

## Research Article

# Nazhir Legal Aspects of Cash WAQF in Indonesia in the 4.0 Era

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**ORCID**Siska Lis Sulistiani: <https://orcid.org/0000-0003-0007-9401>**Abstract.**

This study aims to analyze the related law No. 41 of 2004 concerning endowments in particular the rules relating to endowment management institutions entitled to collect and manage money endowments (nazhir waqf money) in Indonesia in the context of the era of 4.0 which emphasizes Islamic financial institutions and advances in digital technology. The method used is a qualitative research method with a normative juridical approach with data collection techniques study literature, interviews, and documentation, then analyzed through descriptive analytics. The results of this study indicate that the progress and development of technology in the 4.0 era, especially in the digitalization of the waqf program, makes the collection and management of waqf money mainly depend on the technological advancements owned by the institution, massive commitment and socialization to the public regarding money waqf, and Islamic financial institutions that collaborate with nazhir. The recipient of the waqf money is considered to have technological devices and SDI that can support the management and collection of waqf money in Indonesia, in addition to credibility in terms of financial accountability as well as the guarantor and supervisory institutions in addition to the OJK, BWI, and DPS.

**Keywords:** cash waqf, nazhir, moneyCorresponding Author: Siska Lis Sulistiani; email: [siska.sulistiani@unisba.ac.id](mailto:siska.sulistiani@unisba.ac.id)**Published** 30 October 2023

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## 1. INTRODUCTION

Following the advent of digital technology, which has had far-reaching effects on human life all over the globe, the industrial revolution has reached its peak. All activity processes are being driven toward automation by the fourth generation of the industrial revolution.[1] Era 4.0 or known as industry 4.0 was born from the fourth industrial revolution. The term Industry 4.0 itself was officially born in Germany, precisely when the Hannover Fair was held in 2011. In the European Parliamentary Research Service in Daveis (2015) quoted by Hoedi Prasetyo, this condition was caused by the rapid development of the use of digital technology in various fields[2].

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In the 4.0 era, advances in digital technology should be able to be harmonized in optimizing the development of Islamic philanthropy, especially cash waqf. The development of the waqf in terms of collection and management. The term cash waqf used in this study is a formal legal term contained in Law No. 41 of 2004, while the term cash waqf is also known in the community as the name used in Bangladesh and other Islamic countries as cash waqf.

Although waqf has been practiced for quite a long time and plays an important role as an Islamic public finance institution with a high potential income for the state and ummah, however in reality waqf has not been carried out optimally and functioned optimally even already have legal guarantee through a the enactment of the Waqf Law in 2004.[3] According to Budiman, as quoted by Rozalinda, several causes that make waqf ineffective include human resources, especially on the management side (nazhir), and another cause is the weak accountability of the waqf institution. Therefore, in order to maintain and preserve the benefits of waqf property, the existence of nazhir waqf is needed and even occupies a central role, because on the shoulders of nazhir it is the responsibility and obligation to maintain, maintain and develop waqf assets, and distribute the results to mauquf alaih[4].

To support the collection and management of cash waqf in Indonesia, the Indonesian Waqf Agency (BWI) together with the Indonesian Ministry of Religion and Bank Indonesia after Law no. 41 of 2004 concerning Waqf and Government Regulation no. 42 of 2006 concerning its implementation is to give permission to Islamic banks in Indonesia to become Islamic Financial Institutions Recipient of Cash Waqf (LKS-PWU) as a legal institution to receive cash waqf.

Until 2022, the Minister of Religion has designated 29 Islamic financial institutions as recipients of cash waqf deposits, called LKS-PWU.

Meanwhile, for cash waqf nazhir, as of January 2019 there are 201 cash waqf management institutions or cash waqf nazhir that have been registered with the Indonesian Waqf Board, these institutions are in the form of foundations, organizations, government institutions, zakat management institutions, and Baitul Maal wat Tamwil[5].

Of the 201 cash waqf nazhir that have been registered with the Indonesian Waqf Board, there is no adequate data to determine how much total waqf funds have been collected and how much waqf funds have been distributed from the total cash waqf nazhir[6].

From this, it is necessary to review the management of cash waqf in era 4.0 in the reconstruction of the regulation of money waqf in Indonesia, so that this study aims to analyze the related law No. 41 of 2004 concerning waqf, especially the rules

related to waqf management institutions that have the right to collect and managing cash waqf (nadhzir cash waqf) in Indonesia in the context of era 4.0 which emphasizes Islamic financial institutions and advances in digital technology. The method used is a qualitative research method with a normative juridical approach with data collection techniques from literature, interviews and documentation, then analyzed through analytical descriptive.

