

## **THE UTILISATION OF CASH WAQF IN THE BAITUL ASYI WAQF FOUNDATION IN THE PERSPECTIVE OF FIQH MUAMALAH**

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### **Abstract**

Management and utilization of cash waqf in Aceh based on data from Baitul Waqf Foundation. There is great potential for development, but problems often occur facing the management of cash waqf is a lack of human resources or nazhir specifically managing the cash waqf, so that the results are not optimal. The problem formulation in this thesis is how the management of cash (cash) waqf by Nazhir at the Baitul Asyi Foundation and how cash waqf (tuna) is utilised at the Baitul Asyi Foundation muamalah fiqh perspective. To answer the problems above, researchers used qualitative methods using library sources and strengthened by the results of interviews with informants as part of the empirical data. Data collection techniques were carried out through interviews and document studies. The collected data will be analysed using qualitative descriptive techniques. Results research shows that; First, cash waqf management carried out by the Baitul Asyi Waqf Foundation in a productive way waqf assets, by entering into collaboration with entrepreneurs. The profits from this business are channeled for the benefit of the people. Second, the management and utilization of cash waqf cannot yet be fully explained as successful, because cash waqf assets have not been managed optimally. The cash waqf that has been managed is distributed to Dayah Barbate Waqf in the amount of Rp. 12,155,000,- accumulated from the zakat and alms business management. The waqf distribution is aimed at: the interests of the people, in accordance with the rules and provisions. From the explanation above can conclude, manage and utilize cash waqf at the Foundation Baitul Asyi Waqf viewed from the perspective of muamalah fiqh, is in accordance with the purpose, function and purpose. This is in accordance with the opinion of the madzhab Hanafi and Maliki allow waqf in cash, meanwhile The Imam Shafi'i school of thought does not allow cash waqf because it values waqf in permanent cash.

**Keywords:** Utilisation, cash waqf, Baitul Asyi Waqf Foundation.

### **Abstrak**

Pengelolaan dan pemanfaatan wakaf tunai di Aceh berdasarkan data dari Baitul Mal sangat potensial untuk dikembangkan, namun permasalahan yang sering dihadapi dalam pengelolaan wakaf tunai yakni kurangnya SDM atau nazhir yang mengelola secara khusus wakaf tunai tersebut, sehingga hasilnya belum optimal. Adapun yang menjadi rumusan masalah dalam skripsi ini yaitu bagaimana manajemen pengelolaan wakaf uang (tunai) oleh Nazhir di Yayasan Baitul Asyi dan bagaimana pemanfaatan wakaf uang (tunai) di Yayasan Baitul Asyi dalam perspektif fiqih muamalah. Untuk menjawab permasalahan di atas, peneliti menggunakan metode kualitatif dengan memakai sumber kepustakaan dan diperkuat dengan hasil wawancara dari informan sebagai bagian dari data empiris. Teknik pengumpulan data dilakukan melalui wawancara dan studi dokumen. Data yang terkumpul akan di analisa dengan teknik deskriptif kualitatif. Hasil penelitian menunjukkan bahwa; Pertama, manajemen pengelolaan wakaf tunai yang dilakukan oleh Yayasan Wakaf Baitul Asyi dengan cara memproduksi aset wakaf tersebut, dengan mengadakan kerjasama bersama pihak pengusaha. Hasil dari keuntungan usaha tersebut disalurkan untuk kepentingan umat. Kedua, pengelolaan dan pemanfaatan wakaf tunai belum dapat dikatakan sepenuhnya berhasil, disebabkan aset wakaf tunai belum dikelola secara maksimal. Pemanfaatan wakaf tunai yang telah dikelola tersebut disalurkan kepada Dayah Wakaf Barbate dengan jumlah Rp. 12.155.000,- akumulasi dari zakat usaha dan sedekah manajemen usaha. Penyaluran wakaf tersebut ditujukan untuk kepentingan umat, sesuai dengan aturan dan peruntukannya. Dari paparan di atas dapat disimpulkan, pengelolaan dan pemanfaatan wakaf tunai pada Yayasan Wakaf Baitul Asyi ditinjau dalam perspektif fikih muamalah, sudah sesuai dengan tujuan, fungsi dan peruntukannya. Hal ini sesuai dengan pendapat madzhab Hanafi dan Maliki yang membolehkan wakaf dalam bentuk tunai, sedangkan madzhab Imam Syafi'i tidak membenarkan wakaf tunai karena menilai wakaf secara tunai kekal sifatnya.

