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## Cash Waqf for Economic Equality According To Law Number 4 Year 2023 And Islamic Economic Law

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### Abstract

*Cash Waqf in Islamic Banks for economic equality has become an essential topic in the legal framework regulated by Law Number 4 Year 2023 concerning the Development and Strengthening of the Financial Sector and Islamic Economic Law. Cash waqf in Islamic Banks provides a legal basis for raising funds needed to support economic equality, which aims for sustainable economic development. The purpose of this study is to explain Cash Waqf in Islamic Banks for economic equality, first, according to Law Number 4 Year 2023 concerning the Development and Strengthening of the Financial Sector and, second, according to Islamic Economic Law. The research method used normative juridical with a statute and conceptual approach, while the research specifications used descriptive analytical. The results of the study indicated that Law Number 4 Year 2023 provides a legal framework to support cash waqf in Islamic Banks by providing opportunities for them to become waqf nazirs. Then, this will support national economic equality in accordance with the objectives of waqf according to Islamic economic law. However, harmonization of regulations related to banks as cash waqf nazirs is needed.*

**Keywords:** *Waqf Pledge; Bank; Sharia Principles.*

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### 1. Introduction

The Islamic banking industry is one of the financial services sectors that is currently experiencing a period of expansion. Hence, public trust and loyalty are needed. Before entering the next phase, namely the maturity phase, Islamic institutions must build this loyalty and trust. However, those things cannot be achieved without products that meet consumer needs. Islamic banking products must be able to accommodate all levels of society, ranging from funding, financing, to services. Therefore, innovation in Islamic banking products is a must as proof that Islamic banks are able to adapt to the demands of today's society. This is an essential need because, in the business world, product

innovation is very important for the long-term survival of the company. Product innovation represents the company's ability to satisfy market needs and efforts to obtain company profits ([M. Hafidz MS., 2015](#)).

The success of economic development in general can be seen from the high and low rates of economic growth. The higher the economic growth, the more the development changes for the better. Economic growth is a long-term increase in a country's ability to provide types of economic goods to its population. ([Ahmad Harun Daulay et al., 2023](#)) The financial performance of the banking has important implications for a country's economic growth of a country. ([Falikhatun & Mutiarafah, 2022](#))

Islamic banks in Indonesia are one of the institutions that contribute to the growth and equality of the Indonesian economy. Economic equality is homework for the Indonesian government. This is based on the fact that Indonesia is a developing country and the percentage of its poor people in March 2021 was 10.14%, increased by 0.36% points compared to March 2020. Islamic banks are expected to offer new opportunities based on financial products that are not only profit-seeking, but also have social motives ([Salsabila et al., 2022](#)).

The social motivation of Islamic banks is not only seen in their products, but also in the laws and regulations in Indonesia. Article 4 of Law Number 21 Year 2008 concerning Islamic Banking (Islamic Banking Law) explains the social function of Islamic banking, including receiving and distributing social funds sourced from *zakat*, *infaq*, alms, grants, and other social funds to related organizations. Islamic banking as a Sharia Financial Institution–Cash Waqf Recipient (LKS-PWU/*Lembaga Keuangan Syariah Penerima Wakaf Uang*) is one of the functions of Islamic Banks that has a social motive ([Salsabila et al., 2022](#)). In the Islamic financial institutions, both banks and non-banks, the terms financing and lending are common. However, there is also the term Fundraising which has the same meaning as funding or collecting funds. This term refers to the process of collecting waqf funds, which does not only involve collecting money, but also contributing ideas to help those in need and convincing them to bring about better social change. Thus, the giver will accept the idea and be willing to donate his assets for the greater good of society ([Nugroho, 2019](#)).

According to Law Number 41 Year 2004 concerning Waqf and Government Regulation Number 42 Year 2006 concerning the Implementation of Waqf (hereinafter referred to as Government Regulation Number 42 Year 2006), it is possible to develop a waqf system in the form of cash based on a certain time or future waqf. The evolution of the future waqf in the waqf system in Indonesia as a result of changes in objects that are allowed to be waqf. So far, society has only known waqf for immovable objects such as land and buildings. However, along with the development of society and law, several categories of waqf assets have begun to be recognized: immovable objects, movable objects that are not cash, and movable objects in the form of cash ([Moertiono M. Yamin; Mustamam, 2021](#)).

