

CASH WAQAF REGULATION IN INDONESIA – AN ANALYSIS TOWARDS ZERO HUNGER DURING COVID 19 PANDEMIC

ULYA KENCANA, NASIIBAH RAMLI, MOHD NAQIB HAMDAN

Faculty of Sharia and Law, Raden Fatah State Islamic University, Palembang, Indonesia

Academy of Islamic Civilisation, Faculty of Social Sciences and Humanities, Universiti Teknologi Malaysia, Malaysia

Academy of Islamic Civilisation, Faculty of Social Sciences and Humanities, Universiti Teknologi Malaysia, Malaysia

ulyakencana_uin@radenfatah.ac.id, nasiibah@utm.my, mohammadnaqib@utm.my.

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Abstract

Cash waqaf is an intangible waqaf, an innovation of the traditional concept of waqaf or Islamic endowment practice. Looking at the potential of cash waqaf for the benefit of the society, Indonesian government then regulates it in Law Number 41 of 2004 concerning Waqaf together with Indonesian Waqaf Board Regulations and other regulations. Cash waqaf practice is getting wider acceptance in the society, however its potential has not been fully utilised for the benefit of the society. Reason being is that the allocation of cash waqaf is not considered as charity (direct assistance) but instead it is managed productively for business ventures. Besides that, due to overlapping rules on cash waqaf, Nazhir of cash waqaf are incapable of managing waqaf money independently. On top of that Muslim community at large are still unclear with the procedures on how to donate money based on existing laws and regulations. Thus this research aims to Research findings regarding cash waqaf regulation for the benefit of the community during the Covid-19 period have not been optimal. Because the allocation of cash waqaf is not specifically for overcoming the economy of the people affected by the Covid-19 outbreak.

Keywords: Cash Waqaf; Islamic Economy; Covid-19; Regulations

INTRODUCTION

Enforcement of the Indonesian Waqaf Law No. 41 year 2004 regulating Waqaf practice and other regulations relating to waqaf makes the practice of cash waqaf legal in the Indonesian society. The allocation of cash waqaf is certainly different from zakat and infaq. Waqaf money is structurally managed so that the money is not used up and it is essential for economic development of Muslim community. Cash waqaf in its development continues to increase in number and people are starting to become familiar with the term cash waqaf. Cash waqaf is sometimes called money waqaf, which means endowment made by Muslim through monetary because money is given in cash (Ulya Kencana 2017, 43-44). Entering 2021 the number of Covid-19 cases in Indonesia continues to increase. Indonesia is in the 21st position with 808,240 cases from the number of cases worldwide reaching 89,289,203 cases as reported in January 2021 (Suli Hanna 2021). The Covid-19 pandemic is an event of the spread of Coronavirus disease in year 2019 (abbreviated as Covid-19) throughout the world for all countries (Wikipedia 2021).

The solution in facing difficult times due to the Covid-19 outbreak, cash waqaf (money) is an alternative that can overcome the problem of poverty in the society (Azwan Iskandar 2020, 631). The advantage of cash waqaf is that it is muamalah activity which has spiritual, social and economic dimensions which can be a solution in the midst of the Covid-19 Pandemic (Husni Amriyanto 2020). In the practice of Islamic philanthropy in Indonesia, cash waqaf is not as much as zakat, infaq and sadakah. But in the midst of the Covid-19 pandemic in 2020, we are witnessing a massive strengthening of generous activities (Amelia Fauzia 2021, 2). The strength of waqaf compared to other Islamic philanthropy, that waqaf has a very big role in infrastructure development in various kinds of public facilities and in empowering the economy of the people (Asri and Iskandar 2020, 79-92).

Legalization of Islamic law into Indonesian law is very important, because law is the most important thing for the life of society and the country. Every country in the world has its own laws and regulations. The modern state is personification of the legal system (Ulya Kencana and Yandy 2020, 1), meaning that the state in all its activities is always based on law. In Indonesia, it applies legal pluralism that comes from the customary law system, the Islamic legal system and the Western legal system (Ulya Kencana 2016, 94). The three of them become raw materials in the formation of the national legal system in Indonesia (Ali Zainuddin 2018). Waqaf law is part of Indonesian law.

Along with the reform era, it demands legal development. Islamic law regulates all areas of human life (Gemala Dewi 2018, 25). Islamic teachings developed into various legal aspects, not only in the field of family law (marriage, inheritance), but extends to other legal aspects, namely grants, wills, shodaqah, zakat and banking (Taufiq Hamami 2003, 34). Waqaf law is derived from Islamic economic law, and is the main sunnah act of worship.

Waqaf actually grows from society, that "the practice of waqaf law in Islam had grown and developed in society" (Ulya Kencana and Maselena 2019, 5338). Waqaf law is part of Islamic law. The enforcement of Islamic law in Indonesia is regulated in Article 49 of Law Number 50 of 2009 concerning the Religious Courts, is to regulate family law (divorce, divorce, reconciliation, child custody, property, and inheritance), Islamic philanthropic law (zakat, waqaf, infaq, and shadakah), and sharia economic law. In this article there are three aspects of the legalization of Islamic law into Indonesian law: family law, Islamic philanthropic law, and sharia economic law. Waqaf law is included in Islamic philanthropic law.

