

The Use of Cash Waqf Funds and Its Various Legal Problems in Indonesia

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Abstract

Cash waqf is waqf carried out by a person, group of people, and institutions or legal entities in the form of cash. In the fiqh literature it is stated that the Hanafi school has practiced this waqf in society. In Islamic society in general cash waqf has long been practiced, but the contract still mentions land waqf. For example, the construction of a mosque requires a plot of land with an area of 500 square meters, with a price of 50,000,000; then the land is divided into 500 lots. Thus, obtained the price of 100 per meter. Furthermore, it is marketed to the wider community for land waqf by way of per meter with an affordable value, and the wakif pays according to the number of meters he wants to waqf. Today, by looking at the times, and something that cannot be avoided anymore about the importance of money (in the form of cash) in transactions, the Indonesian ulema. The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online. Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion. According to Law no. 41 of 2004 concerning waqf and Government Regulation no. 42 of 2006 can be summarized several waqf concepts as follows. Waqf is a legal act of wakif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. Waqf is carried out by fulfilling the elements of waqf. In the management of waqf, there are still various kinds of problems that lead to civil matters. Regarding civil issues, the relationship between humans and humans in daily practice can often lead to legal relationships, which in that relationship between one another will give rise to rights and obligations that must be fulfilled by the parties so that in legal terms it is known as material civil law. and formal civil law.

Keywords:

Cash Waqf, Legal Problem

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A. Introduction

The discourse on waqf management, especially cash waqf in Indonesia, is still very new. Historically, this management cannot be separated from the periodization of waqf management in general, namely: First, the traditional period; which still places waqf as a pure teaching in the category of mahdhah worship. The endowments that are given are still in the form of immovable physical objects, in the form of land for places of worship such as mosques, prayer rooms and educational facilities. Second, the semi-professional period; in this period the pattern of waqf management was still relatively the same as the previous period, but in this period there have been developments in management, namely the empowerment of waqf productively, although still in a simple manner. Third, the professional period; During this period, the attractiveness of waqf has begun to appear and be looked at to be empowered professionally and productively. To build a professional order, strategic socialization is needed. Cash waqf needs to be socialized intensively so that cash waqf can be accepted in the wider community and immediately provide concrete answers to economic problems so far. Indeed, cash waqf is still a debate among scholars', and the professional management of cash waqf is still in the form of discourse and not many parties or institutions can accept such a waqf model. However, several Islamic countries have succeeded in empowering cash waqf to the maximum and have been proven to be able to prosper the local Muslim community. Basically cash waqf has benefits that are not owned by

immovable object waqf. The benefit is that cash waqf can vary in amount so that someone who has limited funds can start giving waqf funds without having to wait to become a landlord first. The transition of thought from inanimate waqf to cash waqf can be easily managed and developed as long as the original capital is kept tightly. Cash waqf can also help some Islamic educational institutions whose cash flows sometimes fluctuate. And with the cash waqf, Muslims can be independent in developing the world of education without having to be too dependent on the state education budget which is increasingly limited.¹

The word waqf is very familiar among Indonesian Muslims. Etymologically, waqf comes from the word waqafa-yaqifu-waqfan which means to stop, stand in place, or hold back, the opposite of the word istamarra which means to keep going. In Arabic waqf is synonymous (taraduf) with the word habs which means to hold back, from the root word habasa-yahbisu-habsan. The Prophet also used the word habs (hold), which is holding an object whose benefits are used for virtue and is recommended by religion. Waqf is also commonly referred to in terms of the science of recitation, which means to stop reading, either continuously or to take a temporary breath. Waqf (Waqf) is also closely related to the core series of the pilgrimage, namely wuquf at Arafah every 9th Dhul Hijjah. Meanwhile, in terms of terminology or literally, waqf has several definitions that are often revealed by scholars: First, according to al-Jazairi, waqf is the detention of property so that the property cannot be inherited, or sold, or donated, and donates the proceeds to the recipient of the waqf. Second, according to the Shafi'i school of thought, waqf is to hold assets that can be taken advantage of while the goods are intact and the property is lost from the waqif, and used on what is allowed. If the Shafi'i school of thought is declared valid, the ownership will shift from the owner of the property being waqf to the people, not the person who is waqf. So, the relationship between a person who has donated his wealth and his property is cut off. Third, waqf can also be seen from an economic perspective, namely as a transfer of funds (or other assets, both inanimate assets or movable assets) from consumption purposes and investing them into productive assets that generate income for consumption in the future either by individuals or groups. Fourth, waqf means holding back assets that may be taken advantage of without spending or destroying the object (other) and used for the good of society at large. Waqf is generally directed to waqf of immovable objects, such as a plot of land, buildings, trees to be used as a result, and wells to collect water. Appears later, waqf uses movable objects, waqf with this model is often referred to as cash waqf (waqf nuqud).²

