

Research Article

The Function of Sharia Banks in Optimizing Waqf as the Integration of the Commercial Economy and Social Economy to Improve Public Welfare

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The pillars of Islamic Economics and Finance cover commercial finance and social finance, such as *zakat* and *waqf*. Based on data from BAZNAS in 2020, *zawaf* (*zakat*, *infaq*, *alms*, and *waqf*) funds among Muslims in Indonesia were Rp12.5 trillion, while its potential reached Rp327.6 trillion. The potential for cash *waqf* is Rp80 trillion every year. Meanwhile, based on data from the Ministry of Religion in 2018, the realization of cash *waqf* recorded from 2011 to 2018 was an average Rp31.9 billion each year. This means that cash *waqf* still has enormous potential to be developed. Therefore, the study was conducted to (1) explain the regulation of bank functions to achieve the goal of increasing people's welfare and (2) find alternative efforts to improve bank functions in improving people's welfare through the integration of the commercial and social economy. The method used was normative juridical approach with descriptive and prescriptive analysis, while the type of data used was secondary data obtained through a literature review. This research provided an in-depth study of the function of Islamic banks in optimizing the potential of *waqf* through the integration of the commercial economy and social economy in an effort to improve community welfare. The data were then analyzed using qualitative juridical analysis through legal interpretation. The results showed that (1) based on Law Number 21 Year 2008, the function of Sharia banks is as a financial intermediary, which collects funds from the public in the form of deposits, namely savings, time deposits, and demand deposits. Sharia banks cannot accept deposits in the form of cash *waqf*. (2) As an effort to integrate the commercial and social economy to improve people's welfare, it is better to amend the Sharia Banking Law that allows Sharia banks to accept deposits in the form of cash *waqf*, so that the proceeds can be channeled into productive activities.

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1. INTRODUCTION

The banking industry has an important role as a driving force for the economy of a country, including Indonesia. As a country with the majority of the population embracing Islam, Indonesia also has financial institutions that carry out their activities guided by Islamic principles such as fairness, equity, togetherness, and benefit, which are manifested through the development of the Islamic banking industry as stipulated in Law Number 21 Year 2008.[1]

In addition to carrying out its role as a support for the national economic system, sharia banks also pay attention to community-based social activities, such as *zakat* and *waqf*. [2] Based on data from BAZNAS in 2020, the potential for *zakat*, *infaq*, alms and *waqf* (ziswaf) funds among Muslims in Indonesia was Rp12.5 trillion, while its potential reached Rp327.6 trillion. The potential for cash waqf is Rp80 trillion every year. Meanwhile, based on data from the Ministry of Religion in 2018, the realization of cash waqf recorded from 2011 to 2018 was an average Rp31.9 billion each year. This means that cash waqf still has enormous potential to be developed.

Waqf is the highest Islamic philanthropy in the form of Endowment Fund. [3] Besides the dimension of worship, *waqf* is very closely related to legal, social, and especially economic aspects. The economic dimension is very essential because fun from *waqf* can produce assets with high economic value whose results can be utilized for social welfare (poverty alleviation, job creation, and construction of public facilities). Therefore, *waqf* is one of the economic instruments that has the potential to have a positive impact towards social life, equitable development, and economic growth. This is strengthened by the passing of Law Number 41 of 2004 concerning *Waqf*.

The enactment of the aforementioned law is the first step towards a new era of *waqf* in Indonesia because the arrangement is more comprehensive, where the scope of objects that can be donated is not only limited to *waqf* of immovable objects in the form of land and buildings, but also is increasingly diverse, namely in the form of money, precious metals, securities, vehicles, intellectual property rights, rental rights, and other movable objects including the use of the *waqf* objects. [4]

In Indonesia, cash *waqf* was established through the MUI Fatwa, on April 26, 2002, in the MUI Fatwa Commission meeting considering the Letter from the Director of *Zakat* and *Waqf* Development of the Indonesian Ministry of Religion Number Dt. 1. III/5/BA. 03. 2/2772/2002 with the following stipulation. (1) Cash *waqf* is made by a person or legal entity in the form of cash. (2) Included in the money are securities. 3) Cash *waqf*

may only be channeled and used for things that are permitted by *shar'i*. (4) The principal value of money must be guaranteed to be preserved, it cannot be sold, given away, or inherited.

