

**THE PROBLEM OF SECURING CASH WAQF TO
ANTICIPATE THE DECLINE IN ASSET VALUE**

THESIS

Submitted in partial fulfillment of the Requirements for the Degree of Bachelor
of Law in Departement of Family Law



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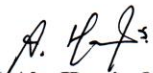
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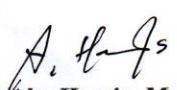
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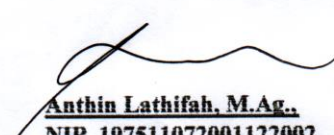
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MOTTO

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ وَلَهُ أَجْرٌ كَرِيمٌ

**Who is it that would loan Allah a goodly loan so He will multiply it for him
and he will have a noble reward**

(Qs: Al-Hadid [57] : 11)

TRANSLITERATION ARABIC

Arabic Letter	Written	Arabic Letter	Written
ا	A	ط	ṭ
ب	B	ظ	Z
ت	T	ع	‘
ث	s´	غ	G
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	z´	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	‘
ص	Ṣ	ي	Y
ض	Ḍ		

Vowel Letters :

ā = a long spelling

ī = i long spelling

ū = u long spelling

Diftong Letters:

au = أُو

ai = أَيْ

iy = إَيْ

DEDICATION

The final project is dedicated to:

My beloved parents (Mr. Indri Teguh Widodo and Mrs. Hazizah) who always support me in finishing my study, in every my way they pray, in every my fall they take care, in every my tears they amuse, in every my dream they support.

ACKNOWLEDGMENT

All praises be to almighty Allah Who always gives his blessing upon the research in her life and enabled her to accomplish this thesis entitled “ *The Problem of Securing Cash Waqf to Anticipate the Decline in Asset Value*”. Peace and salutation always be with my prophet, Muhammad Saw, The noblest creature ever. In this opportunity, the researcher extends her gratitude to:

1. Dr. H. Ahmad Arif Junaidi, M. Ag., the dean of Syari'ah and Law faculty.
2. Anthin Lathifah, M. Ag. Is the chairman of Islamic Family law Departement
3. Drs. H. Abu Hapsin, MA, Ph.D., as my adviser. Your trust on me, grows my self confidently
4. Dr Achmad Arief Budiman, M. Ag. As my adviser. Providing his valuable guidance.
5. All of my lectures of and staff of Syari'ah and Law Faculty
6. My beloved Father Indri Teguh Widodo who is never exhausted to work hard for his family, My beloved mother Hazizah who always keeps me on her prayer teaches me how to understand others, how to be sincere person, and how to keep thinking positively.
7. My beloved oldest sister Meizha Istiqomah S.Pd who always give me spirits and advice for me in every moments My beloved brother and sister Muhammad Arsyad Maulana, Agustin Mahardika, Gayuh Nastiti Wulandari who always entertain and accompany me from distance.
8. My beloved friends, Astri Fadhilah who always give me spirit and supports for 24 hours.
9. My beloved friends of KKN, Especially Refirta rachma, Himmatul Ulya and Siti Hadiyanti who always support me and accompany me every time.
10. My beloved friends of Islamic Family Law C 2015 who accompany me in every moments in the campus, keep solidarity, and friendship.

Finally, the researcher realize that this thesis is far from being prefect. Therefore, the researcher will happily accept constructive criticism in order to make it better. The researcher expect that this thesis may be helpful for all. Amin

Semarang, 22 Juli 2019
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ABSTRACT

Cash waqf is an endowment (waqf) in the form of cash money invested in profitable economic sectors with certain percentage provisions used for social services. Waqf with money still having a debate in terms of its management, this has become a concern due to its non-eternal nature. Even though, in Indonesia, there were regulations including Law No. 41 of 2004 which regulates waqf and Government Regulation No. 42 of 2006, its own vulnerability still exist because cash waqf in Indonesia must be deposited in rupiah currency and other currency endowments must also be converted into rupiah. While rupiah is very vulnerable to inflation .

Thus, there is no guarantee of purchasing power at all times in recording the waqf value by LKS-PWU. Therefore, it is necessary to provide a reserve money prepared by the waqf manager to deal with the possible decline in the cash waqf principal value. For those reasons, this research will discuss what is the urgency of securing cash waqf from depreciation of asset value and how to secure cash waqf from the depreciation.

This research used literature studies (library research) related to cash waqf security to secure cash waqf from depreciation of asset value. In this study the source of the data came from laws, government regulations and organizational regulations. The data collection techniques used were literature or manuscript studies that were analyzed using qualitative methods by examining all available data from various sources. Data reduction was done, after reading, studying, and reviewing all the sources, by summarizing the core of the materials. Subsequently abstraction was performed and finally the data interpretation.

The urgency of securing cash waqf from depreciation of asset value is because cash money is impermanent if it is utilized and it can be utilized by the requirement of securing its material form. Cash waqf security is performed by investing in accordance with sharia. Investments outside the sharia bank must be insured in sharia insurance. Nazhir's expertise in managing and developing the waqf properties must be a concern in order to achieve the purpose, function and designation of the waqf properties.

Keywords: Cash Waqf, Inflation, Investment.

CHAPTER I

INTRODUCTION

A. Background of the Study

Nowadays, there is a thought to move the wheels of economy through the addition of funds from outside the state system by developing *waqf* productively. *waqf* is a form of empowering community economic assets contained in *waqf* assets. Therefore, *waqf* assets must be managed productively in order to produce opportunities for opening profitable strategic sectors, such as opening new jobs, and managing public services that alleviate the economic burden of the community.

A productive *waqf* is *waqf* whose principal assets are used for production activities and the profits are given in accordance with the purpose of *waqf*. A Productive *Waqf* prioritizes *waqf* to produce more with different paradigm measures with consumptive *waqf*. Productive *Waqf* has two visions, namely eliminating social structure inequality and providing fertile land to prosper the people, therefore the *waqf* is only intended for the benefit of the people. This type of *waqf* is more in line with the reality of today's Muslims who face problems of poverty, backwardness and ignorance. Productive *Waqf* has been known at the time of Al-Zuhry (died 124 H) for example, someone has been allowed to accept dinars and dirhams. The way is to make dinars and dirhams as Financial capital, then channel the profits as *waqf*. When compared with the management of consumptive *waqf*, the managers of productive *waqf* are required to work more professionally. This is because the amount of benefits that can be taken from productive *waqf* is very dependent on Nazhir's ability to manage *waqf* assets in order to generate profits.¹

According to Prof. M.A. Manan, a *waqf* management designer, in the form of a cash *waqf* certificate scheme that has been developed by SIBL (Social

¹ Muhyar Fanani, "Pengelolaan Wakaf Tunai Studi Perbandingan atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat dan Baitul Mal Muamalat", dalam laporan penelitian individual, (Semarang: DIPA, 2009) P 34.

Investments Bank, Ltd), cash *waqf* is innovation of Islamic public finance. Cash *waqf* opens opportunities for investment creation in the fields of religion, education and social services. Savings from the community can be utilized through the exchange of Cash *Waqf* Certificates, while the income earned from managing the money can be spent on the variety of needs, such as maintaining existing *waqf* assets. Besides, cash *waqf* also functions as a strategic investment to eradicate poverty and to deal with underdevelopment in the fields of economics, education, health, and scientific.²

As one of the productive *waqf* instruments, cash *waqf* is a new thing in Indonesia. *Waqf* that has been understood by the people is the only *waqf* of property owned based on Government Regulations No 28 Th 1997 about the *waqf* of property. The chance for cash *waqf* existed after the Indonesian Ulema Council issued fatwa on the permissibility of cash *waqf* in 2002.³ Greater opportunities have emerged lately, with the passing the *Waqf* Draft into *Waqf* Law No. 41 of 2004 concerning *waqf*.⁴

As an important instrument for the implementation of productive *waqf*, the *waqf* law regulates various matters that are important for the empowerment and development of *waqf* assets in order to remain productive. Endowments in this law are not only limited to immovable property, but also movable assets, such as money, precious metals, securities, vehicles, intellectual property rights, lease rights, and other movable assets in accordance with sharia.

Cash *waqf* management has unique characteristics. The concept is different from the management of sadaqah, or donation from a western perspective. *Waqf* has the principle of immortality which makes it different from sadaqah or other donations. M.A Manan stated, that based on transactions, *waqf* is similar to Sadaqah. The difference between them lies in the transfer of assets to those in need. Sadaqah assets and their benefits must be given directly to the *eight Asnaf* that have been set by Allah SWT. Whereas

² M.A. Manan, *Sertifikat Wakaf Tunai*, (Jakarta: CIBER bekerjasama dengan PKTTI-UI, 2001) P. 30.

³ Nurul Huda, M. Heykal, *Lembaga Keuangan Islam*, (Jakarta: Kencana,2010),P.314

⁴ UU Wakaf NO 41 Tahun 2004.

in waqf the transfer only occurs in benefits and results, without reducing the principal.⁵

The principle of *waqf* management, states that the waqf must continue to flow its benefits, in accordance with the hadith of the Prophet "*In Syi'ta habasta aslahā wa tashadaqta bihā*" which means holding the subject and *shadaqoh* the results ". this means that the management of *waqf* in the form of money must be in a productive. *Waqf* should always involve the process of assets growth and value addition. In other words, *waqf* assets must be able to produce something of economic value so that the benefits can be channeled without reducing the existing assets.⁶

According to that allows cash *waqf*, money can be represented by preserving the material form, namely by replacing the material form of money represented, either used or invested, the form should be the same. So that the form of *waqf* property is maintained. This is intended shows the principle of eternity of wealth in cash *waqf*.

Whereas in the opinion of those who prohibits cash *waqf*, the *waqf* requirement is that it can be utilized and guaranteed its permanence. Therefore, it is not permissible to distribute *waqf* assets that do not guarantee immortality, such as money. because *waqf* is holding back the principal and issuing the results, in the cash *waqf* according to this opinion money is the principal and result, if issued means the same as using the principal asset.

Whereas in the discussion of *waqf* property in the classical jurisprudence (fiqh) of the Imam Shafi'i such as Al-umm or even modern jurisprudence (fiqh) such as As-Sunnah fiqh Sayyid Sabiq does not allow waqf money, because the object is impermanent when used. In addition, another reason is because based on the *Urf* (prevailing habits), then cash waqf only

⁵ Rozalinda, *Manajemen Wakaf Produktif*, (Jakarta: RajaGrafindo,2016), P. 7

⁶ Ahmad Furqon, *Praktek Perwakafan Uang di LKS-PWU Bank Syari'ah Mandiri Pusat*,(Semarang: IAIN Walisongo,2010), P 13

applies in certain regions of the former Byzantine (Roman) empire, in other places it does not apply.⁷

Another problem that arises, regarding the use of paper money as *waqf* assets, there is a fluctuating nature in the currency. If someone borrows a certain amount of money for a specified period. Then when returning money, the value of the currency has decreased, compared to when borrowing in the first time. And borrower returns the same amount, it will harm the lender, but if returning more than the amount borrowed will lead to the practice of *riba nasi'ah*.

This source of this vulnerability actually lies in article 22 paragraph 1 and 2 PP No 42/2006 which requires money *waqf* in the form of rupiah⁸. Even *waqf* from non rupiah must be converted to rupiah. In fact, the rupiah is very vulnerable to inflation. The full article reads: "The money *waqf* can be *waqf* is rupiah. In the event that the money to be *waqf* is still in foreign currency, it must be converted into rupiah". To avoid inflation, the value of *waqf* must be converted into dinars or gold.

The obligation for cash *waqf* in Indonesia with rupiah money, even *waqf* from non-rupiahs must be converted to rupiah giving rise to their own potential. because the rupiah currency is highly variate in inflation. The *waqf* law has not provided a guarantee that the value of the *waqf* must be recorded in accordance with the purchasing power value at all times. Islamic Financial Institutions receiving cash *waqf* (LKS-PWU) only has the obligation to record according to the nominal value when submitted.⁹

From this explanation, it can be concluded that the actual use of paper money as a currency is not free from controversy, because of its fluctuating nature, and this creates a problem if paper money is used as an asset of *waqf*. The use of dinars and dirhams whose properties remain as assets of *waqf* are

⁷ Tim Ditjen Bimas Islam dan Penyelenggaraan Haji Depag RI, *Nazhir Profesional dan Amanah*, Jakarta: Direktorat Jendral Bimas Islam dan Penyelenggaraan Haji, 2005, P.121-122.

⁸ Peraturan Pemerintah Nomor 42 Tahun 2006 pasal 22 ayat (1) dan (2)

⁹ Muhyar Fanani," *Pengelolaan Wakaf Tunai Studi Perbandingan atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat dan Baitul Mal Muamalat*", dalam laporan penelitian individual, (Semarang: DIPA,2009) P 34.

also not spared from the pros and cons of salaf scholars, moreover the use of paper money as *waqf* assets.

Majma' al-Fiqh al-Islamy based in Jeddah issued a fatwa for the permitted of cash *waqf*. The contents of the fatwa are as follows :

- 1) Cash *waqf* law is permissible based on *syara* arguments, because the purpose of the *waqf* is to hold back the principal and disburse benefits and results, and this is fulfilled in cash *waqf*. The principle of eternity in cash *waqf* is still realized even though wakif money is used up for investment but there is another money that replaces it.
- 2) Cash *waqf* can be used as a loan or direct investment or a combination of money from several *Wakif* for an investment project or by using shares of paper as an effort to encourage community participation to represent together¹⁰.

To avoid inflation, the *waqf* value of rupiah should be converted into the value of gold or dinars and dirhams. Which has no impact on inflation money. Another way that can be taken is money from *waqf* used for investment.

Besides getting profits, investment is also shown to reduce inflation so that wealth owned does not decline in value. Basically, investment is closely related to banking and the capital markets. Generally, investments are categorized into two types, namely consisting of real assets, such as buildings, vehicles. while financial assets, namely investments made in financial aspects, such as deposits, bonds, mutual funds, and capital markets.

Nazhir professionals are in task of investing *waqf* funds. Investment is basically the placement of a number of funds at this time in the hope of gaining profits in the future. that's why investment can be defined as a means of placement of funds, so that the funds are maintained in value from inflation, even required to increase and provide profit.

The term nazhir means guard, another name from Nazhir is mutawwali means administrator, who is given authorize. According to al-Sha'ani, a figure

¹⁰ *Ibid*, P 18-19

from the Hanafi Mazhab, Nazhir is a person who has the authority to maintain and develop waqf and submit the results to rightful person. Az-Zuhaili argues that Nazhir is a person who is entrusted with the task of maintaining the principal property of waqf, managing, and distributing the proceeds to the rightful.¹¹ A Nazhir can be interpreted as a person entitled to act on *waqf* property. In order for the *waqf* assets function properly and can continue continuously, Article 42 of UU/ 41/2004 stated that Nazhir is obliged to manage and develop waqf objects in accordance with their designation.¹² If waqf is managed professionally, waqf can be used to create independence in broad affairs. The more professional the management, the greater the chance for success. Management and development of waqf assets is regulated in chapter V of Law No. 41/2004¹³ concerning waqf, article 42 to article 46.¹⁴

The main obstacle to managing cash *waqf* in Indonesia is Nazhir's quality. Because the duties of nazhir, especially cash *waqf* are very heavy. Therefore, Nazhir must have the conditions stated in article 10 paragraph (1) of the Law on *waqf*, namely a. Indonesian citizens; b. Muslim; c. adult; d. trusteeship; e. able physically and spiritually; and f. not carry out legal actions, nazhir waqf money must have various capabilities that support its duties as nazhir productive *waqf*. Nazhir who is a professional will look for new innovations.