It can be interpreted, cash waqf is waqf carried out by a person, group of people, and institutions or legal entities in the form of cash. In fiqh literature it is stated that the Hanafi school has practiced this waqf in society. In Islamic society in general cash waqf has long been practiced, but the contract still mentions land waqf. For example, the construction of a mosque requires a plot of land with an area of 500 square meters, with a price of 50,000,000; then the land is divided into 500 lots. Thus, obtained the price of 100 per meter. Furthermore, it is marketed to the wider community for land waqf by way of per meter with an affordable value, and the wakif pays according to the number of meters he wants to waqf. Today, by looking at the times, and something that is unavoidable about the importance of money (in cash) in transactions, the Indonesian ulema, in this case the MUI, have responded positively to this cash waqf. On May 11, 2002, the MUI issued a fatwa concerning the permissibility of cash waqf (waqf al-nuqud), on condition that the principal value of the waqf is guaranteed to be sustainable and can be used for an indefinite period of time. According to the Hanafi school, the thing that needs to be considered in cash waqf is to make it business capital by means of mudharabah or mubadha'ah. While the profits are donated to the waqf. Ibn Abidin argues that cash waqf which is said to be a habit that applies in the community is a habit that applies in Roman territory, while in other countries cash waqf is not a habit. Therefore, Ibn Abidin is of the view that cash waqf is not allowed or is not valid.³

Judging from its understanding, cash waqf is funds or money (such as infaq) collected by waqf management institutions (nadzir) through the issuance of Cash Waqf Certificates (SWT) purchased by the public. In this case cash waqf can also be interpreted as waqf or donating assets in the form of money or securities managed by banking institutions or sharia financial institutions whose profits will be distributed to parties in need, but the capital (asl) cannot be reduced to be distributed, while The collected waqf can then be rolled out and invested by waqf managers into various halal and productive business

¹ Ahmad Atabik, "Manajemen Pengelolaan Wakaf Tunai Di Indonesia", *Jurnal Ziswaf*, 1 No. 1, (2014): p. 82-83.

² *Ibid.*, p. 83-84.

³ *Ibid.*, p. 84-85.

institutions. Imam al-Zuhri also expressed a similar opinion, namely asserting that it is legal to make dinars as endowment of dinars as business capital and then the profits are distributed or donated to people/things who are mauquf 'alaih (the purpose of waqf). From an economic point of view, cash waqf has the potential to be developed in Indonesia, because with this waqf model the range of mobilization will be much more evenly distributed to the community compared to the traditional-conventional waqf-waqf model, namely in the form of physical assets which are usually carried out by families who relatively more capable.⁴

Based on the description above, the main problem can be drawn, namely how is the legal arrangement of cash waqf in Indonesia? And what are the legal problems that occur in the use of cash waqf funds based on Indonesian written law? The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online. The data collection technique was carried out by library research with qualitative data analysis.⁵ Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.⁶

B. Discussion

1. Legal Regulations of Cash Waqf in Indonesia

Law is the basis of various implementations, one of which is for orderly administration and legal certainty of mortgage status which has been regulated in positive law in Indonesia. Because Indonesia, which adheres to positivism, must be based on applicable law.⁷ Indonesia, where the majority of the population is Muslim, expects matters relating to the relationship between people to have an existence with the existence of several laws that regulate Islamic law. One of them is the use of cash waqf, which in the last few decades people are familiar with waqf of immovable objects such as land. Meanwhile, due to the development of the times, especially sharia law, waqf has also experienced rapid development, namely the permitting of waqf of movable objects in the form of cash, especially in the field of infrastructure and public facilities as regulated in Law no. 41 of 2004 concerning Waqf. In addition to the Waqf Law which encourages Muslims to do waqf, first Muslims follow the Word of Allah SWT which is the reason for Muslims to waqf, namely "You will never reach (perfect) virtue before you spend some of the wealth you earn. loving. And whatever you spend, then verily Allah knows." (Surat: Ali Imran [3]: 92). Then, there is a hadith from Abu Hurairah ra., in fact the Messenger of Allah said: "When a child of Adam (human) dies, then his deeds are cut off, except for three things: shadaqah Jariyah, useful knowledge and a pious child who prays for his parents" (HR. Muslim).⁸

Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "the State guarantees the independence of each resident to embrace their own religion and to worship according to their religion and beliefs". Its degradation to implementing regulations and agency regulations related to the implementation of waqf is accommodated on the legal basis as follows: First, Law Number 41 of 2004 concerning Waqf; Second, Government Regulation Number 42 of 2006 concerning Waqf; Third, Regulation of the Indonesian Waqf Board Number 2 of 2010 concerning Procedures for Registration of Nazhir Cash Waqf; fourth, the Regulation of the Indonesian Waqf Board Number 4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets; fifth, Regulation of the Indonesian Waqf Board Number 1 of 2008 concerning Procedures for Compiling Recommendations on Applications for Changes in Status of Waqf Assets; sixth, Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Waqf of Immovable Objects and Movable Objects Other than Money and Minister of Religion Regulation Number 4 of 2009 concerning Administration of Registration of Cash Waqf.

⁴ *Ibid.*, p. 86.

⁵ Rahmat Ramadhani, "Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission", IJRS: International Journal Reglement & Society 2, No. 1, (2020): p. 33.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, (2011), p. 171.

⁷ Zainuddin dan Rahmat Ramadhani, "The Legalforce Ofelectronic SignaturesIn Online Mortgage Registration" *Jurnal Penelitian Hukum De Jure* 21 No. 2, (2021): p. 244.

⁸ Faisal, "Analisis Hukum Penggunaan Dana Wakaf Tunai Untuk Pembangunan Infrastruktur", *De Lega Lata: Jurnal Ilmu Hukum*, 5 No. 2, (2020): p. 195.

As explained above, so far, waqf has been widely understood in the form of immovable objects such as land and buildings, but legally, according to the law, waqf can also be carried out in the form of movable waqf assets, both tangible and intangible, namely money, precious metals, securities, vehicles, intellectual property rights, lease rights, and other movable objects. Land is a tool for the realization of human welfare. The existence of land is not only a need for housing, but is a supporting factor for the growth and development of all aspects of human life, both economic, social, political and cultural. Land and land titling are very important considering the amount and area of land controlled by the state remains constant, while population growth is getting faster and faster.⁹ Cash waqf or cash waqf is specifically regulated in Article 28 of Law Number 41 of 2004 concerning Waqf "Wakif can waqf movable objects in the form of money through Islamic financial institutions appointed by the Minister". The need for a legal analysis of cash waqf for infrastructure development so that it can be studied to what extent it is permissible or not to use waqf funds because as stated in Article 22 of the UURW which essentially states that the allocation of waqf funds must be in accordance with sharia and applicable laws and regulations. Article 16 of Law Number 41 of 2004 concerning Waqf divides the types of waqf assets into two, namely immovable objects and movable objects. Money is classified as one of the movable waqf assets. In the laws of the Republic of Indonesia through Law Number 41 of 2004 concerning Waqf, Indonesia can make cash waqf funds as a means of economic development. The Indonesian Waqf Board (BWI) is an independent institution that oversees the national waqf nazhir which was established in 2007 based on Presidential Decree No. 75/M/2007 dated July 13, 2007 concerning the Management of the Indonesian Waqf Board. As of 19 October 2017, there were 187 cash waqf nazhir institutions that had been officially registered with BWI. Positive law in Indonesia allows waqf for a certain period of time, this is accommodated by the Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Waqf of Immovable Objects and Movable Objects Other than Money; first, Land with Ownership Certificate (WTT); second, Land with a certificate of Building Use Rights, Business Use Rights or Use Rights on State Land (WT); third, Land with a certificate of building use rights or usage rights over management rights or other people's property rights (WT); fourth, State Land on which a mosque, prayer room, and/or tomb (WTT) is built. 5. Ownership of condominium units (WT); fifth, Ships weighing more than 20 tons including immovable property waqf; sixth, certain cash waqf (5 years, 10 million) (PBWI 1/2009) and seventh, mauquf money waqf alaih muqayyad (1 M).¹⁰