Nevertheless, in its implementation, there are pros and cons related to cash *waqf* in connection with the existence of pillars which more specifically regulates it compared to immovable property *waqf*, including cash *waqf* must be eternal and remain in existence and *waqf* must be done in cash. The purpose of giving *waqf* must be clear, the use of *waqf* must be truly carried out and not be cancelled.

Additionally, there are three big challenges in developing *waqf*. First, it is difficult to provide the public with an understanding of the law of productive *waqf* (cash *waqf*), due to the belief that *waqf* must be a fixed object and cannot change. Second, the management of *waqf* by the *waqf nazhir* has not been optimal, resulting in *waqf* assets being neglected or even lost altogether. Last, the lack of professionalism of the existing *waqf nazhir* has resulted in the emergence of several new cases which actually slow down *waqf* development efforts, such as some *nazhirs* who lack trustworthiness, the emergence of *waqf* disputes, and various other problems.[5]

Against the background of these problems, it is interesting to study the function of sharia banks in optimizing *waqf* as an integration of the commercial economy and social economy to improve community welfare.

2. OBJECTIVES

Based on the background above, this research aims to understand and study:

Regulation of bank functions to achieve the goal of improving community welfare, and

Alternative efforts to improve the function of banks in improving community welfare through the integration of the commercial economy and the social economy.

3. METHOD

This research was conducted using a normative juridical approach starting from secondary data reinforced with primary data.[6]

This research specification used analytical descriptive and analytical prescriptive methods. The former is needed to describe, explain, and elaborate research objects

completely, clearly, and objectively which are related to the problem. Meanwhile, the latter is needed because the results of this research are expected to offer a solution to the problem studied, namely the function of sharia banks in optimizing *waqf* as an integration of the commercial economy and social economy to improve community welfare.

In accordance with the normative juridical research approach, the data collection technique was based on secondary data obtained from library research materials, divided into three groups, namely primary, secondary, and tertiary legal materials.[7]

The data analysis technique was descriptive qualitative, both for primary and secondary data. This description included the content and structure of positive law to determine the content or meaning of the rules that would be used as a reference in resolving legal problems as the research object through comparison and legal construction.

3.1. Thinking Framework

3.1.1. State of The Art

The previous research related to this topic includes:

First, research conducted by Neneng Nurhasanah and Neni Sri Imaniyati in 2017 entitled *Micro Financing Regulation in Sharia Banks Connected with the Bank Function as Financial Intermediary Institution* discovered that the role of banking institutions has not been maximized in overcoming the gaps that are visible from at least microfinance products or financial institution financing for MSMEs is different from Sharia Cooperatives and BBMT which have paid more attention to providing financing to MSMEs.

Second, research conducted by Ascarya Rafinda in 2016 entitled *Integration of Islamic Commercial and Social Finance to Improve Financial System Stability and Socio-Economic Development* discovered that the little difference since it only examined integration, did not carry out a study of function optimization, while the novelty that researchers would carry out was to find function optimization by studying models and regulations related to the integration of sharia financial institutions.

Third, research conducted by Gusva Havita, Kartika Arum Sayekti, and Silvia Ranny Wafiroh, entitled *Waqf Bank Model in Indonesia in its Potential to Develop Cash Waqf and Overcome Poverty* discovered that the novelty of this research is that it provided an in-depth study of the function of Islamic banks in optimizing the potential of waqf

through the integration of the commercial economy and social economy in an effort to improve community welfare.