To get Nazhir who completes the requirements is not easy. But all can be prepared through continuous regeneration. For the task of building Nazhir's capabilities, BWI is in charge of being the leading sector. Nazhir's work in Indonesia strive to have adequate competency standards so that they can develop waqaf maximally. Article 49 paragraph (1) of Law No. 41 of 2004 states that Indonesian *Waqf* bodies has duties and authority :

- a. Fostering nazir in managing and developing waqf assets

¹¹ Wahbah az-Zuhaili, *Fiqh al-Islami wa Adillatuhu*, cet 4(Damaskus Daral-Fikr,1997) X: 7688.

¹² Undang-Undang Wakaf Nomor 41 Tahun 2004 Pasal 42

¹³ Undang-Undang Wakaf Nomor 41 Tahun 2004

¹⁴ Muhyar Fanani," *Pengelolaan Wakaf Tunai Studi Perbandingan atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat dan Baitul Mal Muamalat*", dalam laporan penelitian individual, (Semarang: DIPA,2009) P 34.

- b. Management and development of national and international waqf assets
- c. Give approval or permission for changes in the allocation of funds and status waqf property
- d. Stop and replace Nazhir
- e. Give approval to exchange waqf property
- f. Provide advice and consideration to the government in policy formulation in the field of representation.

Under the Law, the Indonesian Waqf Agency (BWI) has the responsibility to develop representatives in Indonesia towards the era of productive waqf, namely waqf that can improve the economy and general welfare.¹⁵

Thus, in the investment process the most important thing to do maintaining the principal capital that can produce in value. But the first time required was to maintain the assets invested, this method was in line with the principles of waqf management.¹⁶

Referring to the explanation, the writer found a problem that is how to anticipate fluctuations in currency values, which affect the principal assets of waqf. It is necessary to provide reserve money or termed the appropriation. in the form of the amount of money prepared by a foundation, company, or cash waqf management bank to deal with the possibility of possible currency fluctuations in the future.¹⁷

Based on the background that the writer describes, then the write is interested in discussing more about **“The Urgency Of Securing Cash Waqf To Anticipate The Decline In Asset Value”**

B. Research Questions

¹⁵ Ibid, P 242-243

¹⁶ Rozalinda, *Manajemen Wakaf Produktif*, (Jakarta: RajaGrafindo,2016), P. 141

¹⁷ Ahmad Furqon, *Praktek Perwakafan Uang di LKS-PWU Bank Syari'ah Mandiri Pusat*,(Semarang: IAIN Walisongo,2010), P 22.

Based on the explanation above, the writer can formulate two problems that require answers to this research.

1. What is the urgency of securing cash *waqf* from decreasing asset value?
2. How to secure cash *waqf* from decreasing asset value?

C. Objectives and Significances of the study

1. To find out, what is the important about securing cash *waqf* from decreasing assets value.
2. To find out, how to secure cash *waqf* assets from decreasing assets values.

By using this research, there are two significances. They are Theoretical Significance and Practical Significance which the research expects that the findings may be useful for the following parties:

1. Theoretical benefits.
 - a. Can add insight to the life of the community regarding the concept of the importance of securing cash *waqf* assets to anticipate the decline in asset values.
 - b. Can be used as a basis or reference for further research.
2. Practical Benefits
 - a. Can provide scientific contributions to *waqf* development institutions especially cash *waqf*.
 - b. Can provide understanding and insight to the community and the development of cash *waqf* regarding the importance of securing the value of cash *waqf* assets.
 - c. Can provide scientific contributions to academic practitioners and academics especially Islamic Family law in the field of *waqf*.

D. Literature Review

The literature review is intended to provide information to the writer as a comparison material, so the writer can avoid plagiarism. In order to support the authenticity of scientific work, the writer will present several literature reviews related to the theme of this research. About the cash *waqf*,

several previous studies have been conducted in the form of journal, thesis, articles and other scientific works, but the position about the concept of securing cash waqf in anticipating the decline in the value of these assets has not been found in previous studies. This literature review can be in the form of research results that have been recorded, among others :

Sudirman hasan with the title “ cash waqf and its implementation in Indonesia”¹⁸, in the articles describes, cash waqf which can be used as a religious investment, in education and social services. In this effort, a full and integrated understanding of waqf law is needed both in the fiqh perspective and in positive law, along with implementation, especially in Indonesia.

Uswatun Hasanah “the urgency of supervision in managing productive waqf”¹⁹ in the journal explained waqf is an Islamic socio-economic institution that has a very important role in the development of Indonesia society. However, the potential of Waqf has not been fully explored and developed. Some of the causes are: the weak understanding of the community about the importance of recording waqf, Nazhir’s limited professionalism and supervision and management of waqf are still weak. Therefore, supervision becomes an absolute thing, especially for productive waqf.

Haura A, Baga LM, Tanjung, “Analysis of money waqf management in sharia financial services cooperatives”²⁰, in the journal describes the process of sharia financial services cooperatives, as a Nazhir cash waqf, analyze the priorities of related internal and external factors.

Intan Wijaya thesis entitled “ management of waqf reporting funds at waqf institutions in Indonesia (case study at the Sultan Agung Foundation Waqf agency Studi)”²¹ with the conclusion that there is no

¹⁸ Sudirman Hasan,” *Wakaf Uang dan implementasinya di Indonesia*”, jurnal de jure Fakultas Hukum dan Syari’ah Uin Maulana Malik Ibrahim,(Malang: 2010)

¹⁹ Uswatun Hasanah, “*Urgensi pengawasan dan pengolahan wakaf produktif*”, Jurnal ahkam Fakultas Syariah dan Hukum Uin Walisongo, (Semarang: 2012)

²⁰ Haura A, Baga LM, Tanjung,” *Analisis pengelolaan wakaf uang pada koperasi jasa keuangan syariah*” jurnal Muzara’ah Fakultas Ekonomi dan manajemen (bogor: 2015)

²¹ intan Wijaya, “ *Pengelolaan dan pelaporan Aset Wakaf Pada Lembaga Wakaf Di Indonesia (Studi Kasus Pada Yayasan Badan Wakaf Sultan Agung)*”, Skripsi, Universitas Diponegoro (Semarang: 2015)

accounting system that specifically regulates waqf, this was evidenced by informants who struggled in finance. However, this does not become a barrier for *waqf* institutions apply an accounting system based on PSAK 45 Regarding financial reporting of non-profits entities that approaches accounting system for *waqf*.

Niswatin Ma'rifah thesis entitled “Management of cash waqf processing in global waqf Foundations” ²² with the conclusion that there are two methods in the management of cash *waqf* collection, namely religious approaches and socio-economic approaches. The mechanism of cash *waqf* pledges is written method, there are 4 programs namely food *waqf*, health, education and economic *waqf* including retail markets, securities, and property.

Among the many writings and studies that discuss cash waqf. That previous research is different from present. The difference, Previous research, such as Sudirman Hasan's article with the title of cash waqf and implementation in Indonesia, fully discussed the understanding of cash waqf law and its implementation in Islamic law and positively in Indonesia, while in this thesis discussed the vulnerability of waqf if used as the main principal of waqf assets especially in regulation No 41/2004.

while the difference from uswatun hasanah is that the journal discusses waqf social institutions that have an important role in society while in this thesis discusses the vulnerability of a waqf in the form of rupiah if used as main principal assets waqf especially in regulation No 41/2004

haura бага journal is to discuss the process of sharia financial services cooperatives as nazhir waqf money while in this thesis discusses the vulnerability of a rupiah if used as a main principal of the assets of waqf, especially in regulation No 41/2004.

Finally, Intan Wijaya's thesis discusses the accounting system that regulates waqf and the Niswatin Marifah thesis discusses the methods in cash

²²Niswatin Ma'rifah,” *Manajemen Pengolahan Wakaf Tuna di Yayasan Wakaf Global*” Fakultas Ekonomi dan Bisnis Islam, Universitas Islam Negri Walisongo,(Semarang: 2018).

waqf collection management, this is very different from the written thesis because the author discusses the issue of rupiah assets if used as main principal in regulations No. 41/2004

E. Research Method

The research method is a method of working to be able to understand objects and subject to the relevant knowledge. Methods are guidelines for the way a scientist learns and understands environments.²³

Research in the context of carrying out document collection, must determine the sources of documents and locations where the source of the document is found and examined. In contrast to the field research, the location for collecting documents for library research is far wider and even knows no boundaries and space. Research settings are the limits to where the location is carried out. Before mentioning the location of the research, it is a good idea to mention the specific points of library research with other studies such as in the field research.

Library research has several special features, among others: firstly, this research is directly dealing with text or document and number, not by field research or eyewitness. secondly, the document is ready to use, meaning that researchers do not go anywhere, except only dealing directly with the source already in the library. Thirdly, documents in the library are generally secondary document sources, meaning that the researcher obtains documents from the second hand not original from the first hand in the field research. And fourthly, a condition of the documents in the library not divided by space and time.²⁴

Based on the above characteristics, this research is carried out in a library that collects documents regarding cash waqf. The means to conduct research was centered in the library of UIN Walisongo Semarang and the Central Java Provincial library. In addition, data is also found in bookstores

²³ Soerjono Soekamto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986), P. 67.

²⁴ Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Indonesia, 2004).

and the internet. From various places, the library is the richies places for finding documents.

1. Research Design

Based on the background conveyed by the researcher, this research is focused on the field of law. The research uses the type of normative or library research, that is, first step, by recording all findings regarding the security of cash waqf in general at each discussion obtained in the literature and other sources, or the latest findings regarding the security of cash. After noting the data, second step is combining all findings, both theories found in securing cash waqf. Third, analyze all findings from various readings related to the shortcomings and strengths of each source or each other's relationships to the discourse discussed therein. The last is to give ideas, in research results to previous discourses by presenting new findings in collaborating with different thoughts. so according to Ammirudin,²⁵ this research is also called doctrinal legal research.

*Doctrinal research: research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explain areas of difficulty and, perhaps, predict future development.*²⁶

Doctrinal research, is a research that provides a systematic exposition of regulations that regulate certain legal categories, analyze the relationships between regulations, explain the direction those experience obstacles, and predicts future developments.²⁷

Library research will face data sources in the form of books that are very large in number so that it requires an adequate method. For this reason, in library research, collecting books must be done gradually, unless it will

²⁵ Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persada, 2004), P 118.

²⁶ Peter Mahmud Marzuki, *Penelitian hukum*, (Jakarta: Kencana, 2005),P 32.

²⁷ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: PT. Citra Aditya Bakti, 2004), Cet.1, P. 52.

be difficult. To get all the needs mentioned above, it can be produced through libraries, research centers, and internet networks by accessing information and information on securing cash waqf to anticipate the decline in asset values.

the material used consists of secondary legal materials, and tertiary legal materials. These documents are collected by documentation techniques, that is by reading, studying, and recording the literature that is related to the problems discussed in the writing.

2. Source of the data

Because in the library research, we only use secondary and tertiary documents sources, as we know the researcher obtained data document second hand rather than directly from the first hand in the field. And the following secondary and tertiary documents sources:

- a. UU Waqf No 41 Thn 2004
 - b. Government regulations No 42 Thn 2006 about implementing waqf.
 - c. Act BWI No. 1 Tahun 2009
 - d. Cash waqf management guidelines, published by the Directorate of Waqf Empowerment, Directorate General of Guidance for Islamic Communities
 - e. Islamic Cash Wakaf Certificate, author Prof. Dr. M.A Manan, an innovation in Islamic financial instrument.
 - f. Productive Waqf Management, author Dr. Rozalinda M.ag, Alloyed of productive waqf assets.
 - g. Islamic Financial Institutions, by Nurul Huda and Muhammad Heykal.
 - h. Fiqh and Financial Analysis, by Adiwarman.
 - i. Practices of cash waqf in the Bank Mandiri Pusat LKS-PWU, by Ahmad Furqon.
 - j. Legal Dictionary
 - k. National and International Journals related to cash waqf
- ## 3. Technique of Data Collection

Document collection techniques, in this case, the writer will identify discourse from books, papers or articles, journals, web (internet), or other information related to the above theme to look for a study of the importance of securing cash waqf in anticipation the decline of asset value. Then the first, steps is to collect good documents through books, documents, internet magazines, the Second is to analyz the documents so that researchers can conclude about the problem under study.

In essence, there is no specific reference in collecting document on this method, but not just the documents collected are the result of research, because the human mind provides job guidance systematically and in accordance with the object of study. Therefore certain techniques are needed, so the results of the study are systematic and objective.

Secondary and tertiary legal materials are collected based on the topic of the problem formulated based on the documentary system²⁸, which allows researchers to explore the materials obtained and classified according to sources and hierarchies for a comprehensive review. Hence the researcher collects the materials or the literature by visiting to various libraries. The researcher collected the following documents:²⁹

a. Accumulation.

This stage is the beginning of the research, the researcher will collect legal materials that are relevant to the research being faced.

b. Editing

After the researcher collects legal materials that are used as references, researcher rechecks all legal materials obtained, especially the completeness, the clarity of the meaning, of their suitability and their relevance.

c. Clasification.

²⁸ Jhon W. Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif, dan Mixed*, terj. Achmad Fawaid, (Yogyakarta: Pustaka Pelajar, 2010), P 269.

²⁹ *Ibid*, P 269 -270

In this stage, the researcher chooses to compile and classify the material obtained into certain problem patterns to facilitate discussion.

d. Analysis

This stage is the core of research, where researchers analyze or review legal materials that have been obtained, so they can understand the essence of research

e. Conclusion

Finally, after the researcher analyzes or reviews the legal material, the researcher concludes some conclusions which are the answers to the problem statement.

4. Technique of Data Analysis.

A set of legal materials obtained in this library research study, which comes from statutory rules and articles will be presented and connected in such a way that they can be presented in more systematic research to answer the problems that have been formulated.³⁰ Then the legal materials obtained, both secondary and tertiary legal materials will be analyzed descriptively. The researcher has collected legal materials that are then analyzed to get conclusions. The material obtained was then analyzed by the descriptive method as follows³¹:

- a. Grouping materials according to their types, namely secondary and tertiary legal materials
- b. Analyze materials according to the problem.
- c. Drawing a conclusion

F. Writing Systema

To facilitate this research, systematic writing is needed, which is systematically described in the five chapters as explained below :

HAPTER I

INTRODUCTION

³⁰ *Ibid.*, P. 270.

³¹ *Ibid*, P. 271

In this chapter, the writer will explain the background of the problem, the formulation of the problem, the literature reviews, the methods used in writing this thesis and systematic.

CHAPTER II DEFINITION CASH WAQF

In this chapter contains theories that writer use in conducting research. The theory used is the general concept of cash waqf.

HAPTER III IMPLEMENTATION OF SECURING CASH WAQF

That is to explain the implementation of cash waqf security in order to maintain the value of waqf assets.