According to Law no. 41 of 2004 concerning waqf and Government Regulation no. 42 of 2006 can be summarized several waqf concepts as follows. Waqf is a legal act of wakif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. Waqf is implemented by fulfilling the waqf elements which consist of the following; First, Wakif is the party who endows his property. Wakif can be individuals, organizations, and legal entities; second, Nazhir is the party who receives the waqf property from the wakif to be managed and; third, developed in accordance with its designation. Property can only be waqf if it is fully and legally owned and controlled by the wakif; fourth, the waqf pledge as evidenced by the making of the waqf pledge deed as evidence of the statement of the waqif's will to donate his property to be managed by nadzir in accordance with the designation of the waqf property as outlined in the deed; fifth, the allocation of waqf property, in order to achieve the purpose and function of waqf. Waqf assets can only be allocated for worship facilities and activities; educational facilities and activities, as well as health; and improvement of the people's economy and/or other general welfare advancements that are not contrary to the Shari'a and laws and regulations and sixth, the period of waqf.

Waqf in the form of cash has actually been known since the time of the Mamluks. However, lately it has become the subject of intensive study again, especially in Indonesia as well as a challenge to manage waqf funds as an investment instrument. The management of waqf funds as an investment instrument becomes attractive, because the benefits of the investment in the form of investment profits will be enjoyed by people everywhere (both local, regional and international). This is possible because the benefit of the investment is in the form of cash which can be transferred to any beneficiary around the world. Meanwhile, investment in waqf funds can be done anywhere without national borders,

⁹ Rahmat Ramadhani, "Pendaftaran Tanah Sebagai Langkah Untuk Mendapatkan Kepastian Hukum Terhadap Hak Atas Tanah" *SOSEK: Jurnal Sosial dan Ekonomi* 2, No. 1, (2021): p. 32.

¹⁰ *Ibid.*, p. 196-197.

considering the nature of cash waqf, namely cash that can be invested in any country. This is expected to be able to bridge the gap between the rich and the poor. In addition, cash waqf can expand the reach of waqf givers and increase the productivity of waqf assets with the following explanation:¹¹

- a. Waqf in the form of fixed assets can only be given by those belonging to the community who have excess assets, so that the excess can be donated. As for people who do not have excess assets, of course, they will face obstacles to waqf in the form of fixed assets. The community can provide waqf in the form of cash, where the money can be collected first by a manager and then invested, and the benefits of the investment can be distributed to the beneficiary.
- b. Cash waqf can be used to generate waqf assets which are now scattered in many Muslim countries. For example, in Bangladesh there are 150,593 waqf assets. Thus, cash waqf can be used as a means to motivate public funds with a wider reach of society into the form of productive investment capital and can be used to produce existing waqf assets.

2. Legal Problems that Occur in the Use of Cash Waqf Funds Based on Indonesian Written Law

Waqf is one of the instruments in Islamic economics that has the potential to improve the welfare of the community and overcome the problem of poverty. Waqf has two sides relationship, namely the relationship to God in the form of worship and also the relationship to God humans in the form of muamalah. Waqf has a social function that can provide benefits which is very large for the community, both Muslims and non-Muslims, if it can be managed productive and optimal. In Islamic history, waqf has been known since the time of the Prophet sallallahu 'alaihi wa sallam. Shari'a waqf was revealed after the Prophet Muhammad emigrated to the city of Medina, namely in the 2nd year of hijriyah. At that time, waqf had been managed productively, such as waqf land in the Khaibar area which was donated by Umar bin Khattab radiyallahu anhu. Waqf can have a contribution to the economic development of a country, namely it can reduce government spending, equalize income distribution, reduce poverty, and can increase economic growth. However, at this time the potential for waqf has not been optimally utilized in Indonesia. Most of the waqf allocations in Indonesia are lacking leads to the economic empowerment of the people and tends to common worship activities, such as for mosques, prayer rooms, schools, madrasas, Islamic boarding schools, and graves. The current use of waqf is mostly seen from a social perspective, so it has less positive effect on the community's economy. Whereas the government has supported to make waqf productive by issuing Law Number 41 of 2004 concerning Waqf and also PP RI Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf. However, since the issuance of the regulation until now there has been no significant development of waqf management in a productive direction that can develop the community's economy.¹²

In practice, waqf in Indonesia currently faces quite complicated problems, because generally it is a non-productive waqf and its operational costs seem to burden the community. This fact illustrates the condition of waqf which, if you borrow the term Mundzir Qahf, is a direct waqf, not a productive waqf. This means that waqf that provides direct services to the community, not waqf provided for production purposes. Talking about cash waqf, waqf institutions are not only religious rituals but can touch the human aspect by empowering their potential for public welfare as much as possible. Thus, the authors are interested in studying cash waqf. Although basically all waqf problems need to be resolved, prioritizing problems is still important to do because of limited resources, both financial resources, and time resources owned by waqf institutions or institutions. Prioritizing problems will also help waqf or nashir managers in preparing strategic plans and prioritizing their work agendas.¹³