Pure waqaf law from Islam, although there are legal institutions similar to waqaf, is called a trust (Ulya Kencana 2015, 4). Waqaf existed after Islam came to Indonesia, grew and developed in society (Ulya Kencana 2010, 83). Indonesian people are used to donating money, although the fuqaha have different opinions about money being made as waqaf. The existence of Waqaf Law Number 41 of 2004 concerning Waqaf legalizes the public to donate money. But in the development of waqaf in people's lives it has not been completely orderly and efficient (Firman Muntaqo 2015, 83).

Waqaf is an instrument of public economic empowerment. Waqaf institutions are very important to be developed (Ministry of Religion of the Republic of Indonesia 2006). In achieving benefit as the goal of Islamic law, the results of the management of domiciled waqaf are very important. To achieve waqaf as an Islamic legal institution that is committed to having good governance.

Waqaf law in Indonesia is increasingly well-developed by being regulated in Government Regulation Number 28 of 1977 concerning Ownership of Owned Land, Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law Book III of Waqaf Law, Fatwa of the Indonesian Ulama

Council (May 11, 2002) concerning Allowance for Money, Regulation of the Indonesian Waqaf Board (hereinafter written as BWI) Number 1 of 2009 concerning Guidelines for the Management and Development of Movable Waqaf Assets in the Form of Money, BWI Regulation Number 2 of 2009 concerning Guidelines for Receiving Cash Waqaf for Nazhir BWI, BWI Regulation Number 2 of 2010 concerning Procedures for Registration of Money Waqaf Nazhir, BWI Regulation Number 4 of 2010 concerning Guidelines for the Management and Development of Waqaf Assets, and Law Number 41 of 2004 concerning Waqaf.

The condition of the Indonesian people and even the whole world since March 2020 was affected by the Covid-19 outbreak, causing the economy to not run as usual. Even though civil society has the same rights in economic welfare as citizens (Ulya Kencana 2018, 4). In achieving its goals, the Islamic economic system through cash waqaf has become its solution. Where cash waqaf as productive waqaf is categorized into service products (Philip Khotler 2002).

BWI as an independent institution has the authority to develop waqaf in Indonesia. Law Number 41 of 2004 concerning Waqaf Article 47 paragraph (2), states that BWI as an independent institution is tasked with advancing and developing national waqaf. The birth of BWI was colored by the changing atmosphere of the political system in Indonesia from authoritarianism to democracy. In this context, BWI reflects the spirit of democracy and good governance in every process of forming better management and governance.

Waqaf property is preserved so that its benefits continue for the benefit of humans. However, there are still many waqaf assets that are not maintained, disappear and there are disputes over the status of these assets (Ulya Kencana 2018, 4). Waqaf property should be preserved, because otherwise it will damage the basic values of waqaf teachings that must be preserved because it is a form of worship to Allah SWT (Abdul Manan 2012, 235). The essence of waqaf has human, business, economic and divine values. Based on the philosophy of waqaf law, that waqaf creates a welfare impact for those who are entitled to receive it without knowing any boundaries (Sumuran Harahap 2011, 89).

The benefits of cash waqaf for the community during the Covid-19 pandemic are at stake. Many homeless people appear on the streets, and puppet beggars on the main streets of big cities. This condition of the community is related to the statutory regulations on waqaf based on the allotment of cash waqaf has been used and managed. The identification of the problem of this research is regarding the money waqaf laws and regulations in Indonesia which brought the public good during the Covid 19 period.

It was concluded that the maximum benefit of Islamic law and endowments had not yet been achieved. Due to the development pattern of cash waqaf under the authority of BWI, and the position of LKS-PWU as BWI's partner in the development of cash waqaf in Indonesia the rules of the articles conflict with one another. So that the maximum benefit of cash waqaf has not been achieved during the Covid-19 pandemic. The allocation of cash waqaf is not charity (direct gift), however, many are used as business assets, people still lack financial waqaf, and difficult procedures to become a cash waqaf Nazhir.

METHOD

This study analyzes the laws and regulations regarding cash waqaf in Indonesia that provide benefits for the community during the Covid 19 period. This type of normative-empirical legal research combines normative and empirical legal approaches. Normative-empirical legal research examines the applicable legal provisions, as well as what happens in social reality (Suharsimi Arikunto 2012, 126).

Normative legal research, is a legal research method carried out by examining library materials or secondary data only (Soejono Soekanto and Sri Mamudhi 2012, 13-14), in the form of statutory regulations, literature, opinions of experts on cash waqaf. This study analyzes the laws and regulations regarding cash waqaf in Indonesia that provide benefits for the community during the Covid 19 period. Empirical legal research, is a research method carried out to obtain primary data, find the truth of correspondents, as well as the facts used to carry out the induction process from correspondent truth testing are the latest facts. This research is to determine the pattern of cash waqaf development under the authority of BWI and LKS-PWU.

Live case study empirical approach, is an approach to a legal event, the process is still ongoing or not over. The legal incident in question is that Nazhir waqaf money under the authority of BWI, the process of developing cash waqaf is still ongoing today. This type of exploratory legal research is carried out to obtain information, explanations and unknown data (Koentjaraningrat 1997, 42), regarding the development pattern of cash waqaf under the authority of BWI.

Secondary data collection techniques, namely research legal materials taken from literature consisting of primary, secondary, and tertiary legal materials (Mukti Fajar and Yulianto Ahmad 2013, 318). The primary legal material is in the form of statutory regulations concerning cash waqaf.