HAPTER IV ANALYSIS OF SECURING OF CASH WAQF TO ANTICIPATE A DECREASE IN ASSET VALUE

That is an analysis of cash waqf, Then an analysis of the implementation of cash waqf securing related to anticipation of decline in asset value.

CHAPTER V : CLOSING

In this chapter consists of three subs, namely conclusions from the results of the research as well as suggestions regarding the results of research and do not forget the closing. This chapter is a series of closures from research.

CHAPTER II THE CONCEPT OF WAQF

A. The Definition of Waqf.

Etymologically the word *waqf* comes from Arabic, the verb is *waqafa-yaqifu*, means "*standing*", "*stoping*", "*hesitating*", "*holding back*" or "*preventing*". The phrase *waqaftu* means *I stand up, I stop, I hesitant, I prevent it* and *I hold it*. Furthermore, the word *waqf* is more popularly used for the meaning of *mauquf*, meaning that which is detained, which is stopped or is doubtful, compared to the meaning of a transaction. The phrase: *hadza al- 'iqar waqf* (this land is *waqf*) means *hadza al- 'iqar mauquf* (this land is used for *waqf*).³²

In general terms *waqf* is a *masdar (infinitive noun)* word which basically means *holding back, stopping* or *being silent*. If the word is associated with assets such as land, animals and others, it means freezing certain property rights. As one of the terms in Islamic sharia, *waqf* is defined as retaining property rights on material objects (*al- 'ain*) for the purpose of giving benefits or results³³.

In the Arabic-Malay Dictionary compiled by Muhammad Fadullah and B. Th. Brondgeest stated that, *waqf* in Arabic means *al-habsu*, which comes from the verb *habasa-yahbisu-habsan*, keeps people away from things or imprisons. Then this word develops into *habbasa* and means the verb *waqafa (fiil madi) -yaqifu (fiil mudari ') - waqfan (isim masdar)* which means stop or stand. The word *waqf* comes from the verb *waqfa (fiil-madi) -yaqifu (fiil mudari) - waqfan (isim masdar)* which means stop or stand.³⁴

In terms of terminology, the word *waqf* which at the beginning of Islam was known as *habs* and *sadaqah* had different meanings in accordance with the views of each Fiqh expert. Imam Abu Hanifah described the *waqf* as holding property of *wakif* and providing benefits such as loans. Both of his students, Imam Muhammad and Abu Yusuf interpreted

³² Mukhlisin Muzarie, *Hukum Perwakafan dan Implikasinya Terhadap Kesejahteraan Masyarakat*, (Jakarta: Kementrian Agama RI), 2010, 77

³³ Uswatun Hasanah, *Laporan Akhir Pengkajian Hukum Tentang Aspek Hukum Wakaf Uang*, (Jakarta: Badan Pembinaan Hukum Nasional), 2009, P 22

³⁴ Rachmadi Usman, *Hukum Perwakafan di Indonesia*, (Jakarta: Sinar Grafika, 2009), P51

waqf as holding back property and channeling its benefits to someone or institution and the law belongs to Allah. These two meanings are substantially different, first concerning the problem of transactions, whether waqf is a release of property rights or not³⁵.

According to the Ulama Abu Hanifah :

حبس العين على ملك الوقف وتصدق بمنفعتها على جهة من جهات البر والحال او المآل

ل

*hold objects belonging to people who carry out waqf and provide benefits for the good of now or in the future*³⁶

Based on this definition Abu Hanifah states, that the waqf agreement is *ghairi lazim* (not binding) in the sense that the person who performs waqf (*waqif*) can only withdraw the waqf and sell it. This waqf according to the ulama is the same as the *ariyah* whose agreement is *ghairi lazim* which can be withdrawn at any time. The meaning waqf according to Abu Hanifah does not take absolute ownership rights of objects in the waqf. Waqf can be binding according to Abu Hanifah³⁷ in circumstances: (1) if there is a judge's decision explaining that waqf is binding, (2) Allocation of waqf is for the mosques, (3) the waqf is related to the death of *Wakif* (inherit the property used for waqf). Whereas according to the two students, waqf is a transaction that releases rights, until the ownership status moves from *wakif* to Allah. The second problem is about the legal strength, whether the waqf agreement is binding so it cannot be canceled.

³⁵ Mukhlisin Muzarie, *Hukum Perwakafan dan Implikasinya Terhadap Kesejahteraan Masyarakat*, (Jakarta: Kementrian Agama RI, 2010), P 78

³⁶ Badran Abu al-a'inain, *Ahkam al-Washy wa Auqaf*, (Iskandariyah: muassasat as-Salaby,t.t) P 260

³⁷ Abu Bakar Muhammad ibn Ahmad ibn Abi Sahal as-Syarakhsi al Hanafi, *Kitab al-Mabsuth*, Juz 11, P 34 dan 41 dalam Rozalinda (ed), *Manajemen Wakaf Produktif*. (Jakarta: PT Grafindo Persada, 2015), P 14

According to Abu Hanifah the waqf pledge is not binding, at any time it can be canceled and can be withdrawn to belong to Wakif. While according to the two students, waqf pledges are binding and cannot be canceled or returned by Wakif

According to the Ulama Malikiyah :

جعل المالك منفعة مملوكا بأجرة او جعل غلته كدراهم بصيغة مدة ما يراه الحبس

*waqf is if wakif makes the property benefits owned even in the form of rent or the results such as dirham and money with sighat in a certain period of time in accordance with the will of wakif.*³⁸

Almost the same as the opinion of Abu Hanifah, the waqf agreement according to Malikiyah did not release the wakif ownership rights from the property in waqf. Wakif only releases the use rights of the property in waqf. wakif restrains the use of property waqf and allows the use of the proceeds for the purpose of goodness in a certain period of time. In this case, the Malikiyah Ulama does not require the waqf for eternal time. The Ulama reasoned that there was no argument that required *ta'bid* (eternity) conditions in waqf. According to the Malikiyah Ulama, the words "*habasta ashlaha wa tashadaqta biha*" of the Prophet's hadith indicate, that the definition of waqf is to provide results with the keeping of waqf objects in the hands of waqif. waqif was also prevented from transferring his property to others in the form of buying, granting and inheritance³⁹.

Malikiyah Ulama, as stated by Musthofa Salabi⁴⁰, explain waqf is the act of holding property in wakif power, from various transactions and

³⁸ Wahbah al-Zuhaili, *Al-Fikih al-Islamy wa Adilatuhu*, (Beirut: Dar al-Fikri,1981) Vol 8, P 155-156 dalam Rozalinda (ed), *Manajemen Wakaf Produktif*. (Jakarta: PT Grafindo Persada, 2015), P 14

³⁹ Rozalinda, *Manajemen Wakaf Produktif*, (Jakarta: PT Grafindo Persada), 2015, P 16

⁴⁰ Mustofa Salabi, *Mudharat fie al-Waqfi wa al-Washiyah*, P 21

donating the results to the good sectors of the *ummah* (people). Imam Malik said that goodness in the way of Allah (*sabilillah*) is a lot, but if someone holds back property (*waqf*) for the purpose of Allah, that is for the sake of war, such as holding a horse or holding weapons for good in the way of Allah, for the benefit of war, not other interests⁴¹.

The majority of Shafi'iyah define waqf with:

حبس مال يمكن الإنتفاع به مع بقاء عينه بقطع التصرف في رقبته من الوقف وغيره

على تصرف مباح موجود او بصرف ريعه على جهة البر والخير تقربا الى الله تعالى

*withholding property that can be utilized with the fixed substance that prevents waqif and others from permissible legal actions or legal actions which aim for good and draw closer to Allah ta'ala*⁴²

Ulama Salafiyah explained that waqf is holding back assets that can be used and not destroyed when used, from various transactions that are transferring rights. And channeling its benefits to the good sector of the *ummah* with the aim of getting closer to Allah. This explanation appears more complete when compared to the others, including the provisions relating to transactions and property used for waqf. From this statement, it can be understood that the property used for waqf, after the agreement is signed, results in the disconnection of various transactions that are transferring rights such as buying and selling, grants, wills, gifts, and inheritance. The requirements for property used for waqf must have eternal character. the purpose is because Allah and his aim for virtue (al-birr) and

⁴¹Mukhlisin Muzarie, *Hukum Perwakafan dan Implikasinya Terhadap Kesejahteraan Masyarakat*, (Jakarta: Kementrian Agama RI, 2010), P 78

⁴² Wahbah al-Zuhaili, al-Fikih, Op.cit., P 155-156 dalam Rozalinda (ed), *Manajemen Wakaf Produktif*, (Jakarta: PT Grafindo Persada, 2015, P 17

goodness (al-ma'ruf) or at least not things that are prohibited by the shari'at⁴³.

The Ulama Hanabilah explain that waqf is holding back the principal and channeling the results to the good of the ummah. this explanation comes from the Prophet's instructions to Umar bin al-Khattab when asking what kind of charity is best for utilizing a plantation in Khaibar, the answer is a simple sentence but contains meaning that includes as above. Furthermore, a complete explanation is given by Musa bin Ahmad al Hajjadi (w.960 H) that waqf is the act of an adult who is capable of acting legally to hold back property that can be used and has eternal character by dismissing various transactions and channeling the results to the virtue sector with the purpose to get closer to Allah. Al-Bahuti al-Hanbali (d. 1051 H) commented that the explanation included what was meant to hold back the principal and channel benefits or results to goodness.⁴⁴

The same definition was also formulated by the majority of Ulama from among Hanabilah, as-Syaibani, and Abu Yusuf. They formulated waqf by holding assets that could be exploited and obstructing waqif and others from permissible legal actions, which aimed for goodness in getting closer to Allah. Swt.

From this definition *Jumhur Ulama* believes that waqf agreements are binding (*prevalent*). In a sense, waqif cannot withdraw assets that have been represented and cannot sell or inherit them. According to the majority of these Ulama, the assets that have been used for waqf no longer belong to the waqif and move to belong to Allah which is used for the benefit of Muslims. A well-known opinion among Syafi'i states, that waqf eliminates property ownership from waqif.

⁴³ Mukhlisin Muzarie, *Hukum Perwakafan* , P.78

⁴⁴ *Ibid.*, P. 79

Ahmad bin Hanbal also stated the same, waqf is not true unless waqif gives up its ownership rights and surrenders to others, wakif cannot withdraw his waqf property. This opinion is based on the hadith of the Prophet. Narrated by Baihaqi, explains that Umar obtained wealth in Khaibar, while he intended to surrender to Allah through his wealth.

Then the Prophet Saw said:

عن عبد الله بن عمران عمر قال يا رسول الله اني اصبت مالا لم اصبت قط مثله
تخلصت المائة سهم التي بخير واني قد اردت ان اتقرب بها إلى الله تعالى فقال له رسول
الله صلى الله عليه وسلم حبس الاصل وسبل الثمرة

Narrated by abdullah ibn Umar, in fact Umar bin Khatab said: Rasululloh I have obtained a hundred shares in Kaibar that I do not want to have. And I want to get closer to Allah Ta'ala. The Prophet. Answer: "hold on to the subject matter and spend the results" (HR. Baihaqi)⁴⁵

Furthermore, Maulana Muhammad Ali in his book *De Religi van den Islam* gave a limit, what is meant by waqf is something that is eternal to take the results of the assets used for waqf, with the aim of religious activities and charity.

Meanwhile Naziroedin Rahmat in his book *Waqaf Assets* gives the meaning of waqaf property is an item that is temporary in nature and is maintained by its substance, always changes, which results can be harvested and whose owners have surrendered their power to the object with terms and conditions that the result will be used for the purposes of the virtues ordered by the Shari'a.

Noting the understanding expressed by the *Ulama* and thinkers it can be concluded that in principle waqf is a charity that is eternal virtue (tabarru'at), not a charity that has consumptive nature, is shown to facilitate

⁴⁵ Abu Bakar Ahmad al-Baihaqi, Sunan al-Kubra, (India: Dar al-Ma'rifat al-USmaniyah,1352 H), Vol. 6, P 162 dalam Rozalinda (ed), *Manajemen Wakaf Produktif*. (Jakarta: PT Grafindo Persada), 2015, P 17

the public interests and its purpose only because of Allah. The fundamental difference from this understanding is related to the issue of whether the charity is for an unlimited period of time (*mua'bbad*) or a certain period of time (*muaqqat*). According to the Hanafi Imam the charity is temporary, at any time the election can be taken back like a loan. According to the *Ulema Syafi'iyah* and *Hanabilah*, it must be done at an unspecified time, because ownership of objects used for Waqf has been transferred to Allah, according to Ulama Syafi'iyah dan and belongs to the recipient of Waqf (*mauquf f alaihi*) according to the Hanabillah Ulama. Whereas according to Malikiyah Ulama, both may be for a while and may be for all eternity, with the reason that the waqf object is still controlled by the owner, so he is free to make his choice.⁴⁶

Whereas the definition of Waqf in Law No. 41 of 2004, waqf is a legal act of a person or group of people or legal entity that separates or surrenders a portion of the assets it has to be used forever or a certain period of time for the purpose of worship or other public needs in accordance with Islam.⁴⁷

Thus, the meaning of waqf is to provide an asset that is used a results, for the prosperity of the people. In general trem, the principle of waqf is that eternal virtues not consumptive charities, intended to facilitate the public interests whose purpose is only because of Allah. Waqf assets are retained principally and are carried out immobilized with the purpose of the assets not being used up even though the benefits are taken.

B. Characteristic of Cash Waqf.

⁴⁶ Mukhlisin Muzarie, *Hukum Perwakafan*, P 79

⁴⁷ UU Wakaf No 41 Tahun 2004

Waqf money is a direct translation of the term Cash waqf popular in Bangladesh, where A. Manan initiated his idea⁴⁸. Cash waqf when looking at the object of waqf which is money, its more precisely that cash waqf is translated into waqf money.

Cash waqf is a waqf done by someone, groups of people, and institutions or legal entities in the form of cash. Cash waqf law has become a concern of fuqoha '(juris Islam). Some sources say that money waqf has been practiced by people who follow the Hanafi Ulema.

That Imam Al-Zuhri argues dinars and dirhams (both currencies in the Middle East) can be used for the waqf. The trick is to make the Dinar and Dirham as business capital (trade), then channel the profits as waqf.⁴⁹

Wahbah Az-zuhaili also revealed that the Hanafi Mazhab allows cash waqf, on the basis of *Istihsan bi al-Ur'f*, because it has been carried out by community. The Hanafi Mazhab is of the opinion that the law stipulated based on the *u'rf* (custom) has the same power as the law stipulated based on the *nash* (text).

The basis of the Hanafi Mazhab argument is the hadith narrated by Abdullah bin Mas'ud, r.a:

ما رأى المسلمون حسنا فهو عند الله حسن وما راوا سيئا فهو عند الله سيئ

What is considered good by the Muslims, then in Allah view is good, and what is seen as bad by the Muslims in Allah view is also.

⁴⁸ Sudirman Hasan, *Wakaf Uang*, (Malang: UIN MALIKI PRESS), 2011, P 20

⁴⁹ Abu Bakar dan Bamualim, Chaider S, *Filantropi Islam dan Keadilan sosial*, (Jakarta: CSRC UIN Jakarta), 2006, P 78

The way to do cash waqf, according to the Hanafi School, is to make it business capital by way of *mudharabah* or *mubadha'ah*. While the benefits are given to those who are entitled to receive waqf.⁵⁰

Furthermore, money waqf in the definition of the Ministry of Religion is the waqf carried out by a person, group of people, and an institution or legal entity in the form of money. Thus, money waqf is one form of waqf submitted by a wakif to nadzir in the form of cash⁵¹. This is in line with the definition of waqf issued by the Fatwa Commission of the Indonesian Ulema Council on 11 May 2002⁵² when it released the fatwa cash waqf.

