

Juridical-Normative Analysis of Money Waqf Investment in State Sukuk: Study on Retail Cash Waqf Linked Sukuk (CWLS) Program

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Abstract

Waqf is one of the sharia economic instruments that has long been known in Islamic history. It functions as a form of charity that aims to provide long-term benefits to the community, both in the educational, social, and religious fields. This research examines cash waqf investment in state sukuk through the retail Cash Waqf Linked Sukuk (CWLS) program with a juridical-normative approach. The aim is to analyze the legal basis of CWLS and legal protection for waqif through the wakalah bil ujah contract. This research uses a qualitative method with deductive analysis techniques of regulations, DSN-MUI fatwas, and other legal documents. The results show that the wakalah bil ujah contract provides a legal basis for nazir in managing waqf funds, including facing the risk of default with the mechanism of reimbursement of development proceeds, restructuring, and periodic payments guaranteed by assets. The findings strengthen the understanding of the role of law in the management of cash waqf in state financial instruments.

Keywords: *Cash Waqf; Government Sukuk; Cash Waqf Linked Sukuk*

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Abstrak

Wakaf merupakan salah satu instrumen ekonomi syariah yang telah lama dikenal dalam sejarah Islam. Ia berfungsi sebagai bentuk sedekah yang bertujuan memberikan manfaat jangka panjang bagi masyarakat, baik di bidang pendidikan, sosial, maupun agama. Penelitian ini mengkaji investasi wakaf tunai dalam sukuk negara melalui program *Cash Waqf Linked Sukuk (CWLS)* ritel dengan pendekatan yuridis-normatif. Tujuan penelitian ini adalah menganalisis dasar hukum CWLS dan perlindungan hukum bagi wakif melalui kontrak wakalah bil ujah. Penelitian ini menggunakan metode kualitatif dengan teknik analisis deduktif terhadap peraturan, fatwa DSN-MUI, dan dokumen hukum lainnya. Hasil penelitian menunjukkan bahwa kontrak wakalah bil ujah memberikan dasar hukum bagi nazir dalam mengelola dana wakaf, termasuk menghadapi risiko gagal bayar melalui mekanisme pengembalian hasil pengembangan, restrukturisasi, dan pembayaran berkala yang dijamin oleh aset. Temuan ini memperkuat pemahaman tentang peran hukum dalam pengelolaan wakaf tunai pada instrumen keuangan negara.

Kata Kunci: *Wakaf Tunai; Sukuk Negara; Sukuk Wakaf Tunai*

Introduction

The waqf is one of the economic instruments of Sharia that has been known for a long time in Islamic history. It functions as a form of charity that provides long-term benefits to the community in educational, social, and religious fields. Traditionally, waqf refers to immovable assets, such as land and buildings, whose proceeds are used for public benefit.¹ However, the times and economic needs encourage innovation in waqf practices. One significant form of innovation is the money waqf, or cash waqf. This allows the community to contribute cash funds, which the Nazir manages productively, and the proceeds are used for social and humanitarian activities.

In classical fiqh literature, the concept of a money waqf became a subject of debate. Some scholars argue that waqf must consist of non-consumable objects because money falls under the category of consumable objects. However, in the Hanafi school, for example, money waqf is permitted as long as it is managed productively and provides sustainable benefits.²

As Indonesian law has developed, the concept of waqf has been discussed not only from the perspective of fiqh, but also accommodated in positive law. This is evident in Law No. 41 of 2004 concerning Waqf, which regulates not only conventional waqf but also contemporary types such as money and securities waqf.³

In his book *Zakat and Waqf Law*, Akmal Bashori explains that: Dialectics of Fiqh, Law, and Sharia Maqashid, explains that waqf has shifted from the realm of fiqh to that of positive law. He mentions that the realization of waqf is now closely related to social reality and the needs of contemporary society. Thus, its nature has become more profane and dynamic.⁴

¹ Akmal Bashori, *Hukum Zakat dan Wakaf: Dialektika Fikih, Undang-Undang, dan Maqashid Syariah* (Malang: Literasi Nusantara, 2021), hlm. 85.

² Bashori, hlm. 86.

³ Pemerintah Pusat, "Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf" (Jakarta: JDIH BPK, 2004), Pasal 6 Ayat 3.

⁴ Bashori, *Hukum Zakat dan Wakaf: Dialektika Fikih, Undang-Undang, dan Maqashid Syariah*, hlm. 86.