3.1.2. Theoretical Framework

Since the ratification and promulgation of Law Number 21 Year 2008 concerning Sharia Banking on July 16, 2008, the existence of sharia banking in Indonesia has a strong formal juridical foundation so that institutions, business activities and sharia banking operations in Indonesia are required to implement sharia principles.[8]

Sharia Banks are banks that carry out their business activities based on Sharia Principles. There are several types of sharia bank, namely Sharia Commercial Banks and Rural Sharia Banks. Besides carrying out its function in collecting and distributing public funds, sharia banks can also carry out a social function, namely receiving funds originating from *zakat*, *infaq*, alms, grants, or other social funds originating from cash *waqf* and distributing them to the *waqf* manager (*nazhir*) in accordance with the wishes of the *waqf* giver (*waif*).

Based on the language, *waqf* comes from the word *waqafayaqifu-waqfan*, which means to stop or hold. Based on the term (*fiqh*), *waqf* is holding the principal property of the *waqf* and channeling the benefits or results.[9] As a religious institution that has economic potential and benefits in promoting public welfare, the government issued Law Number 41 Year 2004 concerning *Waqf*.

According to Article 1 point 1 of Law Number 41 Year 2004, as further explained in Government Regulation Number 42 Year 2006 concerning the Implementation of *Waqf*, *waqf* is defined as the legal act of a wakif to separate and/or hand over part of his property to be used forever or for a certain period of time according to his interests for the purposes of worship and/or general welfare according to sharia.

Waqf assets not only consist of immovable objects, but also movable objects, one of which is cash *waqf* and *waqf al-nuqud*. [10]

The MUI fatwa stipulates: 1) Cash *waqf* (cash *waqf/waqf al-nuqud*) is a *waqf* made by a person, group of people, institution or legal entity in the form of cash; 2) Included in the meaning of money are securities; 3) Cash *waqf* may only be channeled and used for things that are permitted by *shar'i* (مباح مصرف); and (4) The principal value of cash *waqf* must be guaranteed to be preserved, it cannot be sold, given away, and/or inherited.[3]

Cash *waqf* basically encourages sharia banks to become professional *nazhirs*. The bank as the recipient of the *waqf* assets can invest the money in halal business sectors that generate benefits. The bank itself as *nazhir* is entitled to a maximum reward of 10% of the profits earned. *Waqf* funds in the form of money can be invested in financial and real assets. Investment in financial assets is carried out in the capital market, for example in the form of shares, bonds, warrants, and options, while investment in real assets can take the form of the purchase of productive assets, the establishment of factories, the opening of mines and plantations.[11]

Muhammad Syafi'i Antonio classifies at least three periods of *waqf* development in Indonesia. First is the traditional period in which *waqf* was still positioned as a pure teaching that had the character of *mahāhah* (principal) worship, so that most *waqf* assets were only intended for physical development purposes as has been explained. Second is the semi-professional period where *waqf* management was generally the same as the traditional period, but during this period a pattern of productive *waqf* empowerment began to be developed, although it was not optimal, such as the construction of mosques in strategic areas with the addition of meeting hall facilities for rent and the proceeds were allocated for the benefit of mosque management and administration. Third is the professional period in which the empowerment of *waqf* assets is productively developed without reducing their original value.[12]

4. RESULTS AND DISCUSSION

4.1. Regulation of Bank Functions to Achieve the Goal of Improving Public Welfare

The preamble to the 1945 Constitution mandates state administrators to protect the entire nation and land of Indonesia and improve the public welfare. This shows that the Indonesian state, apart from being a legal state (*rechtsstaat*) as intended in Article 1 paragraph (3) of the 1945 Constitution, the third amendment, is also based on a welfare state. Regarding the welfare state, Bagir Manan said that the state or government is not only a guardian of security or public order, but also bears the main responsibility for realizing social justice, general welfare, and the greatest prosperity of the people to achieve the country goals through national development.[13]

The concept of a welfare state is then used as the basis for the position and function of the government (*bestuurfuction*) to achieve the creation of economic democracy-based just and prosperous society based on, which is based on the values of justice, togetherness, equality, and benefit in accordance with sharia principles.