According to Faisal, in the management of waqf there are still various kinds of problems that lead to civil matters. Regarding civil issues, the relationship between humans and humans in daily practice can often lead to legal relationships, which in that relationship between one another will give rise to rights and obligations that must be fulfilled by the parties so that in legal terms it is known as material

¹¹ Siti Kalimah, "Wakaf Tunai Sebagai Solusi Masalah Kemiskinan Di Indonesia", *SALIMIYA: Jurnal Studi Ilmu Keagamaan Islam* 1 No. 4, (2020): p. 98.

¹² Resfa Fitri dan Heni Wilantoro, "Analisis Prioritas Solusi Permasalahan Pengelolaan Wakaf Produktif", *Jurnal Al-Muzara'ah* 6 No. 1, (2018): p. 42.

¹³ Aam Rusydiana dan Abrista Devi, "Analisis Pengelolaan Dana Wakaf Uang Di Indonesia: Pendekatan Metode Analitic Network Process", *Jurnal Al-Awqaf* 10, No. 2, (2017): p. 116.

civil law. and formal civil law. Material civil law is a collection of laws and regulations that regulate civil (private) rights and obligations between one party and another, while formal civil law is a statutory regulation. an invitation that regulates the implementation of punitive sanctions against violators of civil rights in accordance with material civil law contains sanctions that are coercive in nature. The settlement of waqf cases can be resolved in the Religious Courts. Usually it also requires experts and witnesses in the proofing process, nadzir, waqif or other parties related to waqf disputes may also be present. Quoting the opinion of Hari Sasangka and Lily Rosita, "The strength of the evidence of expert testimony is that an expert's testimony only has proving value, if the expert is sworn in before giving testimony, by taking an oath, it has value as evidence. What is explained by an expert is a conclusion from a known condition according to his expertise, or in other words an assessment or appreciation of a situation. This is different from the testimony of a witness, which is prohibited from giving conclusions, because the witness is only a re-expression of the facts that the witness has seen, heard and experienced himself. In fact, if legal certainty is associated with legal justice, it will often be inconsistent with one another. This is because on the one hand it is not uncommon legal certainty ignores the principles of legal justice, on the contrary it is not uncommon legal justice ignores the principles of legal certainty. If in practice there is a conflict between legal certainty and legal justice, then legal justice must be prioritized. The reason is that legal justice is generally born from the conscience of the giver of justice, while legal certainty is born from something concrete. Legal certainty is closely related to a sense of security and comfort, because the essence of legal certainty is to create certainty in everything that involves human doubt, uncertainty and fear. Furthermore, the study of legal certainty is closely related to the study of legitimacy. A definite condition is judged to be a legitimate condition according to statutory regulations both formally and materially. the community has not been fully orderly and efficient, so that in various cases the waqf property is not properly maintained, abandoned or transferred to the hands of a third party in a way that is against the law in such circumstances, not only because of the negligence or inability of nadzhir in managing and developing the waqf property but also because the attitude of the people who are less concerned or do not understand the status of waqf property which should be protected for the sake of the general welfare in accordance with the purpose, function, and designation of the waqf.¹⁴

Problems in the development of cash waqf in Indonesia can be divided into 4 aspects consisting of aspects of human resources (HR), aspects of trust, aspects of systems, and aspects of sharia. The clusters as a whole are grouped into clusters of problems, solutions and strategies. The sub-criteria of the problems in terms of developing cash waqf in Indonesia include: Human resource issues, Weak quality of work of fund managers; Lack of insight into waqf; There is misappropriation of waqf funds; and Personal interest in fund management Trust issues, Cash waqf products are not a priority; Weak donor trust; Domination by individual foundations; Untrustworthy waqf recipients, System problem, Weak endowment law; Weak waqf information system; Lack of valid waqf database; Weak governance system, Sharia issues, There is no sharia supervisor; Debate on cash waqf contracts; Non-fulfillment of waqf contracts; Naming tabarru' funds into waqf funds.¹⁵