One strategic innovation that emerged from the development of the money waqf is the Cash Waqf Linked Sukuk (CWLS) program, which was launched by the Indonesian government through the Ministry of Finance. The CWLS program allows waqf funds to be invested in Sharia state sukuk, and the returns are used to finance social programs and the economic empowerment of the people. The CWLS program is a concrete effort to combine waqf instruments with state Sharia investment instruments. Previously considered only philanthropic, waqf now has a dual role as a tool to collect social funds and as a productive financial instrument. This expands the usefulness of waqf in national development.^{5,6}

Fatwa Number 43 of 2015 from the DSN-MUI concerning Money Waqf on State Sukuk provides sharia legitimacy to this practice. However, the fatwa is not strong enough to serve as a binding legal basis, so further study is needed from juridical and normative perspectives. Additionally, the MUI fatwa does not carry the same legal force as law. While several previous studies have discussed related themes, none have specifically examined the CWLS program from a juridical-normative perspective. For instance, Isro'iyatu and Rahma's study, "Analysis of Factors Affecting the Demand for SR05 Series Retail Sukuk," focuses primarily on macroeconomic factors, such as sukuk prices, interest rates, and inflation.⁷

The above research uses a quantitative approach to discuss market demand for retail sukuk but does not address money waqf or the underlying Sharia and positive legal framework. The existence of CWLS as a form of money waqf invested in sukuk has important legal and religious dimensions. Similarly, Elvira Fitriani's thesis, "Legal Analysis of the Issuance of Retail State Bonds (ORI)," focuses on the issuance of conventional bonds and legal protections for holders.

⁵ Dewi Sri Indriati, "Urgensi Wakaf Produktif dalam Pembangunan Ekonomi Masyarakat," *Jurnal Ilmiah Al-Syir'ah* 15, No. 2 (2017): 94–114, <https://doi.org/10.30984/as.v15i2.476>.

⁶ Budi Indra Agusci, "Urgensi Pengelolaan Wakaf Produktif dalam Pembangunan Ekonomi dan Pemberdayaan Masyarakat," *Misykat Al-Anwar Jurnal Kajian Islam dan Masyarakat* 30, No. 1 (2019): 137–58.

⁷ Isro'iyatu Mubarakah and Madjidainun Rahma, "Analisis Faktor yang Mempengaruhi Permintaan Sukuk Ritel Seri SR 05," *Profit: Jurnal Kajian Ekonomi dan Perbankan Syariah* 3, No. 2 (2019): 1–21, <https://doi.org/10.33650/profit.v3i2.860>.

While this study is important for comparison purposes, it does not discuss sharia sukuk, especially those associated with waqf funds.⁸

Conversely, Siti Latifah's journal, "The Role of State Sharia Securities (SBSN) Sukuk in Indonesia's Economic Development Growth," reveals the role of sukuk in infrastructure development. She noted that strategic projects, such as toll roads and campus buildings, are funded by the issuance of SBSN.^{9,10} However, the study did not examine the role of the money waqf in sukuk. Therefore, previous studies have left a theoretical gap in that they have not examined the integration of money waqf in state sukuk from a juridical-normative perspective. The issue of legality and legal protection is crucial to ensuring the long-term safety of waqf funds.

This research is important because it attempts to bridge the gap in studies that integrate Islamic law and state law in the context of the productive management of waqf funds. It is expected to provide a stronger foundation for developing the CWLS program and other contemporary waqf models. Additionally, the research aims to clarify the role and responsibilities of the Nazir in managing waqf funds invested in sukuk and how to establish accountability and legal protection for the Wakif and beneficiary communities.

Based on the above background, this study will take an in-depth look at the investment of money waqf in state sukuk through juridical and normative approaches in the *Cash Waqf Linked Sukuk* (CWLS Retail) program. The results of this research are expected to contribute to the development of Sharia economic law literature and serve as a reference for regulators, Islamic financial institutions, and the general public.

⁸ Elvira Fitriani, "Analisis Hukum Terhadap Penerbitan Obligasi Negara Ritel (ORI)" (Universitas Indonesia, 2020), hlm. 72.

⁹ Siti Latifah, "Peran Sukuk Surat Berharga Syariah Negara (SBSN) dalam Pertumbuhan Pembangunan Ekonomi Indonesia," *Jurnal Ilmiah Ekonomi Islam* 6, No. 3 (2020): 421–27, <https://doi.org/10.29040/jiei.v6i3.1369>.