Secondary legal materials are books, research results and papers related to cash waqaf. Primary data collection, namely data sources that directly provide data to data collection (Sugiyono 2016, 402). through interviews, is a data collection technique where the researcher in collecting data asks the interviewee a question (Sugiyono 2010, 188). Interviews were conducted directly with legal experts and Nazhir waqaf money under the authority of BWI. Data analysis, is data that is processed and analyzed qualitatively by describing the data in the form of a sentence description or explanation. Data analysis by drawing conclusions inductively, a thinking based on general facts, and continued with taking specific conclusions in response to research problems (Bambang Sunggono 2010,12-13).

ANALYSIS AND DISCUSSION

3.1. Analysis of the Legislation on Cash Waqaf in Indonesia that brings benefit to the community

Waqaf is an instrument of economic empowerment for the people. Waqaf is one of the Islamic economic institutions with great potential to be developed (Firman Muntaqo 2015, 96). Waqaf institutions are very important (Directorate General of Islamic Community Guidance and Hajj 2006, 38). because waqaf is an instrument in achieving benefit as the goal of Islamic law. Waqaf as an Islamic legal institution must be managed well (good governance). Apart from zakat, infaq and sadakah, through waqaf there has been a process of distributing benefits to the wider community. namely from personal benefits (private benefits) to community benefits (social benefits).

Benefit theory speaks of benefit as the goal of Islamic law. Benefit is called *mashlahah-mursalah*. The principle of benefit (*al-mashlahah*) comes from divine values, implemented to basic principles or principles that are more concrete in the field of Islamic law. The theory of benefit becomes the basis for the enforcement of waqaf law in people's lives) Ulya Kencana 2018, 8,(based on the main principles of Islamic law, it is to maintain the benefit of all mankind.

Waqaf is closely related to the life of a muslim. A person is not said to be a believer if he has not given the best of his possessions. Allah Almighty said in the Qur'an:

"You should do good, in order to win (Surat al-Hajj: 77).

"You will not arrive at a (perfect) good, before giving away some of the valuable property you have. Whatever you give, Allah knows "(Surah Ali-Imran: 92).

The use of *mashlahat mursalah* theory with the *ushuliyah* approach, examines the problem of legal objectives, namely *maqashid al-syari'ah* (Romli 2010, 76) and the value contained by law, namely *maslahat*. The concept of *maqasid al-syari'ah* is seen from two aspects of *mashlahat* existence and levels:

- 1) In terms of existence *mashlahat* can be divided into three aspects:
 - a. *Maslahat mu'tabarah* is *maslahat* which is described or mentioned by the texts, and *Maslahat mulghah* is *maslahat* which is rejected and contrary to the text.
 - b. *Maslahat Mursalah* is a *maslahat* that textually there is no text that explains it, either to admit it or reject it, but its existence is in line with and does not conflict with the objectives of the *syari'at*
- 2) From the level of importance *mashlahat* consists of three aspects:
 - a. *Maslahat daruriyat* is *maslahat* whose position is in the primary or primary rank. There are five ranks which are maintaining religion (*hifz al-din*), protection of life (*hifz al-nafs*), protection of reason (*hifz al-'aql*), protection of descent and honor (*hifz al-nasl*), and protection of property (*hifz al-mal*).
 - b. *Maslahat hajiyat* is a *mashlahat* rank which is secondary in nature.
 - c. *Maslahat tahsiniyat* ialah menyangkut kebutuhan atau kepentingan yang sifatnya pelengkap dan kesempurnaan saja (Romli 2010 , 81-113).

The legalization of Islamic legal values into state law makes it binding. Waqaf as a living value in society is legalized into statutory regulations with permanent legal force. In making laws generally use the principle of benefit as the basis for making rules. Based on the main principles of Islamic law, it is maintaining the benefit of all mankind, that the most basic and universal human benefit is the main objective stated by *maqasyid asy-sharia* (Muhyuddin 2019, 18). The Waqaf Law carries benefit as the main goal.

The general goal of philanthropy is managing and utilizing funds in the community and utilized for the community. Waqaf money is part of Islamic philanthropy managed and used for the benefit of the community. Human life becomes good with the realization of social welfare and justice in society (Welhendri 2020).

Waqaf is an Islamic economic instrument that has not been maximally empowered in Indonesia. This is related to the aspect of utilizing the results of the development of the cash waqaf itself. The types of waqaf objects that can be developed are cash waqaf, namely money as a waqaf is developed into various sectors of economic activity, the benefits are used for the benefit of the community at large (Ulya Kencana 2010).

The study of the money waqaf regulations is very important, because waqaf is a productive waqaf, there is a business element in it. Cash waqaf cannot be used directly, because it causes cash waqaf to be lost. Mundzir Qahaf views from an economic point of view, that the benefits of waqaf products are directly felt by the community, such as mosques where prayers are made. Productive waqaf is a waqaf object that is managed productively (Mundzir Qahaf 2004, 22-23). Cash waqaf is not direct waqaf, however, productive waqaf is managed productively so that it remains an asset and its benefits are for the allocation of cash waqaf.

Nasar Fuad says:

"The issuance of the Waqaf Law in Indonesia is a very important progress. Since then there has been a role for the state in empowering waqaf in Indonesia. Application of the Waqaf Law in the community, in terms of benefits, it has been maximally carried out, but in the field of education it is necessary to carry out supervision, evaluation and monitoring" (Nasar Fuad 2015).