Cash waqf is seen as a way to increase its productivity. Since cash is no longer used as a means of trade in society, cash has now become a commodity that is capable of producing in other

developments. Therefore, compared to other types of commodities, cash waqf is considered capable of generating greater profits. As the price value of a commodity, cash is no longer seen solely as a means of exchange; it is also a commodity that can be used as a means of production. This can be done, for example, by implementing cash waqf certificates that are available to be distributed to the community. The advantage of this model is that the *waqif* can allocate his assets in the form of waqf flexibly. This is because the *waqif* does not need much funds to buy productive products. In addition, smaller waqf units are allowed ([Suryadi & Yusnelly, 2019](#))

This study will explore the legal aspects related to cash waqf in Islamic banks according to Law Number 4 Year 2023 and regulations related to cash waqf in Islamic banks according to Islamic economic law. Thus, this study is expected to provide a better understanding of the role of Islamic Banks in exploring the potential of cash waqf as an effective instrument to achieve national development goals. The novelty of this research lies in exploring the potential of cash waqf for national development in the context of the enactment of the Financial Sector Development and Strengthening Law, which amended the provisions on the *waqif*. In the Islamic Banking Law and the Waqf Law, Islamic banks are not included in the cash the *waqif*, only as collectors and distributors.

## 2. Literature Review

The study of “Cash Waqf in the Perspective of Islamic Law and Positive Law in Indonesia” conducted by Syarif Hidayatullah in 2016 is related to this cash waqf. The study examined the law of cash waqf positioned and used in Islamic law and positive law in Indonesia. As a result of the study, the Indonesian Ulema Council (MUI/*Majelis Ulama Indonesia*) has decided that cash waqf may only be carried out and used for purposes that are justified by sharia and its security must be guaranteed. In Indonesia, cash waqf has been regulated by Law Number 41 Year 2004 concerning Waqf in Article 16 paragraph (1) concerning Waqf of Movable Objects and Additional Regulations ([Hidayatullah, 2016](#)). Meanwhile, Muhammad Tho’in and Iin Emy Prastiwi (2015) studied cash waqf from a sharia perspective. Their study shows that the waqf system is an idea that is not clearly and firmly stated in the Qur’an and hadith. According to the opinion of scholars, waqf objects must meet the following requirements: must be useful, may not be used only once, does not have haram substance, and fully belongs to the *waqif*. The hadith does not specifically support cash waqf, and the use of verses of the Qur’an and hadith is general. As a result, determining the conditions of waqf objects involves the area of *ijtihad* ([Muhammad Tho’in & Prastiwi, 2015](#)).

Haniah Lubis wrote a study on cash waqf that discusses the potential of waqf in Indonesia and the strategy for developing waqf in Indonesia. The development of the potential of cash waqf in Indonesia requires the following steps or strategies. First, the interpretation of the law on waqf and its implementing regulations among the Ministry of Religion, the Indonesian Waqf Agency, and Sharia Financial Institution–Cash Waqf Recipient must be in harmony. Second, due to the lack of cash waqf *nazir*, Sharia Financial Institution–Cash Waqf Recipient and the Indonesian Waqf Agency are more proactive in seeking *nazir* candidates. One of them by asking about the *nazir* certificates to increase their role in raising cash waqf contributions from the community ([Lubis, 2020](#)).

This study is different from previous studies, as shown by Syarif Hidayatullah's study which examines the legal position of cash waqf in Indonesia from the perspective of Islamic law and positive law. The study conducted by Muhammad Tho'in and Iin Emy Prastiwi concentrates on studying cash waqf from a sharia perspective, while the study conducted by Haniah Lubis explains the potential of waqf in Indonesia and the strategy for developing waqf in Indonesia. Meanwhile, this study further examines the Cash Waqf Pledge at Islamic Banks as a potential tool to promote an inclusive economy in Indonesia.

### 3. Methodology

Juridical-normative research uses library materials or secondary data. This study used two approaches, namely the statute approach, which includes statutory regulations related to the issues discussed, and the conceptual approach, which takes perspectives and theories developing in legal science. This study used secondary data through qualitative data analysis. The secondary data used are primary data from the Waqf Law, the Financial Sector Development and Strengthening Law, the Banking Law and the Islamic Banking Law. The secondary legal materials used are the results of studies or research from books and journals.

### 4. Results And Discussion

#### **Cash Waqf in Islamic Banks: A Review According to Law Number 4 Year 2023 concerning the Development and Strengthening of the Financial Sector and Islamic Economic Law**

Economic development is a condition of a country's economy that is moving towards a better direction sustainably over a certain period of time. In other words, economic development is the process of increasing output per capita over time. There are three main components or factors that contribute to economic development. The first is capital accumulation, which includes all forms or categories of new investment in land, physical equipment, and capital or human resources. Next component is population growth, which will increase workforce participation. The last is technological progress of regional development, which is carried out to achieve three important goals: growth, equity, and sustainability. Growth is the main goal, which is determined by the extent to which resource scarcity can occur, and human, material, and natural resources can be allocated and utilized optimally to increase productive activities ([Sri Hartati, 2021](#)).

Regarding Indonesia's economic development, data from the World Inequality Report 2022, in the last two decades, the economic gap in Indonesia did not change significantly. The report noted that during the 2001-2021 period, 50% of Indonesia's population only had less than 5% of total household wealth. Meanwhile, the other 10% of the population had around 60% of total household wealth throughout the same period ([Arif Firmansyah dan Rimba Supriatna \(editor\), 2024](#)).