¹⁰ Muhammad Iqbal Zuhdi, Wahyudi, and Romi Suradi, "The Role of State Sharia Securities (SBSN) in Indonesia's Financing Sector," *Asian Journal of Economics, Business and Accounting* 24, No. 7 (2024): 238–46, <https://doi.org/10.9734/ajeba/2024/v24i71406>.

Research Methods

This study uses the normative legal research method, also known as normative juridical research. This literature research method focuses on analyzing legal materials or secondary data from laws, regulations, fatwas, official documents, and other legal literature. Rather than relying on empirical data from the field, this research explores applicable legal norms through doctrinal and theoretical approaches to understand the legal protection of waqif in the implementation of *Cash Waqf Linked Sukuk (CWLS) instruments*.¹¹

This study uses a deductive thinking method in its implementation. This method is a process of drawing conclusions from general legal rules or principles that have been recognized as true and applying them to analyze specific problems. In this study, the specific problem is the legal protection of the waqif in the CWLS with wakalah bil ujah contracts. A qualitative approach was used to analyze the content of the legal norms contained in the law, government regulations, DSN MUI fatwa, and other technical regulations related to the management of money waqf in CWLS. The study aims to gain an in-depth understanding of the legal position of the parties involved, particularly the waqif, and the legal guarantees for money waqf funds in the context of state sukuk using wakalah contracts.¹²

Result and Discussion

The issue of the validity of money waqf has been debated since the early days of Islam. Imam al-Zuhri (d. 124 H) stated that a dinar waqf is permitted if it is invested, and the profits are distributed to the beneficiaries. Scholars from the Hanafi school also recognized the validity of the money waqf as an exception based on *istihsān bil al-'urfi*, a legal consideration based on societal norms. This view is based on Abdullah bin Mas'ud's opinion that what is considered good by Muslims is also good in the sight of Allah. Similarly, some Shafi'i scholars, as

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2004), hlm. 13.

¹² Sukarmi and Haryanto, *Metode Penelitian Hukum: Teori dan Praktik* (Malang: Setara Press, 2008), hlm. 77.

quoted by Abu Tsyar from Imam al-Shafi'i, support the validity of a dinar or dirham waqf.¹³

The Hanafi school develops a cash waqf mechanism through the mudharabah system, which is to make waqf money as business capital and distribute the profits for the public good. This practice has legitimacy because it is in accordance with the principle of *'urf* (community customs), which in the view of the Hanafi school has a legal position equivalent to the postulates of the *nas*. This approach emphasizes that money waqf can be a productive philanthropic instrument if managed professionally and in accordance with sharia. This support was further strengthened by the decision of the Fatwa Commission of the Indonesian Ulema Council (MUI) on May 11, 2002 (28 Shafar 1423 H), which stipulated that waqf money is legal and may only be used for matters in accordance with sharia, provided that its principal value is maintained and may not be sold, granted, or inherited.

The legality of money waqf has also been strengthened by laws and regulations in Indonesia. Law Number 41 of 2004 concerning Waqf explicitly states that the object of waqf includes not only immovable objects, but also movable objects such as money, precious metals, securities, vehicles, and intellectual property rights. This is reaffirmed in Government Regulation Number 42 of 2006 as a technical implementation of the law. Thus, legally positive, money waqf is recognized and protected as a form of legal waqf and can be widely used for the benefit of the ummah.¹⁴

Mechanism and implementation of money waqf investment through the Retail Cash Waqf Linked Sukuk (CWLS) program in Indonesia. The mechanism/procedures and implementation of Money Waqf on State Sukuk (Cash Waqf Linked Sukuk - CWLS) include the following:¹⁵

¹³ Al-Mawardi, *Al-Hāwī Al-Kabīr, Tahqīq Mahmud Mathrajī Juz IX* (Beirut: Dar al Fikr, 1994), hlm. 379.

¹⁴ Wahbah Zuhaili, *Al-Fiqh Al-Islāmī Wa Adillatuh Jilid VII* (Damaskus: Dar al-Fikr, 1985), hlm. 162.

¹⁵ Kementerian Keuangan Republik Indonesia, "Pemerintah Republik Indonesia Perubahan Kedua atas Memorandum Informasi Sukuk Wakaf (Cash Waqf Linked Sukuk) Seri Swr004" (Jakarta: Kemnkeu RI, 2023).