## 2. RESULTS AND DISCUSSION

### 2.1. The Role of Nadzir in Cash Waqf

In Article 11 of Law No. 41 of 2004 concerning Waqf it is stated that Nazhir is in charge of administering waqf assets, managing and developing waqf assets in accordance with their purpose, function and designation, supervising and protecting waqf assets, and reporting on the implementation of tasks to the Waqf Board. Indonesia. This is in accordance with BWI Regulation No. 4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets. The management and development of waqf property is carried out by Nazhir, namely the party who receives waqf property from the wakif to be managed and developed according to its purpose.

For the management and development of waqf property, it must be in accordance with its purpose, function and designation. In managing waqf assets, Nazhir can cooperate with other parties in an effort to optimize the management of the cash waqf. Nazhir is rewarded with a maximum net profit of 10 percent for the management and development of waqf assets.

Meanwhile, the management and development of cash waqf can only be done through investment in Islamic financial products or instruments issued by Islamic Financial Institutions (LKS) which are legal entities in Indonesia based on Article 8 Paragraph 2 PP concerning Waqf whose integrity is guaranteed by the Deposit Insurance Corporation in accordance with with PP Waqf Article 8 Paragraph 4 or Sharia Insurance Institutions in PP Waqf Article 8 Paragraph 5 with these rules the management and development of cash waqf in Islamic banks that have been guaranteed by a deposit guarantee institution. The management and development of cash waqf can also be carried out in the form of investments outside the products of Islamic financial institutions with the approval of the Indonesian Waqf Board.

Based on Law No. 41 of 2004, to receive cash waqf, waqf management institutions need to cooperate with a sharia financial institution appointed by the minister of religion

as a sharia financial institution receiving cash waqf (LKS-PWU). Cash waqf funds received by LKS-PWU are only allowed in rupiah currency. Thus, if there is a waqif who is waqf in foreign currency, the funds to be donated must first be converted into rupiah currency.

According to the applicable regulations, waqf who will be waqf money in LKS-PWU are required to fill out a statement of will form which functions as a waqf pledge deed (AIW). Furthermore, LKS-PWU will issue a cash waqf certificate which will be submitted to the wakif and nadzhir as evidence of the delivery of the waqf property. LKS-PWU on behalf of Nadzhir will register the waqf property in the form of money to the minister no later than 7 days after the issuance of the cash waqf certificate.

These waqf funds can then be managed absolutely (Nadzhir is free to manage them and/or are free to determine the beneficiaries of the waqf) or limited (wakif provides requirements on the procedures for managing and receiving the waqf benefits), if the management/investment of the cash waqf generates a profit, then nadzhir is obtained. take a maximum reward of 10% of the profits earned[7].

Regarding rewards for waqf managers, the waqf law stipulates 10% while in the hadith it is not stated specifically how many percent of the rights of managers are, the most important thing is not to make waqf assets their own. As the following hadith:

From Ibn Age r.a. (reported) that 'Umar Ibn al-Khattab acquired a plot of land in Khaibar, so he came to the Prophet (S) to ask for his instructions regarding the land. He said: O Messenger of Allah, I have obtained a plot of land in Khaibar which so far I have never obtained a treasure more valuable than me. What are your instructions regarding the treasure? The Messenger of Allah said: If you want, you can withhold the substance (institutionalize the object) and give charity. [Ibn Umar further] reported: So Umar gave the land in charity on the condition that it may not be sold, donated or inherited. Ibn Umar said: Umar gave it to the poor, relatives, pawns, sabilillah, ibn sabil and guests. And it is not forbidden for people who control the waqf land (take care) to eat from the results in a good (proper) way or eat without intending to accumulate wealth. [Narrated by Bukhari].

According to Hasim, the majority of nazhir cash waqf are only a few who manage cash waqf in accordance with existing regulations and laws. Nazhirs prefer to run a more practical "waqf through money" program, namely waqif waqf a sum of money to buy waqf assets by nazhir[8].