**Kata Kunci:** Pemanfaatan, wakaf tunai, Yayasan Wakaf Baitul Asyi.

### **INTRODUCTION**

Waqf is an important component of Islamic philanthropy empowered for the benefit of the people. Waqf plays an important role in efforts to build mosques, schools, taklim congregations, clinics, shelters, Islamic boarding schools and recitation organisations, and other Islamic social order foundations. Waqf has different sides, the main side is connected to Allah,

especially love mahdhah, the other side is related to fellow humans in the form of muamalah. One of the social functions of waqf is that it can have a positive impact on society as a whole, both Muslim and non-Muslim, if managed effectively and efficiently.<sup>1</sup>

In Islam, the practice of waqf is highly recommended, and everyone is commanded to be able to set aside some of their wealth to be spent according to the will of Allah. Scholars and experts differ on the definition of waqf, which is generally defined as holding property for permissible purposes and to gain the pleasure of Allah without losing it. Waqf is beneficial to the executor who is rewarded, and also to others, allowing the sharing of wealth and easing the burdens of others, with many other unique benefits.<sup>2</sup>

In 1178, Salahuddin al-Ayyubi established a policy that Christians from Alexandria who traded had to pay customs duties, the proceeds of which were endowed to the fuqaha' and their descendants. Although many waqf assets had been accumulated, most of them remained abandoned and unutilised. Over time, the understanding and empowerment of waqf assets has undergone significant changes, extending from religious, educational, and health facilities to productive forms of waqf, such as cash waqf.<sup>3</sup>

With the development of the times, waqf is no longer only associated with waqf objects in the form of land, but has penetrated into other forms of waqf, as stipulated in Law Number 41 of 2004 concerning Waqf. In detail, the object of waqf in the 2004 State Sheet No. 159 explains that waqf assets can only be waqf if they are legally owned and controlled by the waqif (article 15). Waqf assets consist of immovable and movable objects. Movable objects are assets that cannot be depleted due to consumption, including: a) Money; b) precious metals; c) securities; d) vehicles; e) intellectual property rights; f) lease rights; and g) other movable objects in accordance with the provisions of sharia and applicable laws and regulations (article 16).<sup>4</sup> Thus, waqf assets have undergone significant development so that one does not need to wait to become a landlord to do waqf. He can even set aside just a few thousand

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<sup>1</sup> Resfa Fitri and Heni P Wilantoro, "Priority Analysis of Productive Waqf Management Solutions", *Al-Muzara'ah Journal*, Vol. 6 No. 1, 2018, p. 42. 42.

<sup>2</sup> M.A. Mannan, *Cash Waqf Certificates*, (Pancoran, South Jakarta: Mitra Abadi Press, 2001), pp. 12.

<sup>3</sup> Sudirman Hasan, *Waqf Money Implementation in Indonesia*, Vol. 12. No. 4, (Postgraduate Programme IAIN Walisongo: Semarang, 2019), pp. 23.

<sup>4</sup> Racmadi Usman, *Law of Perwakafan in Indonesia*, (Jakarta: Sinar Grafika, 2009), p. 111.

rupiah to perpetuate wealth in the form of cash waqf or commonly called cash waqf.<sup>5</sup>

In this modern era, cash waqf has become popular thanks to the skillful touch of M. A. Mannan with the establishment of an institution he called Social Investment Bank Limited (SIBL) in Bangladesh which introduced the product of Cash Waqf Certificates for the first time in the world. SIBL collects funds from the aghniya' (the rich) to be managed professionally so as to generate profits that can be channelled to the mustadh'afin (the poor).<sup>6</sup>

Basically, cash waqf aims to raise endowment funds sourced from the people, which are then utilised for the maximum social benefit of the people. Thus, cash waqf provides an opportunity for everyone to give jariyah alms and get uninterrupted rewards without having to wait to become a landlord or a rich merchant. With this cash waqf concept, people can donate by simply buying a cash waqf certificate issued by a cash waqf management institution.<sup>7</sup>

Aceh is specialised in waqf management with three regulated institutions, namely the Ministry of Religious Affairs, BWI, and Baitul Mal, which other regions do not have. Law No. 11/2006 states that zakat, waqf assets, and other religious assets are managed by Baitul Mal Aceh and Baitul Mal Kabupaten/Kota. However, there are several factors that hinder waqf in empowering the people's economy in Indonesia: people's understanding is still limited to the waqf of immovable objects, the dominance of the Shafi'i Mazhab that does not understand cash waqf, the lack of institutions for cash waqf collection, and the government's insensitivity to the potential of cash waqf which causes limited public access and lack of transparency in the management of waqf funds.<sup>8</sup>

The data on the potential of waqf in the Baitul Asyi Waqf Foundation in 2020-2022 is as follows:

Table 1.1 Waqf Potential in Baitul Asyi Waqf Foundation

Total	Waqf Potential	Waqf Potential
Waqf/Month	Money/Month	Money/Year
IDR 5000,-	IDR 10 million	IDR 60 million

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<sup>5</sup> Sudirman Hasan, *Waqf Money Implementation in Indonesia...*, p. 27.

<sup>6</sup> *Ibid.* p. 30.

<sup>7</sup> Ministry of Religious Affairs, *Fiqh of Waqf*, (Jakarta: Directorate of Waqf Empowerment, Directorate General of Islamic Guidance, Ministry of Religious Affairs, 2006), p. 46.

<sup>8</sup> Qurratul 'Aini Wara Hastuti, The Role of Sharia Financial Institutions Receiving Cash Waqf (LKS-PWU) for the Optimisation of Cash Waqf, (*Ziswaf Journal of Zakat and Waqf*, Vol. 4, No.1, June 2017), p. 43. 43.

IDR 10,000-	IDR 20 million	IDR 80 million
IDR 50,000-	IDR 20 million	IDR 100 million
Total		IDR 240 million

Source: Waqf Potential in Baitul Asyi Waqf Foundation in 2020-2022

Based on the preliminary data in table 1.1 above, Aceh has a very large potential for cash waqf, because the majority of the people are Muslim. The total potential of cash waqf in the Baitul Asyi Waqf Foundation until 2022 totalled IDR 4.56 billion.