First, Initiation of Waqf by Waqf. The process begins when a Wakif (waqf giver) has the intention to waqf a certain amount of money. This waqf can be temporary, which is for a certain period of time according to the CWLS maturity period. Perpetual, which is waqf forever, whose principal funds will continue to be managed and the results will be used sustainably.

Second, Distribution of Waqf Through LKS-PWU. Wakif distributes its waqf funds through the Sharia Financial Institution Recipient of Money Waqf (LKS-PWU), which has been officially appointed by the government and has obtained permission from the Indonesian Waqf Agency (BWI). The mechanism can be done by two methods. First, Offline (Conventional): The wakif goes directly to the LKS-PWU office or Distribution Partner (Midis), Sign the Waqf Pledge Deed (AIW) as a form of legalization of the waqf statement and Fill out the Waqf Sukuk Order Form that has been prepared by Midis. Second, Online (Digital): Wakif accesses the official Distribution Partner's digital platform (e.g. through the Islamic bank application or CWLS portal), Digitally approving the Waqf Pledge Deed and Order Sukuk Waqf directly through the electronic system.

Third, Placement of Funds to State Sukuk (CWLS). The money waqf funds that have been received by LKS-PWU will be invested in the CWLS series of State Sukuk instruments, which have been determined by the Ministry of Finance. This sukuk is a sharia instrument based on state assets that is safe and provides a fixed yield.

Fourth, Issuance and Recording of Waqf Sukuk. The Government issues CWLS on behalf of the wakif, with recording carried out by the Ministry of Finance and Distribution Partners and Even though it is recorded in the name of the Wakif, the management and authority of the use of the investment proceeds is in the hands of the Nazir, who has received the power of attorney from the Wakif.

Fifth, Payment of Investment Returns; The government periodically (monthly) pays the returns/coupons from CWLS investment to Nazir and The amount of this return is fixed for the investment period, in accordance with the provisions of the applicable CWLS prospectus. Sixth, Distribution of Returns by Nazir. Nazir distributes CWLS investment returns through trusted social

institutions to fund social programs that are not financed by the state budget, such as Physical Program, Construction of hospitals, Islamic boarding schools, orphanages, mosques, clean water facilities, and other public facilities; and Non-Physical Programs: Educational scholarships, skills training, economic empowerment of the people, and social assistance for vulnerable groups.

Seventh, Settlement of Principal Funds at the End of the Period. Depending on the type of waqf, there are two schemes for settling the principal at the maturity of the sukuk; Temporary Waqf: the principal fund (the initial nominal of CWLS investment) is returned to the Waqf by the government and Perpetual Waqf: the principal funds are not returned to the Wakif, but are transferred to the Nazir's account automatically through the debiting of the Wakif account, to be managed and reinvested productively. Eighth, Monitoring and Reporting. Nazir is obliged to make periodic reports on the use of returns to the public and to the Indonesian Waqf Agency (BWI). This process is supervised by BWI, the Ministry of Religious Affairs, and other relevant authorities to ensure the transparency and accountability of waqf.

Nazir's position and responsibilities in managing waqf funds invested in sukuk

Nazir has a central role in the management of money waqf funds, including in investments in Cash Waqf Linked Sukuk (CWLS) instruments. As the party who receives the mandate from the waqf, Nazir is responsible for ensuring that the waqf funds are managed in accordance with sharia principles and social goals that have been determined by the waqf. In the context of CWLS, Nazir becomes the holder of power in distributing investment proceeds to the beneficiary community (*mauqūf 'alayh*).¹⁶

The role of the Nazir is not limited to administrative management, but also includes strategic decisions in choosing safe, sharia, and productive investment instruments. Investment through CWLS is a form of ijtihad of the sharia economy that is considered appropriate because it is guaranteed by the

¹⁶ Afief El Ashfahany and Novita Lestari, "Optimizing Cash Waqf and Cash Waqf Linked Sukuk: The Role of Nazhir and The Strategies," *Iqtishadia* 15, No. 2 (2023): 171–90, <https://doi.org/10.21043/iqtishadia.v15i2.16353>.

state and provides a fixed return. Thus, Nazir plays a role as a manager and guarantor of the sustainability of waqf assets in order to be able to provide long-term benefits to the community.¹⁷

Nazir's responsibilities in this context include supervising the flow of funds from the beginning of receipt, investment in sukuk, to the distribution of returns to the social sector. In practice, Nazir is also required to form periodic financial reports, which must be audited and reported to the Indonesian Waqf Agency (BWI) and announced to the public to ensure transparency.¹⁸

