

Cash Waqf in Indonesia: Legal Aspects and Its Impact on Economic Resilience

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Cash Waqf in Indonesia: Legal Aspects and Its Impact on Economic Resilience

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Abstract: The scope of waqf so far is generally understood to be limited to waqf of immovable objects such as land and buildings. Meanwhile, cash waqf began to show potential and a significant role in building the country's economy. This study is directed at two research objectives: to identify aspects of strengthening cash waqf regulations in Indonesia, and also to analyze its potential and influence on national economic resilience. The research is categorized as a normative juridical research that uses a statutory approach and a conceptual approach. This study finds that the regulation of cash waqf in Indonesia already has sufficient space to be implemented in conjunction with other types of conventional waqf, however, it is necessary to strengthen several aspects so as to mitigate disputes that may occur. In addition, important findings from this study show that the potential for cash waqf has a large enough impact in maintaining the country's economic resilience. In the end, it can be concluded that cash waqf has a significant role in building the economy and economic resilience so that adequate regulations are needed to be able to minimize the occurrence of disputes in the future that follow the times and technology.

Keywords: *cash waqf; economic resilience; regulation.*

Introduction

Waqf is the holding of assets that are taken advantage of which are not immediately destroyed and their use is for things that are permitted by religious law with the aim of getting the pleasure of Allah swt (1). By releasing the waqf property, legally the wakif has lost his ownership rights so that he no longer has the authority or right to use it for his personal interests and the right to transfer or transfer his ownership to other parties, such as selling, giving, including bequeathing to heirs (2). Waqf as a worship that has a social and horizontal dimension is certainly very important for the people, because in addition to zakat, waqf worship can also improve people's welfare and can alleviate poverty (3).

Indonesia as a country with a Muslim majority population has great potential in developing waqf. However, public understanding regarding waqf is still limited to traditional waqf in the form of land or other worship facilities. Whereas waqf can also be in the form of movable objects such as cash waqf (4). Law Number 41 of 2004 concerning Waqf states that people who make waqf (wakif) can donate part of their wealth in the form of movable waqf property, either tangible or intangible, one of which is in the form of money. The application of cash waqf as a form of productive waqf today will have greater advantages than traditional waqf. Cash waqf can be collected in a container, so that it becomes a large business capital and can be managed productively through competent and professional management institutions (5).

However, the implementation of cash waqf is not without problems. In the practice of traditional waqf, several problems that often arise such as waqf exchange, protection of waqf property, settlement of disputes over ownership of waqf property, problems with registration and recording of waqf. (6), is still a big job that must be completed by the stakeholders. Likewise, in cash waqf, it is also considered that there are still many problems that need to be resolved, such as guarantees for the protection of cash waqf assets, the types of investments allowed in cash waqf, and so on.

Cash waqf is a new source of fiscal finance with great potential in maintaining national economic resilience. Besides that, the use of cash waqf can encourage the level of community welfare, on the other hand, the existence of cash waqf also has the potential to be able to maintain the stability of the country's economy. The pattern of cash waqf management from the beginning of its collection to its utilization must be followed by strong regulations so that it can avoid practices that violate the rule of law both in terms of religious law and positive law.

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The aspect of regulating cash waqf is one of the government's concerns to be able to realize the essence and purpose of waqf which is expected to continue to be in the form of waqf property. Therefore, in addition to good, systematic and measurable management and management, the legal aspects that underlie it must also be considered. Considering that the existence of cash waqf like other traditional waqf also has the potential for irregularities and various legal cases so that the direction and purpose of cash waqf which is expected to participate in supporting the country's economic stability can be well maintained.

The problem in this study is the lack of cash waqf arrangements in Indonesia which have not fully guaranteed the protection of waqf assets and settlement of disputes over ownership of waqf assets. Another problem is that the existence of cash waqf has not shown its contribution to its participation in the development and resilience of the national economy. Based on these problems, this research focuses on at least two objectives, namely to analyze the form of legal regulation of cash waqf in Indonesia. In addition, this study also intends to analyze the impact of cash waqf on national economic resilience in the territory of the Unitary State of the Republic of Indonesia.