الوقف هو حسب مال يمكن الإنتفاع به مع بقاء عينه بقطع في رقبتة على مصرف

مباح موجود

Waqf is holding back assets that can be utilized without the disappearance of the principal object, by not taking legal action against the object (selling, giving, or bequeathing it), to distribute (the result) to something that is Mubah (not haram).

In definition, waqf is no longer limited to objects which remain their form, but waqf can be objects which remain of value or principal. Money falls into the category of objects that remain the principal. Thus, the definition of the Indonesian Ulema Council gives legitimacy to the ability of cash waqf money.⁵³

⁵⁰ Direktorat Pemberdayaan Wakaf, *Pedoman Pengelolaan Wakaf Tunai*, (Jakarta: Direktorat Jendral Bimbingan Masyarakat Islam), 2006, P 2-3

⁵¹ Achmad Djunaidi dkk, *Strategi pengembangan Wakaf Tunai di Indonesia*, Jakarta: Direktorat Pemberdayaan Zakat, 2007, P 3

⁵² Tim Penyusun, *Himpunan Fatwa Majelis Ulama Indonesia*, (Jakarta: Dirjen Bimas Islam dan Urusan Haji Departemen Agama RI), 2003, P 85

⁵³ Ibid., P 85

The definition of the latest money waqf is the version of the regulation of the Minister of Religion Number 4 of 2009 concerning Administration of Cash Waqf Registration, article (1) paragraph 1. Waqf in the Minister of Religion Regulation is interpreted as a legal act of wakif to separate or surrender a portion of his money to be used forever for a certain period of time in accordance with his interests for the purposes of worship or general welfare according to sharia.⁵⁴

C. Legal Basis of *Waqf*

In the Qur'an it is not explicitly mentioned about waqf in general or specifically about money waqf. However, the fiqh Ulema made the verses of the Qur'an which explained about *infaq* or *shadhaqah* their wealth in the way of Allah in order to obtain blessings can be equated with the meaning of waqf. Some legal principles of waqf and waqf money are covered in the Qur'an, Hadiths, opinions of Ulema and studies of positive law that apply in Indonesia:

1) Al-Qur'an

a. Ali-Imran : 92:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

“ *Never will you attain the good (reward) until you spend (in the way of Allah) from that which you love. And whatever you spend – indeed, Allah is Knowing of it*” (QS. Ali-Imran :92)

Implicitly, the verse instructs to spend the possessions in order to continue to get the good from the property. This can be related to waqf. have similarities in giving their wealth in the way of Allah to get reward.

b. Al-Baqarah: 261

⁵⁴ Sudirman Hasan, *Wakaf Uang*, (Malang: UIN MALIKI PRESS), 2011, P 21-22

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي

كُلِّ سُنْبُلَةٍ مِائَةٌ حَبَّةٌ ۗ وَاللَّهُ يُضَاعِفُ لِمَنْ يَشَاءُ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“The example of those who spend their wealth in the way of Allah is like a seed (of grain) which grows seven spikes; in each spike is a hundred grains. And Allah multiplies (His reward) for whom He wills. And Allah is all-Encompassing and Knowing.”
(QS. Al-Baqarah : 261)⁵⁵

The two verses above include a global verse that encourages Muslims to spend a portion of their income in the public interest. This verse is often used to encourage Muslims to *infaq* and *shadaqah*. the waqf is part of a series of eternal *shadaqah*. That way, the use of these two verses as legal basis is allowed for cash waqf to meet relevance. Dengan begitu, penggunaan kedua ayat sebagai dasar pijakan hukum dibolehkannya wakaf uang menemui relevansinya.

2) Hadith

a. Hadith from Abu Hurairah.

إِذَا مَاتَ ابْنُ آدَمَ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ : صَدَقَةٍ جَارِيَةٍ ، أَوْ عِلْمٍ

يُنْتَفَعُ بِهِ ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

Abu hurairah repoted Allah’s mesengger as saying : “ when a man dies, all his acts come to an end, but there : recurring charity, or knowledge (by which people benefit), or apious off spring, who prays for him.

b. Hadith from Shahih Muslim.

⁵⁵ Departemen Agama RI, *Al-Qur'an dan Terjemahannya*, (Bandung: CV PENERBIT J-ART,2005), P 63.

عن ابن عمر رضي الله عنهما ان عمر بن الخطاب أ صاب ارضا بخيبر،

فأتى النبي صلى الله عليه و سلم يستأ مره فيها فقال: يا رسول الله إني

أصبت ارضا بخيبر لم أ صب مالا قطُّ أنفس عندى منه، فما تأمرنى به؟

قال: إن شئت حبست اصلها فتصدق بها

Allah's Messenger, I have acquired land in Khaibar. I have never acquired more valuable for me than this, so what do you command I do with it? Thereupon the Prophet (saw) said: If you like, you may keep the corpus intact and give its produce as Sadaqah. So 'Umar gave it as Sadaqah declaring that the property must not be sold or inherited or given away as a gift. And 'Umar devoted it to the poor, to the nearest of kin, to the emancipation of slaves, to wayfarers/guests, and in the way of Allah. -Sahih Muslim⁵⁶

3) According to Ulema Fiqh and MUI Fatwa.

The way to do money waqf according to the Hanafi School is to make business capital with *mudharabah* or *mubadha'ah*. While the benefits are in shadaqah to those who are entitled to receive waqf. This opinion is supported by Ibn Jibrin, One of the modern scholars that money waqf must be empowered so that it can provide convenience in helping people who are economically inadequate.

Ibn Abidin argued that waqf money is said to be a habit that applies to people in the Roman region, whereas in other countries, money waqf is not a habit. Therefore, Ibn Abidin argued that waqf money is not

⁵⁶ Shahih al-Bukhari, *Bab fi al-Waqf*, Hadis No. 2532, P 263

permissible or invalid⁵⁷. Syafi'i believes that money waqf is not permissible as Muhyiddin an-Nawawi said Syafi'i⁵⁸ in the book *al-Majmu'*. According to, the Shafi'i Mazhab does not allow money because dinars and dirhams will disappear when paid so that there is no more form.

The difference of opinion, that the reason is allowed and should not allow cash waqf in the form of money. Does the form of money after use or payment still exist as it was, maintained, and can generate profits again in a long time? But if we look at the development of the economic system now, it is very possible to carry out cash waqf. For example the money waqf is used as business capital as said by the Hanafi School or invested in the form of shares in the company that are strong or deposited in sharia banking and the profits can be channeled as a result of waqf. The Cash waqf invested in the form of shares or deposits, the value of money is maintained and produces profits in the long term⁵⁹.

Besides Hanafi scholars, there are some scholars who say that the Shafi'i School also allows money waqf as seen by al-Mawardi⁶⁰

وروى أبو ثور عن الشافعي جواز وقفها أى الدنانير والدراهيم

Meaning: Abu Saur narrated from Imam Shafi'i about the allowance of waqf dinars and dirhams

⁵⁷ Abu zahrah Muhammad, *Mudharat fi al-Waqf* (Tahqiq, Maha'ad al-Dirasat al-Arabiyah al-Aliyah, 1959), P 183

⁵⁸ Muhyiddin Nawawi, *al-Majmu'*, Mauqi' Ya'sub : 325

⁵⁹ Achmad Djunaedi dkk, *Setrategi pengembangan Wakaf Tunai di Indonesia*, (Jakarta: Direktorat Pemberdayaan Zakat),2007, P 6

⁶⁰ Al-Mawardi, *al-Hawi al-Kabir*, Tahqiq Dr. Mahmud Matharaji,(Beirut: Dar al-Fikr, Juz IX, 1994), P 379

The Fatwa Commission of the Indonesian Ulema Council (MUI) also allows money waqf⁶¹. The fatwa of the MUI was issued on May 11, 2012. In the fatwa it was stipulated that waqf money is an endowment by a person, group of people, or legal entity in the form of cash (cash). Included in the sense of money are securities⁶². The argument is based on the hadith of Ibn Umar. At that time the MUI fatwa commission also formulated a new definition of waqf⁶³ :

الوقف هو حبس مال يمكن الانتفاع به مع بقاء عينه بقطع في رقبته

على مصرف مباح موجود

Waqf is holding back property that can be utilized without the disappearance of the basic object, by not taking legal action against the object (selling, giving, or inheriting), to be channeled (the result) to something that is mubah (not haram).

Cash Waqf can only be channeled and used for shari'a allowed things. The principal value of cash waqf must be guaranteed immortality, may not be sold, granted or inherited.

4) According to Positive Law in Indonesia.

Cash waqf for Muslims is new. This can be seen by the birth of the fatwa of the Indonesian Ulema Council regarding the waqf money

⁶¹ Tim Penyusun, *Himpunan Fatwa Majelis Ulama Indonesia*, (Jakarta: Dirjen Bimas Islam dan Urusan Haji Departemen Agama RI), 2003, P 85

⁶² Sudirman Hasan, *Wakaf Uang*, (Malang: UIN MALIKI PRESS), 2011, P 28-29

⁶³ Direktorat Pemberdayaan Wakaf, *Pedoman Pengelolaan Wakaf Tunai*, (Jakarta: Direktorat Jendral Bimbingan Masyarakat Islam), 2006, P 17

set out on May 11, 2002⁶⁴. Law Number 41 of 2004 concerning waqf was also ratified by the president on October 27, 2004⁶⁵. This Law is a new history for the management of waqf after previously the waqf is regulated in Government Regulation Number 28 of 1977 concerning the Waqf of Owned Land explained that waqf is a legal act of a person or legal entity that separates part of his assets in the form of land and institutionalizes it forever for the purposes of worship or other public needs in accordance with Islamic⁶⁶. The definition of waqf contained in Government Regulation No. 28 of 1977 shows three things: (1) wakif or parties who donate property individually or legal entities such as companies or community; (2) the separation of land ownership has not indicated the transfer of ownership of the land used for waqf. Even so, by looking at the duration specified, which is institutionalized forever: this provision shows that the object waqf has changed ownership, from individual property or legal entity to public property (*milk-al-lah*); and (3) waqf land must be used for the purposes of worship or other public purposes in accordance with Islamic teachings.

In law Number 41 of 2004 concerning Endowment stipulated that waqf is a legal act of *wakif* to separate or surrender a portion of his property to be used forever or a certain period of time in accordance with its provisions for the purposes of worship or general welfare according to sharia.⁶⁷ About waqf according to this rule are: (1) wakif is a person who waqf property belonging to an individuals, organizations, legal entities; (2) Endowments are property that has long-lasting

⁶⁴ Tim Penyusun, *Himpunan Fatwa Majelis Ulama Indonesia*, (Jakarta: Dirjen Bimas Islam dan Urusan Haji Departemen Agama RI), 2003, P. 85

⁶⁵ Sudirman Hasan, *Wakaf Uang*, (Malang: UIN MALIKI PRESS), 2011, P. 31

⁶⁶ Peraturan Pemerintah Nomor 28 Tahun 1997 tentang Perwakafan Tanah Milik, Bab 1, pasal 1(1b)

⁶⁷ Undang-Undang Nomor 41 Tahun 2004

durability or long-term benefits and has economic value for sharia; (3) that waqf objects can be moving objects or immovable objects.⁶⁸

In Book III Compilation of Islamic Law (KHI) article 215 paragraph (1) and Article 216, explained that waqf is a legal act of a person, group of people or legal entity by separating part of his property and institutionalizing it for the purpose of worship or public needs. in accordance with Islamic teaching.⁶⁹

The definition of waqf shows: First, the party having waqf is directly called wakif without elaborating on the party that gave the assets, as detailed in Government Regulation Number 28 of 1977 and Compilation of Islamic Law.

Second, the duration of waqf. This is what distinguishes the definition of waqf according to Law Number 41 of 2004 with the previous legislation. In the previous legislation and KHI it was stipulated that waqf is *mu'abbad* (eternal, forever or lasting). Objects used for waqf cannot be taken back because it no longer the property of wakif (but become public property). Whereas in Law Number 41 of 2004 there is an explicit provision stating that waqf objects can be used forever or for a certain period of time. Therefore, in Law Number 41 of 2004 there is an acknowledgment of the *waqf mu'abbad* (a certain period of time) and the recognition of the *waqf ghairi lazim* agreement⁷⁰.

Third, the difference between Government Regulation No. 28 of 1977 and Compilation of Islamic Law before the issuance of Law No. 41 of 2004 and Government Regulation No. 42 of 2006 concerning the objects used for waqf. Government Regulation No 28/1977 only concerns property, while Compilation of Islamic Law is that all objects (rights) of property are not limited to land. Whereas in Law No. 41 of

⁶⁹ Kompilasi Hukum Islam Pasal 215 dan 216 ayat (1)

⁷⁰ Jaih Mubarak, *Wakaf Produktif*, (Bandung : Simbiosis Rekatama Media), 2008, P 13-14

2004 it is emphasized that waqf objects can be in the form of movable objects and immovable

D. Types of *Waqf*.

In detail, the waqf object which is the main part of waqf money in Law Number 41 of 2004 explained that waqf property can only be used for waqf if owned and controlled by wakif legally (article 15). Waqf property consists of immovable objects and movable objects. Immovable objects include:

1. Land rights are in accordance with the provisions of legislation that apply both those who have and those who have not registered.
2. Buildings or parts of buildings that stand on the ground as referred to in number
3. Plants and other objects related to soil
4. Property rights to apartment units in accordance with the provisions of applicable laws and regulations
5. Other immovable objects in accordance with Shari'a provisions and applicable laws and regulations.

Whereas article 16 paragraph (3) movable waqf is property that cannot be used up because it is consumed, including: (1) Money; (2) Precious Metals; (3) Securities; (4) Vehicles; (5) Right to wealth Intellectual; (6) Rental Rights and (7) Other Movable Objects in accordance with Shari'ah provisions and applicable laws and regulations (article 16).

Articles 15 and 16 d show that Indonesian waqf fiqh has adopted the classical fiqh spirit combined with the needs of the times. In the perspective of classical jurisprudence, such as Imam Shafi'i's opinion, generally waqf is still associated with immovable items such as land and buildings. Opinions like this have actually been valid in Indonesia before applying Law Number 41 of 2004, as stated in (KHI)

Compilation of Islamic Law⁷¹. This Law on Waqf provides flexibility for Muslims to participate in waqf programs so that they do not need to wait rich. They can set aside a portion of their income for money waqf or even be able to share their property rights to be waqf in time⁷². This is a new path that can provide opportunities for improving the welfare of Muslims.

As for movable objects in the form of money in articles 22 and 23 of Government Regulation No. 42 of 2006 concerning the implementation of Law No. 41 of 2004 concerning Endowments. Article 22 explain the procedure for cash waqf as follows.