The Nazir's accountability is moral, legal, and spiritual. Moral, because Nazir holds the social mandate of the wakif; legal, because Nazir is subject to the applicable positive legal provisions; and spiritual, because Nazir carried out religious orders in the form of waqf fund management. Violations of this mandate can be subject to administrative and criminal sanctions in accordance with the provisions of waqf legislation.¹⁹

Law Number 41 of 2004 concerning Waqf states that Nazir must have competence, integrity, and a good track record in waqf management. Furthermore, in Government Regulation Number 42 of 2006, Nazir is required to report his performance in writing to BWI at the end of each year and if requested at any time. This shows that Nazir is positioned as the executor of the state mandate in the realm of waqf.²⁰

In the CWLS mechanism, Nazir also collaborates with Sharia Financial Instructions Recipients of Money Waqf (LKS-PWU) and Distribution Partners. After the funds are collected through the CWLS booking scheme, Nazir receives

¹⁷ Rozaq Muhammad Yasin, "Cash Waqf Linked Sukuk: Issues, Challenges and Future Direction in Indonesia," *Jurnal Ekonomi dan Bisnis Islam (Journal of Islamic Economics and Business)* 7, No. 1 (2021): 100, <https://doi.org/10.20473/jebis.v7i1.24818>.

¹⁸ Sandra Monica, Murniati Mukhlisin, and Dede Abdul Fatah, "Enhancing Waqf Accountability: Nazhir's Perspective towards Waqf Reporting," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 12, No. 2 (2020): 251–64, <https://doi.org/10.15408/aiq.v12i2.15828>.

¹⁹ Lis Purwanti and Sigid Eko Pramono, "Analysis of Implementation the Good Nazir Governance (GNG) Index in Waqf Institutions," *Ziswaf: Jurnal Zakat dan Wakaf* 11, No. 2 (2024): 215–31, <https://doi.org/10.21043/ziswaf.v11i2.28506>.

²⁰ Presiden Republik Indonesia, "Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf" (Jakarta: JDIH BPK, 2004), <https://peraturan.bpk.go.id/Details/40788/uu-no-41-tahun-2004>.

investment results from the government on a regular basis and is fully responsible for distributing benefits to the agreed social sectors, such as education, health, and economic empowerment of the people.

Furthermore, if the issuer or nazhir is negligent in carrying out its obligations, the trustee has the following responsibilities: (1) managing the disbursement of the *sinking fund* to fulfill the right to pay to the sukuk or wakif holder; (2) identify potential problems that may cause conflicts of interest; (3) Deliver a notification to the holder of the retail sukuk waqf (waqf); and (4) identify and secure collateral. In addition, the trustee has the authority to negotiate with the issuer to provide a guarantee for the sukuk waqf with the highest possible priority. If there is no certainty about the guarantee, the trustee can apply for a *pari passu pro rata parte* scheme. In fact, on behalf of retail sukuk waqf holders, the trustee can also take legal steps such as collateral execution, *sinking fund* disbursement, filing a civil lawsuit on the basis of default, *class actions*, and bankruptcy applications against issuers representing the government.²¹

Juridical-Normative Analysis of the Legal Status and Protection of Cash Waqf Assets Invested in Retail CWLS

Juridical Analysis of the Legal Status and Protection of Cash Waqf Assets Invested in Retail CWLS. The development of the Islamic economy in Indonesia has given rise to various innovations in financial instruments based on Islamic principles. One strategic and adaptive innovation to contemporary needs is the Cash Waqf Linked Sukuk (CWLS). CWLS is an investment scheme whereby cash waqf is invested into sovereign sukuk instruments designed to support the financing of social and infrastructure projects in a productive and sustainable manner. Within the context of Indonesia's positive law, the existence of CWLS is noteworthy because it involves the management of entrusted public funds, thus

²¹ M Khozinul Asror and Nita Triana, "Perlindungan Hukum Wakif bagi Pemegang Wakaf Sukuk Ritel Terhadap Resiko Gagal Bayar," *Menara Ilmu* 17, No. 1 (2023): 72–77, <https://doi.org/10.31869/mi.v17i1.3948>.

requiring comprehensive legal protection, both from statutory regulations and supervisory institutions.²²

Cash waqf itself has legal legitimacy within the national legal system. Recognition of cash waqf is regulated under Law Number 41 of 2004 concerning Waqf, reinforced by Government Regulation Number 42 of 2006. These regulations clarify that waqf is not limited to immovable property but also includes movable property, such as money. Once donated, waqf funds become the property of Allah SWT and are managed by a nazir (trustee), who is obligated to preserve the principal amount and distribute the returns to the rightful beneficiaries (*mauquf 'alaih*).

