

## THE EFFECTIVENESS OF CASH WAQF REGULATION IN BANDA ACEH, INDONESIA: Examining of local people's perspective

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### Abstract

The purpose of this essay is to examine the community's opinions about cash waqf, its regulations, and its rules concerning fiqh. One option available to Muslims in Banda Aceh City for allocating funds for worship is cash waqf. On a practical level, however, the society remains unaware of the existence of cash waqf, and academics continue to hold differing views at the fiqh level. This is why a legislative method and a conceptual approach were used in the writing of this study. According to the study's findings, one type of transportable waqf is cash waqf. Classical and modern academics continue to disagree on the constitutionality of the legislation from a fiqh standpoint. The Waqf Law, Government Regulations Implementing the Waqf Law, Minister of Religious Affairs Regulations, and BWI Regulations are among the legal provisions in Indonesia that have made cash waqf acceptable. When it comes to Aceh, the Qanun Baitul Mal is responsible for managing monetary waqf. In reality, certain Acehnese citizens, particularly those in Banda Aceh City, are aware of the cash waqf regulations, while others are not (yet) aware of them. Although Banda Aceh City residents are generally lenient and accept financial waqf, socialisation initiatives by associated organisations are thought to be underutilised. Therefore, there must be a concerted effort to maximise community socialisation and cash waqf product branding. Cash waqf requires a particular rule in the form of a qanun, which is an extension of the current Qanun Baitul Mal.

**Keywords:** Banda Aceh, Cash Waqf, Islamic Economic Law, and Society perspective



## Abstrak

Tujuan dari tulisan ini adalah untuk mengetahui pendapat masyarakat tentang wakaf uang, peraturannya, dan kaidah-kaidahnya dalam kaitannya dengan fikih. Salah satu pilihan yang tersedia bagi umat Islam di Kota Banda Aceh untuk mengalokasikan dana ibadah adalah wakaf tunai. Namun, pada tingkat praktis, masyarakat masih belum mengetahui keberadaan wakaf tunai, dan para akademisi masih memiliki pandangan yang berbeda di tingkat fikih. Oleh karena itu, metode perundang-undangan dan pendekatan konseptual digunakan dalam penulisan studi ini. Menurut temuan penelitian ini, salah satu jenis wakaf yang dapat dipindahkan adalah wakaf uang. Para akademisi klasik dan modern terus berselisih pendapat tentang konstitusionalitas undang-undang tersebut dari sudut pandang fikih. UU Wakaf, Peraturan Pemerintah yang melaksanakan UU Wakaf, Peraturan Menteri Agama, dan Peraturan BWI adalah beberapa ketentuan hukum di Indonesia yang memungkinkan wakaf uang dapat diterima. Untuk Aceh, Qanun Baitul Mal adalah peraturan yang mengatur wakaf uang. Pada kenyataannya, sebagian masyarakat Aceh, khususnya di Kota Banda Aceh, sudah mengetahui tentang peraturan wakaf uang, sementara sebagian lainnya belum mengetahuinya. Meskipun masyarakat Kota Banda Aceh pada umumnya bersikap lunak dan menerima wakaf uang, inisiatif sosialisasi oleh organisasi terkait dianggap kurang maksimal. Oleh karena itu, harus ada upaya bersama untuk memaksimalkan sosialisasi masyarakat dan branding produk wakaf uang. Wakaf uang membutuhkan aturan khusus dalam bentuk qanun, yang merupakan perpanjangan dari Qanun Baitul Mal yang ada saat ini.

**Kata kunci:** Banda Aceh, Wakaf Tunai, Hukum Ekonomi Syariah, dan Perspektif Masyarakat

## INTRODUCTION

Waqf in Islamic teachings is described as a legal action taken by a person, organisation, or group to permanently set aside a portion of their assets for use in religious activities or other public purposes. Waqf can be interpreted in two different ways: either by retaining ownership of the asset while utilizing its income, or by retaining ownership of the asset while utilizing the waqf asset to provide specific benefits.<sup>1</sup> Waqf also refers to stopping or delaying the transfer of ownership of tangible assets so that the profits can be used to pursue the pleasure of Allah SWT.<sup>2</sup>

The Islamic legal perspective on waqf is included as one of the laws related to *mal* or wealth, where Allah SWT has prescribed waqf for the public interest and can

<sup>1</sup> Article 215 paragraph (1) Presidential Instruction Number 1 of 1991 Concerning the Dissemination of the Compilation of Islamic Law (or often abbreviated as KHI) See in, Supreme Court, <http://jurnal.arraniry.ac.id/index.php/samarah>

<sup>2</sup>Ahmad Mujahidin, *Waqf Law in Indonesia: The Dispute Handling Process*, (Jakarta: Kencana Prenada Media Group, 2021), pp. 6.



be utilised for the benefit of society. The object of waqf is generally understood to be in the form of land, or educational/school/madrasa buildings, or mosque buildings, including in the context of waqf for books. The object of waqf in the form of books, buildings, land, and others must be widely known so that the object is an object that is waqfed. Therefore, it cannot be said that a land, building, or book, and others are waqf objects if the community does not widely know that the owner has endowed the object.<sup>3</sup> Islamic law also stipulates that waqf is carried out for worship, in which the benefits of the waqf object provide benefits for the general public. Therefore, it is not valid if the waqf is intended for anything other than good and not in the context of an act of worship to Allah SWT.<sup>4</sup>

The public generally understands that the object of waqf is only in the form of land and buildings that are immovable objects or assets. There are even some people who do not allow, or at least doubt the legal status of other forms of waqf objects, such as cash waqf.<sup>5</sup>

Regarding the legal concept of waqf, it was initially known in the form of land waqf. It was first implemented and practiced by the Prophet through land waqf to build a mosque, and later followed by the Companions, who also endowed their land and date plantations.<sup>6</sup> This practice, which occurred in the historical context of the life of the Prophet and his Companions, has become a common understanding among modern society, where the object of waqf is generally understood to be only immovable objects such as land and buildings, or land in the form of plantations.<sup>7</sup>

Regarding the issue of cash waqf, it has only emerged in modern times, where current financial transactions have become a trigger and, at the same time, one of the objects used for waqf. Regulatively. This cash waqf has been stipulated in several regulations. According to Article 215, paragraph 4 of the Compilation of Islamic Law (KHI), both movable and immovable objects that are durable, not only used once, and have value following Islamic principles are eligible for waqf. This definition can encompass a wide range of immovable waqf objects, offering long-term benefits, even when monetary waqf is not explicitly mentioned. A more comprehensive description of the purpose of waqf is provided by Law No. 41/2004 on Waqf, which states that assets considered waqf include both immovable and movable objects.