In addition, another example of the value of waqf managed funds at Harvard University in 2016 amounted to 35.6 billion dollars or Rp. 487 trillion. If the investment return is 10%, then the funds that can be obtained are IDR 48.7 trillion. This large amount of funds certainly requires the management of a competent and professional waqf

manager, so that they can provide maximum results and additional funds. Therefore, it is not surprising that there are researchers who equate endowments or waqf with the characteristics of other financial institutions, such as pension funds. In addition, the management of waqf funds also requires nadzhir who understands investment, especially the problem of risk and its allocation[9]

Based on the laws and regulations related to waqf, it does not require nazhir in general to have expertise in the investment sector. However, if referring to the similarity of waqf characteristics with pension fund institutions, then the investment manager in the pension fund program must at least be certified as an investment manager representative (WMI) and have several years of experience. This should also apply to nazhir waqf who must be able to manage waqf funds to be productive. In addition, investment managers must also have certification from the ministry of finance, which is currently handled by the financial services authority (OJK). The same can be applied to nadzhir waqf. The professionalism of waqf management institutions towards waqf assets and their use is a medium for raising public awareness of the importance of productive waqf, in this case cash waqf. Absolute management effectiveness is carried out by waqf management institutions. According to MA Mannan, one indicator of the effectiveness of productive waqf is income redistribution. The expenditure of funds obtained from the results of waqf management plays an important role in any vertical redistribution of income. The expenditure of waqf funds must be coordinated so that the effect of income redistribution is in favor of the poor, namely by providing important services and infrastructure for the poor, such as educational facilities[10].

Research conducted by Kuran on waqf among Muslims states that waqf has emerged as a trustworthy means of commitment to provide security for property owners as a balance of social services. This study shows that waqf has long served as an important instrument to provide public goods in a non-centralized way. In principle, the waqf manager (Nadzir) must comply with the requirements outlined by the waqf provider (Wakif). In practice, the purpose or direction of waqif often has to be adjusted to various factors that develop in society[11]. Therefore, the urgency of enforcing waqf law must be fair and with legal certainty giving birth to legal protection for waqf assets, wakif and nadzhir itself.

## 2.2. Legal reconstruction of the role of LKS-PWU in the context of cash waqf management in Indonesia

The legal position is to serve the purpose of the state by administering justice and order (legal certainty). Subekti said that the law serves the purpose of the state, which in essence is to bring prosperity and happiness to its people. Law cannot be separated from people's lives, law exists because there are people and people need law to direct and regulate people's lives in a better direction[12].

Waqf law exists because it has existed in the life of the Islamic community in Indonesia for a long time, and has become a community tradition. Indonesian law functions to direct and regulate the practice of cash waqf that has existed so far, to be able to bring benefits to the community in a sustainable manner[12].

Reconstruction of regulations for the management of cash waqf in Indonesia, which states that BWI is a partner of LKS-PWU in the collection, development and management of cash waqf in Indonesia. Nadzhir cash waqf has a very important position and function in the context of realizing social justice in the field of economic welfare, as well as fulfilling the spiritual and material needs of the community. The distribution of the results of the management and development of cash waqf assets for the purpose of cash waqf (mauquf alaih) for the benefit of the community that is sustainable can be realized as well as in order to maintain the asset value of money. In relation to the politics of development of Indonesian Islamic economic law in the law of cash waqf, management and development of waqf assets money using a sharia guarantee institution. The appointed sharia guarantee institution is a sharia financial institution (sharia bank) appointed by the minister of religion with the approval of Bank Indonesia and BWI.

Even though the minister has the authority to appoint Islamic financial institutions as recipients of waqf, not all LKS can become recipients of Islamic money waqf. Law No. 41 of 2004 provides certain conditions for LKS that can receive public money waqf funds. These requirements include:

- a. LKS must submit a written application to the Minister,
- b. attaching articles of association and ratification as a legal entity,
- c. has an operational office in the territory of the Republic of Indonesia,
- d. operates in the field of Islamic finance and
- e. has a deposit function (wadi'ah).

The determination of LKS-PWU as a business legal entity that manages and develops cash waqf in Indonesian waqf law by the state is the legal politics of Indonesian cash

waqf. In practice, many religious institutions that accept, manage and develop cash waqf do not cooperate with LKS-PWU. Legal politics is needed as a legal development tool, so that the Indonesian cash waqf legal system can become a national law. In the Islamic legal system and customary law, the legal principles are included, while western law is included in the legal system. The Islamic legal system and the customary law system after being ratified by the state became national law (Indonesian law). National law is actually nothing but a legal system that is sourced from the nation's cultural values that have been around for a long time and are developing now[13].