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Research Method

This research is included in the normative juridical research (doctrinal research) which instrumented several research approaches, including the statutory approach and the conceptual approach. Both approaches are used to be used as a researcher's point of view in viewing a legal study. The data used in this study is secondary data consisting of primary, secondary and tertiary legal materials. The process of collecting data was carried out through a literature study which was then analyzed descriptively analytically.

Literature Review

Waqf is etymologically a masdar form of the word waqafa-yaqifu which means al-habs (hold) or al-muks (settled) (7). While waqf according to the term, holding property that can be used by maintaining the principal property and distributing its benefits to those who are allowed to receive it (2). The definition of waqf according to the schools of fiqh is quite varied. The Hanafiyah group defines waqf as holding back the material belongings of the waqif (the person who is waqf) and giving charity or waqf its benefits to whoever it wants for the purpose of virtue. While Mal'ah argues, waqf is to make the benefits of a property owned to be given to people who are entitled to one contract (sigat) within a certain period of time in accordance with the wishes of the waqif. As for the Shafi'iyah school community, waqf is defined as holding assets that can provide benefits and eternal material objects (al-'ain) by deciding the management rights owned by waqif to be handed over to Nazirites which are permitted by Shari'ah. Meanwhile, Hanabilah defines waqf in simple language, namely holding back the origin of property (land) and giving alms to the resulting benefits (8).

Waqf according to Government Regulation Number 28 of 1977 is a legal act of a person or legal entity that separates part of his assets in the form of property and institutionalizes it forever for the benefit of worship other public interests. In the Compilation of Islamic Law (KHI) article 215 paragraph (1) it is stated that waqf is a legal act of a person or group of people or legal entities that separates part of his property and institutionalizes it forever for other public interests in accordance with Islamic teachings. Meanwhile, according to Law Number 41 of 2004 concerning Waqf, what is meant by waqf is a legal act of wakif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to Law No. sharia.

While the basis for waqf practice in Indonesia is the following laws and regulations:(9)

- 1) Law Number 41 of 2004 concerning Waqf
- 2) Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf
- 3) Indonesian Islamic law compilation
- 4) Government Regulation Number 28 of 1977 concerning Land Waqf

In order to achieve the purpose and function of waqf, waqf property can only be designated for:(10)

- 1) worship facilities and activities
- 2) educational and health facilities and activities
- 3) assistance to the poor, abandoned children, orphans
- 4) progress and improvement of the people's economy
- 5) other public welfare advancements that do not conflict with sharia and the laws and regulations.
- 6) the period of waqf (this period is adjusted to the condition of the property in the waqf).

According to Law Number 41 of 2004 concerning Waqf, waqf assets consist of:

- 1) immovable objects, including:
 - a. land rights in accordance with the provisions of applicable laws and regulations, both those that have been and have not been registered
 - b. plant land and other objects related to land ownership rights to the apartment unit in accordance with the provisions of the applicable laws and regulations
- 2) other immovable objects in accordance with sharia provisions and applicable laws and regulations.
- 3) movable objects, are property that cannot be used up due to consumption, including:
 - a. money
 - b. precious metal
 - c. securities
 - d. vehicle
 - e. intellectual property rights
 - f. lease rights
 - g. other movable objects in accordance with sharia provisions and applicable laws and regulations.