<sup>3</sup>Ibn Qayyim Al-Jauziyyah, *Al-Turq Al-Hukmiyyah fi Siyāsah Al-Syar'iyyah*, (Terj: M. Muchson Anasy), (Jakarta: Pustaka Al-Kautsar, 2014), p. 376. 376.

<sup>4</sup>Ibn Qayyim Al-Jauziyyah, *Zād Al-Ma'ād fi Hadī Khair Al-'Ibād*, (Transl: Masturi Irham, Nurhadi, Abdul Ghofar), (Jakarta: Pustaka Al-Kautsar, 2008), p. 505. 505.

<sup>5</sup>Muhamad Wildan Fawaid and Ahmad Muhsin Febrianto, "Implementation of Cash Waqf in Indonesia," *Wadiyah: Journal of Islamic Banking*, Vol. 6, No. 1 (24 January 2022): pp. 72, <https://doi.org/10.30762/wadiyah.v6i1.162>.

<sup>6</sup>BWI Editorial, "History of Waqf," Badan Wakaf Indonesia | BWI.go.id, 7 October 2016, <https://www.bwi.go.id/1494/2016/10/07/sejarah-wakaf-1/>.

<sup>7</sup>Chairul Fahmi, "Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)," *Tsaqafah: Jurnal Peradaban Islam* 8, no. 2 (3 Mei 2016): 295-309, <https://doi.org/10.21111/tsaqafah.v8i2.27>.



Shariah law and relevant laws and regulations define movable assets as goods that cannot be consumed. These include cash, securities, precious metals, intellectual property rights, cars, lease rights, and other movable assets.

Cash waqf is regulated in Article 15 and Article 22 of Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf. Cash waqf is permitted based on the 2002 fatwa of the Indonesian Ulema Council (MUI). Imam Al-Zuhri is one of the scholars who support dinar waqf. The practice of dinar waqf was also authorised by Abu Tsur and Al-Mawardi of the Shafi'i school, as well as several scholars from the older Hanafi school.<sup>8</sup>

The role of the community is vital in the development of cash waqf so that it can develop properly. Therefore, there is a need for a more comprehensive understanding of cash waqf so that its overall benefits for life can be felt. The existence of a cash waqf can benefit the community and make it easier to allocate funds for worship purposes. Cash waqf is easier to use in life compared to endowing land when you are not able to do so.

Even so, when viewed from the normative aspects contained in the Qur'an and hadith, there is indeed no definite and unequivocal evidence regarding the prohibition or evidence that allows cash waqf; on that basis, it is still in dispute among classical scholars, including scholars in modern times. The public perception of cash waqf regulations in Indonesia also receives serious attention, where some people reject (at least still have doubts) about the law of cash waqf, others accept it, and not a few have also practised cash waqf.

From the community's perspective, especially in the city of Banda Aceh, the regulation of cash waqf also has different views. The regulation on cash waqf in Aceh has been affirmed in Qanun Aceh Number 10 of 2018 concerning Baitul Mal, which was later amended by Qanun Aceh Number 3 of 2021, regulating several matters related to the role and duties of Baitul Mal in managing zakat and local finances.<sup>9</sup> Provisions related to the management of Baitul Mal in Aceh are explained in Article 1, Point 41 of the Qanun. Waqf assets, which include movable goods, cash, shares, immovable assets, and rights granted by the waqif, are defined as assets that have long-term durability, long-term benefits, and economic value by sharia.<sup>10</sup> Although Qanun Baitul Mal has recognised money as one of the forms of assets that can be donated, there are still various perceptions in the community. In some residents' testimonies, it was found that there are people who still question the legal status of cash waqf and its regulations in Indonesia. Some already know and have transferred money to waqf institutions.

<sup>8</sup>The 2002 Fatwa of the Indonesian Ulema Council (MUI) on Cash Waqf.

<sup>9</sup> Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia," *Jurnal Ilmiah Peuradeun* 11, no. 2 (30 Mei 2023): 667-86, <https://doi.org/10.26811/peuradeun.v11i2.923>.

<sup>10</sup>Aceh Islamic Shariat Office, *Aceh Qanun No. 10/2018 on Baitul Mal*, (Banda Aceh: Islamic Shariat Office, 2018), pp. 2.



On the one hand, this fact indicates that the regulation of cash waqf still presents problems, at least from the perspective of the people of Banda Aceh City, as there are still those who doubt the position of cash waqf, despite the existence of several regulations governing it. On the other hand, the function of a rule of law or legal regulation is as a *tool of social engineering*, or *law as a tool of social control*, i.e., law is used as a means to change people's behavior in accordance with legal objectives and as a means of social control.<sup>11</sup>

According to Friedman, the function of law is social control.<sup>12</sup> And in Hans Kelsen's statement, it is also stated that one of the functions of the rule of law is to ensure compliance with the law.<sup>13</sup> Since law or regulation has the function of influencing social change, the legal regulation of cash waqf should also ideally be an essential part of changing the perceptions and perspectives of the people of Banda Aceh City on the existence of cash waqf. Thus, this article discusses the regulation of cash waqf from the perspective of citizens in the city of Banda Aceh. The core problems in this paper can be summarized as several key questions, including whether the community is aware of the regulations governing cash waqf. What is the knowledge of the people of Banda Aceh City about cash waqf? What are the views of the people of Banda Aceh on cash waqf, and are the people aware of the existence of cash waqf nazir in Banda Aceh City?