1. Cash Waqf that can be donated is Rupiah
2. the money that will be waqf is still in foreign currency, then it must be converted into rupiah.
3. Wakif who will accept the money is required to :
 - a. Present at the Syari'ah Financial Institution Recipient Financial Institution (PWU LKS) to surrender the will of the waqf
 - b. Explain the ownership and origin of money that will be used for waqf
 - c. Deposit money in cash to the LKS-PWU
 - d. A statment from of Wakif will intention that functions as Waqf Pledge Deed (AIW)

Then, article 23 explains that wakif can transfer movable objects in the form of money through LKS designated by the Minister of

⁷¹ Dalam pasal 215 huruf(a) disebutkan bahwa wakaf adalah perbuatan hukum seseorang atau kelompok orang atau badan hukum yang memisahkan sebagian dari benda miliknya dan melembagakannya untuk selama-lamanya guna untuk kepentingan peribadahan atau keperluan umum lainnya yang sesuai dengan ajaran agama islam.

⁷² Dalam pasal 1 angka (1), wakaf didefinisikan sebagai perbuatan hukum wakif untuk memisahkan dan menyerahkan sebagian harta benda miliknya untuk selama-lamanya atau untuk jangka waktu tertentu sesuai dengan kepentingan guna kepentingan ibadah atau keperluan umum lainnya yang sesuai menurut syari'ah.

Religion as a Sharia Financial Institution for Receiving Money Waqf (LKS-PWU). Until now, there have been 12 Islamic Financial Institutions (LKS-PWU) that receive cash waqf which inaugurated by Minister of Religion Number 4 of 2009⁷³, namely Bank Muamalat, Bank Syariah Mandiri, Bank BNI Syariah, Bank DKI Syariah, Bank Mega Syariah, Bank BTN Syari'ah, Bank Bukopin Syari'ah, BPD Jogja Syari'ah, BPD West Kalimantan Syari'ah, BPD Central Java Syari'ah , BPD Riau Syariah, BPD East Java Syari'ah.⁷⁴

Technically, the money waqf has been regulated by administrative procedures. Regulation of the Minister of Religion Number 4 of 2009 concerning the Administration of Money Waqf Registration was signed on 29 July 2009, the regulation consisted of 15 articles.

Several articles of legislation show explicitly that the cash waqf is acknowledged as being in positive law of Indonesia. Besides, the Waqf Law also mandates the establishment of an Indonesian Waqf Board (BWI) tasked with advancing and developing national waqf, this institution is an independent institution. According to the Waqf Law the membership of the Indonesian Waqf Board (BWI) was appointed and dismissed by the President. Whereas the responsibility for carrying out the tasks was carried out by an independent audit institution and submitted to the Minister and announced to the public.

With the issuance of Law No. 41 of 2004 concerning Waqf, which was warmly welcomed by Muslim communities so that it is possible

⁷³ Achmad Arief Budiman, *Hukum Wakaf Administrasi*, Pengelolaan dan Pengembangan, Semarang: Karya Abadi Jaya, 2015, P 115

⁷⁴ Ditunjuk Mentri Agama tanggal 9 September 2009 di Gedung DPR RI. Nomor Rekening Wakaf Uang Bank Syariah Mandiri 0090012345, BNI Syari'ah 33300003, Bank Muamalat 3012345615, dan Bank DKI Syari'ah 7017003939. Nazhir pada bank-bank tersebut adalah Badan wakaf Indonesia

for all Muslims to perform waqf part of their property other than in the form of land and buildings. Now with the provision of waqf in cash, it does not have to wait until it has abundant property, it is not obligatory to own land or large buildings that can become *wakif*. Only by submitting a portion of cash to a Sharia Financial Institution that Receives Money Endowments (LKS-PWU).⁷⁵

E. Waqf Obligations and Requirements.

For waqf eligibility criteria, there was a debate among Ulama. This happens because it is different in determining what is meant by contract obligations⁷⁶. Pillars of waqf according to the Hanafiyah Ulama are *Sighat*, namely *lafadz* which shows the meaning of waqf. Therefore, those who become pillars of waqf according to them are *ijab*, statements originating from waqif that show the will of waqf. *Qobul* from receiving waqf does not include pillars of waqf according to the Ulama of Hanafiyah. Meanwhile, the pillars of waqf according to *Jumhur Ulama* are four, namely *waqif* (the person who waqf his property), *mauquf* (property in waqf), *mauquf 'alaih* (the person who has the right to manage the waqf property) and *shigat* (statement of pledged waqf pronounced wakif).⁷⁷

1. Waqif

In order for the Waqf to fulfill the element of legality, waqif must have the ability to carry out legal actions. Skills are a condition of a

⁷⁵ Uswatun Hasanah, Laporan Akhir Pengkajian Hukum Tentang Aspek Hukum Wakaf Uang, (Jakarta: Badan Pembinaan Hukum Nasional, 2009), P 22

⁷⁶ Dalam menjelaskan rukun dan syarat akad terjadi perbedaan pendapat ulama. Perbedaan pendapat ini muncul karena berbedanya mereka dalam mendefinisikan rukun dan syarat. Rukun menurut Hanafiyah adalah apa yang keberadaannya tergantung kepada sesuatu dan ia merupakan bagian dari hakikat sesuatu. Maka yang menjadi rukun akad dikalangan Hanafiyah adalah *sighat* akad, yaitu *ijab* dan *qabul*. Karena hakikat dari akad adalah ikatan antara *ijab* dan *qobul*.

⁷⁷ Rozalinda, *Manajemen Wakaf Produktif*. (Jakarta: PT Grafindo Persada), 2015, P 22

person freed from obstacles to take legal actions such as crazy, or in the control of others.

Wakif is required to have the ability to take legal actions because waqf is an act of releasing property from its owner which is shown for religious and social purposes, without expecting any reward. One indicator of skill is maturity (*baligh*), a mental condition in which a person is able to consider all good and bad actions he does.

According to the *Jumhur Ulema* who are ignorant and bankrupt, it is illegal to do waqf. Ulama Hanafiyah added that the requirement for wakif is not a bankrupt person, unless he gets permission from his creditor. Bankruptcy prevents a wakif from carrying out waqf, namely the interests outside of him, because there are still obligations to eliminate difficulties on him.⁷⁸

2. *Mauquf lahu*

so that property possessed by law is legal. then it must fulfill the following conditions:

a. Assets in waqf are *mal mutaqawwim*, immovable objects. Therefore, it is illegal to accept something in the form of benefits, such as *irtifaq* rights. Because rights according to Hanafiyah, not including property. Likewise, according to this *Ulema*, it is not valid to grant property that should not be used by sharia (*malghairu mutaqawwim*)⁷⁹

b. The assets that are represented must be clear.

Fuqoha agrees that the waqf object must be clear in its form, there must be a clear existence, boundary, and place, such as accepting

⁷⁸ Achmad Arief Budiman, *Hukum Wakaf Administrasi, Pengelolaan dan Pengembangan*, (Semarang: Karya Abadi Jaya), 2015, P 27

⁷⁹ Rozalinda, *Manajemen Wakaf*, P 25

1000 meters of land bordering one's land.⁸⁰ This condition aims to provide legal protection for the existence of waqf. This condition guarantees that *mauqf a'laih* can receive benefits or results of management of waqf objects. This condition is intended to avoid the appearance of disputes, due to the unclear status of the waqf object..⁸¹

c. Waqf property belongs to absolute wakif

Endowments must be perfectly owned by *Wakif* For example, goods are still in a testament , the one who bequeath still alive. Malikiyah Ulama requires that waqf assets are objects that are not related to the rights of others. hence, it is not valid to endow with objects that are used as collateral or rent⁸². Legislation defines the necessity of waqf objects to belong to Wakif. This is in accordance in Compilation of Islamic Law Article 215 paragraph (1) in conjunction with Law No. 41 of 2004 Article 1 paragraph (1) which states: "*waqf is a legal act of wakif to separate or surrender a portion of his property ...*"

The definition of waqf explicitly shows that waqf objects are implied as belonging to the absolute waqf. Objects that are under the control of many people are not valid for waqf. More explicitly, Law No. 41 of 2004 Article 15 states that "*waqf property can only be used for waqf if owned and controlled by wakif legally*"⁸³.

3. *Mauqf a'laihi*

⁸⁰ Ibid., 26

⁸¹ Achmad Arief Budiman, *Hukum Wakaf Administrasi, Pengelolaan dan Penembangan*, Semarang: Karya Abadi Jaya, 2015, P 28

⁸² Rozalinda, *Manajemen Wakaf Produktif*, P 26

⁸³ UU Perwakafan No 41 Tahun 2004 Pasal 15

The ulama agreed that waqf is a form of worship that aims to get closer to Allah. Because that is the purpose of waqf are all virtues included in the category of *qurbah* to Allah. The implementation of *qurbah* to Allah is realized by *mentasharafkan* the results of waqf management for *mauquf a'laihi* which are in accordance with the Shari'a such as for the poor, Ulama, close family and the public interest. Although fiqh allows the allocation of waqf on two targets in accordance with the distribution of waqf, namely *waqf ahli* and *waqf khairi*. But at this time formally Islamic countries only limit the allocation to the type of *waqf khairi*. Normatively these restrictions affirm the allocation of waqf to broader goals and not only to families or certain parties⁸⁴

The difference between *waqf khairi* and *waqf ahli* lies with the party designated as the recipient of the right (*mauquf a'laih*) for the results of the management of waqf. In the *waqf ahli* the family, people or certain parties. While in *waqf khairi* the recipient is the general public. That way the value of the benefits of *waqf khairi* is much greater than the *waqf ahli*.⁸⁵

Legislation in this modern era has a strong vision to make waqf to have a broad value of benefits. This confirms the validity of *waqf khairi* as the only choice. This vision for example can be seen in the purpose of waqf according to Compilation of Islamic Law which is intended for "*the interests of worship or other public purposes in accordance with Islamic teachings*". Whereas Law Number 41 of 2004 Article 22 determines to achieve the goals and functions of waqf, waqf property can only be allocated for religious facilities, education, health activities, assistance to the poor, neglected children, orphans,

⁸⁴Achmad Arief Budiman, *Hukum Wakaf Administrasi, Pengelolaan dan Pengembangan*, Semarang: Karya Abadi Jaya, 2015, P 33

⁸⁵ Ibid.,34

scholarships, advancement and economic improvement of the Ummah and general welfare.⁸⁶

Furthermore, in article 23 paragraph (1) the determination of waqf property as referred to in Article 22 is carried out by Wakif at the time of pronouncement of the waqf pledge. But if Wakif does not determine the allocation of waqf property, then according to article 23 paragraph (2) Nazhir can determine the allocation of property of waqf which is carried out in accordance with the purpose and function of waqf.⁸⁷

4. *Shighat*

Sighat is a statement from wakif which is shown to Nazhir to endow his property. In the Waqf rules in Indonesia *sighat* is also known as the waqf pledge. The meaning of the waqf pledge is explained in the Compilation of Islamic Law Article 215 paragraph (3) which says "*waqf pledge is a statement of the will of Wakif to endow his property*" Whereas Government Regulation No. 28 of 1977 article 1 paragraph (3) states that "*Waqf pledges are statements of wakif intention which are spoken or written to Nazhir to endow their property*"⁸⁸.

The waqf pledge stipulated in Law Number 41 of 2004 differs from waqf pledges governed by previous laws and regulations. The law allows pledges to be stated verbally,⁸⁹ while the previous legislation was not. However, the legal action requires authentic evidence, then the waqf pledges stated verbally are also carried out in front of the Wakaf Pledge Acting Officer or in front of the Leaders

⁸⁶ UU Perwakafan No 41 Tahun 2004 pasal 22

⁸⁷ Achmad Arief Budiman, *Hukum Wakaf*, P 35

⁸⁸ Ibid., 38

⁸⁹ Peraturan Pemerintah No 42 pasal 25 dan P 26

of the Islamic Financial Institutions appointed by the Minister of Religion to make their certificates.

Wakif who is unable to attend in front of the Certificate Makers of Worship Endowments or Leaders of Islamic Financial Institutions appointed by the Minister of Religion for reasons that can be accepted by law, can appoint representatives with a power of attorney strengthened by two witnesses⁹⁰. Both wakif and his proxy can carry out waqf pledges by submitting a valid proof of ownership to the Waqf Pledge Acting Official (PPAIW) or the Head of the Islamic Financial Institution Recipient of Cash Waqf (PWU LKS)⁹¹

5. *Nazhir*

Fiqh positions *Nazhir* as a party that has an urgent position in waqf. *Nazhir* has the task of administering, maintaining / protecting, managing and developing, and reporting on the management of waqf property. Without its existence, it is not impossible that waqf property can be managed properly and bring results or benefits. Literature Fiqh that includes *Nazhir* as a pillar of waqf, put the discussion in the title *al-Wilayah 'ala al-Waqf* (mastery or supervision of waqf objects). *Nazhir's* placement in the matter was intended, that *Nazhir* had the task of managing, maintaining, distributing the results of the management of waqf to *mauquf a'laihi*, or make every effort that has the potential for waqf objects to produce well according to the purpose of waqf. Looking at *Nazhir's* roles and tasks, it can be concluded that the existence of *nazhir* in waqf is very important.⁹²

⁹⁰ Mukhlisin Muzarie, *Hukum Perwakafan dan Implikasinya Terhadap Kesejahteraan Masyarakat*, (Jakarta: Kementrian Agama RI, 2010), Hlm 185

⁹¹ Undang-Undang Nomor 41 Tahun 2004 pasal 17 ayat (2)

⁹² Achmad Arief Budiman, *Hukum Wakaf Administrasi, Pengelolaan dan Pengembangan*, (Semarang: Karya Abadi Jaya, 2015), Hlm 341

Although Nazhir was positioned as an important element in waqf, in general fiqh does not include Nazhir as a pillar of waqf. Nevertheless the *Ulama* 'agreed in the Waqf, Wakif must appoint *Nazhir*. According to Prof. Dr. Ahmad Rofiq, Professor of Islamic Law at the Syari'ah Faculty of Walisongo State Islamic University (UIN),⁹³ Nazhir was not included as a pillar of waqf because waqf is a *tabbaru* charity 'which is the release of property rights from Wakif..

However, Nazhir's existence is very necessary in the implementation of waqf because its function as a waqf manager is very urgent. In the whole waqf process, Nazhir's position as the main actor, while other parties such as *Wakif*, *mauquf aih*i, the government, are only supporting actors. So it is impossible for waqf to be expected as something productive and useful if there is no party in charge of managing it

Nazhir is responsible for realizing the goal of waqf desired by *Wakif*. In the Waqf, *Nazhir's* responsibilities are so great. Nazhir's task is so heavy, but full of glory. This needs to get emphasis, because it is in the hands of Nazhir the objects of Waqf. In the nazhir's grasp also the people depend on hope for prosperity and progress.⁹⁴

Furthermore Al-Khatib al-Syarbini provided Nazhir's requirements as follows:⁹⁵

- a. Honest and fair, waqf assets are mandates that must be maintained as well as possible and the benefits must be channeled in accordance with the allocation of waqf. Therefore Nazhir as the trustee needs to have honesty and justice as in the testament.