Uswatun Hasanah argues:

"The Money Waqaf Movement launched by President Susilo Bambang Yudhoyono (2010), as a national movement has not had a positive impact. But its socialization in society is well received. The Money Waqaf National Movement should have a good impact or benefit on society, because cash waqaf can be developed productively, and if successful it can be distributed to the community" (Uswatun Hasanah 2015).

The exploration of the potential of cash waqaf in Indonesia continues. Minister of Religion of the Republic of Indonesia, Yaquut Cholil Qoumas (28/12/2020) inaugurated the "Grand Launching of ASN Cash Waqaf Ministry of Religion of the Republic of Indonesia", is collecting cash waqaf funds through ASN. State Civil Apparatus (ASN), is a professional group for employees who work in government agencies. As of Monday (28/12) the movement of ASN money waqaf from the Ministry of Religion of the Republic of Indonesia has reached 3.5 billion.

According to Yaquut Cholil Qoumas:

"Waqaf is an economic pillar that has the potential to contribute to bringing prosperity to the people. Cash waqaf is an important part of the program to strengthen the economy and Islamic finance. Furthermore, according to him, the potential for waqaf in Indonesia is very large." (Anom Prihantoro 2020)

Before the waqaf law was passed, the term cash waqaf in society was unfamiliar. There are several community foundations that have managed cash waqaf from the community. The Matla'ul Anwar Foundation has long implemented cash waqaf, however, the community was not fully donated in money. Money as a gift is better known as zakat, infaq and sadakah. Since 2002 the Indonesian Ulema Council has declared that it is permissible to donate money, because seeing the money waqaf is very good prospect. Cash waqaf is very productive in moving other immovable object waqaf.

The Money Waqaf National Movement should have a good impact or benefit on society. The function of cash waqaf in economic development is very important, because the results of empowering cash waqaf for interests related to worship are also used for public interests (Fahmi Aziz 2021). The potential for cash waqaf in Indonesia reaches 180 trillion per year and has the largest amount of money waqaf Nazhir in the world. According to Tarmizi Tohor, the management of cash waqaf needs to be standardized nationally and internationally (Fika Nurul Ulya 2021).

However, the allocation of cash waqaf for the community has not gone according to what is expected by law (Fika Nurul Ulya 2021). During the Corona virus pandemic (Covid-19), the economy of the community is in declined and in need of assistance in the form of charity and other assistance due to weakening people's purchasing power. As a result of the increasing number of unemployed during the Pandemic, reaching 6.9 million people (Rommy Roosyana and Nur Yasin 2021), it has even increased to 9.77 million people (Aditya Pratama 2021). Efforts to make cash waqaf as a solution during the Covid-19 outbreak have been fought for even better.

3.2. The Role of BWI and LKS-PWU for the Development of Cash Waqaf in Indonesia

Before the waqaf law (2004) and BWI regulations were legalized regulating cash waqaf, in the community there are several Nazhir endowments of money. Receipt of cash waqaf is not large compared to the amount of infaq and zakat (Mukhyar Fanani 2011). Since the launch of the "Money Waqaf Movement" in 2010, data from Nazhirs new cash waqaf collected a total of Rp. 2,000,000,000 (Syahrudin el-Fikri 2020). Data from the LKS-PWU BSM reported to BWI, the funds collected from

February 2010 to March 2011 amounted to Rp. 2,580,430,714.00 (Tutuy Guntara 2015). Later developments (2020) through the money waqaf movement for State Civil Apparatus at the Ministry of Religion of the Republic of Indonesia, cash waqaf has reached Rp. 3,591,812,621. Seeing the increasing value of the money waqaf value is certainly encouraging, however, since the Covid-19 pandemic in Indonesia, it has not been seen that waqaf money will bring benefits to the community.

This is related to the money waqaf management institution (Nazhir). Nazhir functions as the person in charge of property or a group of people who manage and manage property (Muhammad Rawwas Qak'ah Jay 1988), became very important person or institution. Criticism of the role of Nazhir BWI and Islamic Financial Institutions Receiving Cash Waqaf (hereinafter written LKS-PWU) towards the development of cash waqaf in Indonesia is unclear. Nazhir waqaf money under the auspices of BWI, while LKS-PWU as an institution that manages and maintains cash waqaf assets. LKS-PWU is not said to be Nazhir, he is a BWI partner.

BWI as a state institution in charge of developing waqaf in Indonesia. Its authority as Nazhir BWI in BWI construction serves as Nazhir waqaf money. In its construction, the BWI institution itself does not have this position, there is a Waqaf Management and Utilization Division.

Opinion:

"Nazhir BWI's position in BWI construction is not what the mandate is, because BWI is independent, and BWI's structure stands alone". (Tutuy Guntara 2015)

Picture of the Indonesian Waqaf Building



Source: Interview, 2015

BWI as a cash waqaf development institution can be relied on in its programs to help the community in dealing with the Covid-19 outbreak. BWI's task is not only to manage cash waqaf and a small part of its duties in developing waqaf in Indonesia. However, BWI must pay attention to the potential of cash waqaf as part of its task of developing waqaf in Indonesia. Although there have been many private institutions that specialize as Nazhir waqaf money such as ESQ, established by Ary Ginanjar. However, it is much important that a greater amount of receipt and distribution of cash waqaf proceeds being channeled to the community (Tutuy Guntara 2015).