## RESEARCH METHODS

Against the backdrop of these problems, this article raises the following legal issues concerning the regulation of waqf and the perception of the people of Banda Aceh City towards waqf regulation. In this section, research on the regulation of cash waqf has been studied by several previous researchers, ranging from literature studies aimed solely at collecting information on legal views expressed by scholars, to studies of judges' decisions, laws, and public perceptions. For example, in Ulya Kencana's research, titled "The Development of Cash Waqf in Indonesia: Analysis of Waqf Law in the Context of Long-Term Community Welfare."<sup>14</sup> Next in the research of Selamet Hartanto and Devid Frastiawan Amir Sup, title: *The Concept of Cash Waqf*

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<sup>11</sup>Rahman Syamsuddin, *Introduction to Indonesian Law* (Jakarta: Kencana Prenada Media Group, 2019), p. 14. 14.

<sup>12</sup>Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, (Transl: M. Khozim), (Bandung: Nusa Media, 2019), pp. 20.

<sup>13</sup>Hans Kelsen, *Pure Theory of Law*, (Terj: Raisul Muttaqien), (Bandung: Nusa Media, 2019), pp. 325.

<sup>14</sup>Ulya Kencana, "Development of Cash Waqf in Indonesia: A Critical Study of Waqf Legislation in the Framework of Sustainable Public Welfare," *Al-Awqaf: Journal of Waqf and Islamic Economics* Vol. 9, no. 2 (2016): 93-112, <https://doi.org/10.47411/al-awqaf.v9i2.81>.



*in Legal Perspective in Indonesia.*<sup>15</sup> Furthermore, in the study of Yuliana Ismawati and Moch. Khoirul Anwar, *The Impact of Surabaya City Community Perceptions on Interest in Cash Waqf*,<sup>16</sup> can be found in several other studies. However, no research precisely examines the issues raised in this work. Regarding the legal issues and legal theories employed, particularly the theory of law as a tool for social change or law as a tool of social engineering, there are two notable differences with previous researchers. The first is the location of the research and the people who are the subject of the study.<sup>17</sup>

The research methodology in this article is qualitative. Two methods were used. The statutory approach is the first approach. The intellectual approach is the second approach. The study of legal issues arising in society or the field is known as empirical legal research, also referred to as empirical juridical research. Primary and secondary data are the two sources of information used in this research. Through documentation studies and interviews, primary data were collected from the field. Library materials, such as law books, fiqh/legal dictionaries, linguistic dictionaries, legal encyclopaedias, articles, and legal journals, are good sources of secondary data.

## RESULTS AND DISCUSSION

### A. The Concept of Cash Waqf in Jurisprudence

Cash waqf is one of the derivative products of waqf objects developed to accommodate the will of the people to *use* their wealth in the way of Allah in the form of money. To have an in-depth understanding of cash waqf, it is necessary to have a conceptual description of it, along with a review of its historicity and the relevant regulations governing cash waqf.

The term cash waqf consists of two words. The word waqf is an Arabic, *waqf* which is composed of three letters, namely *waw*, *qaf*, and *fa'*, which etymologically or language (*lughawi, letterlijk*), has several meanings, including *diddun istamarra*, meaning to stop, stand, and prevent.<sup>18</sup> In English means *to come to a standstill, come to*

<sup>15</sup>Selamet Hartanto and Devid Frastiawan Amir Sup, "The Concept of Cash Waqf in Legal Perspective in Indonesia," *Journal of Indonesian Comparative of Shari'ah Law* Vol. 4, no. 1 (16 August 2021): 39–62, <https://doi.org/10.21111/jicl.v4i1.5778>.

<sup>16</sup>Yuliana Ismawati and Moch Khoirul Anwar, "The Effect of Public Perceptions of Cash Waqf on Interest in Waqf Money in Surabaya City," *Journal of Economics and Islamic Business* Vol. 2, no. 3 (30 December 2019): 129–38.

<sup>17</sup> 2003037702 Muhammad Siddiq Armia, *Penentuan Metode Pendekatan Penelitian Hukum* (Banda Aceh: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022), <https://repository.ar-raniry.ac.id/id/eprint/22862/>.

<sup>18</sup>Achmad W. Munawwir and M. Fairuz, *al-Munawwir Dictionary: Indonesian Arabic Dictionary* (Surabaya: Pustaka Progressif, 2007), pp. 1576.



a stop.<sup>19</sup> The term *waqf* in Arabic also means *habasa*, which means to hold back.<sup>20</sup> *Waqf* also means *al-man'u* (blocking). Normatively, the term *waqf* (Arabic) is used with the word *wakaf*, or *wakf* (English), meaning *religious endowment*, meaning religious donations, or religious *endowment funds*.<sup>21</sup>

Scholars have developed several definitions based on terminology. According to Wahbah Al-Zuhaili, *waqf* is the withholding of wealth from various types of *taṣarruf* (or utilisation) and distributing its benefits for charitable purposes to get closer to Allah SWT. Endowment funds for educational institutions, social foundations such as schools, hospitals, and weapons production facilities, endowment funds for so-and-so, endowment funds for certain social institutions, and so on are some examples of such purposes. *Waqf* only takes place at the request of *al-wāqif*, the donor. The *al-wāqif* determines which social institutions will receive the *waqf* if the *waqf* is for a person who has the right to refuse it.<sup>22</sup> Sayyid Sābiq defines *waqf* as managing a tree and distributing its fruits, or in other words, managing property and leaving the proceeds to Allah SWT.<sup>23</sup> *Waqf* is defined as property held by its owner for a good purpose by Yūsuf Al-Qaraḍāwī.<sup>24</sup>

This understanding of the concept and meaning of *waqf* can also be understood from the explanation of the mazhab scholars.