⁹³ Ahamad Rofiq, *Hukum Perdata Islam di Indonesia*, PT Raja Grafindo Persada, 2013 P 399

⁹⁴ Achmad Arief Budiman, *Hukum Wakaf*, P 42-43

⁹⁵ Al-Khatib al-Syarbini, *Mughni al-Muhtaj*, Vol II, P 395

- b. Kahtib al-Syarbini suggested that justice as a condition for Nazhir's acceptance be emphasized on the physical aspect, as well as the justice of parents towards children, although perhaps dividing his affection towards all is not the same, but what is important in the physical aspect gives equal attention and division.
- c. Skills or abilities, a person's ability to manage and develop waqf assets so as to achieve optimal results. If Nazhir turns out to be incompetent to manage waqf assets it will cause a great loss, then the regional law government immediately replaces it with another, even though the Nazir is appointed by Wakif, the reason being because of saving property.

Nazhir's duties and responsibilities are to manage and develop the assets of the waqf to achieve maximum results and then distribute them to people or institutions that are entitled to receive them. From these tasks, Nazhir has the right to earn a decent income. Al-Khatib Syarbini explained that the operational costs of waqf management consisting of maintenance, development, and production costs were taken from waqf assets or wakif assets or from production and the results of empowerment.⁹⁶

Provisions regarding Nazir requirements in Indonesian legislation complement each other. For example, contained in Law No. 41 of 2004 and Compilation of Islamic Law, the substance of the rules in the two regulations is identical, only the formulation or editor is different. According to KHI article 291 Nazhir's requirements include: (a) Indonesian citizens (b) are Muslim (c) are adults (d) physically and mentally healthy (e) are not under the custody (f) reside in the district where the object is located waqf.

⁹⁶Mukhlisin Muzarie, *Hukum Perwakafan dan Implikasinya Terhadap Kesejahteraan Masyarakat*, Jakarta: Kementrian Agama RI, 2010, P 144-145

Provisions in Law No. 41 of 2004 Article 10 paragraph (1-3) state that

- 1) a person as referred to in article 9 letter *a* can only become *Nazir* when fulfilling the requirements:
 - a. Indonesian citizens
 - b. Muslim
 - c. Adult
 - d. Trustful
 - e. physical and spiritual abilities
 - f. Not deterred from carrying out legal actions
- 2) Organizations as referred to in article 9 letter *b* that can become *Nazhir* if they fulfill the following conditions:
 - a. The management of the organization concerned fulfills the requirements of the individual *nazhir* as referred to in paragraph (1)
 - b. Organizations in the social, educational and religious fields of Islam.
- 3) Legal entities as referred to in article 9 letter *c* can only become *Nazhir* if they fulfill the following requirements:
 - a. the legal entity concerned fulfills the requirements of the individual law as referred to in paragraph (1)
 - b. Indonesian legal entities formed in accordance with applicable laws
 - c. Legal entity in charge of social, education, community and religious Islam⁹⁷

⁹⁷ UU Perwakafan Nomor 41 Tahun 2004 Pasal 10 ayat (1-3)

The determination of Nazhir's conditions is expected to support

the optimization of Nazhir's work in managing waqf objects. Because of the importance of Nazhir's position, according to Zuhaili, Nazhir is required to have competent criteria in managing and *pentasharufan waf*.

additional requirements from the Directorate of Religious Waqf Empowerment, Ministry of the Republic of Indonesia. The institution adds conditions to Nazhir :

1) Moral Requirements

- a. Understand waqf law and ZIS, both in Shari'a and Law
- b. trustworthy, and fair
- c. Have emotional and spiritual intelligence

2) Management Terms

- a. Have good capacity and capability in leadership
- b. Have a clear vision in advancing waqf
- c. Having a high social life
- d. Professional in economics

3) Business Terms

- a. Having the desire to manage waqf assets.
- b. Having experience or ready to learn
- c. understand various business opportunities⁹⁸

The addition of the conditions for Nazhir outside the legal provisions indicates a similarity of views, that a Nazir has special qualifications that support in carrying out the tasks of managing waqf productively. With this qualification, waqf will not only maintain its existence, but also can bring results or benefits to

⁹⁸ Dirjen Bimas Islam Direktorat Pemberdayan Wakaf Depag RI, *Tanya Jawab Wakaf*, (Jakarta: Dirjen Bimas Islam Direktorat Pemberdayaan Wakaf Depag RI),2008 Hal 9-10.

mauqf a'laihi because it is managed by Nazhir who has the character of trustworthy, capable, and has good managerial abilities.⁹⁹

⁹⁹ Achmad Arief Budiman, *Hukum Wakaf Administrasi, Pengelolaan dan Pengembangan*, (Semarang: Karya Abadi Jaya), 2015, P 47-48.

CHAPTER III

CASH WAQF SECURITY

A. Technical Implementation of Cash Waqf

Movable waqf including cash waqf is specifically regulated in Law No. 41 Year 2004. The provisions regarding cash waqf are stated as follows: a) *wakif* is allowed to give movable waqf in the form of money (cash waqf) through Sharia Financial Institutions appointed by the Minister¹⁰⁰, b) cash waqf is performed by the *wakif* with a written statement of wills¹⁰¹, c) waqf is issued in the form of cash waqf certificates¹⁰², d) the cash waqf certificates are issued and delivered by the Sharia Financial Institutions to the *wakif* and *nazhir* as a proof of waqf property bestowel¹⁰³, dan e) Sharia Financial Institutions on behalf of *nazhir* register the waqf property in the form of money to the Minister of Religious Affairs at least 7 working days since the issuance of cash waqf certificates.¹⁰⁴

The provisions regarding cash waqf are as follows: 1) the type of property given by the *wakif* is in rupiah currency; therefore, in the case where the money is still in foreign currency, thus it must be converted into rupiah,¹⁰⁵ and 2) movable waqf in the form of money is given through Sharia Financial Institutions appointed by the Minister of Religion Affairs as the Sharia Financial Institutions in charge of receiving cash waqf (LKS-PWU)¹⁰⁶.

¹⁰⁰ Law Number 41 Year 2004, Article 28

¹⁰¹ *Ibd*, Law No. 41/2004, Article 29 paragraph 1

¹⁰² *Ibd*, Law No. 41/2004, Article 29 paragraph 2

¹⁰³ *Ibd*, Law No. 41/2004, Article 29 paragraph 3

¹⁰⁴ *Ibd*, Law No. 41/2004, Article 30

¹⁰⁵ Peraturan Pemerintah Nomor 42 Tahun 2006, Pasal 22, ayat (1) dan (2)

¹⁰⁶ Peraturan Pemerintah Nomor 42 Tahun 2006, Pasal 23 Lima lembaga Keuangan Syariah yang telah ditunjuk menteri Agama sebagai LKS-PWU adalah: a) PT Bank Negara Indonesia (Persero) Tbk. Divisi Syariah b) PT Bank Mu'amalat Indonesia Tbk c) PT Bank DKI Jakarta, d) PT Bank Sya'riah Mandiri, e) PT Bank Mega Sya'riah Indonesia.

The technical rules concerning cash waqf stated that *wakif* is obliged to: a) present at the Sharia Financial Institutions in charge of receiving cash waqf (LKS-PWU) to declare the willingness of giving cash waqf¹⁰⁷, if unable, *wakif* may appoint a representative¹⁰⁸; b) explain the ownership and the origin of the money; c) hand over the money in cash to the LKS-PWU; and d) fill out the statement form of *wakif* willingness that functions as a deed of waqf pledge (Akta Ikrar Wakaf [AIW])¹⁰⁹.

The *wakif* who wants to endow his money through LKS-PWU can deposit the money directly or indirectly. Article 4 of the Indonesian Waqf Board (BWI) Regulation No. 1 of 2009 states that:

- (1) deposit of cash waqf can be performed directly and indirectly
- (2) direct deposit of cash waqf as referred to in paragraph (1), namely *wakif* or his representative must be present at LKS-PWU office
- (3) indirect deposit of cash waqf as referred to in paragraph (1), namely through electronic media channel, including: Automated Teller Machines (ATM), *Phone* Banking, Internet Banking, and Mobile Banking.¹¹⁰

Article 5 and 6 of the Indonesian Waqf Board (BWI) Regulation No. 1 of 2009 explained the procedures for direct and indirect deposit. Article 5 states¹¹¹ :

- (1) The deposit of cash waqf from *wakif* is addressed to the *nazhir* who has been registered by the BWI and has entered into a cooperation contract with LKS-PWU

¹⁰⁷ *Ibd*, PP 42/2006, Pasal 22 ayat (3)a

¹⁰⁸ *Ibd*, PP 42/2006, Pasal 22 ayat (4)

¹⁰⁹ *Ibd*, PP 42/2006, Pasal 22 ayat (3) b,c, dan d

¹¹⁰ Peraturan Badan Wakaf Indonesia No 1 Tahun 2009, Pasal 4

¹¹¹ *Ibd*, BWI regulation 1/2009, Pasal 5

- (2) *Wakif* is required to fill out a statement form of *wakif* willingness which functions as Deed of Waqf Pledge (Akta Ikrar Wakaf [AIW]) which is followed by depositing a sum of money in accordance with the pledge.
- (3) Statement form of *wakif* willingness which functions as AIW and has been filled and signed by the *wakif*, attached with proof of cash deposit, then signed by 2 (two) bank officers as witnesses and by 1 (one) bank official as Official of Waqf Pledge Deed (Pejabat Pembuat Akta Ikrar Wakaf [PPAIW]).
- (4) LKS-PWU issues a certificate of cash waqf to the *wakif* if the requirements listed in paragraph (1) and (2) have been fulfilled.

The explanation of article 6 of Indonesian Waqf Board (BWI) Regulation No.1 of 2009 concerning indirect deposit of cash waqf is as follows ¹¹²:

- (1) Indirect deposit of cash waqf from the *wakif* is addressed to the *nazhir* who has been registered by the BWI and has entered into a cooperation contract with LKS-PWU.
- (2) *Wakif* can only choose forever type of time period and is intended for public interest.
- (3) LKS-PWU is obliged to prepare an on-line receipt system for cash waqf using the electronic media channel, which contains at least the following information:
 - a. List of *nazhir* names that will be chosen by *wakif*
 - b. List of cash waqf denominations
 - c. Statement form of *wakif* willingness that functions as AIW
 - d. Approval of cash waqf deposit that has been pledged.
- (4) LKS-PWU is obliged to prepare a Cash Waqf Certificate from the *wakif's* indirect deposit based on the information obtained from electronic media channel.

¹¹² *Ibd*, BWI regulation 1/2009, Pasal 6

- (5) *Wakif* can exchange the proof of cash waqf deposit obtained from electronic media channel to the LKS-PWU to get a cash waqf certificate.
- (6) If the *wakif* not exchanging the proof of cash waqf deposit into cash waqf certificate, then within a period of no later than 2 weeks after the electronical deposit, the LKS-PWU will issue a Cash Waqf Certificate.
- (7) In the case where the *wakif* not exchanging the proof of cash waqf deposit into a cash waqf certificate as referred to in paragraph (6) then the cash waqf certificate will be handed over to BWI for administration.

The nominal of cash waqf is not limited. As a proof that someone has endowed his money, he is given a Cash Waqf Certificate (Sertifikat Wakaf Uang [SWU]). However, based on Article 3 of the Indonesian Waqf Board Regulation (PBWI) Number 1 of 2009¹¹³, this cash waqf certificate is only given if the deposited cash waqf has reached a nominal value of Rp. 1000,000 (one million rupiah) and above. *Wakif*, who wants to endow his money, immediately deposit his money to *Nazhir*'s account. The endowed money must be in Rupiah currency.¹¹⁴

The flow of cash waqf administration according to BWI is as follows:

- a. *Wakif* comes to the LKS-PWU (Sharia Financial Institutions in charge of receiving cash waqf)
- b. Fill out the Deed of Waqf Pledge (AIW) and attach a copy of valid identity card
- c. *Wakif* deposit the cash waqf and the money will be automatically entered to BWI's account
- d. *Wakif* declare the pledge of waqf (*sighat*) and signs the Deed of Waqf Pledge (AIW) along with:
 - 2 witnesses

¹¹³ *Ibd*, BWI regulation 1/2009, Pasal 3

¹¹⁴ Achmad Arief Budiman, *Hukum Wakaf Administrasi, Pengelolaan dan Pengembangan*, Semarang: Karya Abadi Jaya, 2015, Hlm 116

- 1 Bank official as the Official of Waqf Pledge (PPAIW)
- e. LKS-PWU prints the Cash Waqf Certificate (SWU)
- f. LKS-PWU hand over the AIW and SWU to the *Wakif*

For practical purposes, the prospective *wakif* can directly come to one of the following Sharia Financial Institutions in charge of receiving cash waqf (LKS-PWU) to endow his money:

- Bank Syari'ah Mandiri
- BNI Syari'ah
- Bank Muamalat
- Bank DKI Syari'ah
- Bank Mega Syari'ah Indonesia
- Bank BTN Syari'ah
- Bank Bukopin Syari'ah
- Bank Pembangunan Daerah (BPD) Jogja Syari'ah
- Bank Pembangunan Daerah (BPD) Riau Syari'ah
- Bank Pembangunan Daerah (BPD) Jatim Syari'ah

Cash waqf can be deposited through ATM to LKS-PWU's account. Afterwards, the *wakif* can confirm to the relevant LKS-PWU, or contact the *Call Service Center* at (021) 87799232, (021) 87799311.¹¹⁵

B. Cash Waqf with a Risk of Decreasing Currency Values

Cash waqf is an endowment (waqf) in the form of cash money invested in profitable economic sectors with certain percentage provisions used for social services. More specifically, the definition of cash waqf in the context of regulation in Indonesia is an endowment (waqf) in the form of movable property (money), in rupiah, through a Sharia Financial Institution

¹¹⁵ Achmad Arief Budiman, *Hukum Wakaf*, Hlm 113-115

(LKS) appointed by the government which issues a Cash Waqf Certificate.¹¹⁶

One of the provisions of MUI fatwa states that sustainability of the principal cash waqf value must be guaranteed, may not be sold, granted, or inherited¹¹⁷. For this reason, Article 43 of Law No. 41 of 2004 states ¹¹⁸: "(1) the management and development of cash waqf properties by nazhir as referred to in Article 42 shall be carried out in accordance with Shari'ah principles, (2) The management and development of cash waqf properties by nazhir as referred to in paragraph (1) is carried out productively. (3) In the case where the management and development of cash waqf properties as referred to in paragraph (1) require a guarantor, then a Sharia Insurance Institution is used." The Sharia Insurance Institution is intended to prevent loss of principal business due to investment loss.

In order to secure this principal money, article 48 paragraph 1.4.5 of the Law states: "management and development of cash waqf properties must be guided by BWI. (4) Management and development of cash waqf properties carried out at the Sharia Bank must follow the program of the Sharia Insurance Institution in accordance with the laws and regulations. (5) Management and development of cash waqf properties carried out in the form of investments outside the sharia bank must be insured in sharia insurance.

In order to strengthen the security of principal money, article 10 of the BWI regulation No. 1 of 2009 states that "Management of cash waqf investment is an effort carried out by the waqf fund manager (*Nazhir*) in the form of investment to obtain profits by securing the principal value of waqf"¹¹⁹.

¹¹⁶ UU Perwakafan No 41/2004

¹¹⁷ Komisi Fatwa Majelis Ulama Indonesia, Fatwa Tentang Wakaf Uang, 11 Mei 2002.