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The fatwa of the Indonesian Ulema Council (MUI) explains about cash waqf (waqf al-Nuqud), namely waqf carried out by a person, group of people, institutions or legal entities in the form of cash. Included in the definition of money are securities. Waqf of movable property in the form of money, hereinafter referred to as cash waqf, is waqf in the form of money that can be managed productively, the results are used for maufiq alaih. While the basis of cash waqf in Indonesia, among others:(5)

- 1) MUI Fatwa in 2002 concerning Cash Waqf
- 2) Law Number of 2004 concerning Waqf
- 3) Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf
- 4) Regulation of the Minister of Religion number 4 of 2009 concerning the Administration of Cash Waqf
- 5) Decree of the Minister of Religion number 92-96 regarding the determination of LKS to become LKS PWU
- 6) BWI Regulation number 1 of 2009 Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money

With regard to cash waqf in Indonesia, the research conducted is still relatively small. Among them are research by Junaidi Abdullah (1) who discovered the procedures and effective management of cash waqf. However, there has been no specific study on the legal aspects of cash waqf. Furthermore, Hisam Ahyani and Muharir (3) concluded that cash waqf plays an important role in the welfare of the people in the era of the industrial revolution 4.0. However, the application of cash waqf has not shown its effect on national economic resilience which is directly proportional to the welfare of the community. Other studies such as those conducted by Diah Sulistyani (5), Alfin Syaqui (4) and Inne Risnaningsih (11) which generally raises the issue of cash waqf management in Indonesia by raising various problematic issues related to the implementation of cash waqf.

In contrast to previous studies, this study focuses on the regulation of cash waqf in Indonesia as an important sector that has direct contact with the community. In addition, this study will also examine the impact of money law instrumentation on national economic resilience while also looking at the positive impact of cash waqf on the progress of the country's economy.

Cash Waqf and its Regulations in Indonesia

Waqf is a legal act that has very high spiritual value and is widely known by the people of Indonesia. The knowledge of the Indonesian people about waqf is quite high, although it is still limited to the aspect of waqf of land and immovable objects. Therefore, it can be found several regulations governing land waqf in Indonesia such as PP no. 28 of 1977 concerning the Endowment of Owned Land and Regulation of the Minister of Religion No. 1 of 1978 as the implementing regulation.

In the historical record of Islam, waqf first occurred after the event of the Prophet's migration to Medina. The construction of the Quba mosque which was built out of taqwa and faith for the sake of religion became the first waqf in Islamic history. It did not stop there, followed by the construction of the Prophet's mosque which was built on the land of orphans from Bani Najjar, the purchase of the Raumah well by Uthman bin Affan's friend whose water was donated for the benefit of the Muslims at that time, and also land waqf carried out by Umar bin Khattab's friend who gave up his best land in Khaibar for waqf (12).

Cash waqf is a new thing in Indonesia. However, the existence of cash waqf has long been developed in several countries. The existence of cash waqf has long been felt by the wider community and has enormous potential for development. In Law no. 41 of

2004 concerning Waqf, the discussion of cash waqf can be found in at least several articles, namely Articles 28, 29, 30 and 31. The regulation of cash waqf in the Act emphasizes the importance of developing cash waqf as an instrument for developing social welfare (13). The presence of the Waqf Law changed the waqf paradigm that developed in the community before the existence of the Law. At that time, the community focused on waqf only on immovable objects with the nuances of social worship, such as mosques, burial grounds, schools, hospitals, prayer rooms and so on. In addition, the policies that were born after the existence of the Waqf Law were able to accommodate cash waqf instruments as one of the productive waqf that deserves to be developed in Indonesia in addition to other types of productive waqf.

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The Problems of Management and Development of Cash Waqf in Indonesia

10 management and development of cash waqf in Indonesia has been specifically regulated through the Indonesian Waqf Agency (BWI) Regulation No. 1 of 2009 concerning Guidelines for the Management and Development of Cash Waqf. In the regulation, cash waqf which is categorized as waqf of movable property in the form of money is defined as waqf in the form of money that can be managed productively and the results can be utilized by the mauquf 'alaih. The money that is donated must be in the form of rupiah currency so that the money to be donated in foreign currency must first be converted into rupiah. Furthermore, in the regulation, it is stated that cash waqf certificates will be given to waqif who donate at least one million rupiah (13).