- a. According to the Ḥanafī school, *waqf* is the retention of the principal asset by the rules of ownership of Allah, and donating its benefits.
- b. According to the Mālikī school, *waqf* is giving the benefit of an ownership property even by giving its wages or profits to those who are entitled to receive it in a formula for a specific period of time, as long as the *waqf* donor wishes.
- c. Shafi'i scholars define *waqf* as the ownership of property that can be used for permissible purposes while retaining its essential characteristics. In addition, the property is free from its owner. *Wuquf* and *waqf* are plurals of the word *waqf*
- d. According to the scholars of the Hanbalī school, *waqf* is when an owner withholds his property free to use its benefits while maintaining the

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<sup>19</sup>J.M. Cowan, *Arabic English Dictionary*, Third Edition (New York: Spoken Language Services, 1976), pp. 1093.

<sup>20</sup>Sayyid Sābiq, *Fiqh Al-Sunnah*, (Terj: Abu Aulia dan Abu Syauqina) (Jakarta: Republika, 2018), hlm. 98.

<sup>21</sup>Cowan, *Arabic English Dictionary*..., p. 1093.

<sup>22</sup>Wahbah Al-Zuhaili, *Al-Fiqh Al-Islāmī wa Adillatuh*, Jilid 4, (Terj: Abdul Hayyie al-Kattani, dkk), (Jakarta: Gema Insani Press, 2012), hlm. 424.

<sup>23</sup>Sābiq, *Fiqh Al-Sunnah*..., p. 398.

<sup>24</sup>Yūsuf Al-Qaraḍāwī, *Min Hadī Al-Islām Fatāwā Mu'āṣirah*, (Terj: As'ad Yasin), (Jakarta: Gema Insani Press, 2008), hlm. 355.



principal by cutting off a quarter of the waqfed portion to be spent in a justified way. Also, the benefits are given in charity in the way of Allah.<sup>25</sup>

From the description above, it can be seen that waqf in general terms is property that is held by the owner to be utilised in the way of Allah, which can be for education, health, and other public benefits.<sup>26</sup> From some of the meanings above, it is also evident that the object of the waqf property is an asset that has a beneficial value. So it is not called waqf if the object does not have something that can be utilised. Therefore, any item that has value and benefit can be waqfed. This includes cash waqf. In Arabic, this waqf is known as *al-awqāf al-naqdiyyah* or *waqf al-naqdī*.

Undertaking cash waqf involves first generating funds as business capital and then allocating the proceeds as waqf.<sup>27</sup> Cash waqf is a subset of movable goods waqf. Cars, stocks, currency, precious metals, intellectual property rights, and other non-consumable goods are examples of movable goods. In addition, the production and distribution of waqf assets can be utilized for various community empowerment and development initiatives that help reduce poverty and create jobs. Social, education, health, economic, and da'wah programmes are examples of community development and empowerment initiatives.<sup>28</sup>

The object of waqf in Islam, including the category of public property, is any form of waqf. One of the characteristics of the object of waqf in the past, since the time of the Prophet, was buildings or plantations. Examples of buildings that are generally used as waqf are mosques for worship, schools for educational purposes, hospitals for treatment, shops, and plantations whose proceeds are used for public purposes.<sup>29</sup> However, the object of waqf has expanded to moveable objects, one of which is money. Scholars who consider the permissibility of cash waqf are generally from the Hanafi school. According to the Hanfiyyah, waqf of money such as dinars and dirhams is permissible because the community has practised it.<sup>30</sup> and the legal argument refers to the hadith narrated by Ibn Mas'ūd, which is as follows:

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<sup>25</sup>Syamsuddin Muhammad bin Muhammad Al-Khaṭīb Al-Syarbīnī, *Mughnī Al-Muhtāj ilā Ma'rīfah Ma'ānī Al-Fāz Al-Minhāj*, (Beirut: Dār Al-Kutb Al-'Ilmiyyah, 2000), hlm. 522.

<sup>26</sup>Chairul Fahmi dan Syarifah Riyani, "ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT," *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (17 Juli 2024): 89–104, <https://doi.org/10.21580/wa.v11i1.20007>.

<sup>27</sup>Muhammad Tahir Azhary dkk., *Beberapa Aspek Hukum Tata Negara, Hukum Pidana dan Hukum Islam*, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2015), hlm. 342-343.

<sup>28</sup>Ainol Yaqin, *Ijtihad Moderat Metode dan Implementasi* (Jakarta: Kencana Prenada Media Group, 2023), hlm. 190-191.

<sup>29</sup>Yūsuf Al-Qaraḍāwī, *Dawr Qiyyam wa Akhlāq fī Al-Iqtisād Al-Islāmī*, (Terj: Zainal Arifin dan Dahlia Husin), (Jakarta: 2022, t.t.), hlm. 77.

<sup>30</sup>Wahbah Al-Zuhailī, *Al-Fiqh Al-Islāmī wa Adillatuh*, Jilid 10, (Terj: Abdul Hayyie al-Kattani, dkk), (Jakarta: Gema Insani Press, 2012), hlm. 279.



مَا رَأَهُ الْمُسْلِمُونَ حَسَنًا، فَهُوَ عِنْدَ اللَّهِ حَسَنٌ.<sup>31</sup>

*What Muslims see as good, Allah sees as good*

Another point of contention is social norms, or "urf." According to Al-Qarađāwī, a law is acceptable if it is recognised in a country as *waqf al-manqul* (waqf whose object can be moved), such as waqf of Islamic books, sciences, and Qur'ānic manuscripts, or waqf of light weapons such as swords, arrows, spears, pistols, and rifles. Waqf is also valid; however, al-manqul waqf is basically invalid, but is permissible due to 'urf.<sup>32</sup> In this context, cash waqf is a type of *al-manqul waqf*, but the majority of the Ḥanafīyyah allow it. Only a few do not allow it, for example Ibn 'Abidin, one of the scholars of the Ḥanafī school, argues that cash waqf, such as dirham and dinar, is not allowed.<sup>33</sup> In Yūsuf Al-Qarađāwī's explanation, it is stated that there is a difference of scholarly opinion in determining the law of waqf with money objects. However, Yūsuf Al-Qarađāwī himself believes that cash waqf is permissible:

*"The scholars of jurisprudence disagree about cash waqf. My own view is that it is permissible to endow money as an encouragement for people to do good. In fact, I consider it permissible to waqf money for a certain number of years, say 20 years, to support the implementation of various types of good, such as jihad, da'wah, education, and so on. This cash waqf is used for various muamalah projects that do not involve harm, and are in accordance with Islamic principles."<sup>34</sup>*