¹¹⁸ UU 41 Tahun 2004, Pasal 43

¹¹⁹ PP BWI No 1 Tahun 2009, Pasal 12 Ayat (4)

Even though there was a protection system for principal value of waqf, the problems were still existed. *Wakif* still has to face principal value losses. Due to the obligation of doing cash waqf in rupiah currency in Indonesia, other currency endowments must be converted into rupiah resulting in their own vulnerability. The source of actual vulnerability mentioned in Article 22 Paragraph 1 and 2 of PP No. 42/2006 in the waqf regulation, where the waqf properties in the form of foreign currency must be exchanged in rupiah, and the amount of cash waqf set forth in the waqf pledge deed or cash waqf certificate is based on these *tasharaf* results. The full article states:” *Cash waqf that can be endowed is only in rupiah currency. In the case where the endowed money is still in foreign currency, it must be converted into rupiah*”.

On the other hand the rupiah in the form of paper money as cash waqf property is very vulnerable to inflation, due to the fluctuating nature of the paper currency itself. The fluctuating nature of the rupiah affects the declining of waqf principal value secondary to inflation scour.

The waqf law has not provided a guarantee that the value of the endowed money should be recorded in accordance with the value of purchasing power at all times. Sharia Financial Institutions in charge of receiving cash waqf (LKS-PWU) only perceive that they have an obligation to record in accordance with the deposited nominal value only.

For example, if the A endows 1 million, then the next 30 years LKS-PWU is only required to record 1 million, even though 1 million in 30 years later has a smaller value. Not to mention that there might be a hyperinflation riot with the rupiah. It can not be imagined if the rupiah value fell 6 times like in 1998 or the government issued a policy to cut money from one thousand to one rupiah as happened in Soekarno's time.¹²⁰

¹²⁰Muhyar Fanani, *Pengelolaan Wakaf Tunai: Studi Perbandingan Atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat, Dan Baitul Mal Muamalat*, Semarang: DIPA IAIN Walisongo Semarang 2009, Hlm 150.

To anticipate fluctuation in currency values that affect the principal property of waqf, it is necessary to provide a reserve money, namely a sum of money prepared by a foundation, company or bank managing cash waqf to deal with the possibility of fluctuations in currency values. The reserve money can be taken from the benefits of waqf money investment.¹²¹

C. Cash Waqf Management Institution

1 Indonesian Waqf Board (BWI)

Waqf is a legal act that has long been existed and carried out by the community. As a religious rule that has the potential and economic benefits, waqf needs to be managed effectively and efficiently so that it can be useful, both for the sake of worship and promoting public welfare.

To advance and develop national endowments (waqf), the government established an Indonesian Waqf Board, hereinafter abbreviated as BWI, which is an independent institution in carrying out its duties to develop waqf in Indonesia. BWI was established based on the Law of the Republic of Indonesia Number 41 of 2004 concerning Endowments. This agency specifically has the task of advancing and developing management of endowments (waqf) in Indonesia towards the professional and modern ones so as to produce benefits that can prosper the community.

Indonesian waqf board has a vision and mission¹²²: *“To realize of an independent institution that is trusted by the community, has the ability and integrity to develop national and international waqf.”*

The mission of the Indonesian Waqf Board is, *“Making the Indonesian Waqf Board a professional institution capable of realizing the economic potential and benefits of waqf property for the benefit of worship and community empowerment.”*

¹²¹ Ahmad Furqon, *Praktek Perwakafan Uang di Lembaga Keuangan Syariah Penerima wakaf uang*, Semarang: IAIN Walisongo, 2010, Hlm 20

¹²² Badan Wakaf Indonesia, *Profil Badan Wakaf Indonesia Periode 2007-2010*, Jakarta: Badan Wakaf Indonesia, 2008, Hlm 10-11

The membership of Indonesian Waqf Board is appointed and dismissed by the President. The membership of Regional Indonesian Waqf Board is appointed and dismissed by the Indonesian Waqf Board. Indonesian Waqf Board membership is appointed for a term of 3 (three) years and can be reappointed for 1 time after his term ends.

BWI's existence is very urgent. This is related to the efforts of improving the quality of waqf management in Indonesia. As the guidance and supervision of waqf managers since the enactment of the Waqf Law became the responsibility of BWI.

In Indonesia, the authority that regulates cash waqf investment is the Indonesian Waqf Board specifically the Division of Waqf Management and Development. In terms of cash waqf management, the task of this division is to assist and guide the *nazhir* in managing cash waqf, and to facilitate the study of cash waqf program feasibility.

It was stated in the Government Regulation of the Republic of Indonesia Number 42 of 2006 article 48 that the management and development of waqf properties must be guided by BWI regulations. The management and development of cash waqf properties can only be done through investment in LKS fund products or sharia financial instruments.¹²³

Following up those mandate of the Government Regulation (PP), BWI issued several regulations relating to the management of cash waqf, especially in cash waqf investments. The regulation is the BWI Regulation Number 1 of 2009 concerning Guidelines for Management of Waqf Property Development Funds.

In the BWI regulation (No. 1 / 2009) regarding the Guidelines for Management of Waqf Property Development Funds in the form of money, in Chapter V it is stated that Investment of Cash Waqf is intended for productive projects for the benefit of the community through direct and indirect investment.

¹²³ Peraturan Badan Wakaf Indonesia No 1 Tahun 2009, Pasal 10

Direct investment as referred to in paragraph (1) is investment in projects managed by *Nazhir*. Indirect investment is investment through institutions that profitable and meet the institutional eligibility criteria. Cash waqf investments can be performed through deposits at the Sharia Bank with the most favorable expectations of profit sharing.

Direct investment of cash waqf on projects managed by *Nazhir* can be done if the project meets the requirements: a) the project business is carried out in accordance with Islamic Shari'a; b) The level of project feasibility meets the project eligibility requirements according to the 5C principles (Character, Condition, Capital, Capacity, Collateral), and (3P: People, Purpose, Payment); c. Source of return can be calculated based on a feasibility study.

Waqf funds collected in the LKS-PWU are then handed over to *Nazhir* for investment. Article 10 of the Regulation of Indonesian Waqf Board (BWI) No.1 of 2009, describes the cash waqf investment, namely¹²⁴ :

- (1) Cash waqf investment is intended for productive projects for the benefit of the community through direct and indirect investments
- (2) Direct investment as referred to in paragraph (1) is investment in projects managed by *Nazhir*
- (3) Indirect investment as referred to in paragraph (1) is investment in institutions that profitable and meet the institutional eligibility criteria
- (4) Money waqf investments can be performed through deposits in Sharia Banks with the most favorable expected profit sharing.

Furthermore, in article 11 of the Indonesian Waqf Board (BWI) Regulation No.1 of 2009, a more detailed mechanism of investment is explained, namely¹²⁵ :

¹²⁴ *Ibd*, BWI regulation 1/2009, Pasal 11

¹²⁵ *Ibd*, BWI regulation 1/2009, Pasal 11, Ayat (5)

- (1) Direct cash waqf investment on projects managed by *Nazhir* can be done if the project meets the requirements:
 - a. The project is run in accordance with the Shari'a
 - b. The level of project feasibility meets the project feasibility requirements according to 5C principles (Character, Condition, Capital, Capacity, Collateral) and 3P (People, Purpose, Payment)
 - c. Source of return can be calculated based on a feasibility study.
- (2) Direct cash waqf investment as referred to in paragraph (1) is carried out through the product with mudharabah muqayyadah contract in the LKS.
- (3) Direct cash waqf investment as referred to in paragraph (1) is guaranteed by cash collateral whose funds are obtained from the benefits of cash waqf investment reserved 100% of the amount of invested cash waqf or the investment is guaranteed by the insurance.
- (4) In the case where *Nazhir* appoint an institution or individual as the project implementer to take advantage of or receive cash waqf as a fee, then the fee is paid through terminology in accordance with work performance
- (5) Distribution of money for investment to parties related to *Nazhir* only permitted at most 10% of managed cash waqf
- (6) Related parties as referred to in paragraph (5) are as follows¹²⁶:
 - a. Individual shareholders and / or companies that have more than 10% paid capital
 - b. Administrators and members of *nazhir*
 - c. *Nazhir* administrators who have executive functions and influence on *nazhir*
 - d. Administrators and members of DPS LKS-PWU
 - e. Families of the parties as referred to in letter a, letter b, letter c, and letter d.

¹²⁶ *Ibd*, BWI regulation 1/2009, Pasal 11, Ayat (5)

- f. Companies that have the interests of the parties referred to in the item above with more than 10% the ownership of paid capital or do not own shares in the company;
- g. *Nazhir* company subsidiaries with a total ownership of more than 25% of the company's paid capital and / or if the *Nazhir* has an influence on the company.

Furthermore, Article 12 of the Indonesian Waqf Board (BWI) Regulation No.1 of 2009 describes about indirect cash waqf investment as follows¹²⁷:

- (1) Indirect cash waqf investment can be performed through the following institutions:
 - a.Sharia Bank
 - b.Baitul Mal wa Tamwil
 - c.Cooperation that runs its business in accordance with sharia
 - d.Other Syaria Financial Institutions.
- (2) Indirect cash waqf investment through institutions as referred to in paragraph (1) can be done if it meets the following requirements:
 - a.At least have been operating for 2 (two) years
 - b.Having formal legal provisions
 - c.Including an independent audit report for the past 2 (two) years.

Based on Law Article 49 Paragraph 1 (a) Year 2004 states that the Indonesian Waqf Board has the responsibility to provide guidance for *Nazhir* in managing and developing waqf properties. *Nazhir* acts as an investment manager.

In order to increase waqf productivity, then the selected nazhir must be qualified. Article 42 of Law No. 41/2004 states that *Nazhir* must manage and develop waqf properties in accordance with their designation. *Nazhir*'s task in waqf management is as follows:

¹²⁷ *Ibd*, BWI regulation 1/2009, Pasal 12

- 1) Managing finances transparently, in accordance with sharia accounting standards.
- 2) Making decisions based on organizational rules
- 3) Recording the administration
- 4) Making a work plan
- 5) Developing waqf properties by investing in productive portfolios that have profit values, such as agribusiness, trade, property, mining and industrial sectors.

While Article 43 states that:

- 1) Management and development of waqf properties by *Nazhir* as referred to in Article 42 is carried out in accordance with sharia principles.
- 2) In the case where management and development of waqf properties as referred to in paragraph (1) carried out productively, the management and development of the related waqf properties is performed using a sharia insurance institution.

Therefore, *Nazhir* can be interpreted as a person or party who has the right to act on waqf properties, both to secure, manage, develop, and distribute the waqf properties to people who have the right to receive them, or to do everything that enables the properties to grow well and eternally.

2. Indonesian Waqf Savings (TWI)

Indonesian Waqf Savings (Tabungan Wakaf Indonesia [TWI]) is *nazhir* institution of cash waqf established by Dompot Dhuafa Republika, on July 14, 2005. As time goes by, Dompot Dhuafa thought that the management of zakat, infaq, shodaqoh and waqf must be more organized and professional, not to mention there were also the increasing number of zakat, infaq, shodaqoh, and waqf received annually. For those reasons Dompot Dhuafa network was formed which facilitated their work both in collecting and distributing zakat, infaq, and shodaqoh. In particular,

Dhompét Dhuafa established a network called Indonesian Waqf Savings (Tabung Wakaf Indonesia [TWI]) for waqf.¹²⁸

Dhompét Dhuafa take the initiative to form a new unit called Indonesian Waqf Savings which functions as the manager of waqf (Waqf *Nazhir*), specifically cash waqf, to distribute the cash waqf professionally and reliably, as a solution to the waqf problems. It is expected that Indonesian Waqf Savings can optimize waqf so that it can improve the economy of the community.

The form and legal entity of Indonesian Waqf Savings in accordance with Law Number 41/2004; Indonesian Waqf Savings (is Waqf *Nazhir*) in the form of a legal entity, and therefore, the requirements that must be fulfilled are:¹²⁹

- 1) The legal entity management of Indonesian Waqf Savings fulfills the requirements as an Individual *Nazhir* as referred to in article 9, paragraph (1) Waqf Law Number 41/2004.
- 2) This legal entity is an Indonesian legal entity formed in accordance with the applicable laws and regulations.
- 3) This legal entity is engaged in the social, educational, community and religious fields of Islam.
- 4) Indonesian Waqf Savings is an unit body or autonomous body from and with the foundation of the Dhompét Dhuafa Republika legal entity, as a foundation legal entity that has been credible and meets the requirements as Waqf *Nazhir* of the Waqf Law.

On the strong reason the institution was formed to manage waqf properties for the purpose of worship and devotion to religion by preaching through waqf management institutions. Even though the Vision of

¹²⁸ Muhyar Fanani, *Pengelolaan Wakaf Tunai: Studi Perbandingan Atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat, Dan Baitul Mal Muamalat*, Semarang: DIP A IAIN Walisongo Semarang, 2009, Hlm 97-98

¹²⁹ *Ibid*, *ngelolaan Wakaf Tunai: Studi Perbandingan Atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat, Dan Baitul Mal Muamalat*, Hlm 100.

Indonesian Waqf Savings is¹³⁰ "*to be a superior institution in generating the role of waqf as a perpetual donation and economic generation of the community*".¹³¹ The mission is a task that is felt as an obligation that must be done for the sake of religion, ideology, etc. The Indonesian Waqf Savings Mission is:

- 1) Encouraging the role of waqf as a donation that provides lasting benefits.
- 2) Encouraging the economic growth of the community.
- 3) Optimizing the role of waqf in productive social and economic sectors.

TWI is the number one leading productive waqf nazhir in Indonesia. It received cash waqf from the community. The waqf is intended for middle and upper economic class with a minimum value of Rp. 1,000,000.- (one million rupiah). The *wakif* can determine the allocation of waqf funds for example for education or health. With these funds, TWI invests by cooperating with Batas Capital. TWI acts as *Nazhir*, while Batas Capital acts as investment manager of Reksa Dana Dhuafa Batas Syariah.

TWI gives a certificate to *wakif* which has endowed at least 1 million rupiah. The waqf certificate is an proof for *Wakif* that he has endowed his money. In managing waqf, TWI uses a pattern of asset management, which treats edowments (waqf) as assets that produce surplus. The waqf funds were then invested into the real sector. And the investment returns are distributed through integrated and productive social programs.¹³²

In carrying out its obligations as *Nazhir*, TWI manages and develops the collected waqf properties in accordance with its objectives, functions and designation in islamic sharia principles. Asset management in TWI is

¹³⁰ Media Tabung Wakaf Indonesia, *Manfaat yang mengalir abadi*, Edisi 05 Tahun III 1431H, Hlm 35

¹³¹ *Ibd*, Hlm 36

¹³² *Ibd*, Hlm 47

based on three approaches, namely: (1) productive approach; non-productive approach and (3) integrated approach.¹³³

a. Productive Approach

In this approach, TWI manages waqf properties into something that are productive and generate profits. Then this profits will be used for the benefit of the community while securing the principal value of waqf properties. In this case, TWI allocates waqf funds into farm businesses, plantations, provision of commercial facilities and other forms of productive business. The profits obtained from these efforts are used for economic empowerment of the poor people.