Currently, an effective strategy is needed to develop the potential of cash waqf, given the huge potential but the realization of the collection is still not optimal. On the other hand, Islamic banking in Indonesia requires a breakthrough that is able to increase market share and at the same time provide benefits for the people in line with maqashid sharia. According to the Sharia Banking Law No. 2 of 2008 in Chapter II Article 4 paragraph 3 it is stated that Islamic Banks and Sharia Business Units (UUS) can collect social funds originating from cash waqf and distribute them to waqf managers (nazhir) in accordance with the will of the waqf giver (wakif). With this law, it can be said that currently Islamic banking only acts as a collector of cash waqf funds and then submits it to several nazhir to be managed, and cannot manage waqf funds. In the implementing Government Regulation Number 42 of 2006 concerning the Implementation of Law no. 41 of 2004 concerning Waqf Article 25 points c and d emphasizes the position of Islamic financial institutions not as nazhir cash waqf but only intermediaries and the obligation to place these waqf funds in a wadi'ah account in the name of nazhir.

The results of the 2019 sinta research show that the alternative for choosing a cash waqf management strategy through competent and professional Nazhir is determined by five criteria including Accountability, Product, Human Resources, Regulation, and Outreach. In analyzing the potential development of cash waqf through sharia banking, the five criteria have an important role in accordance with their respective functions to be able to produce a strategy for managing and developing cash waqf through competent and professional Nazhir. In addition, the results of ANP's recommendations point to Islamic banks as the most competent institutions as money waqf managers. So that several things that need to be paid attention to by Islamic Banks include: Nazhir cash waqf that can optimize the management and development of cash waqf is one that prioritizes aspects of professionalism, runs waqf programs by continuing to educate the public, has a clear strategy, adheres to sharia principles, and utilizes IT Network[6].

In this case, Islamic Banks have the role and position and full authority to become Nazhir starting from the recipient, manager, and distributor of waqf funds. So that in the



organizational structure of Islamic Banks, separate sections/units can be formed that act as Nazhir cash waqf with the following inputs: Separate management of Nazhir's activities with the Bank, such as Baitul Maal or as appropriate DPLK (Financial Institution Pension Fund); The investment decision committee must have adequate competence, not only knowledge about sharia economics and investing in waqf assets but also the willingness to improve other competencies that support waqf management for the better because waqf investment does not only look at the financial feasibility aspect but the most important thing is *maslahah* and benefits. *maqashid sharia*; Islamic banks must think about the readiness of waqf products that will be informed to the public, including systems and procedures so that they can run effectively and efficiently; As nazhir cash waqf, Islamic banks must have a policy regarding the distribution of profits (generated from the waqf project) to *mauquf alaih*, where the policy must accommodate the designation that has been explained by the wakif when the wakif makes the waqf pledge[14].

According to Hasbullah, the design of cash waqf must be changed by making sharia financial institutions a direct nazhir by tightening the requirements for nazhir cash waqf. LKS must be socially integrative business oriented[15]. The results of research by Haura et al. (2016) regarding the analysis of money management in Islamic Financial Services Cooperatives shows that the priority of the internal aspect is accountability, and the priority of the external aspect is regulation[16].

The waqf fund management system, namely with a pattern (implementation standard) by giving the role of Islamic banking, namely as follows[17]:

a) Islamic Bank as Nadzir Recipient, Distributor and Manager of waqf funds. The operational outlines of the Cash Waqf Certificate are as follows:

(1) cash waqf is accepted as a contribution according to sharia. The bank manages on behalf of the wakif,

(2) waqf is carried out with no time limit, the account must be open with the name determined by the wakif,

(3) the quality of the waqf remains intact and only the profit will be spent for the purposes determined by the wakif and what is not spent will be added to the profit,

(4) For cash waqf deposits, a receipt must be given and after the amount of waqf has been determined, a waqf certificate is issued.

b) Sharia Bank as Custody (custodian), based on the Decree of the Director. Bl. No. 32/34/KEP/DIR concerning Commercial Banks Based on Sharia Principles Article 28 custodial activities are as follows:



(1) transferring money for own interest and or customers based on wakalah principle (letter e),

(2) carry out safekeeping activities including administration for the benefit of other parties based on a contract with the wakalah principle (letter e). The results of this management will be distributed by BWI to mauquf 'alaih.

c) Islamic banks as cashiers for Indonesian waqf bodies, based on sharia principles such as Current Accounts, Wadiah, Wadiah Savings or Mudharabah Savings. Nadzir institutions can cooperate with investment managers in the form of an investment investment system as well as waqf

### 3. CONCLUSION

The results of this study indicate that the advancement and development of technology in the 4.0 era, especially in the digitalization of waqf programs, makes the collection and management of cash waqf especially dependent on technological advances owned by the institution, massive commitment and socialization to the community regarding cash waqf, as well as sharia financial institutions that work together. with nadzhir the recipient of cash waqf is considered to have technological and SDI tools that can support the management and collection of cash waqf in Indonesia, in addition to credibility in terms of financial accountability as well as guarantor and supervisory institutions apart from OJK, BWI and DPS.