The government has further strengthened the legal framework for the implementation of cash waqf through the issuance of Minister of Religious Affairs Regulation (PMA) Number 1 of 2022, which specifically regulates the mechanism for executing CWLS. This regulation provides operational guidelines for nazir, Islamic Financial Institutions Receiving Cash Waqf (LKS-PWU), and other related parties in investing waqf funds in sovereign sukuk. In addition, fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) ensure that the CWLS scheme aligns with sharia principles, thereby guaranteeing its halal status and religious validity.²³

Nazir, as the entity responsible for managing waqf funds, bears significant legal responsibility in handling CWLS investments. The nazir is tasked not only with safeguarding the principal amount but also ensuring that the investment returns are utilized appropriately. The nazir's role is supported by LKS-PWU, which serves as the intermediary for receiving and placing waqf funds. Both parties are subject to the regulations of the Indonesian Waqf Board (BWI) and the supervision of the Financial Services Authority (OJK), emphasizing prudence, integrity, and accountability in their functions.²⁴

²² Komisi Fatwa MUI, "Fatwa MUI Tahun 2002 Tentang Wakaf Uang" (Jakarta: Majelis Ulama Indonesia, 2002), <https://mui.or.id/baca/fatwa/wakaf-uang>.

²³ Komisi Pengawas Wakaf Indonesia, *Pedoman Tata Kelola Nazir Wakaf Produktif* (Jakarta: Komisi Pengawas Wakaf Indonesia, 2022), hlm. 18-20.

²⁴ Indonesian Waqf Board and National Committee for Islamic Economics and Finance, *National Waqf Annual Report* (Jakarta: BWI & KNEKS, 2023), p. 44-46.

CWLS utilizes Sovereign Sharia Securities (SBSN) as the primary investment vehicle. According to Law Number 19 of 2008 concerning SBSN, sovereign sukuk are sharia-compliant financing instruments fully guaranteed by the state. Article 18 of the law grants the government authority to repurchase SBSN before maturity, while Article 27 outlines the accountability of the Minister of Finance in managing sukuk funds. This ensures the security of waqf funds invested in CWLS against default risks.

Legal certainty and protection in waqf fund management are further guaranteed by applying principles of transparency and accountability. Nazir is required to prepare and report financial statements periodically to BWI, the waqif (donor), and the public. The Guidelines for the Governance of Productive Waqf Nazir, issued by BWI, stress the importance of integrity in governance, internal auditing, and publicly accessible reporting as forms of accountability for managing entrusted waqf.

As an independent institution, BWI plays a vital role in ensuring the implementation of legal and sharia principles in CWLS management. BWI not only provides guidance to nazir and LKS-PWU but also oversees their activities and, if necessary, intervenes directly in the event of mismanagement. This authority empowers BWI to safeguard waqf funds in accordance with the donor's intentions and the purpose of the waqf.

The legal protection of waqif is reflected in the prohibition against transferring, selling, inheriting, or abolishing the waqf principal. This is stipulated both by law and reinforced by DSN-MUI fatwas. Conversely, the protection of beneficiaries (mauquf 'alaih) is realized through the nazir's obligation to distribute investment returns accurately and fairly. Should the nazir be negligent or violate legal principles, administrative, civil, or even criminal sanctions may be imposed under applicable law. Moreover, the involvement of the Ministry of Finance and capital market authorities in the issuance of CWLS subjects the scheme to public administrative law. The offering, recording, and settlement of sukuk transactions involve clearing and settlement institutions regulated by Bapepam and OJK, ensuring that CWLS is legally structured and formally managed.

The CWLS scheme also provides risk mitigation mechanisms through the establishment of reserve and guarantee funds derived from waqf fund management returns. This measure anticipates potential issues such as program misalignment or default by sukuk issuers, thus preserving the integrity of waqf assets and maintaining public trust.

From a criminal law perspective, the potential misuse of waqf funds is also given special attention. If a nazir is found guilty of embezzlement, misappropriation, or serious negligence in fund management, they may face criminal sanctions under Article 372 of the Indonesian Criminal Code on embezzlement or other provisions of economic criminal law. This underscores that waqf management carries not only moral and religious responsibilities but also legal consequences.