Historically, the position of cash waqf has been known for a long time. The first scholar to introduce and allow cash waqf was Imam Al-Zuhri (d. 124 AH), at the

<sup>31</sup>According to Ibn Ḥājib Al-Ḥālī, the meaning of the Hadīth is the consensus of the scholars, and in other contexts it is the view of the laity. Meanwhile, Al-Ījī clarified Ibn Ḥājib Al-Ḥālī's statement. Al-Ījī states as follows:

قال عليه السلام: (مَا رَأَهُ الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ)، دل أن ما رأه الناس في عادتهم ونظر عقولهم مستحسنًا فهو حق في الواقع إذ ما ليس بحق فليس بحسن عند الله. الجواب: المسلمين صيغة عموم فالمعنى ما رأه جميع المسلمين حسناً فيتناول إجماع جميع أهل الحال والعقد لا ما رأه كل واحد حسناً وإن لم حسن ما رأه أحد العوام حسناً، وما أجمع عليه فهو حسن عند الله لأن الإجماع لا يكون إلا عن دليل.

"The Messenger of Allah (saw) said: "What is good for the Muslims is good in the sight of Allah". This means that what the people regard as good according to their customs and reasoning is the right thing to do, because what is not right is not good in the sight of Allah. Answer: What the Muslims consider to be good is a general formula, meaning that what the Muslims consider to be good includes the *consensus of the ahl al-ḥalli wa al-'aqd* (legislature or *shūrā* assembly), not what each individual *considers* to be good. See in, Ibn Ḥājib Al-Ḥālī and Abdurrahmān Al-Ījī, *Sharḥ Mukhtaṣar Al-Muntaha Al-Ūṣūlī*, Juz 3, (Jakarta: Dār Al-Kutb Al-'Ilmiyyah, 2004), pp. 575-576. 575-576.

<sup>32</sup>Yūsuf Al-Qarađāwī, *Al-Qawā'id Al-Ḥākimah li Fiqh Al-Mu'āmalāt*, (Terj: Fedrian Hasmand), (Jakarta: Pustaka Al-Kautsar, 2014), hlm. 244.

<sup>33</sup>Ibn 'Abidin, *Radd Al-Muhtār 'alā Al-Darr Al-Mukhtār Syarḥ Tanwīr Al-Abṣār*, Juz' 6 (Riyad: Dār 'Ālim Al-Kutb, 2003), p. 557. 557; Al-Zuhaili, *Al-Fiqh Al-Islāmī*..., pp. 279.

<sup>34</sup>Yūsuf Al-Qarađāwī, *Fiqh Al-Jihād: Dirāsah Muqāranah li Aḥkāmih wa Falsafatih fi Dau' Al-Qur'ān wa Al-Sunnah*, (Terj: Irfan Maulana Hakim dkk), (Bandung: Mizan Pustaka, 2015), hlm. 471.



beginning of the second century AH.<sup>35</sup> The following can be stated some of the scholars' opinions on the law of cash waqf, as follows:<sup>36</sup>

- a. According to the majority of scholars of the Ḥanafī school, waqf (dinar or dirham) is permissible.
- b. According to some scholars of the Ḥanafī school, cash waqf is not permissible, such as the views of Imams Abu Ḥanīfah (the founder of the Ḥanafī school), Abu Yūsuf, and Ibn 'Abidin.
- c. According to the *asāḥ* opinions of Ḥanbalī, Shāfi'ī and Mālikīs such as Ibn Shās and Ibn Al-Hājib, cash waqf is not permissible.
- d. There is a difference of opinion among the Shāfi'ī school of thought, but the preferred opinion is that dirhams, dinars or money are not allowed. There are others who allow it, for example, as stated by Al-Sharbīnī, Al-Nawawī, Al-Anshārī, and others.
- e. Among the contemporary scholars who allow cash waqf is Yūsuf Al-Qaraḍāwī.<sup>37</sup> The scholar who does not allow it is Sayyid Sābiq.<sup>38</sup>

The process and mechanism of implementing cash waqf is to retain the principal and take the proceeds to be spent in the way of Allah Swt (public interest). A person can set aside some of their money to be used as a waqf object. The money is to be invested in various forms of business. An example of a company that the scholars of the Ḥanafī school have suggested is to invest it with a *muḍārabah* (profit-sharing) contract. The proceeds from this investment are used to endow the waqf, while the principal remains intact and is managed by the waqf nazir.

## B. Regulation of Cash Waqf in Indonesia

In Indonesia, cash or cash waqf is an important component regulated by legislation.<sup>39</sup> In practice, cash waqf is an entity that receives and supervises cash waqf in bank and non-bank Islamic financial institutions (IFIs). To implement cash waqf, one must contact the LKS, express his/her wishes, complete the waqf pledge deed,

<sup>35</sup>Didin Hafidhuddin, *Islam Aplikatif*, (Jakarta: Gema Insani, 2003), hlm. 125; Siska Lis Sulistiani, *Wakaf Uang: Pengelolaan dalam hukum Islam dan Hukum Positif di Indonesia*, (Jakarta: Sinar Grafika, 2022), hlm. 35.

<sup>36</sup>The above differences of opinion are referred to in several literatures including Al-Zuhailī, *Al-Fiqh Al-Islāmī*..., 2012, pp. 279; 'Abidīn, *Radd Al-Muḥtār*..., pp. 276; Muḥammad Al-Zuhailī, *Al-Mu'tamad fi Al-Fiqh Al-Syāfi'i*, (Transl: M. Hidayatullah), (Jakarta: Gema Insani Press, 2018), p. 447. 447.

<sup>37</sup>Yūsuf Al-Qaraḍāwī, *Fiqh Al-Jihād*..., p. 471.

<sup>38</sup>Sābiq, *Fiqh Al-Sunnah*..., p. 404.