The problems often faced in cash waqf are due to the lack of knowledge related to cash waqf by the waqf manager (nazhir) so that the optimisation of cash waqf has not been maximised, the management of cash waqf has not been in accordance with the provisions of the Indonesian waqf agency (BWI), the utilisation of cash waqf has not seen results in economic improvement for cash waqf recipients.

Seeing this problem, the role of Islamic socio-economic institutions, including waqf, is important for the management and distribution of cash waqf. In the waqf law, waqif can endow movable objects in the form of money to nazhir as a party who receives waqf money from waqif to be managed and utilised according to its designation which is then distributed through a cash waqf recipient Islamic financial institution (LKS-PWU) appointed by the minister on the basis of advice and consideration from BWI. In Aceh, in accordance with the gubernatorial regulation, cash waqf is managed by the Baitul Asyi Foundation. Cash waqf is a very open form of waqf management carried out by the Baitul Asyi Foundation and with existing regulations. Baitul Asyi Foundation functions as a nazir, can also act as a nazir supervisor and supervisor. This is certainly not an easy job, but it must be done seriously and supported by various parties.

Based on the discussion of the background of the problem above, the researcher is interested in conducting this research and examining and examining how the management of cash waqf management, examining and analysing the process of distribution and utilization of cash waqf further on these issues in a scientific work by choosing the title Utilisation of Cash Waqf (Cash) at the Baitul Asyi Waqf Foundation in the Perspective of Fiqh Muamalah.

## RESEARCH METHODS

The research method aims to solve problems scientifically in a research with a formal juridical approach and a systematic pattern.<sup>9</sup> This research uses a qualitative approach, where the end result is described in words or sentences. Data were obtained through literature and field research, including interviews with the Baitul Asyi Waqf Foundation and documentation related to the utilisation of cash waqf. Data collection instruments include recording devices, cameras, and stationery. The data analysis technique used is descriptive qualitative to describe the information collected, as well as deductive techniques to draw conclusions from general to specific related to the utilisation of cash waqf at the Baitul Asyi Waqf Foundation and its legal basis, referring to fiqh muamalah

## RESULTS AND DISCUSSION

### A. Concept of Waqf Beneficiaries

#### 1. Definition of Cash Waqf

Linguistically, the word "waqf" comes from the Arabic "waqafa," which means to stop or to hold back, similar to the meaning of "habs." This definition is also expressed in the book "Tanah Aṭalibīn," which states that waqf is one of the characteristics of Muslims according to Al-Hafiz and As-Shafi'i. Etymologically, waqf means to hold (habs), and in terms, waqf is defined as holding property and giving its benefits in the way of Allah SWT.<sup>10</sup>

Meanwhile, waqf according to shara' terms is expressed by several opinions from scholars, scientists in Islamic studies, as follows:<sup>11</sup>

- a. Imam Abu Hanifah is of the opinion that Waqf is the retention of an object in the possession of the waqif and the donation (charity) of its benefits for good purposes in the present and future. The ownership of waqf property does not leave the waqif, in fact he is allowed to withdraw it and he may sell it. If the waqif dies, the property becomes inherited property for his heirs. So what arises from waqf is only "donating benefits".
- b. The Malikiyah school of thought believes that waqf means the withholding of an object from preventing the waqif from taking actions that can release his ownership of the property (selling and buying it)

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<sup>9</sup> Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

<sup>10</sup> Muhammad Jawad Mughniyah, *Fiqh Five Mazhabs*, (Jakarta: Lentera, 2007), pp. 383.

<sup>11</sup> Ibid. pp. 385-386.

and that the object remains in the waqif's ownership and is obliged to give away its benefits and may not withdraw his waqf. The waqf is valid for a certain period of time, and therefore cannot be stipulated as a perpetual waqf.

- c. Imam Syafi'i and Ahmad ibn Hambal explained that waqf is the withholding of the waqf (legal action, selling and giving it away) and giving away the proceeds, as well as the transfer of ownership from the person who endowed it to the person who received the waqf and cannot act according to the will of the mauqūf ` alaih.<sup>12</sup>
- d. Abu Bakar Jabir Al-Jazairi defines waqf as the retention of property so that it cannot be inherited, or sold, or given away, and donates it to the recipient.<sup>13</sup>

According to Law No. 41/2004, waqf is a legal action in which a waqif separates or surrenders part of his/her property to be utilised permanently or temporarily for the benefit of worship and the welfare of the community in accordance with sharia. The party who endows is called the wakif, and the statement of his/her will is known as the waqf pledge. The waqf asset is received and managed by Nadzir, who is responsible for developing and utilising the asset in accordance with its designation. The law also stipulates the existence of a Waqf Pledge Deed Official (PPAIW) and the Indonesian Waqf Board (BWI) as independent institutions to develop waqf in Indonesia.<sup>14</sup>

According to the 2002 Fatwa of the Indonesian Ulema Council on Cash Waqf, cash waqf is waqf done by a person, group of people, institution or legal entity in the form of cash. According to Law Number 41 of 2004 concerning waqf, cash waqf is not mentioned directly about its definition, only the definition of waqf in general, namely the legal action of the waqif to separate and / or submit part of his property to be utilised forever or for a certain period of time in accordance with his interests for the purposes of worship and / or public welfare according to Sharia. However, referring to article 28 of Law No. 41/2004 on waqf, it is stated that a waqif can endow a movable object in

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<sup>12</sup> Abdul Halim, *Law of Perwakafan in Indonesia*, (Jakarta: Ciputat Press, 2005), pp. 9-11.