The placement of cash waqf into the productive sector is carried out to realize the principle of "enduring the principal and enjoying the results" as outlined in the hadith of the Prophet. Waqf funds from *wakif* are "the principal", while the profits from management of waqf funds is "the results/ the fruits". These results are allocated to programs such as the construction of mosques and schools. For this reason, the fixed value (principal value) of the waqf properties must be considered in cash waqf. In the same time the waqf can also produce something that can be distributed to *mauquf alaih*.¹³⁴

In managing cash waqf for productive sectors, TWI is more likely to invest directly (direct investment) into waqf objects in addition to the real sector using mudharabah, muzara'ah, and ijarah contracts. Among the forms of productive waqf management carried out by TWI is to distribute waqf funds to various sectors, namely farms, agriculture, plantations, trade, wakala (sales of dinars and dirhams), and commercial facilities.¹³⁵

b. Non-productive Approach

¹³³ Muhyar Fanani, *Pengelolaan Wakaf Tunai: Studi Perbandingan Atas Lembaga Tabungan Wakaf Indonesia, Pos Keadilan Peduli Umat, Dan Baitul Mal Muamalat*, Semarang: DIPA IAIN Walisongo Semarang, 2009, Hlm 100

¹³⁴ Uswatun Hasanah, *Investasi Wakaf*, Modal No.21/ II-Juli 2004

¹³⁵ Rozalinda, *Manajemen Wakaf Produktif*, Jakarta: PT. Raja Grafindo Persada, 2016, Hlm 272

Based on this approach, TWI manages waqf properties for non-productive products. The profits of the waqf properties come from the value of benefits that can be felt by the community as beneficiaries of waqf, for example TWI allocates waqf funds for investment in the establishment of a free hospital like LKC. This means there is no income at all.

Thus, the operational costs of the free hospital must be obtained from other sources. In addition, TWI also established free schools for poor people such as Smart Ekselensia, while all operational costs were obtained from other funds such as zakat, infaq, and alms.

Basically the non-productive approach carried out by TWI is not different from what Hanafiyah Ulama affirmed. This group of ulama requires management of cash waqf by means of *istibdal* (replacement). Namely by diverting waqf funds into a property that can be utilized so that the value of the waqf is eternal.

c. Integrated Approach

Integrated approach is the waqf distribution program for the facilities and infrastructure of the ummah service institutions combined with the waqf program in the form of commercial facilities, property, plantations, trade, agriculture, and others. The profits is then distributed to the poor and / or to the operation of the community service institutions in one program area.

For example are Rumah Cahaya, library facilities and writing training for public combined with the leased property assets. Then the profits is used to support library programs and writing training. The cocoa and coconut plantation waqf in Banggai District, Central Sulawesi is also a form of the TWI integrated waqf program. The results of the cocoa and coconut plantations are used to fund Mansamat High School in the area.

When considering the principle of *shadaqah jariah* in waqf, *Nazhir* not only has to improve the ability and quality of his work, but also the paradigm of the waqf he manages. The integrity of waqf properties does not have to be understood literally in the form of not changing it at all, but in the context taught by the Prophet. namely "securing the principal and distributing the results".

TWI's operational activities always pay attention to and use rules that are in accordance with Islamic Sharia and fatwa recommendations from the Sharia Board

3. B'aitul Mal Mu'amalat (BMM)

Baitulmaal Muamalat was established by Bank Muamalat Indonesia since 1994. Starting from the anxiety of some people who care about the condition of the community who are getting worse economically. Then on 16th June 2000, Baitulmaal Muamalat was inaugurated by the Minister of Religious Affairs of the Republic of Indonesia. Support from the government became increasingly evident after Baitulmaal Muamalat was confirmed by the Indonesian Ministry of Religious Affairs as the National Amil Zakat Institution through Decree of the Minister of Religious Affairs No. 481/200.¹³⁶

Baitulmaal Muamalat was previously part of Bank Muamalat Indonesia as a division / unit of Sharia Financial Institutions (LKS) formed to deal with various humanitarian social problems, especially in the Bank Muamalat Indonesia environment, with the main source of funds coming from the zakat funds of employees and company zakat of Bank Muamalat Indonesia.

The cash waqf acceptance in Baitul maal Muamalat is relatively closest to the statutory provisions because it has involved LKS-PWU (in

¹³⁶ Baitulmaal Muamalat, *Empowering & Caring Sociey*, (Jakarta, Baitulmaal Muamalat),Hlm 10

this case Bank Muamalat). In managing waqf, the productive waqf properties must be invested based on the Baitul maal principle itself, increasing profits, where *Nazhir* must look for halal project from various promising projects, to be able to gain profits from the project.

According to Yayan Daryunanti, Financial Administration Manager of Baitul Maal Muamalat (BMM), said that the management of waqf in Baitulmaal Muamalat refers to Law No. 41 of 2004, which is generally divided into two types¹³⁷ :

1) In the form of investment

Investment can be an alternative for the needs of cash waqf management. This means that the utilization that seems "stop in the place" can be overcome. The management of this model is quite interesting because the benefits of the investment will be enjoyed by all people in need. The form of investment involved in managing cash waqf must be a profitable investment with a small risk, so that the waqf principal does not decrease and the profits of the investment can be greater than the principal amount of the waqf. The type of used investment can only be done on financial instruments that are in accordance with Islamic sharia and do not contain elements of usury.

2) In the form of working capital loan

The provision of working capital loan is quite educational for the community because the existence of loans to the people in need will further foster an independent attitude in the community which usually only relies on subsidies from the government, BLT funds (Direct Cash Assistance). Therefore, this is expected to be able to foster the community independence. This loan is provided without profit sharing, which means that those who are given a working capital loan do not need to share profits to those who provide the capital, they only have to do

¹³⁷ *Ibid*, Baitul maal Muamalat, Hlm 23

infaq and the nominal is also not limited. The loan principal of the capital must be returned within a specific period of time.

More clearly, cash waqf management model according to Law No.41 of 2004 concerning waqf, and can be seen in CHAPTER V of Law No.41 of 2004 concerning management and development of waqf properties, precisely in article 43 paragraph (1) which reads "*management and development of waqf properties by Nazhir as referred to in Article 42 which is carried out in accordance with sharia principles*" then this article was explained in PP No.42 of 2006 article 45 paragraph (2) which reads "*in the management and development of waqf properties to promote public welfare, Nazhir can cooperate with other parties in accordance with sharia principles*".

To support the successful development of productive aspects of waqf funds, it is, therefore, necessary to direct the management model of waqf funds into cooperation with reputable business institutions in a productive business sector. One of them is to establish networking with venture capital companies.¹³⁸ Venture capital companies are very much in line with islamic financial model in the form of *mudharabah* and *musyarakah* financing¹³⁹.

In order to develop cash waqf properties in Indonesia, each cash waqf management institution has conducted various methods as an example of managing cash waqf in Baitul maal Muamalat (BMM). Since 2004, it has been issued a waqf product under the name of WAQTUMU (waqaf tunai muamalat). The pattern of cash waqf management in Baitul Maal Muamalat begins with the making of a cooperation contract of cash waqf management between PT. Bank Muamalat Indonesia, Tbk as the administrative executor with Baitulmaal Muamalat (BMM) as a manager, where both parties jointly

¹³⁸ Sumuran Harahap dan Nasaruddin Umar, *Strategi Pengembangan Wakaf Di Indonesia*, Jakarta: Direktorat Pemberdayaan Wakaf, Direktorat Jendral Bimbingan Masyarakat Islam, 2006, Hlm 105

¹³⁹ Muhammad Syafi'i Antonio, *Bank Syariah Dari Teori Ke Praktek*, jakarta: Gema Insani Press, 2001, Hlm 80

agreed to become *Nazhir*. Administrators are in charge of administering the receipt of cash waqf and recording investment management activities along with their distribution.

While the manager is in charge of selecting the types of investments in accordance with the mandate of *wakif* and managing them professionally. The manager and administrator are jointly responsible for receiving and managing waqf funds, as well as reporting them to the *wakif*.

Even though the cash waqf certificate is still issued by BMM instead of BMI, BMM is not a bank. It is just *Nazhir* founded by BMI. BMM is not justified in issuing SWU. However, because of the demands of the situation, BMM has issued a Cash Waqf Certificate for 100 thousand waqf even though the certificate is only in 1 (one) duplicate. If it has reached 1 million rupiah, BMM will issue the certificate according to the regulation, namely 5 copies.

In waqf management, the productive waqf properties must be invested based on the Baitul maal principle itself, increasing profits, where *Nazhir* must look for halal project from various projects with promising benefits, to be able to gain profits from the project. To support the successful development of productive waqf properties, it is therefore necessary to direct the management model of waqf funds into cooperation with reputable business institutions in a productive business sector.

The collected waqf funds will be utilized by *Nazhir* in the form of business investment to secure the principal value and to obtain profits. The type of investments made by Baitul Maal Muamalat, namely deposits in Bank Umum Syariah and Bank Prekriditan rakyat Syariah (BPRS), also investing the waqf funds in low risk sharia principles portfolio such as stocks, obligation and sharia mutual fund, etc. The profits of the investment are utilized for the purpose of social development, education, health care and economic development.

CHAPTER V

CONCLUDING REMARKS

A. CONCLUSION

Based on previous chapters, the author conclude that:

1. The urgency to secure cash waqf from depreciation of asset value arises because cash waqf money is a new thing in Indonesia. This hadith is used as the principle of waqf management, which states that the waqf must provide sustainable benefits in accordance with the hadith of the prophet "*in Syi'ta habasta aslaha wa tashadaqta biha*".

However, the previous ulama disagree about the justification of cash waqf. In the opinion that does not allow cash waqf, cash money is impermanent if it is utilized. While in opinion that allow cash waqf, money can be endowed by the requirement of securing its material form, namely by investing it so that the principal values is secured.

Based on Qur'an, Hadith and opinion of ulamas, cash waqf is allowed with the conditions that "waqf must provide sustainable benefits and be secured for its principal value". MUI through its fatwa on 11th December 2011 allowed cash waqf with the requirements (e) "*Principal Value of Cash Waqf must be guaranteed for its sustainability, may not be sold, granted and or inherited*".

For this reason, thus a different regulation was issued, Law No. 41 of 2004 concerning Waqf, that are different from previous law. This law is a reference and legal umbrella for managing waqf in Indonesia, especially cash waqf. The arrangement of movable property waqf like money mentioned in Article 28- Article 31.

Other related regulations are Government Regulation No. 42 of 2006 about Implementation of Law No. 41 of 2004 concerning waqf. Specific regulations related to waqf management are found in CHAPTER III Paragraph 3 concerning movable properties in the form of money. However, in Article 22 there is a separate vulnerability because the obligation to endow in rupiah currency and the endowments of non-rupiah currency must be converted into rupiah. While rupiah is very vulnerable to inflation and is fluctuating.

To overcome the potential of diminishing the value of cash waqf, Law 41 of 2004 concerning waqf is issued as a legal umbrella for waqf security, so that the waqf can be conducted according to the mandate of MUI stating that the principal value of cash waqf must be guaranteed for its sustainability, may not be sold, granted or inherited. For that reason, Law no. 41 of 2004 In Article 3 paragraph 2 states "*management and development of waqf properties by Nazhir as referred to in paragraph (1) should be carried out productively*", and paragraph 3 states "*in terms of management and development of waqf properties as referred to in paragraph (1) a guarantor is needed, thus the Sharia Insurance Institution is used* "

In addition to Law 41 of 2004 above, Government Regulation No. 42 of 2006 is located in Article 48 Paragraph (1), (4) and paragraph (5) states: "paragraph (1) management and development of waqf objects must be guided by BWI, paragraph (4) Management and development of waqf money assets carried out in Sharia Banks Must follow the deposit guarantee institution program in accordance with the laws and regulations, paragraph (5) management and development of waqf assets carried out in the form of investments outside the Shari'ah Bank must be insured with sharia insurance.

Based on the mandate of PP No. 42 of 2006 above, especially paragraph 1, in order to strengthen the security of cash waqf principal value, Indonesian Waqf Board has issued Regulation No. 1 of 2009 concerning Guidelines for the Management of Waqf Property Development Funds.

In the effort to secure the cash waqf principal, BWI states in its regulation that Cash Waqf Investment is intended for Productive Projects for the benefit of the people. Investment is carried out both directly and indirectly.

Direct investment as referred to in the projects managed by Nazhir should meet the following requirements a). The project effort is carried out in accordance with sharia. b) The level of project feasibility meets the project eligibility requirements according to the principles of 5 C (Character, Condition, Capital Capacity, Collateral), and 3P (People, Purpose, Payment). c) Source of Returns can be calculated based on a feasibility study.

Indirect investment of cash waqf as mentioned previously is carried out through products with mudharabah muqayyadah contract in LKS. Indirect investment of cash waqf should be guaranteed by Collateral Cash whose funds are obtained from the profits of cash waqf investment that are reserved 100% of the amount of the invested cash waqf funds, otherwise the investment must be guaranteed by insurance.

In addition to the above laws and regulations there is a major factor in the waqf security process, namely Nazhir. In Article 42 of Law No. 41 of 2004 concerning Waqf, it was stated that "management and development of waqf properties is an obligation of Nazhir, in accordance with the purpose, function and designation of the waqf properties pledged by Wakif. In this management task the Nazhir should: 1) Manage the finances transparently, in accordance with Sharia accounting standards, 2) Make decisions based on organizational rules, 3) Carry out administrative records, 4) Make work plans, 5) Develop waqf properties by investing in productive and profitable portfolios, such as the argobusiness sector, trade, mining and industrial properties.

2. Securing the cash waqf institutions from depreciation of asset value

Indonesian Waqf Savings securing the principal value of cash waqf through two approaches including productive and non-productive approaches. Productive Approach, TWI allocates cash waqf by making a productive money through agricultural, plantation, trade and rental businesses. The profits generated from the production and trade processes is then used for a variety of social services.

Non-productive approach, TWI manages waqf properties for non-profitable things. For example, by allocating the waqf properties for investment in the establishment of free hospitals.

Baitulmall Muamalat secures the principal value of cash waqf by issuing muamalat Cash Waqf products managed jointly with Bank Muamalat Indonesia. BMI is part of the LKS-PWU that has been authorized by the Ministry of Religion Affairs. BMM has the duty to select the types of investments, for example in the form of deposits or other productive businesses and and provide benefits to the people in accordance with the mandate of Wakif. Whereas BMI as the Administering Officer has the duty to administer the receipt of cash waqf funds and record the fund management activities as well as distribution of profits.

B. SUGGESTIONS

1. Regulations concerning cash waqf, especially Law 41 of 2004, have arranged a productive waqf management in order to secure the waqf principal, in accordance with the principles of waqf management. However, the waqf law has not provided a guarantee that the value of the endowed money should be recorded in accordance with the value of purchasing power at all times. Therefore, it is necessary to have a standard of cash waqf value in the regulation. Thus before being recorded in a cash waqf certificate, its value must be compared with gold, dinar or dirham in the first place, because of their fixed value.
2. BWI nazhir must prepare a professional staff. Even though there are provisions that cash waqf must be submitted to the LKS-PWU, Nazhir is the key investment manager in developing waqf funds.
3. In the case where TWI does not follow the existing legal rules, it is expected to adjust with the rules.

C. CLOSING

This is last part of final project. The researcher admits that there are still many mistakes. Therefore, she does wait for constructive suggestions for better creation to accomplish the next project. May this final project be useful for us.

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