According to Ahmad Djunaidi, the BWI strategy he wrote in a paper entitled "The Role of BWI in the Development of Productive Waqaf in the Modern Era":

"To improve BWI's competence and network both nationally and internationally, making regulations and policies in the field of waqaf, increasing public awareness and willingness to have productive waqaf, improve the professionalism and security of Nazhir in managing and developing waqaf assets, coordinating and fostering all Nazhir waqaf, order the administration of waqaf assets, supervise and protect waqaf property, and collect, manage, and develop waqaf assets on a national and international scale" (Muhammad Rofiq Lubis 2015).

BWI's role is very big for the development of cash waqaf in Indonesia. Regulatory rules and policies in the field of cash waqaf are to increase awareness and willingness of the people to productively donate money, improve the professionalism and security of Nazhir cash waqaf in managing and developing cash waqaf, coordinate and foster all money waqaf Nazhirs, order the administration of cash waqaf assets, and supervise and protect cash waqaf assets. Good regulations need to be socialized as a waqaf development management system in accordance with the demands of the times

(Directorate General of Islamic Community Guidance and Hajj, Directorate of Zakat and Waqaf Development 2006).

**Picture of Money Waqaf Advice
At LKS-PWU**



Source: Interview, 2015

Waqaf institutions are very important to be developed (Directorate General of Islamic Community Guidance and Hajj, Directorate of Zakat and Waqaf Development 2006), therefore it must have a good strategy. Development of cash waqaf submitted to BWI through LKS-PWU is LKS stipulated by the Minister as LKS-PWU (BWI Regulation Number 4 of 2010 concerning Guidelines for Management and Development of Waqaf Assets: Article 1 paragraph 8), where cash waqaf is developed in investments other than syari'ah banks that are insured first into syari'ah insurance. In 2020 the Minister of Religion of the Republic of Indonesia approved 22 LKS-PWU (Anom Prihantoro 2020). In 2008, there were only 5 LKS-PWUs that were approved by the Minister of Religion (BWI Regulation Number 4 of 2010 concerning Guidelines for the Management and Development of Waqaf Assets: Article 7).

The regulations for developing cash waqaf in Indonesia:

- (1) Development of cash waqaf through investment in LKS products or syari'ah financial instruments.
- (2) LKS-PWU receives cash waqaf for a certain period of time, so Nazhir can only develop it at the LKS-PWU.
- (3) Development of cash waqaf in syari'ah banks is guaranteed by a deposit insurance institution.
- (4) The development of cash waqaf is carried out in the form of investment outside of LKS products with the approval of BWI. Approval is given after the feasibility of the investment has been studied.
- (5) Development of cash waqaf in the form of investment other than in syari'ah banks must be insured in syari'ah insurance first.
- (6) The distribution of cash waqaf investment (cash waqaf portfolio) is subject to the provision of 60% investment in LKS instruments, and 40% outside LKS (BWI Regulation Number 4 2010).

Especially for Nazhir BWI, the right to manage cash waqaf directly in accordance with the conditions of becoming Nazhir waqaf money, is able to manage finances and have experience in finance. Nazhir waqaf money must cooperate with LKS-PWU in managing and developing cash waqaf through deposits and demand deposits. Types of Nazhir of waqaf money are prominence individuals, organizations, and legal entities.

The problem with the regulation is that LKS-PWU has the authority to manage cash waqaf. They are not registered Nazhir cash waqaf but as a Sharia Guarantee Institution for wakif. Meanwhile, banks as a profit-oriented business entity offer a wide range of services or products to the public, including deposits and demand deposits (Kholis 2020).

The problem in practice is that LKS-PWU does not report to the Minister of Religion regarding the receipt of waqaf money. The waqaf regulation requires LKS-PWU to report to the Minister of Religion regarding cash waqaf including the amount, value and value for the results of waqaf at the end of each financial year through the Director General to BWI no later than 3 (three) months from the end of the financial year (Regulation of the Minister of Religion Number 5 of 2009 concerning Administration of Money Waqaf Registration: Article 8).

LKS-PWU obligations to report to the Ministry of Religion every three months. Based on the interview, the practice has not gone according to the rules, even though it has been asked (H.A.S. Junaedi 2015). The obligation of LKS-PWU to report to the Minister is that the LKS-PWU registers cash waqaf with the Minister no later than 7 working days from the issuance of the cash waqaf certificate. Registration of cash waqaf is copied to BWI as administration, and administrative provisions for the

registration of cash waqaf are regulated in a ministerial regulation (Government Regulation Number 42 2006).

According to Nasar Fuad:

"The management and development of cash waqaf by LKS-PWU is in accordance with the rules (under track). Waqaf money is given the authority for productivity through syari'ah banking, however, there must be strong cooperation with BWI, lest BWI as Nazhir-BWI only as a supervisor (capacity building)" (Nasar Fuad 2015).

On the other hand, even though the enforcement of the money waqaf law in Indonesia has started since the waqaf law and other regulations existed. However, in its development it has not achieved maximum results in society. One of the implications, due to the weak desire of the community to donate money in LKS-PWU. The waqaf regulation stipulates LKS-PWU as the manager and developer of cash waqaf (BWI Regulation Number 4 2010). LKS as an Indonesian legal entity is not in sync with the rules of waqaf money management by LKS in Islamic finance. He is the LKS designated by the Minister as LKS-PWU. He is the recipient and depositor of cash waqaf. The waqaf law states, LKS is Nazhir. The BWI regulation states that Nazhir is the party who receives waqaf property from wakif to be managed and developed according to its allocation.