<sup>13</sup> Farid Wajdy and Mursid, *Waqf and the Welfare of the People*, (Yogyakarta: Pustaka Pelajar, 2007), pp. 30.

<sup>14</sup> Panji Adam, "LEGISLASI HUKUM EKONOMI SYARIAH: STUDI TENTANG PRODUK REGULASI HUKUM EKONOMI SYARIAH DI INDONESIA," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 1, no. 2 (2018), <https://doi.org/10.29313/tahkim.v1i2.4105>.

the form of money through a Sharia Financial Institution appointed by the Minister.<sup>15</sup>

## **2. Terms and Conditions of Waqf**

Waqf is declared valid if its pillars and conditions are fulfilled. There are four pillars of waqf, namely:<sup>16</sup>

- a. Waqif (the person who donates his/her property)
- b. Mauquf bih (the item or property being donated)
- c. Mauquf ` Alaih (the party to whom the waqf is given/allocated)
- d. Şigat (statement or pledge of the wakif as a will to endow part of his property).

Scholars differ in their opinions on the pillars of waqf. This difference is an implication of their different views on the substance of waqf. If the Malikiyah, Shafi'iyah, Zaidiyah and Hanabilah view that the pillars of waqf consist of Waqif, Mauquf ` Alaih, Mauquf bih and Şighat, then this is different from the view of the Hanafi followers who reveal that the pillars of waqf are only limited to Şighat (pronunciation) which shows the meaning/substance of waqf.<sup>17</sup>

In addition to the conditions attached to each pillar, there are several conditions of waqf that must be fulfilled, namely:

1. Requirements for the donor
  - a. The person doing the waqf must be free and the full owner of the property being waqfed. Therefore, a waqf made by a slave is not valid. This is because a slave does not have the right to ownership. The same applies to endowing something that does not yet belong to him, or endowing a robbed object. Therefore, the donor must be in full possession of the property when he donates it.
  - b. The person who makes a waqf must be of sound mind. Therefore, the waqf of an insane person, a person who is weak of mind due to illness or age, an idiot or a fool is not valid because his mind is not perfect.

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<sup>15</sup> Secretariat of the Indonesian Ulema Council, Set of MUI Fatwas Since 1975, (Erlangga, 2011), p. 356.

<sup>16</sup> Ahmad Rofiq, *Contextual Jurisprudence: From Normative to Social Understanding*, (Semarang: Student Library, 2004), pp. 23.

<sup>17</sup> Nawawi, *Ar-Raudhah* Volume IV, (Beirut: Darul Kutub al-Ilmiyah, 1994), pp. 25.

- c. The person doing the waqf must be of legal age. Therefore, the waqf of an infant who has not reached puberty is not valid. The signs of puberty are generally wet dreams, menstruation for women, or reaching the age of 15 in general, and reaching the age of 17 according to Abu Hanifah.
- d. The person making the waqf must be clear-headed and not depressed. The waqf of a person who is emotionally unstable, or is broke and in debt, or has lost his memory is not valid.<sup>18</sup>

2. Conditions of the goods being endowed (*al-mauquf*)

The scholars agree that the property to be endowed must be a fixed asset, known to exist, fully owned by the donor, and there is no khiyar option. The imams of the madhhab have some specific requirements, among others:<sup>19</sup>

- a. Hanafiyah, the waqf asset must be a fixed object, clearly known, fully owned by the waqif during the waqf process, and not mixed with other objects.
- b. Malikiyah, waqf property must be in the full ownership of the waqif, not mixed with other people's property, and not in a pawnshop or under lease, unless the pawnshop or lease period has ended.
- c. Hanabilah and Syaf'iyah, waqf assets must be clear and concrete, not under debt guarantee, fully owned by the waqif that can be transacted, and provide long-term benefits.

According to the various schools of thought, the requirements for the property to be donated emphasise the clarity, full ownership, and long-term benefits of the donated property.

3. Conditions for the recipient of *waqf* (*mauquf 'alaih*)

The conditions for the recipient of the waqf (*mauquf 'alaih*) include several important matters. The recipient must be present during the waqf process, have the ability to own, and the waqf cannot be given to animals. Waqf for educational institutions, mosques, and other facilities is permissible

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<sup>18</sup> Department of Islamic Economics and Finance, *Waqf Regulation and Effective Governance*, (Jakarta: Bank Indonesia, 2016), p. 94.

