism of nazhir (managers), and the integration of cash waqf with other Islamic financial instruments. Furthermore, Islamic financial institutions need to be encouraged to play a more active role in developing the cash waqf ecosystem, not only as recipients of funds but also as catalysts for the development of productive waqf. Thus, these results and discussion confirm that the implementation of cash waqf at BSI has fulfilled the normative aspects and provided an initial contribution to the development of sharia business law, but still requires strengthening in terms of regulations, institutions, and public literacy so that cash waqf can function optimally as an inclusive and equitable economic instrument.

CONCLUSION

This study concludes that cash waqf has a strong legal basis in the national legal system through Law Number 41 of 2004 concerning Waqf and sharia legitimacy through a fatwa from the National Sharia Council of the Indonesian Ulema Council. Normatively, the recognition of cash waqf as a movable waqf object indicates a paradigm shift in waqf towards an Islamic social financial instrument that is adaptive to the needs of the modern economy and has the potential to strengthen an inclusive economy (Law No. 41 of 2004 concerning Waqf; DSN-MUI Fatwa No. 29/DSN-MUI/III/2003) . The research results show that the implementation of cash waqf at Bank Syariah Indonesia , as a Sharia Financial Institution receiving cash waqf, has been carried out in principle in accordance with statutory provisions. BSI has carried out its functions of receiving, administering, and distributing cash waqf to nazhir (Islamic trustees) in a legal and orderly manner, thus providing legal certainty and protection for the parties involved. From a sharia business law perspective, this practice reflects the application of the principles of prudence, transparency, and accountability in the management of waqf funds.

However, this study also found that the effectiveness of cash waqf in encouraging real sector financing and empowering the community's economy is still suboptimal. The gap between the potential and realization of cash waqf indicates structural and cultural constraints, particularly low public literacy regarding cash waqf, limited professionalism of nazhir (managers), and inadequate technical regulations that encourage productive cash waqf management. This condition indicates that normative compliance with waqf law does not automatically translate to the achievement of waqf's socio-economic goals (Sukman, 2025) . In terms of its contribution to the development of Sharia business law, cash waqf has strategic potential as a social financial instrument that integrates religious values and economic activities within a single legal framework. Cash waqf enriches the treasury of Sharia business law by presenting a sustainable, equitable, and welfare-oriented social financing model (Asy'arie et al., 2024) . However, this contribution remains potential and requires strengthening through regulatory reform, increased institutional capacity, and optimization of the role of Sharia financial institutions as catalysts for productive waqf. Thus, optimizing cash waqf within the framework of sharia business law is not sufficient to rely solely on normative legal legitimacy, but must be accompanied by strengthening governance, professionalism of managers, and policy integration that can encourage cash waqf to function effectively as an inclusive and sustainable economic instrument in Indonesia.

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