By optimizing the support of Indonesia's Muslim population, according to *Globalreligiousfuture* data in 2020 it was estimated to reach 229.62 million people. One form of exploring the potential and manifestation of community contribution in the national economy is the development of an economic system based on Islamic values (sharia) by elevating its principles to in the National Legal System. Therefore, on July 16, 2008, President Susilo Bambang Yudhoyono ratified Law of the Republic of Indonesia Number 21 Year 2008 concerning Sharia Banking.[14]

Sharia banking consists of two words, namely (a) sharia and (b) bank. The word *sharia* in the sharia banking version in Indonesia is the rules of agreement conducted by the bank and other parties for the storage of funds and/or financing of business activities and other activities in accordance with Islamic law.[15] Meanwhile, the word *bank* means a financial institution that functions as a financial intermediary between two parties, namely the party who has excess funds and the party who lacks funds.

Sharia Bank is a business entity carrying out its intermediation function, both collecting and distributing funds, providing compensation based on sharia principles. Then, according to Article 1 paragraph (12) of Law Number 21 Year 2008 concerning Sharia Banking. What is meant by sharia principles are the principles of Islamic law in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.[16]

In contrast to conventional banks which are established with the aim of obtaining maximum material profits, sharia banks are established with the aim of providing material and spiritual prosperity, which reflects values based on the foundations of faith, morals, and sharia.

Sharia banks is usually called Islamic banking or interest free banking, which is a banking system that in operational implementation does not use a system of interest (*riba*), speculation (*maysir*), and uncertainty or ambiguity (*gharar*), which can be described as follows: [17], [18]

Maghrib Free

Maysir (speculation), in Arabic, is synonymous with the word qimar. Maysir is a transaction that depends on uncertain circumstances or is a matter of chance and

contains elements of gambling, betting, or risky games which are prohibited in Islamic law (haram).

Gharar is all economic transactions involving elements of obscurity, fraud, or crime.

Haram, in every economic activity everyone, is expected to avoid everything that is forbidden, both substances and methods in the fields of production, distribution, or consumption.

Riba, etymologically, means addition or excess. Riba is a false and illegal increase in income in carrying out transactions, both in terms of quantity and quality, which is charged to one party only, while the profit is guaranteed to the other party. This is tyranny (zulm) contained in riba which is prohibited by Islam.[19]

The principle of trust and prudence in managing sharia banking activities is a juridical consequence for financial institutions that attract funds from the public. The primary management principle of a financial institution, especially banking, is the principle of trust (fiduciary relations).

Based on the principle of profit sharing, the distribution of business results is carried out by both parties between shari banks as shahibul mal (owners of funds) and customers as mudharib (fund managers). In general, the principle of profit sharing is agreed upon by scholars in Islamic banking, there are two main contracts, namely mudharaba and musyaraka.

Mudharaba is a contract of two or more parties to conduct business cooperation. One party will place 100% of the capital called *shahibul maal*, and the other party as business manager is called *mudharib*. The profit sharing from the cooperated business is calculated in accordance with the agreed ratio between the cooperating parties.[20]

Musyaraka is the origin of the word *syirka* which means mixing.[21] According to *fiqh*, *musyaraka* means an agreement between people who are united in terms of capital and profits. *Musyaraka* is a business cooperation contract between two or more parties in running a business, where each party includes their capital in accordance with the agreement, and profit sharing for the joint business is given in accordance with the contribution of funds or according to a mutual agreement.[20]

Together with conventional commercial banks, sharia banks as financial institutions based on Islamic principles have contributed to the public welfare through their following roles and functions:

Transmission role, to facilitate the exchange of goods and services by using money and credit instruments as means of payment.

Intermediation role as intermediary financial institutions, namely by collecting funds from the household or community sectors that have excess funds in the form of savings and deposits and channeling them to those who need these funds, especially the industrial sector in the form of loans to be used in production and investment activities. Therefore, it is expected to increase productivity and profits, to help increase people's income and wealth through economic activities in the real sector in line with increasing profits they earn and help increase people's output in line with increasing productivity they strive for. As an intermediary institution, banks can also use the funds collected to buy securities and gain profits from the investment.