<sup>19</sup> Rahmad Kurniawan, Nur Asnawi, and Chairul Fahmi, "Juridical-Philosophical Review of the Position of Sharia Compliance in Islamic Banking in Indonesia," *Jurnal Ilmu Hukum Tambun Bungai* 9, no. 2 (December 31, 2024): 531–45, <https://doi.org/10.61394/JIHTB.V9I2.497>.

because it benefits the people. Waqf should not be used for things that violate Allah's commandments, such as brothels or gambling. The recipient of the waqf must be known, and a waqf given without a clear recipient is not valid unless it is intended for good. Scholars also agree that waqf for oneself is not permissible except under certain conditions such as being a fakir or a student at the school being waqfed.<sup>20</sup>

a. Conditions of the pledge/act (*sighat*) of waqf

The scholars agree that the waqf pledge must use the word "waqafu" (I endow) because it is clear and does not require additional information. The validity of using other words such as "habistu" (I withhold my right), "sabiltu" (I give a way), or "abbadtu" (I leave it forever) is debated. However, fundamentally, any word can be used to convey waqf objects, including local or foreign languages, as language is merely a means of conveying intent and does not change the intended purpose of the waqf.

b. Requirements of the Waqf Manager (*Nadzir*)

Nazir is an individual, organisation, or legal entity that is entrusted with the care and management of waqf assets in accordance with their purpose. The conditions that must be met by the *nazir* include: Muslim, adult (aqil baligh), trustworthy and trustworthy, and has the physical and spiritual ability to carry out the waqf mandate.

c. Term Requirement

There are two views on the duration of waqf. The majority of Shafi'iyah, Hanafiyah, Hanabilah (except Abu Yusuf), Zaidiyah, Ja'fariyah, and Zahriyah scholars state that waqf must be permanent. However, Abu Yusuf of Hanabilah and Ibn Suraij of Shafi'iyah allow short or long term waqf. In Indonesia, Article 215 of the Compilation of Islamic Law (KHI) states that waqf is permanent, but Article 1 of Law No. 41/2004 on Waqf adds the option for a certain period of time or forever.

## **Utilisation of Cash Waqf at Baitul Asyi Waqf Foundation in the Perspective of Fiqh**

### **1. Cash Waqf Management**

The management and management of waqf by the Baitul Asyi institution follows the model of Habib Bugha in Mecca, by producing waqf

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<sup>20</sup> Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," <https://doi.org/10.1177/11771801241235261> 20, no. 1 (March 8, 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

assets in the form of cash from pilgrims, communities, and recitation assemblies. These cash waqf assets are managed through productive businesses such as grocery stores and noodle shops, the proceeds of which are then distributed to people in need. For example, on 23 December 2023, the proceeds from the business were distributed to Dayah Wakaf Barbate, showing that this management is able to provide direct benefits to waqf recipients.<sup>21</sup>

Baitul Asyi's cash waqf management is not only for the public good, but also to maximise the economic potential of waqf assets. By utilising the funds obtained from waqf, this institution has managed to develop a business that shows a significant increase. Good and proper management with an entrepreneurial spirit allows waqf assets to grow rapidly, as shown by the development of Baitul Asyi Habib Abdurrahman Al-Habsyi fund in Mecca, which distributes profits to Acehnese pilgrims every Hajj season.<sup>22</sup>

To maximise the potential of waqf, waqf assets must be managed with good and modern management. Waqf empowerment requires the cooperation of all parties, including the government, scholars, professionals, entrepreneurs, and banks. This partnership cooperation is essential to increase the economic strength of the ummah and the welfare of the community. With strong support from all parties, the potential of waqf can be maximised to play a significant role in the national economic order. Baitul Asyi has shown that with proper management, waqf can grow rapidly and make a real contribution to society, while opening up new opportunities for people's economic empowerment.

## **2. Management Model of Baitul Asyi Waqf Foundation**

The management of the Baitul Asyi Waqf Foundation, from the beginning until today, understands that the management they run must be based on Islamic values laid down by the founders of the foundation. Every position in the foundation organisation is seen as a mandate that must be accounted for not only to superiors through the organisational hierarchy line but also to Allah SWT. Therefore, every policy and decision taken must be in

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<sup>21</sup> Interview with Mizaj Iskandar, Chairman of the Baitul Asyi Waqf Foundation, on Wednesday, 21 February 2024 at the Lambhuk Village Mosque, Ule kareng District, Banda Aceh.

<sup>22</sup> Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia," *Jurnal Ilmiah Peuradeun* 11, no. 2 (May 30, 2023): 667–86, <https://doi.org/10.26811/PEURADEUN.V11I2.923>.

accordance with sharia, through the principle of deliberation-consensus, and aimed at the interests of ukhuwah Islamiyah. Basic principles such as amanah, fathanah, tablig, shiddiq, and himayah become the foundation in every managerial action in the foundation.<sup>23</sup>

Human resource management at Baitul Asyi Waqf Foundation includes planning, organising, leading and supervising. Planning involves setting goals and projecting the future, such as a grocery store and Aceh noodle business whose proceeds are distributed to those in need. Organisation involves assigning specific tasks to each HR and establishing effective communication, although currently the management of waqf is still not optimal due to limited HR specifically for nazir. Leadership involves motivation and morale, although the main board also has other duties as lecturers. Supervision ensures activities are in line with the plan through annual financial reports.<sup>24</sup>