### References

- [1] Arwani A. Sharia accounting on Indonesian Financial Accounting Standard on zakat and waqf take on industrial revolution 4.0 and society era 5.0. *J Islam Account Financ Res.* 2020;2(2):1–30.
- [2] Prasetyo H, Sutopo W. "INDUSTRI 4.0: TELAAH KLASIFIKASI ASPEK DAN ARAH PERKEMBANGAN RISET," *J@ti Undip J. Tek. Ind.*, 2018. <https://doi.org/10.14710/jati.13.1.17-26>
- [3] Sulistiani, Hayatudin A, Eprianti N. "Analysis of Waqf land legalization." 2019. <https://doi.org/10.2991/sores-18.2019.51>
- [4] Bayinah AN. "Re-designing governance of Waqf in Indonesia: Can it rely on Islamic Banking?" 2014.
- [5] Siswanto D, Rosdiana H, Fathurahman H. "Reconstructing accountability of the cash waqf (endowment) institution in Indonesia." *Manag Financ.* 2018.

<https://doi.org/10.1108/MF-05-2017-0188>

- [6] Wulandari S, Effendi J, Saptono IT. "Pemilihan Nazhir Dalam Optimalisasi Pengelolaan Wakaf Uang." *J Apl Bisnis dan Manaj.* 2019. <https://doi.org/10.17358/jabm.5.2.295>
- [7] Ascarya. "The real determinants of financial crisis and how to resolve it in Islamic economics perspective". *Int J Econ Res.* 2017.
- [8] Hasim K, Lubis D, Ali KM. Analisis Faktor-Faktor yang Memengaruhi Penghimpunan Wakaf Uang di Indonesia (Pendekatan Analytical Network Process). *Al-Muzara'ah*; 2016. <https://doi.org/10.29244/jam.4.2.127-141>
- [9] Leibowitz ML, Bova A, Hammond PB. The endowment model of investing: Return, Risk, and Diversification; 2011. <https://doi.org/10.1002/9781118266533>
- [10] M. S.H. "KEBIJAKAN PERWAKAFAN DI INDONESIA (KAJIAN SEJARAH DAN PERUNDANG-UNDANGAN)." *Yuriska J Ilm Huk.* 2017. <https://doi.org/10.24903/yrs.v3i1.189>
- [11] Kuran T. The provision of public goods under Islamic law: Origins, impact, and limitations of the waqf system. *Law Soc Rev.* 2001;35(4):841–897.
- [12] Kencana U, Huda M, Maseleno A. Waqf administration in historical perspective: Evidence from Indonesia. *Test Eng. Manag*; 2019.
- [13] Urif UZ, Fajria MI, Rahmi U. Zakat and Wakaf (endowments) role in Muslims economic development of Islamic Economic Perspective. *ISLAMIKA*; 2019. <https://doi.org/10.36088/islamika.v1i2.299>.
- [14] Bank Indonesia, Wakaf: Pengaturan dan Tata Kelola yang Efektif. Jakarta: Departemen Ekonomi dan Keuangan Syariah, 2016.
- [15] Hilmi H. "Dinamika pengelolaan wakaf uang: studi sosio-legal perilaku pengelolaan wakaf uang pasca pemberlakuan UU No. 41 tahun 2004 tentang wakaf." *Ijtihad J Wacana Huk Islam dan Kemanus.* 2012. <https://doi.org/10.18326/ijtihad.v12i2.123-143>.
- [16] Haura A, Baga LM, Tanjung H. Analisis Pengelolaan Wakaf Uang pada Koperasi Jasa Keuangan Syariah (Pendekatan Analytical Network Process). *Al-Muzara'ah*; 2015. <https://doi.org/10.29244/jam.3.2.89-105>
- [17] Mu'is A, Nur Hamidah B. PENERAPAN WAKAF UANG SECARA PROFESIONAL MENURUT HUKUM ISLAM (Application of Cash Waqf in Good Governance). *Qawānīn J Econ Syaria Law*; 2020. <https://doi.org/10.30762/q.v4i1.2058>