Internal factors that influence the development of cash waqf in Indonesia consist of strengths and weaknesses. Factors that become strengths include: First, various management instruments; Second, the existence of the MUI fatwa and the cash waqf law; Third, the ease of waqf in cash and zero cost of funds; Fourth, broaden the source base of waqf funds; and Fifth, the concept of flexible, dynamic and open waqf fiqh. While the factors that become weaknesses include: First, the lack of socialization about cash waqf to the general public; Second, the shortage of human resources and professional nazhir; Third, strategic and potential waqf assets have not been properly identified and certified; Fourth, the business network is not yet strong; and Fifth, the level of compliance of some waqf institutions which is still weak. External factors that influence the development of cash waqf in Indonesia consist of opportunities and threats. Factors that become opportunities include: First, the majority of the Indonesian population is Muslim; Second, support from the government and local governments; Third, unlimited cash waqf potential; Fourth, public interest in sharia economy is growing; and Fifth, the emergence of Islamic financial institutions and study programs related to Islamic economics in public and private universities. Meanwhile, the factors that pose a threat are First, Uncertain economic conditions; Second, the majority

¹⁴ Faisal, *Op.Cit.*, p. 198-199.

¹⁵ Aam Rusydiana dan Abrista Devi, *Op.Cit.*, p. 123.

of nazhir are still traditional; Third, lack of public understanding of cash waqf; Fourth, the weak political will of the authority holders, and Fifth, the imperfection of the existing waqf law.¹⁶

As is known, Indonesia is the largest Muslim country in the world with a majority Muslim population. This is a big enough opportunity for the development of cash waqf in the future. Support from several local governments is also quite a good opportunity for cash waqf. In addition, the potential for 'unlimited' cash waqf is a separate opportunity that needs to be optimized. Currently, the community is stretching towards sharia-based transactions so that the existence of cash waqf is expected to be one of the instruments that can be developed. Last but not least is the emergence of many Islamic financial and economic institutions (LKES) and study programs related to Islamic economics and its derivatives in universities, both public and private in Indonesia. All of this is expected to be an opportunity that can be utilized as an advantage for cash waqf in Indonesia. In addition to the opportunities and opportunities above, there are several threats (threats) faced in the framework of cash waqf development in Indonesia. The influence of the domestic political economy crisis is one of them. Most of the nadzir waqf which is still traditional and less innovative is also the next challenge. In addition, another challenge is the rigidity of Muslims towards the notion of waqf, such as the belief of some Muslims that waqf property should not be exchanged for any reason, most people entrust their waqf property to someone who is considered a figure in their environment and so on. Finally, the weak political will of the authorities and the imperfect regulations related to the cash waqf law are the last challenges that need to be answered.¹⁷

C. Conclusion

According to Law no. 41 of 2004 concerning waqf and Government Regulation no. 42 of 2006 can be summarized several waqf concepts as follows. Waqf is a legal act of wakif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. Waqf is carried out by fulfilling the elements of waqf. Nadzir in the Waqf Law has a very important position, in addition to being able to manage and develop waqf assets, nadzir can also determine the designation of waqf assets as long as the wakif does not determine it and if the wakif also agrees with the allocation of waqf assets proposed by nadzir. The importance of the position of nadzir in the process of waqf management in Indonesia is as an institution that plays a role in the long-term vision of the institution, so in its development the waqf law mandates that nadzir both institutions and individuals must be listed in the waqf pledge deed. Long before the requirement for a waqf pledge deed to mention nadzir as waqf manager, waqf management was informal with a legal basis derived from different customs in each region. Waqf before the existence of these rules is then referred to as traditional waqf.

In the management of waqf, there are still various kinds of problems that lead to civil matters. Regarding civil issues, the relationship between humans and humans in daily practice can often lead to legal relationships, which in that relationship between one another will give rise to rights and obligations that must be fulfilled by the parties so that in legal terms it is known as material civil law. and formal civil law. Material civil law is a collection of statutory regulations that regulate civil (private) rights and obligations between one party and another, while formal civil law is legislation that regulates the implementation of punitive sanctions against violators of rights. Civil rights in accordance with material civil law contain coercive sanctions. The settlement of waqf cases can be resolved in the Religious Courts. Usually it also requires experts and witnesses in the process of proving it can be presented by nadzir, wakif or other parties related to waqf disputes.

¹⁶ Aam Rusydiana dan Solihah Rahayu, "Bagaimana Strategi Pengembangan Wakaf Tunai Di Indonesia", *Jurnal Ekonomi dan Bisnis Islam* 5 No. 1, (2019): p. 21-22.

¹⁷ *Ibid.*,

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