The results showed that the cash waqf management function at the Baitul Asyi Waqf Foundation has not been implemented optimally due to the lack of human resources who manage waqf specifically. Therefore, an evaluation of the system and mechanism of waqf management performance is needed. The management of the institution must understand better so that waqf management runs according to its designation. A competent nazir is essential to achieve the objectives of waqf, as people are a strategic factor in all activities of a waqf organisation. The management of nazir human resources must be based on the vision and mission of the organisation so that the objectives of waqf can be achieved optimally.<sup>25</sup>

### **3. Utilisation of Cash Waqf at Baitul Asyi Waqf Foundation in the Perspective of Fiqh Muamalah**

The scope of muamalah in life includes many things, one of the most important of which is economic activity. In Islamic economics, there are many instruments that can be used as a medium for empowering people towards a prosperous life such as ZISWAF (Zakat, Infaq, Shadaqah and Waqf). Of the

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<sup>23</sup> Tutik Haryanti, "Kewenangan Pengadilan Agama Dalam Penyelesaian Sengketa Ekonomi Syariah," *Tahkim* IX, no. 1 (2013).

<sup>24</sup> Interview with Mizaj Iskandar, Chairman of the Baitul Asyi Waqf Foundation, on Wednesday, 21 February 2024 at the Lambhuk Village Mosque, Ule kareng District, Banda Aceh.

<sup>25</sup> Alif Cahya Setiyadi, Sakiinah Binti, and Mohammad Aris, "ANALYSIS OF THE PERMISSIBILITY OF BAI' AL-'INAH TRANSACTIONS ACCORDING TO THE SHAFI'I SCHOOL OF THOUGHT AND ITS IMPLEMENTATION IN MALAYSIA," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (November 21, 2023): 144-64, <https://doi.org/10.21111/tsaqafah.v8i2.27>.

four instruments, waqf has a very important role as a source of social funds that has a connection to the welfare of the people in addition to zakat, infaq and sadaqah.<sup>26</sup>

Since the arrival of Islam in Indonesia in the 7th century AD, land waqf has existed and prevailed in Indonesian society based on Islamic law and customary law, although there is no written legislation governing it. The objects that were donated at that time were generally immovable objects (such as land) and their existence will continue to exist until the end of time. It cannot be denied that most houses of worship, Islamic schools and other Islamic religious institutions are built on waqf land. However, it is unfortunate that the perception of most Muslim communities in Indonesia regarding waqf objects is still limited to land and buildings, even though cash waqf has enormous potential.<sup>27</sup>

According to the calculations of the Indonesian Waqf Board (BWI), the potential of cash waqf in Indonesia reaches IDR120 trillion per year, assuming that 100 million Indonesian citizens donate IDR100,000 per month. Meanwhile, according to the former Chairman of the Indonesian Association of Islamic Economists (IAEI) in 2005, Mustafa Edwin Nasution, the potential of cash waqf in Indonesia is huge, reaching IDR 20 trillion per year. According to him, if 10 million Muslims in Indonesia donate money ranging from IDR 1,000 to IDR 100,000 per month, the minimum cash waqf funds that will be collected for a year can reach IDR 2.5 trillion. In fact, if around 20 million Muslims in the country donate their wealth of around IDR 1 million per year, the potential of cash waqf could reach IDR 20 trillion.<sup>28</sup>

Among the factors causing the lack of public awareness of cash waqf is the lack of public understanding of cash waqf itself. People in general still think that waqf is in the form of fixed or non-expendable assets. This is an obstacle to the socialisation of cash waqf law, especially in rural areas. People still think that waqf is immovable property, such as land, mosques, graves.

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<sup>26</sup> Atika Rizkiyanda, "FINANCING AGREEMENT IN THE IMPLEMENTATION OF ONLINE SHOPPING SHOPEEPAY LATER," *JURISTA: Jurnal Hukum Dan Keadilan* 1, no. 2 (December 20, 2017): 160-71, <https://doi.org/10.1234/JURISTA.V1I2.61>.

<sup>27</sup> Nora Tuddini, Muslem Abdullah, and Abbas Pannakkal, "AN EXAMINATION OF THE EFFICACY OF ONLINE PAYMENT OF ZAKAT FITRAH BASED ON YUSUF AL-QARHDAWI'S THOUGHT," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 31, 2023): 183-200, <https://jurista-journal.org/index.php/jurista/article/view/77>.

<sup>28</sup> Mukhlisin Muzarie, *Fiqh Wakaf, Syarofin Arba MF (ed.)*, (Yogyakarta: Dinamika, 2010), p.43.

Thus, literacy related to cash waqf law based on Islamic perspective is very important.<sup>29</sup>

When looking at the first source of Islamic law, the Qur'an, there are several verses that can be used as a basis for the permissibility of cash waqf, including Surah Ali Imran verse 92 which means: "You will not attain good unless you spend some of the wealth that you like". The above verse is an encouragement from Allah for Muslims to spend their favourite wealth. Spending one's favourite wealth is a great sacrifice by a Muslim towards the religion of Allah. In this context, the act of waqf includes sacrificing beloved property. Cash waqf using money or securities is one of the models of waqf that is highly recommended in this verse. With cash waqf, a person can be considered as sacrificing his beloved property. Thus, cash waqf is sunnah and highly recommended in Islam.<sup>30</sup>