Beyond financial considerations, CWLS is part of a national strategy to sustainably develop the Islamic social sector. Through CWLS, the government promotes the use of waqf funds to support education, healthcare, and community empowerment programs. In other words, CWLS serves as a collaborative platform between the state and society to broaden the impact of waqf on national development.

Economically, CWLS also broadens public participation in national financing without violating the non-commercial principles of waqf. Society can collectively contribute small amounts of waqf, generating significant impact on social projects. This not only strengthens Islamic financial inclusion but also raises public awareness about the importance of waqf in development.²⁵

CWLS offers an ideal model of collaboration between the financial sector, sharia authorities, and state institutions in creating an inclusive and equitable financial system. This scheme is not only legal and sharia-compliant but also secure and transparent. Effective collaboration between BWI, the Ministry of Finance, OJK, DSN-MUI, and the nazir and LKS-PWU is key to successful CWLS management.

²⁵ Abiyu Achmad et al., "Optimization of Cash Waqf Linked Sukuk (CLWS) Distribution to Support Sustainable Investment in Indonesia," *Jurnal Syarikah: Jurnal Ekonomi Islam* 10, No. 1 (2024): 103–12, <https://doi.org/10.30997/jsei.v10i1.11284>.

Based on the above discussion, CWLS can be concluded as an innovative form of productive waqf that complies with national legal standards and sharia principles. Supported by strong regulations, official institutional supervision, and active public participation, CWLS has the potential to be an effective instrument in achieving social justice and sustainable development within the framework of Indonesia's legal state.

Normative Analysis of the Legal Status and Protection of Cash Waqf Assets Invested in Retail CWLS

The Cash Waqf Linked Sukuk (CWLS) represents an innovative Islamic financial instrument that integrates the concept of cash waqf with sovereign sukuk. According to the SWR004 Information Memorandum, CWLS is a Sovereign Sharia Securities (Surat Berharga Syariah Negara, SBSN) issued under a social investment scheme, where cash waqf is managed by a waqf fund management institution and the returns are allocated for social purposes rather than being traded on the secondary market. CWLS SWR004 employs a wakalah (agency) contract structure, establishing a legal relationship of authority among the waqif (donor), the nazir (waqf manager), and the government as the SBSN issuer.²⁶

Normatively, the wakalah contract is a contract of agency, whereby one party delegates authority to another to perform a specific legal act. In the context of CWLS, the waqif entrusts their funds to the nazir, who, through an Islamic financial institution authorized to manage waqf (LKS-PWU), transfers the funds to the government (through the Indonesian SBSN Issuing Company) for investment in sovereign sukuk. This contract is classified as wakalah bil ujah, as the nazir or waqf manager may receive compensation for their management services. This classification is reinforced by DSN-MUI Fatwa No. 113/DSN-MUI/IX/2017, which defines wakalah bil ujah as the delegation of authority

²⁶ Kementerian Keuangan Republik Indonesia, "Pemerintah Republik Indonesia Perubahan Kedua Atas Memorandum Informasi Sukuk Wakaf (Cash Waqf Linked Sukuk) Seri Swr004."

from a principal (muwakkil) to an agent (wakil) to perform a specific legal action in return for a fee.²⁷

The fatwa also stipulates that the object of wakalah must be clear, must not contravene sharia principles, and that the fee must be agreed upon from the outset. In CWLS, the object of the wakalah is the management of waqf funds to purchase sovereign sukuk, and the management fee (ujrah) is typically determined and transparently disclosed in offering documents, under the supervision of the Indonesian Waqf Board (BWI) and the Financial Services Authority (OJK). This fulfills the necessary conditions and pillars of a valid wakalah bil ujah contract.²⁸

From a legal protection perspective, the wakalah contract in CWLS is reinforced by Indonesia's statutory framework. For instance, Law No. 41 of 2004 on Waqf stipulates that cash waqf must be channeled through Islamic financial institutions appointed by the Minister of Religious Affairs and managed by registered nazir under the supervision of BWI. This ensures legal protection of waqf assets, especially against mismanagement risks (Law No. 41 of 2004, Articles 22–24). Additionally, Law No. 19 of 2008 on Sovereign Sukuk (SBSN) asserts that SBSN are state-guaranteed sharia-compliant securities, including guarantees on return payments and principal redemption. Thus, under the wakalah arrangement in CWLS, the government not only acts as the agent receiving the mandate but also guarantees the security of the invested waqf funds, thereby strengthening the legal protection afforded to waqif (Law No. 19 of 2008, Articles 18 and 27).²⁹

Under Islamic law, wakalah in economic transactions is permissible provided that clarity, mutual consent, and fairness are upheld. Imam Al-Kasani, in "Bada'i al-Sana'i", describes wakalah as a permissible (jaiz) contract that may

²⁷ Dewan Syariah Nasional Majelis Ulama Indonesia, "Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Wakalah Bil Ujah" (Jakarta: DSN-MUI, 2017), hlm. 1.