Development of cash waqaf in banks by LKS-PWU. In fact the bank is not Nazhir, it is LKS-PWU. Nazhir who wants to receive cash waqaf from the public must open an account at a bank to accommodate cash waqaf from the community that is deposited through the LKS-PWU (Tutuy Guntara 2015). The bank manages the cash waqaf by LKS-PWU. Waqaf funds function the same as other third party funds, recorded as rehabilitees funds. The third party was Nazhir who received cash waqaf from the public who deposited the LKS-PWU.

The cash waqaf funds in LKS-PWU are used for financing needy parties such as murabaha, then there is a return. Return is given back to the money waqaf fund depositor (Nazhir). After that Nazhir was only able to distribute the allocation of cash waqaf according to the money waqaf contract. Nazhir can only save his waqaf funds in the bank in the form of deposits, savings and current accounts. Nazhir cannot directly manage the cash waqaf fund productively. Productive management of cash waqaf is like buying a shop and then leasing it, the profits are given to mauquf'alaihi and as a refund for the initial cash waqaf (Tutuy Guntara 2015).

The regulations for developing cash waqaf in Indonesia are conflicting. The bank works as intermediary between the bank and its customers. The bank is not as Nazhir waqaf money, he is an investment manager. Nazhir could be an investment manager (capital market) in the real sector. In the law of waqaf, Nazhir of cash waqaf cannot be personal. Nazhir must be a professional legal institution or body. However, in the practice of cash waqaf, it is unclear the position of LKS-PWU as Nazhir or investment manager.

The discourse of large amounts of cash waqaf funds in LKS-PWU, for example, Nazhir can withdraw 5 billion rupiah. Based on the regulations when Nazhir wants to manage the cash waqaf entrusted to banking products. The large amount of cash waqaf funds cannot be withdrawn personally by Nazhir who is registered with the LKS-PWU, but by way of Nazhir borrowing from the bank to set up shop. In Islamic waqaf law and statutory regulations money waqaf funds cannot be guaranteed.

There are several weaknesses of LKS-PWU as a recipient and manager of cash waqaf, that it is unclear the management and development of cash waqaf through banking, Nazhir did not follow the rules, because he could not use cash waqaf funds directly. A solution must be sought to accommodate related parties (Tutuy Guntara 2015). LKS-PWU is only the recipient and manager of cash waqaf, Nazhir is doing the channeling function as cash waqaf. Meanwhile, the responsibility of the manager includes cooperative relations with the guarantee institution by BWI.

This is the weakness of the management of cash waqaf in Indonesia, because there is a well-established relationship between the two institutions so that it has an impact on the slow distribution of waqaf funds (Jauhar Faradis et al. 2015). The regulation of cash waqaf as an endowment must use banking products as financing. The task of LKS-PWU is to receive cash waqaf money from wakif using the name Nazhir, then put the waqaf money into a deposit account (wadi'ah) in the name of Nazhir.

The development of cash waqaf by Nazhir as cash waqaf comes from wakif deposits, invested directly and indirectly and the proceeds are aimed at productive projects, and the benefits for the benefit of the people. The investment directly in the project is managed by Nazhir. Investment is indirect investment through institutions that meet the institutional eligibility criteria and are profitable, through deposits at a Sharia Bank with the most favorable profit sharing expectations (BWI Regulation Number 1 2009).

Direct cash waqaf investment requirements:

- (1) The cash waqaf investment managed by Nazhir if the project meets the business requirements, namely in accordance with sharia; project feasibility level according to the principles of 5 C (Character, Condition, Capital, Capacity, Collateral), and 3 P (People, Purpose, Payment); and the source of return can be calculated based on a feasibility study.
- (2) Direct cash waqaf investment through the mudharabah muqayyadah contract product in the LKS.
- (3) Direct cash waqaf investment is guaranteed by a Cash Collateral whose funds are obtained from the benefits of the reserved cash waqaf investment of 100% of the amount of waqaf money invested or the investment is guaranteed by insurance.
- (4) If Nazhir appoints an institution or individual as project implementor to use or receive waqaf money as financing, then the financing is paid in terms of work performance.
- (5) Distribution of waqaf money for investment to parties related to Nazhir, can be done at most 10% of the managed waqaf money. The related party is an individual or company shareholder owning more than 10% of the paid-up capital; Nazhir administrators and members; Nazhir's administrators who had executive functions, management and members of the LKS-PWU DPS; the family of the party above; companies in which the parties have an interest in ownership of 10% more than the paid-up capital or do not own shares in the company; and Nazhir subsidiaries with Nazhir ownership of more than 25% of the paid-up capital of the company or if Nazhir has influence over the company.

Indirect cash waqaf investment institutions:

- (1) Indirect cash waqaf investment through Islamic banks; baitul mal wa tamwil (BMT); sharia cooperative; and other Islamic financial institutions.
- (2) Indirect cash waqaf investment through an institution that has met the requirements has been operating for at least 2 years; have formal legal completeness; and submit independent audit reports for the last 2 years (BWI Regulation Number 1 Article (12) 2009).