Providing legal guarantees and security of public money entrusted to the bank, for example avoiding the risk of loss, guarantees in the form of the bank's ability to pay depositors who will withdraw their savings, including a guarantee that the bank will return the public funds deposited at maturity.[22]

In fact, the principle of profit sharing as a characteristic of sharia banking operations has provided a way out of the use of interest which is *riba* in the banking system.[15]

4.2. Alternative Efforts to Improve Bank Functions in Enhancing Public Welfare through Integration of Commercial Economy and Social Economy

With the issuance of Law Number 7 Year 1992, as amended through Law Number 10 Year 1998 concerning banking, it becomes the legal basis for the operation of sharia banks in Indonesia and marks the start of the dual banking system era.[23] Dual Banking System is a bank that can carry out two operational activities simultaneously, namely sharia-based and conventional-based, so that it can meet consumer needs for products in accordance with their religious beliefs[24], [25]

The activities in the conventional banking system are at Commercial Banks, Rural Banks, and Foreign Banks. Sharia banking is also not much different from conventional banking, namely Sharia Commercial Banks, Sharia Financing Banks, Sharia Business Units in conventional banks, and Sharia Business Units of Foreign Banks.

In carrying out its activities, sharia banks do not only carry out commercial financial functions, but also social financial functions. There are some activities of Islamic banks in carrying out commercial financial functions. The first activities consist of raising funds in the form of: (a) Sharia Current Accounts; (b) Sharia Savings; and (c) Sharia Deposits. The second activities consist of distributing fund including (a) *Mudharaba*

Contract-based Financing; (b) *Musyaraka* Contract-based Financing; (c) *Murabaha* Contract-based Financing; (d) Salam Contract-based Financing; (e) *Istishna'* Contract-based Financing; (f) *Ijarah* Contract-based Financing; (g) *Qardh* Contract-based Financing; and (h) Multiservice Financing. The third activities consist of (a) Sharia Import Letter of Credit (L/C); (b) Sharia Bank Guarantee; and (c) Foreign Currency Exchange (*Sharf*).[24]

The function of the fourth Islamic bank is to carry out the social finance function, namely receiving funds originating from zakat, infaq, alms, grants, or other social funds including collecting social funds originating from cash *waqf* and channeling them to *waqf* managers (*nazhir*) according to the will of the *waqf* giver (*wakif*). [26]

The government's strategic step in increasing *waqf* is a function of social finance, by passing Law Number 41 Year 2004 concerning *Waqf*, which is further elaborated in Government Regulation Number 42 Year 2006 concerning Implementation of Law Number 41 of 2004.

Based on the language, *waqf* is derived from the word *waqafayaqifu-waqfan*, which means to stop or hold back. According to the term (fiqh), *waqf* is holding the principal of *waqf* assets and distributing the benefits or results.[9] Article 1 number 1 Law Number 41 Year 2004 defines *waqf* as a legal act of *wakif* to separate and/or hand over some of his property to be used forever or for a certain period in accordance with his interests for the purposes of worship and/or public welfare according to sharia.[27]

Waqf assets consist of immovable and movable objects. Immovable objects include a. land rights in accordance with the provisions of applicable laws and regulations, whether registered or unregistered; b. buildings or parts of buildings standing on land as intended in letter a; c. plants and other objects related to land; d. ownership of the apartment unit is in accordance with the provisions of applicable laws and regulations; e. Other immovable objects in accordance with sharia provisions and applicable laws and regulations. Movable objects are property that cannot be used up due to consumption, including money, precious metals, securities, vehicles, intellectual property rights, rental rights, and other movable objects in accordance with sharia provisions and applicable laws and regulations.