<sup>39</sup>Chairul Fahmi, Sri Wahyuni, dan Laila Muhammad Rasyid, "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: JURNAL HUKUM DAN KEADILAN* 6, no. 2 (1 Oktober 2023): 1-22.



and make payment. The waqif will then obtain a cash waqf certificate, as can be seen in the figure below:

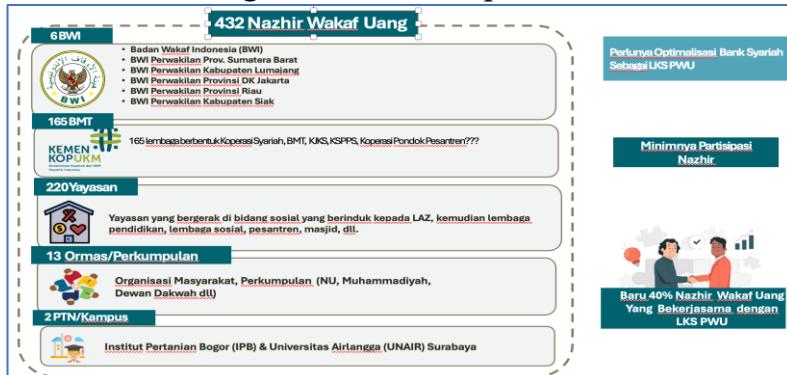
**Figure 1: Flow of Cash Waqf**



Source: <https://www.bwi.go.id/>.

In general, Indonesian cash waqf nazirs consist of various organisations, not just Islamic financial institutions (IFIs). There are currently 423 cash waqf nazirs, according to statistics from the Indonesian Waqf Board (BWI). An example demonstrating this is given below.

**Figure 2. Cash Waqf Nazir**



Source: <https://www.bwi.go.id/>.

According to the Indonesian Ministry of Religious Affairs, the country's cash waqf potential is IDR180 trillion annually, but will only be realised at IDR2.3 trillion by 2024.<sup>40</sup> This shows that cash waqf has significant potential in Indonesia, but has

<sup>40</sup>Ministry of Religious Affairs of the Republic of Indonesia, "Potential to Reach Rp. 180 T, Ministry of Religious Affairs Strengthens Nazir Quality and Policy on Cash Waqf Management," Government-Ministry of Religious Affairs of the Republic of Indonesia, <https://kemenag.go.id>, 2024, <https://kemenag.go.id/nasional/potensi-capai-rp180-t-kemenag-perkuat-kualitas-nazir-dan-kebijakan-tata-kelola-wakaf-uang-nNKZD>.

yet to reach its full potential. The value of new waqf has been collected at around IDR 2.23 trillion, or less than 2% of the potential of IDR 180 trillion.<sup>41</sup>

Waqf is a way of utilising property in the way of Allah SWT that has various benefits, especially in the context of advancing the economy, health, education, and so on, as explained above. Cash waqf is one type of waqf that has many possibilities. Based on its benefits, cash waqf is one of the better worship alternatives for Muslims, although scholars still differ on a number of fiqh-related issues.

Cash waqf is regulated by several laws and regulations. These regulations include Law No. 41/2004 on Waqf, often known as the Waqf Law. Article 16 of the Waqf Law regulates waqf assets, which include movable and immovable goods. Money is one of the movable goods in question. Articles 28 to 31 of the Waqf Law provide additional provisions.

*Article 28:*

*In return for the movable assets, the Wakif can make a gift in the form of money through an Islamic financial institution selected by the Minister.*

*Article 29:*

- (1) *The waqif implements a movable object waqf in the form of money as referred to in Article 28 after submitting a written statement stating his intention.*
- (2) *To endow movable objects in the form of money as referred to in paragraph (1), a cash waqf certificate is used.*
- (3) *In accordance with paragraph (2), Islamic financial institutions issue and provide cash waqf certificates to the waqif and nazir as evidence of the transfer of waqf assets*

*Article 30:*

*After the Cash Waqf Certificate is issued, the Islamic financial institution operating on behalf of the nazir must register the cash waqf assets with the Minister within seven (7) working days*

*Article 31:*

*The government regulation regulates additional provisions regarding the waqf of movable goods in the form of money as mentioned in Articles 28, 29, and 30.*

The Waqf Law PP, also known as Government Regulation No. 42/2006 on the Implementation of Law No. 41/2004 on Waqf, has additional restrictions. Immovable objects, movable objects other than money, and movable objects in the form of money are all considered waqf assets, as reaffirmed in Article 15 of the Waqf Law PP. This shows that the Waqf Law PP seems to pay more attention to the distinction between movable assets that are paid in cash and those that are not.

The Indonesian Waqf Board (Badan Wakaf Indonesia [BWI]) has issued guidelines on cash waqf. BWI Regulation No. 01/2020 provides more certainty on

<sup>41</sup>BWI Editorial, "BWI Calls for Acceleration of Cash Waqf to Maximise Its Potential," Government, Indonesian Waqf Board | BWI.go.id, 25 February 2024, <https://www.bwi.go.id/9336/2024/02/25/bwi-needs-acceleration-of-money-wakaf-to-maximise-its-potential/>.

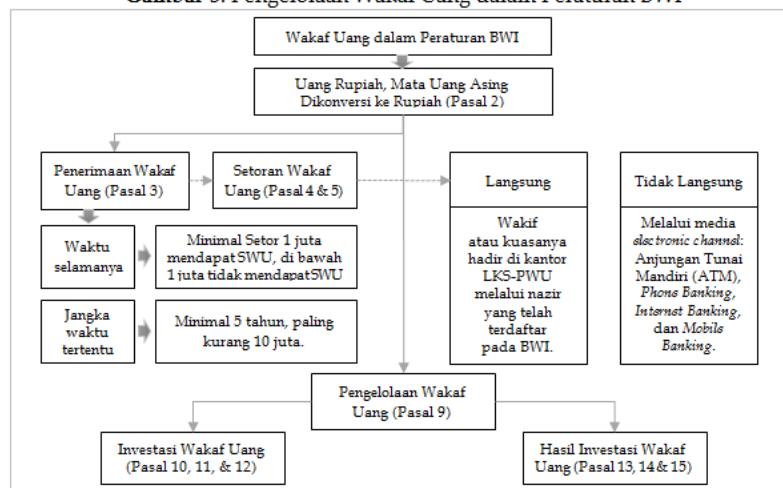


the development and management of waqf assets in order to increase the benefits of cash waqf and support the community's economy. Rupiah is the only currency that can be endowed, as stated in Article 2 of the BWI Regulation. Before doing waqf, foreign currency must be converted into rupiah. In addition, Article 3 of the BWI Regulation states that waqifs can take cash waqf from them on a permanent or temporary basis.