19 above provisions indicate that with a minimum amount of cash waqf of one million rupiah, it at least shows the potential for the development of cash waqf in Indonesia, which is followed by a very large number of Indonesian Muslim population. Cholil Nafis assumes that if 20 million Indonesians want to endow cash waqf of one hundred thousand rupiahs every month, the funds collected by waqf funds will be 24 trillion rupiahs. Likewise, if the number of waqf residents increases to 50 million people, then 60 trillion rupiah of waqf funds will be collected (14). And so on, which shows that the more people who donate money, the greater the value of the waqf funds that will be collected.

The current management and collection of waqf funds is also quite modern where the government determines Islamic financial institutions as recipients of cash waqf. In Law no. 41 of 2004 it is stated that the handover of cash waqf is not carried out directly to the nazir of waqf but through a sharia financial institution that is designated as the recipient of cash waqf, hereinafter referred to as the Islamic financial institution that receives cash waqf (LKS-PWU). (15). In practice, nazir of cash waqf also acts as a manager of waqf funds by investing them in accordance with sharia investment provisions. With a note that the invested waqf funds should not be reduced. And as a form of benefit that the nazir may receive, the profit from the investment returns of 10% can be allocated to honorarium for the nazir and the remaining 90% for the welfare of the community (4)(16).

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Until January 2022, there were at least 23 Islamic financial institutions designated as Islamic Financial Institutions Recipient of Cash Waqf. The stipulation refers to the Regulation of the Minister of Religion No. 4 of 2019 which is then stipulated through a Decree of the Minister of Religion. It is known that to be designated as LKS PWU, a bank must submit a written application to the Minister of Religion by attaching the Articles of Association and ratification as a legal entity and having an operational office in the territory of the Unitary State of the Republic of Indonesia.

Cash waqf is a slice of traditional waqf which is generally in the form of assets and property. Given that cash waqf is relatively new in the scope of the Indonesian economy, as a new instrument, it is necessary to have adequate infrastructure and regulations. Cash waqf is different from traditional waqf, so there needs to be renewal and strengthening in various lines to avoid cash waqf from the forms of deviations that damage the values of cash waqf which incidentally is ta'abbudiy.

In the process of its implementation, cash waqf also cannot be separated from obstacles that often approach. Some of these obstacles, such as the patterned community paradigm of traditional waqf, so that some people interpret cash waqf as waqf with money. Apart from the lack of public understanding, the pattern of monitoring and risk mitigation also seems to still need to be improved. This is considering that money is a medium of exchange that may experience inflation, so of course it really needs a legal instrument that regulates this.

Other obstacles that are also important to observe are the lack of government support, the low level of human resources capable of integrating financial managerial capabilities and waqf fiqh simultaneously, the lack of institutional and regulatory support in the form of adequate implementation instructions and the need for the development of financial technology as a supporting instrument to face industrial revolution 4.0.

Aspects of Strengthening Money Waqf Law

As a modern state of law (Rechstaat), the function of regulation in Indonesia not only provides a formal form of values and norms prevailing in society, but also becomes an instrument to direct people's lives towards the expected ideals. In practice, the formation of regulations is primarily intended to provide direction for the realization of national development goals (17). Realizing a strong and stable economy requires adjustments to various policies and regulations in the economic and monetary sector.

Strengthening regulations is expected to accelerate Islamic finance nationally so that Indonesia can become one of the financial centers in the ASEAN region and the world by maximizing ²⁶ potential of cash waqf. Waqf which is directed to improve the welfare of the people should be placed in a position that is ²⁶ in accordance with the direction and ²⁶ purpose of the waqf itself. In addition, ²⁶ the government as a regulator must also be able to provide regulations that are more adequate and in accordance with needs.

The development of the digital industry today also deserves the government's attention in responding to changes and dynamics of technological advances that have an impact on digital financial transactions. The era of digitalization must also include cash waqf instruments as a form of adaptation to technological developments (18). This is not without reason, various marketplace platforms that provide various applications to facilitate various transactions should also inspire the digitization of money waqf.