Opinions about Bank Syari'ah Mandiri (BSM):

"Nazhir is a legal entity represented by the board. There is no known legal entity as Nazhir or as a wakif. The advantage of LKS-PWU as recipient and manager of cash waqaf is that LKS-PWU can be in the form of syari'ah banks, BPRS and BMT. It is recommended that non-syari'ah commercial banks also act as LKS-PWU because they are more secure. Regulated banking is more prudent" (Tutuy Guntara 2015).

Syari'ah Bank as LKS-PWU in its management is rather troublesome, because apart from taking care of its own business, also has an obligation to take care of the ummah (receive, manage and distribute) the proceeds of cash waqaf to register various Nazhir waqaf money.

Criticism for the management of the development of cash waqaf in Indonesia in order to achieve the goal of waqaf is very beneficial. Firstly, the cash waqaf management at LKS-PWU is difficult and not simple as the community is difficult to practice it. Other than that, BWI has not been proactive in socializing cash waqaf in the community, the procedure of Nazhir's appointment has been kept confidential, and Nazhir personal cash waqaf is weak at the level of legal practice even though it is stated in the waqaf law.

3.3. Money Waqaf Development Patterns by Nazhir Cash Waqaf

Public awareness of donating money has not been maximal. There is no accurate record of the total amount of waqaf money circulating in the community, distribution patterns and management forms of each Nazhir (Amany Lubis 2015).

The BWI Regulations state:

"The results of the management and development of cash waqaf on deposits of cash waqaf and investment of cash waqaf by Nazhir must be aimed at optimizing the gain and/or economic empowerment of the ummah (BWI Regulation Number 1 of 2009 concerning Guidelines for Management and Development of Movable Waqaf Property in the Form of Money: Article 9 paragraph (5), and / or socio-religious activities".

Arrangements for distributing the benefits of the cash waqaf investment are shared directly and indirectly:

- (1) The distribution of the benefits of the cash waqaf investment can be done either directly or indirectly.
- (2) The distribution of the benefits of direct cash waqaf investment as referred to in paragraph (1) is a community development and empowerment program that is directly managed by Nazhir.
- (3) Indirect distribution of the benefits of cash waqaf investment as referred to in paragraph (1) is a community development and empowerment program through partnerships with other

empowerment institutions that meet institutional and professional eligibility criteria (BWI Regulation Number 1 Article (13) 2009).

Direct distribution of the benefits of cash waqaf investment in the form of prerequisites and the allocation program:

- (1) Direct distribution of cash waqaf investment returns as referred to in Article 13 paragraph (2) can be made if it meets the following requirements:
 1. Community development and empowerment programs are carried out in accordance with sharia.
 2. The common level of program eligibility meets the eligibility requirements of the program target community, impact on poverty reduction and creating jobs, and the benefits are felt by the community.
 3. The program is sustainable and encourages community independence.
- (2) Its development and empowerment program as referred to in paragraph (1) letter a includes social and public programs in the form of construction of public facilities such as bridges, arrangement of general footpaths and general MDK, educational programs in the form of community schools at low cost for the poor and skills training, health programs in the form of free medical assistance for the poor and counseling for pregnant and breastfeeding mothers, economic programs in the form of development and assistance for micro-business capital, structuring traditional markets and developing agricultural businesses in a broad sense, and da'wah programs in the form of providing da'i and mubaligh, assistance of teachers/ustadz, assistance for imams and marbobs of mosques/mushalla (BWI Regulation Number 1 Article (14) 2009).

Distribution of the benefits of cash waqaf investment:

- (1) Indirect distribution of the benefits of cash waqaf investment can be done through the National Zakat Agency, national humanitarian agencies, national community empowerment institutions, community foundations/ organizations, BWI representatives, LKS especially LKS-PWU, through the CSR (Corporate Social Responsibility) program, and other institutions both on a national and international scale that carry out community development and empowerment programs in accordance with sharia.
- (2) The institutions as referred to in paragraph (1) must meet the requirements of having formal legal documents for institutions/ foundations in accordance with statutory regulations, has been operating for at least 2 (two) years, has a management with good character, includes an independent audit report in the last 2 (two) years, and has a program that is clear and provides long-term beneficial impacts (BWI Regulation Number 1 Article (15) 2009).

The number of money waqaf Nazhirs officially registered with BWI in 2010-2014 is 56 (Nurkaib 2020). In 2019 the number increased by 224 (BWI: 2020). Because the cash waqaf assets can be maintained and the results are given to the community according to the allocation of cash waqaf.

According to Amany Lubis regarding the benefits of cash waqaf in the community:

"Praktik wakaf uang masih perlu dikembangkan lebih lanjut, karena belum terdengar gaungnya. This is important and must work well. In fact, cash waqaf has provided benefits to society, because the results can already be felt from the aspects of welfare, education, preaching, although not yet optimal" (Amany Lubis 2015).