- If the Waqif has deposited waqf assets of at least IDR1,000,000.00 (one billion rupiah), he will receive a cash waqf certificate.
- Has acquired cash waqf for at least five years and at most IDR10,000,000.00 (ten million rupiah).
- After receiving cash waqf of at least IDR1,000,000,000.00 (one billion rupiah), the Waqif conducts an assessment of mauquf 'alaih (the person who receives the waqf).

Cash waqf management, including cash waqf deposits, cash waqf investments, and cash waqf investment returns, is also regulated in the BWI Regulation (Article 9 of the BWI Regulation). The mudharabah muqayyadah contract, which only applies to direct cash waqf investments i.e., investments in projects supervised by the nazir is used when making cash waqf investments. Articles 10 and 11 of the BWI Regulation explain that cash waqf investments are intended to be used for profitable direct and indirect initiatives that advance the welfare of society. If the project meets the requirements i.e., that the business of the project is conducted in accordance with Islamic law and that the feasibility level of the project meets the requirements according to the 5 C's principle-character, condition, capital, capacity, collateral, and the 3 P's of person, purpose, and payment-direct investment in the activities of the Nazir can be made. LKS uses the item with mudharabah muqayyadah contract to make direct cash waqf investment.

Gambar 3. Pengelolaan Wakaf Uang dalam Peraturan BWI



Sumber: Peraturan BWI.



The following are the provisions in Minister of Religious Affairs Regulation No. 4/2009 on the Procedure for Registration of Cash Waqf. Shari'ah law states that cash waqf is the behaviour of a waqif to divide or transfer part of his property for the purposes of worship and/or public benefit, either permanently or temporarily, in accordance with his interests. This Minister of Religious Affairs regulation contains detailed guidelines on the procedures for registering cash waqf. Articles 2 and 3 of this regulation deal with the pledge of waqf; Articles 4, 5 and 6 deal with registration; and Article 6 deals with supervision.

The above explanation clearly shows that the provisions governing cash waqf, contained in several existing Rules, provide a solid legal basis for the management and implementation of waqf nazirs. By collaborating with Islamic Financial Institutions for Cash Waqf, waqf nazirs registered with the Indonesian Waqf Board (BWI) can perform their duties better. In this case, the waqf nazir plays an important role, especially in investing money. The investment returns are then channelled through a mudharabah muqayyadah contract to fulfil the needs or interests of the community as a whole or for religious purposes.

### C. Banda Aceh People's Views on Cash Waqf Regulation

Waqf has historically been a widespread social practice on immovable property, such as land and buildings, that dates back to the time of the Prophet Muhammad, his companions, and beyond. Indeed, there is still a perception among the public in both rural and urban areas that tends to limit the purpose of waqf to waqf of immovable property, such as buildings and land. However, as this practice is very rare, it is less common for movable property waqf objects, such as cash, stocks, vehicles, and other movable property waqf.

Especially for cash waqf, some people in Banda Aceh City are still relatively unfamiliar with it. This was stated by Imam, a resident of Banda Aceh City, Gampong Alue Naga, that cash waqf is actually still unfamiliar to the community. In practice, the object of waqf is always understood to be immovable objects, and even then it is only limited to land and buildings. Land, for example, plantations and rice fields, or vacant land that is then managed by the waqf nazir. As for buildings, they are like mosques.

*"Cash waqf in fiqh already has provisions, in the early days of Islam it may not be familiar, even for the practice of our society today is still not familiar. For myself, cash waqf is fine, as long as it is managed properly in accordance with the provisions of waqf law in Islam. The most important thing about cash waqf is that the money that becomes the object of waqf must be eternal, similar to land or buildings that we commonly know. Later, the object of cash waqf will be managed, made into a business, investment, and the results will be utilised for public benefit".<sup>42</sup>*

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<sup>42</sup>Interview with Imam, a resident of Gampong Alue Naga, Syiah Kuala Sub-district, Banda Aceh City, 8 February 2025.



Imam added that in the perspective of fiqh, it is still being discussed by the scholars. In the context of contemporary scholars, it is generally permissible. In Indonesia itself, the regulatory provisions of cash waqf have been regulated, the only thing that is needed is socialisation to the community, in addition to the seriousness of the government, through the relevant agencies in each region to support cash waqf.<sup>43</sup> A similar statement was made by Amri, a resident of Gampong Lueng Bata. In his explanation, he stated that he did not know about the regulation of cash waqf. In fact, for him there is only land and building waqf.

*"What I know so far is that waqf is land, or buildings for the mosque, but if it's cash waqf, I don't know about it yet, whether there are people working on it or not, I don't think so, because what is common here is land waqf. There are several land waqfs here, and then buildings are built on them, making them productive waqf in this village. The proceeds are then channelled for the public interest, here it can be education, health or for worship".<sup>44</sup>*

The two descriptions above show that some people are aware of cash waqf and it is also known that cash waqf is still legally debated. In addition, the regulation of cash waqf is mentioned in Indonesian law. The important point from the above explanation is not the approval of the community whether cash waqf is allowed or not. Basically, citizens accept the existence of cash waqf, it's just that the important point is that there must be socialisation from the authorised agency.<sup>45</sup>

Although the people of Banda Aceh City are not fully aware of the regulation of cash waqf and its mechanism, some who have understood the existence of cash waqf have actually practised it, such as Suryadi, a pilgrim who benefited from Habib Bugak's waqf funds in Mecca. Initially, there was a discussion among the Hajj pilgrims regarding the money that had been obtained from Habib Bugak's waqf in Mecca to be voluntarily and sincerely re-deployed to be managed back in the Aceh area at the Baitul Asyi Waqf Foundation. For this reason, there are pilgrims who agree and some disagree, while Mr Suryadi is one of the pilgrims who agreed to endow the money from Habib Bugak's Mecca waqf to be distributed at the Baitul Asyi Waqf Foundation in Banda Aceh.