However, just as digital financial transactions require special regulations, the cash waqf industry also requires regulations that can accommodate technological developments. The current public's preference for technology-based financial transactions, including cash waqf, is the basic capital for the development of technology-based cash waqf instruments. In line with the program, regulations concerning the digital world in the field of cash waqf must also be formulated as a form of legal protection for waqf, wakif and mauquf alaih assets.

Cash Waqf and Economic Resilience

Cash waqf in the economic field has occupied a strategic position in building the national economy. As one of the Islamic fiscal instruments in the economic field, cash waqf has made a significant contribution in the context of empowering the national economy through the social security system. The superiority of cash waqf is based on a paradigm shift that sees the form of productive waqf in contemporary times not fixated on immovable objects, but instead the form of movable objects can outperform immovable powder from a more professional management side. So that the purpose of waqf will be more achievable and even targeting the wider community.

As it is known that the cash waqf mechanism ¹⁸ is collected in a container called ¹¹ Islamic Financial Institutions Recipient of Cash Waqf (LKS PWU) as stated in the decision ¹¹ of the Minister of Religion of the Republic of Indonesia which states that there are at least 27 financial institutions that receive cash waqf. The main tasks of LKS PWU include: first, to announce to the public its existence as one of the LKS recipients of cash waqf, secondly, to provide a form of cash waqf certificate, and thirdly to receive cash waqf from wakif on behalf of nazir. The money waqf funds that have been collected can later be used as large capital to be managed productively so that they can generate substantial income. This of course must be carried out by professional and competent personnel so that they can manage them properly and reliably. Efforts to optimize cash waqf as one of the Islamic financial instruments can certainly support government policies in order to improve people's welfare which has a direct impact on economic resilience.

⁶ Economic resilience is defined as a dynamic condition that occurs in the economic life of the nation which ⁶ consists of tenacity and resilience and has ⁶ the ability to develop national strength in anticipating all forms of threats, obstacles, and ⁶ obstacles including all threats originating from within and outside the country, either directly or indirectly. ⁶ directly ensuring the continuity of the economic life of the nation and state (19). In the macro context, economic resilience is the ability of a country to maintain stable economic growth and maintain a sustainable standard of living for its entire population through quality economic development while maintaining economic independence. It is known that the stability of economic growth is largely determined by the stability of the achievement of Gross Domestic Product (GDP) from year to year (20).

As an effort to maintain economic resilience, economic independence is needed to realize this desire. Economic independence itself is the economic ability of a country/region to continue to grow stably and to a minimum depend on the global economy outside the country/region. In an effort to realize economic independence, various programs and strategic steps are also promoted, such as by increasing people's purchasing power with equitable development and by increasing the absorption of labor so as to minimize poverty (13).

The state's obligation to maintain economic resilience is a mandate from the 1945 Constitution in which the state, at the central and regional levels, is equally responsible for maintaining economic stability in order to create prosperity for the Indonesian people as a whole. In the amendment to Article 34 of the 1945 Constitution, it is stated, "That the State develops a social security system for all people and empowers the weak and incapable in accordance with human dignity". The government's commitment is carried out through various programs and efforts that can maximize community empowerment.

In the context of community empowerment, cash waqf is projected as one of the effective community empowerment instruments and plays a very important role in participating in building an independent society, especially independence in the economy. Waqf essentially requires waqf property to be maintained so that it can be eternal and eternal. The waqf assets must be managed with good management and the results can be given to community empowerment programs in accordance with the mandate of the 1945 Constitution.

Conclusion

Cash waqf is a new source of fiscal finance with great potential in maintaining national economic resilience. For this reason, comprehensive regulations are needed that are able to accommodate the public interest. The regulation of cash waqf in Indonesia already has sufficient space to be implemented in conjunction with other types of conventional waqf, however, it is necessary to strengthen several aspects so as to mitigate disputes that may occur. In addition, important findings from this study show that the potential of cash waqf has a large enough impact in maintaining the country's economic resilience. In the end, it can be concluded that cash waqf has a significant role in building the economy and economic resilience so that adequate regulations are needed to be able to minimize the occurrence of disputes in the future that follow the times and technology.

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