The management and development of cash waqaf by Nazhir is cash waqaf under the authority of BWI such as the al-Azhar Foundation in South Jakarta. The waqaf program is productively developed for the benefit of the people for the realization of an economic revival and the nation's children. The al-Azhar Jakarta Foundation manages and develops cash waqaf through the following programs :

- 1) Insurance Policy Waqaf.
- 2) Plantation Waqaf (teak, palm and fruit plantations).
- 3) Waqaf for International Standard Hospitals, Apartments and Flats in collaboration with the Indonesian Waqaf Board, the Ministry of Public Housing and Egypt's al-Azhar University.
- 4) Islamic Funeral Waqaf (al-Azhar Memorial Garden).
- 5) Silver Waqaf Card / year.
- 6) Family / KK Waqaf Card for 1 year.
- 7) Gold Waqaf Card / person for 1 year.
- 8) Company Waqaf / Transformation Waqaf as joint waqaf shares for Productive Waqaf means of transportation.
- 9) Khairi waqaf, as joint endowments for transportation, property, agriculture, plantations can be cash, term or lifetime (Waqaf al-Azhar 2021)

The Quantum Waqaf program as an acceleration of waqaf by means of the Waqaf Insurance Policy program, is cash waqaf developed productively through a shari'ah insurance policy. The community member become as wakif, he owns the insurance policy from a syari'ah insurance company. After becoming a policy and becoming a securities, all or part of it is donated to the al-Azhar Waqaf Foundation. The funds raised from the Insurance Policy Waqaf are targeted to buy for buses, planes, tankers and other business capital.

The agreement letter from the policy holder to be used as a waqaf contract is called the Insurance Policy Waqaf. For the insurance policy administrator, two types of contracts are used, namely the Wasiat-Grant Waqaf Agreement and the Charity Agreement. Waqaf Insurance Policy 50% is donated, and the other 50% is used for charity according to the wakif choice. Wakif Insurance Policy gets funeral services and syar'i funeral.

Picture of the al-Azhar Waqaf Foundation, Jakarta



Source: Interview, 2015

Another example, the Baitul Mal Hidayatullah Foundation, which is registered as Nazhir in BWI, offers a cash waqaf program for the construction of boreholes in clean water crisis areas. Offers a package of cash waqaf program (Ahmad Ghazali 2020).

Picture of BMH Cash Waqaf Program

| Paket Donasi | | | |
|--|---|---|------------------------------------|
| Paket A Rp. 50.000.000 (1 Sumur Bor) | Paket B (Palingan) Rp. 10.000.000 (5 Orang) | Paket C (Palingan) Rp. 1.000.000 (50 Orang) | Paket D Rp. Sesuai Keinginan |

Rekening Donasi | BNI 550-8768-003 | BRIS 104-7451-888

Source: Interview, 2020

Paying attention to developments in practice in the field and laws and regulations on waqaf in Indonesia. In this case, BWI has a strategic position to encourage and facilitate partnerships between Nazhir, LKS institutions, the community and related stakeholders (Suryadharma Ali 2020). Partnership facilities have been offered between Nazhir BWI by coordinating the Nazirs and managing independently the cash waqaf entrusted to Nazhir (Directorate of Waqaf Empowerment 2008, 33).

4. Cross Border Insight on Cash Waqaf

In Malaysia, waqaf practice is governed by states legislation. List II of the 9th Schedule of Malaysian Federal Constitution provides that matters pertaining to Islamic law, personal and family law of Muslim community fall under jurisdiction of the State law. Therefore Zakat, fitrah, Baitulmal or similar religious revenue also fall under State law legislation. Majlis Agama Islam Negeri (MAIN) is the sole trustee for religious revenue for each state. Waqaf practice in each state is governed by Administration of Islamic Law Enactment, Wakaf Enactment and Rules of Wakaf. Cash Waqaf has been introduced by

the Perak Islamic State Religious Council in year 1957 through rules 18(2) Waqaf Regulation Control 1959.

In the recent years, Islamic financial institution has taken part in managing cash waqaf collection since it is perceived that bank will be the most secured place for safe keeping of cash waqaf money as well as providing cash management for the cash waqaf collection. In 2012, Bank Muamalat Malaysia Berhad had been appointed as state waqaf manager together with Perbadanan Wakaf Selangor with the task of collecting cash waqaf in the state of Selangor (Farhanah Mohd Mokhtar et al. 2015). Collected cash waqaf then were used as capital for mudharabah. During initial stage there was positive acceptance by the muslim community looking at the increased number of cash waqaf collection. However later on, the development has been slower and less people participated in the cash waqaf scheme. Reason being has been contributed to the bureaucratic fuss which become major set back in the smooth running of cash waqaf scheme from multi level decision making, different standard of procedure in management at different institution involved and lacked of trained personel (Farhanah Mohd Mokhtar et al. 2015). Thus there has been call for uniform standard of procedure and rulling regarding waqaf at the national level in Malaysia in order to ensure smooth running of waqaf management which is hoped can be achieved in the near future.

CONCLUSION

In conclusion, the laws and regulations regarding cash waqaf in Indonesia during the Covid 19 period has not provided the maximum benefit for the community. The imbalance pattern of cash waqaf development under BWI's authority only uses LKS-PWU as BWI's partner. Nazhir waqaf money receives return as a third party to the Islamic bank that manages cash waqaf from Nazhir cash waqaf. Waqaf money would turn into much more profit if it is developed in business, not charity (direct cash distribution) to the community. Regulations related to the development of cash waqaf clash with each other, people still have weak desire to donate money, and there are difficult procedures to become a money waqaf Nazhir.

It is suggested that the regulations regarding cash waqaf should be more in favor of Nazhir as cash waqaf and do not require using a third party, namely Islamic banks, but can also use a business legal entity other than LKS-PWU. BWI must play a more active role in socializing cash waqaf in the community so that the cash waqaf funds are pumped more into the community and have varied uses, especially in helping the community's daily needs (charity) due to sudden outbreaks, such as the Covid-19 pandemic.

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