Based on the hadith review, the Prophet and his companions had endowed mosques, land, wells, gardens and horses. The following are some examples of waqf that occurred during the time of Rasoolallah SAW: "Anas said: When the Messenger of Allah SAW came to Medina and ordered to build a mosque, then he asked: O Banu Najjar, have you entrusted me with your garden? They replied: By Allah, we do not ask for its price except to Allah SWT. So the Prophet took over the garden and made it a mosque." (HR Bukhari). Although in the time of the Prophet and the Companions waqf usually refers to objects in the form of land and buildings. However, with the development of the times as it is today, it is undeniable that waqf has also undergone changes such as cash waqf transactions that are run with the support of banks.<sup>31</sup>

In line with the information above this cash waqf if reviewed with maslahat mursalah, then we can sentence it jawaz or permissible because it creates and brings benefits to Muslims. The benefit is included in the type of hajjiyyat because it is needed by humans. Muslims in this modern era cannot

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<sup>29</sup> Jarmanisa et al., "ANALYSIS OF RISK COVERAGE AGREEMENT BETWEEN PT. J&T AND AN INSURANCE COMPANY FOR DELIVERY OF CONSUMER GOODS IN THE CONTEXT OF KAFALAH CONTRACT," *JURISTA: Jurnal Hukum Dan Keadilan* 5, no. 2 (October 1, 2021): 126–46, <https://doi.org/10.1234/JURISTA.V5I2.11>.

<sup>30</sup> Syamsul Anwar, *Contemporary Islamic Law Studies*, (ed.) M. Muchlas Rowie, (Jakarta: Rm Books, 2007), pp. 83.

<sup>31</sup> Siti Sarah, Ali Abubakar, and Fraz Ahmed, "ANALYSIS OF THE ELEMENT OF USURY IN SHARIA ONLINE FINANCING," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 20, 2023): 165–82, <https://doi.org/10.26811/peuradeun.v11i2.923>.

be separated from modern transactions such as ATMs, credit cards and so on. That is why cash waqf is allowed in Islam.<sup>32</sup>

Apart from that, there is a MUI fatwa that can strengthen the argument of the permissibility of cash waqf. On 11 May 2002, the Fatwa Commission of the Indonesian Ulema Council (MUI) has issued a fatwa on cash waqf which can be summarised as follows; 1) Cash waqaf is waqaf done by a person, group of people, institution or legal entity in the form of cash. Included in the definition of money are securities. 2) Waqf of money is jaawaz (permissible). 3) Waqf money can only be channelled for things that are permissible in shari'i. 4) The principal value of cash waqf must be preserved, it cannot be sold, donated or inherited.

As the results of an interview with the chairman of the Baitul Asyi waqf Foundation, Mizaj Iskandar explained the utilisation of cash waqf in the Baitu Asyi waqf Foundation that: regarding the background of the establishment of the foundation and the development of the foundation's efforts in developing waqf for the people of Aceh. The waqf is dominantly sourced from waqf funds received by pilgrims from the Habib Bugha Baitul Asyi Waqf Nazir in Mecca. Currently, the Baitul Asyi Waqf Foundation has two businesses. The first is a grocery business under the name of Mitra Abadi store located in Batoh market and the second is Aceh noodle business under the business name Mie Go Bang Maju in Rex area, Jalan Ratu Safiatuddin. The proceeds of the business will later be distributed to those in need.<sup>33</sup>

In addition, the foundation has also revived MSMEs in Aceh with these two businesses and has created new jobs for the community. So that in 2023, the Baitul Asyi Waqf Foundation has received two awards at once. Firstly from Bappeda Aceh Province as a pilot institution in producing waqf and award from Bank Indonesia in the Sharia Festival as the second winner of the best Ziswaf institution in Aceh.<sup>34</sup>

The spirit to create waqf activity legislation in the form of a legal umbrella law continues. Finally, the Indonesian government issued Law No. 41/2004 on Waqf and Government Regulation No. 42/2006 on the implementation of Law No. 41/2004. These laws and regulations, among

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<sup>32</sup> Chairul Fahmi and Peter Tobias Stoll, "Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia," *BESTUUR* 12, no. 2 (December 31, 2024): 172-90, <https://doi.org/10.20961/BESTUUR.V12I2.94203>.

<sup>33</sup> Interview with Mizaj Iskandar, Chairman of the Baitu Asyi Waqf Foundation, on Wednesday, 21 February 2024 at the Lambhuk Village Mosque, Ule kareng District, Banda Aceh.

<sup>34</sup> *Ibid*,

others, regulate the form of waqf objects, namely fixed objects, and non-fixed objects, namely cash waqf. This can be seen in the provisions contained in Articles 28 to 31 of Law No. 41 of 2004 and Articles 22 to 27 of Government Regulation No. 42 of 2006.

Law No. 41 of 2004 has expanded the objects that can be waqf by wakif, which before this law was generally limited to immovable objects or fixed objects such as land and buildings, now the law also regulates the waqf of movable objects such as cash waqf (money). Cash Waqf in Regulation of the Minister of Religious Affairs Number 4 of 2009 is a legal act of the Waqif to separate and / or submit part of his money to be utilised forever or for a certain period of time in accordance with his interests for the purposes of worship and / or public welfare according to sharia.