Cash *waqf* (*waqf al-nuqud*) according to the fatwa of the Indonesian Ulema Council regarding Cash *Waqf* on May 11, 2002, is defined as *waqf* made by a person, group of people, institution, or legal entity in the form of cash which in its management, the principal value of cash *waqf* must be preserved, may not be sold, gifted and/or inherited.[9]

Based on the Ministry of Religion's *Waqf* Information System, in 2022, the *waqf* sector in Indonesia experienced significant growth. The potential of the *waqf* sector, especially cash *waqf*, was estimated to reach Rp180 trillion per year. The Indonesian *Waqf* Board noted that the acquisition of cash *waqf* reached Rp1.4 trillion in March 2022, this showed an increase from the total acquisition of cash *waqf* of Rp855 billion during the 2018-2021 period.

The large potential of *waqf* as a form of philanthropy in Islam can be carried out to enhance sustainable development and social progress in Indonesia through infrastructure development, educational programs, health services, and other social welfare efforts that can be carried out directly by the wakif himself or through *nazhir* as the party responsible for receiving *waqf* assets from the Wakif to be managed and developed according to their intended purpose.

The limitations of the Law on *Waqf*, which have not yet allowed Islamic banks to become *nazhir waqf*, have been accommodated through the ratification of Law Number 4 Year 2023 concerning Development and Strengthening of the Financial Sector. The addition of this new role is considered to further strengthen the role of Islamic banks as institutions that can play a major role in improving people's welfare. One of the models can be seen in the image below:[28]

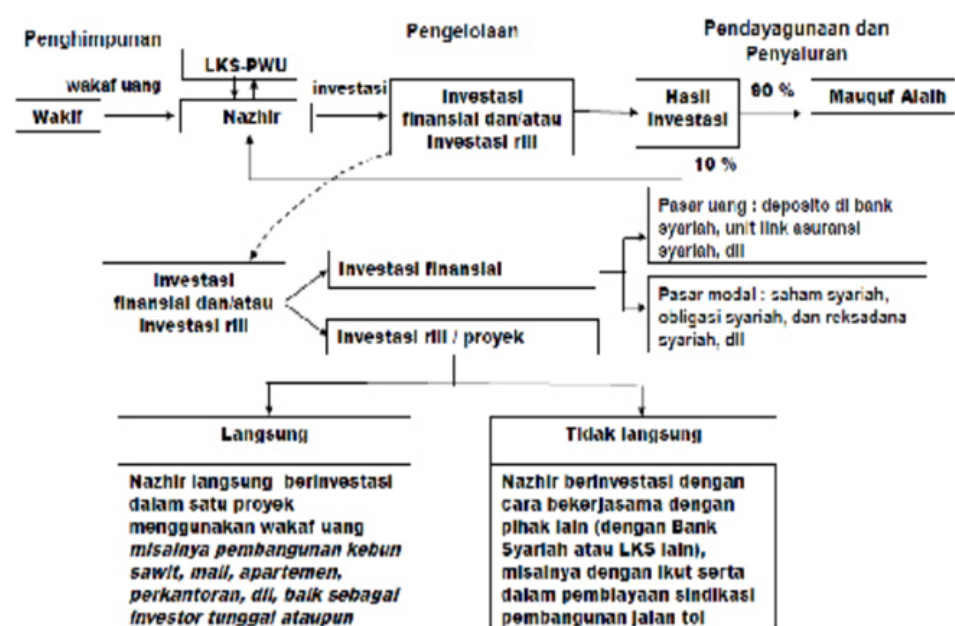


Figure 1: Cash Waqf Asset Management Model.

5. CONCLUSION

The ratification of Law of the Republic of Indonesia Number 21 Year 2008 concerning Islamic Banking provides a strong foundation for Islamic banks to contribute to improving the public welfare through its function as a financial intermediary, which collects funds from the public in the form of deposits, namely savings, time deposits, and current accounts.

The ratification of the Law of the Republic of Indonesia Number 41 Year 2004 concerning *Waqf*, which is further elaborated in Government Regulation Number 42 Year 2006 concerning the Implementation of Law Number 41 of 2004, is a form of the government's strategic step in increasing the function of banks to improve the public welfare through economic integration commercial and social economy.

To maximize the potential of cash *waqf* to improve the public welfare in Indonesia as a country with the largest Muslim population in the world can be carried out through the integration of the commercial and social economy, with the support of legislation.

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