²⁸ Dewan Syariah Nasional Majelis Ulama Indonesia, hlm. 2.

²⁹ Setneg, "Undang-Undang (UU) Nomor 19 Tahun 2008 Tentang Surat Berharga Syariah Negara" (Jakarta: JDIH BPK, 2008).

be revoked at any time, but becomes binding if compensation or specific contractual commitments are involved.³⁰

In the CWLS framework, the commitments detailed in memoranda, ministerial regulations, and fatwa approvals render the wakalah contract legally and sharia-compliantly binding. The protection of waqif rights and interests is further reflected in the mechanisms of accountability and transparency. According to the "Guidelines for the Governance of Productive Waqf Nazir" issued by BWI, nazir are required to prepare financial reports, report on the use of returns, and ensure the targeted distribution of waqf proceeds. Nazir who are found negligent or in breach of contract may be subject to administrative or even criminal sanctions under applicable laws.³¹

Thus, the existence of the wakalah bil ujah contract within the CWLS structure is not only compliant with Islamic jurisprudence (fiqh muamalah) but is also firmly grounded in Indonesia's positive legal framework. The juridical implications encompass the protection of waqif, nazir, and mustahiq (waqf beneficiaries), and uphold the validity and security of waqf investments through state-backed instruments. This integration of Islamic legal principles and positive law demonstrates that CWLS is a financial innovation that upholds the objectives of sharia (maqashid sharia) while ensuring strong legal protection.³²

Conclusion

Upon normative and juridical analysis, the wakalah contract within the framework of the Cash Waqf Linked Sukuk (CWLS) demonstrably fulfills the requirements of both Islamic law and the positive legal framework of Indonesia. The contract is classified as wakalah bil ujah, in accordance with the provisions of DSN-MUI Fatwa No. 113/DSN-MUI/IX/2017, wherein the delegation of authority is accompanied by remuneration, conducted transparently, agreed

³⁰ Abu Bakar bin Mas'ud Al-Kasani, *Bada'i Al-Shana'i Fi Tartib Al-Shara'i* (Beirut: Dar al-Kutub al-Ilmiyyah, 2000), hlm. 90.

³¹ Badan Wakaf Indonesia, *Pedoman Tata Kelola Nazir Wakaf Produktif* (Jakarta: BWI, 2022), hlm. 33-36.

³² Elbachir Askouri, "The Role of Waqf in Achieving the Purposes of Islamic Law," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 11, No. 1 (2024): 101-20, <https://doi.org/10.31942/iq.v11i1.10922>.

upon from the outset, and established over a clear and sharia-compliant subject matter. The clear delineation of relationships among the wakif, nazir, Islamic Financial Institutions Authorized to Manage Waqf Funds (LKS-PWU), and the Sovereign Sukuk (SBSN) issuer evidences that transactions within CWLS are conducted within a legally valid, responsible, and accountable framework. This compliance is further reinforced by national regulations, notably Law No. 41 of 2004 concerning Waqf and Law No. 19 of 2008 concerning Sovereign Sukuk (SBSN), which guarantee the security of waqf assets and the legal validity of sukuk issuance by the state.

From a legal protection perspective, the wakalah structure in CWLS provides robust safeguards for the rights of the wakif and the beneficiaries (mauquf 'alaih). This protection is manifested through a multilayered supervisory mechanism involving the Indonesian Waqf Board (BWI), the Financial Services Authority (OJK), the Ministry of Finance, and the National Sharia Council (DSN-MUI), alongside the application of accountability and transparency principles in the financial reporting obligations of the nazir. The wakalah contract in CWLS is not only legally and religiously valid but also represents a comprehensive mechanism for safeguarding entrusted waqf assets, aligning with the objectives of sharia (maqasid al-shariah) and the foundational principles of a constitutional state.

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