Article 28 of Law Number 41 of 2004 concerning waqf explains that waqf of non-fixed objects, among others in the form of money, is carried out by the waqif through a Sharia Financial Institution (LKS) appointed by the minister. Waqf of non-permanent objects in the form of money is carried out by the waqif in writing to the Sharia Financial Institution (LKS), then the LKS issues a cash / cash waqf certificate, then the cash waqf certificate that has been issued by the LKS is submitted to the waqif and nazhir as proof of the transfer of waqf property and this is stated in article 29 of Law Number 41 of 2004. Furthermore, article 30 of Law 41 of 2004 provides an explanation, that the Sharia Financial Institution on behalf of the nazhir registers the waqf property in the form of money with the Minister no later than 7 (seven) working days from the issuance of the cash waqf certificate.

Article 22 of Government Regulation No. 42/2006 confirms that waqf money that can be endowed is rupiah currency, if the money to be endowed is still in foreign currencies such as Rials, Dollars, Euros, Malaysian Ringgit and so on, it must first be converted into rupiah currency.

Clearly, the above legislation provides legal certainty that cash waqf/money waqf is recognised in positive law in Indonesia. In addition, the waqf law also mandates the establishment of the Indonesian Waqf Board (BWI), which is tasked with advancing and developing national waqf; this body is an independent institution. In Law 41 of 2004 concerning Waqf, BWI membership is appointed and dismissed by the President. Meanwhile, accountability for the implementation of its duties is carried out by an independent audit institution and submitted to the Minister and announced to the public.

The cash waqf in Law number 41 of 2004 is regulated in article 28 to article 31, namely: Article 28: Waqifs can endow movable objects in the form of money through Islamic financial institutions appointed by the minister. From article 28 conclusions can be drawn: 1) The legality of cash waqf is very clear and does not need to be disputed anymore. 2) Management of cash waqf through sharia financial institutions. 3) LKS is appointed by the Minister

Article 29:

1. Waqf of movable objects in the form of money as stated in article 28 is carried out by the waqif with a written statement of the will of the waqif.
2. Waqf of movable objects in the form of money as referred to in article 1 is issued in the form of a cash waqf certificate.
3. The cash waqf certificate as referred to in paragraph 2 is issued and submitted by the sharia financial institution to the Waqif and Nazir as proof of the transfer of waqf assets.

Article 30 states that Sharia financial institutions on behalf of the nazir register waqf assets in the form of money with the minister no later than 7 (seven) days after the issuance of the cash waqf certificate. Article 31: Further provisions regarding waqf of movable objects in the form of money as referred to in articles 28, 29, and 30 are regulated in government regulations.

As for the management of cash waqf, Article 48 of Government Regulation Number 42 of 2006 concerning the implementation of Law Number 41 of 2004 concerning Waqf has explained as follows: 1) The management and development of waqf assets must be guided by BWI regulations; 2) The management and development of cash waqf assets can only be carried out through investment in LKS products and/or Islamic financial instruments; 3) In the event that the LKS-PWU receives cash waqf for a certain period of time, the nazir can only carry out the management and development of cash waqf assets at the LKS-PWU; 4) The management and development of cash waqf assets carried out in Islamic banks must follow the deposit insurance agency programme in accordance with statutory regulations; 5) The management and development of cash waqf assets carried out in the form of investments outside Islamic banks must be insured with sharia insurance.

Judging from the explanation, it can be concluded that juridically justifies the existence of cash waqf and hopefully Muslims in Indonesia can pay very great attention to maximising cash waqf and it is clear that the legal position of cash waqf is very strong to be implemented.

## CONCLUSIONS

Cash waqf management at the Baitul Asyi Waqf Foundation refers to Habib Bugak Al Asyi's waqf asset development model in Mecca City, by producing and developing waqf assets owned. However, the management and management of cash waqf at the Baitul Asyi Waqf Foundation has not been carried out optimally due to the lack of human resources or nazir who specifically manage the cash waqf, so that the role of nazir is still taken over by the lecturer. Therefore, the Baitul Asyi Waqf Foundation needs to evaluate the system or performance mechanism and operations in waqf management, so that its management can run in accordance with its designation.

The utilisation of waqf carried out by the Baitul Asyi Waqf Foundation by producing cash waqf assets (money) for the benefit of the people is considered to be in accordance with the purpose and allocation of the benefits of developing these assets. The management of waqf assets by nadhir is carried out by cooperating with wholesale grocery entrepreneurs and Aceh noodle shops to produce these assets. The results of this asset development are intended for the benefit of the people, and the assets are basically obtained from the waqf of pilgrims and the general public.

In the perspective of fiqh muamalah, the utilisation of waqf carried out by the Baitul Asyi Waqf Foundation varies in law and falls into the realm of scholarly khilafiyah. This khilafiyah arises due to differences in scholarly opinion, both in terms of understanding the text and the culture of the people who are still struggling in the area of immovable waqf. The Hanafi and Maaliki Madhhabs allow cash waqf on the basis of istihsan bi al-'Urfi, while Imam al-Zuhri allows cash waqf on the basis of benefit, which can be utilised productively to improve the economy. In contrast, Imam Shafi'i does not allow cash waqf because he considers cash waqf to be impermanent like immovable waqf objects.

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