The next is Saimi Usman, a resident of Banda Aceh City who also donated money to the Foundation. Based on this information, it is known that the existence of cash waqf in Aceh in general and Banda Aceh City in particular has actually been practised for a long time even though some citizens are not aware of its provisions. Institutions that already have certification from BWI in the context of cash waqf management such as the Baitul Asyi Waqf Foundation. This is as stated by

<sup>43</sup>*Ibid.*

<sup>44</sup>Interview with Amri, a resident of Gampong Lueng Bata, Lueng Bata Subdistrict, Banda Aceh City, on 2 February 2025.

<sup>45</sup> Fahmi, Wahyuni, dan Rasyid, "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS."



Nazarudin A. Wahid, as the Trustee of the Foundation that one of the programmes implemented by the foundation is to collaborate with banks to implement cash waqf to the Baitul Asyi Waqf Foundation such as BSI bank, Hikmah Wakilah and others. Similar information was also stated by Mizaj Iskandar, as the Chairperson of the Baitul Asyi Waqf Foundation Board and waqf nazir at the foundation revealed that the existence of cash waqf is basically very important. The Baitul Asyi Waqf Foundation, which manages waqf, including as an institution that receives and manages cash waqf, has many programmes, namely the use of investment returns in the form of cooperation and helping dayahs in Aceh. In addition, the hope is that in the future the foundation can become a driving sector related to businesses such as hotels, hospitals and others.

This explanation explains that cash waqf is basically an important part of the economic driver, especially in the context of channelling the benefits of positive investment management of cash waqf assets for the benefit of the general public. However, the most important thing is that there must be a serious effort from various parties, including the nazir, preachers and policy makers to socialise cash waqf to the people of Banda Aceh City.

Legally, waqf is regulated in a number of laws and regulations in Aceh. Among these is a clause in Aceh Qanun No. 3/2021 on Baitul Mal, an amendment to Aceh Qanun No. 10/2018. The existence of Baitul Mal in Aceh, whether at the village, city, district or provincial level,<sup>46</sup> has the responsibility and authority to oversee waqf assets. According to Article 1 Point 40 of the Qanun Baitul Mal, Waqf is an action taken by a waqif to set aside part of his property and transfer it to another place to be utilised continuously or for a certain period of time in accordance with its purpose for the welfare of mauquf 'alaih, and general welfare in accordance with Sharia. Furthermore, number 41 confirms that the waqf assets in question are money, securities, land, property rights granted by the waqif, and assets that have economic value in accordance with sharia, have long durability and/or benefits.<sup>47</sup>

The provisions of the Qanun basically become a strong legal basis for Baitul Mal institutions in managing all types of waqf assets, one of which is movable waqf assets in the form of money. However, the Qanun is not the only regulation on cash waqf, with more detailed regulations contained in the BWI Regulation as mentioned earlier. Thus, cash waqf management institutions in Aceh Province in general and in Banda Aceh City in particular are no longer centred on Baitul Mal, but on other

<sup>46</sup>Gampong is the smallest administrative area in Aceh, and above it is the mukim, which coordinates several gampong. "Gampong" in Aceh is the same as "village". See, Al Yasa' Abubakar, *Pelaksanaan Syariat Islam di Aceh Sebagai Otonomi Khusus yang Asimetris: Sejarah dan Perjuangan* (Banda Aceh: Dinas Syariat Islam Aceh, 2020), hlm. 138; Mizaj Iskandar dan EMK Alidar, *Otoritas Lembaga Adat dalam Penyelesaian Kasus Khalwat di Aceh* (Banda Aceh: Dinas Syariat Islam Aceh, 2020), hlm. 55.

<sup>47</sup>Chairul Fahmi dan Peter-Tobias Stoll, "Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia," *BESTUUR* 12, no. 2 (31 Desember 2024), <https://doi.org/10.20961/bestuur.v12i2.94203>.



institutions and agencies that are given the authority to do so in addition to being registered with the central BWI, especially for PWU LKS that have been given the mandate to manage cash waqf.

## CONCLUSIONS

Referring to this description, several conclusions can be made. *First*, one type of waqf of transportable goods is cash waqf. *Second*, there are still differences of opinion between classical and modern scholars about the validity of Islamic fiqh. The majority of classical scholars from the Hanafi school, as well as some from the Maliki, Safi'i, and Hanbali schools, allow cash waqf. A small number of scholars from the Hanafi school, such as Ibn 'Abidin, and the majority of scholars from the Maliki, Safi'i and Hanbali schools either prohibit or do not allow cash waqf. As for contemporary scholars, those who allow cash waqf include Yūsuf Al-Qarādāwī, while those who do not allow it include Sayyid Sabiq. *Third*, juridically, Indonesian positive law accommodates the permissibility of cash waqf, including the Waqf Law, Government Regulations Implementing the Waqf Law, Minister of Religious Affairs Regulations, and BWI Regulations. In the context of Aceh, the regulation of cash waqf is regulated in Qanun Baitul Mal. *Fourth*, in practice in the field, the people of Aceh, especially in the city of Banda Aceh, some are aware of the regulation of cash waqf and others are not (yet) aware of the regulation of cash waqf. However, the people of Banda Aceh City tend to be permissive and accepting of cash waqf, it is just that the socialisation efforts from related institutions are considered not maximally carried out.

Regarding the above findings, there needs to be a maximisation effort to socialise the regulation of cash waqf to the public at large, as well as an effort to introduce or *branding* to the public about the advantages and ease of doing cash waqf. In addition, policy makers, especially the DPRK together with the Aceh government, need to form a special regulation in the form of a qanun that regulates cash waqf as an elaboration of the existing Qanun Baitul Mal.

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