World Inequality Report 2022 showed that since 1999, the level of wealth in Indonesia has experienced significant growth. However, this growth has left wealth inequality almost unchanged. The report also noted that in 2021, the income gap ratio in Indonesia was at 1 to 19. This means that the population from the upper economic class has an average income 19 times higher than the population from the lower economic class. This ratio was greater than the United States, which had

an income gap of around 1 to 17. Meanwhile, Russia, China, South Korea, and Nigeria had an income gap ratio of around 1 to 14. From the data above, it appears that Islamic banks in Indonesia still need hard work to contribute to equitable national development and improve people's welfare ([Arif Firmansyah dan Rimba Supriatna \(editor\), 2024](#)).

In the context of Islam, prosperity can be realized by achieving equitable growth, then sustainability. Waqf is one of the ways to achieve equality. Waqf has evolved from socio-religious activities to economic activities such as building roads, bridges, cultivating agricultural land, plantations, and even trade. In Indonesia, waqf has a lot of untapped potential. As a priority program for economic development, the Financial Services Authority and Bank Indonesia initiated waqf, or commonly referred to as donations of property (land or money) for the benefit of the community. Productive waqf is the main program to raise the status of the poor, encourage those who have nothing to be productive, and make the economy rise from the bottom. The Indonesian Waqf Agency together with the Financial Services Authority and Bank Indonesia has formulated the Waqf Core Principle ([Fauziah, 2018](#)). The presence of financial waqf is believed to be able to increase inclusive economic growth in Indonesia.

In Arabic language, waqf comes from the root word *wa-qa-fa* which means to hold, stop, remain in place, or stand. The terms *waqafa-yaqifu-waqfan* and *habasa-yahbisu-tahbis* mean prohibited from using. The word waqf in Arabic language means storing property to be donated and not to transfer ownership ([Sulistianingsih et al., 2021](#)). The definition of cash waqf is the transfer of ownership rights in the form of cash to a person or *nazir* on the condition whose results or benefits are used in accordance with the teachings of Islamic law without reducing or eliminating the principal. Cash waqf has a flexible and large utility value, because the amount of cash waqf can vary, so that those with limited funds are allowed to donate waqf funds without having to wait until they become rich. Waqf funds can also be used to empower waqf assets in the form of immovable objects that have not been managed effectively ([Syauqi, 2014](#)). As stipulated in the Waqf Law, money is classified as property that has long-term durability and/or long-term benefits and has economic value according to sharia that can be used for waqf by the *waqif* ([Harrieti & Mulyati, 2017](#)).

Article 4 of the Sharia Banking Law states that in addition to the intermediary function, sharia banking has a social function, including collecting social funds from cash waqf. Sharia Banking Law does not provide a precise definition of the social function, even though the very strategic function of sharia banking in the economic system has enormous potential in organizing cash waqf to advance public welfare ([Harrieti & Mulyati, 2017](#)).

Article 15 paragraph (3) of Law Number 4 Year 2023 concerning the Development and Strengthening of the Financial Sector stipulates that Sharia Banks and Sharia Business Units are required to carry out the function of collecting and distributing public funds. Sharia Banks and Sharia Business Units can carry out social functions in the form of *Baitul mal* institutions, namely receiving and distributing funds sourced from zakat, *infaq*, alms, grants, or other social funds to zakat management organizations. Sharia Banks and Sharia Business Units can obtain social funds sourced

from cash waqf and become waqf managers/*nazirs* or distribute them through waqf managers/*nazirs* according to the wishes of the waqf giver/*waqif*.

Waqf seeks to utilize waqf assets in accordance with their allocation. Waqf functions to embody prospective and economic benefits from waqf assets for religious purposes and community welfare. Waqf is implemented with the following components: *waqif*, *nazir*, waqf assets, waqf pledge, allocation of waqf assets, and waqf period. *Waqif* is a giver including individuals, organizations, and legal entities. Meanwhile, *nazir* receives waqf assets to be managed and utilized in accordance with their allocation. Those included in *nazir* are individuals, organizations, and legal entities. The legal entities that can become *nazir* are those who can meet the following requirement. First, the administrators and legal entities concerned meet the requirements to become individual *nazirs*. Second, they are the Indonesian legal entities that are formed in accordance with laws and regulations. Last, the legal entities are engaged in social, educational, community, and/or Islamic religious fields. *Nazir* has obligations and responsibilities including administering waqf assets; managing and developing waqf assets in accordance with their purpose, function, and designation; supervising and protecting waqf assets; and reporting to the Indonesian Waqf Agency regarding the implementation of its duties.

According to the Fatwa of the Indonesian Ulema Council, a cash waqf is a legal act of a *waqif* to set aside and/or donate part of his assets for a certain period of time or forever, whose results are used for religious purposes and/or public welfare in accordance with sharia. Waqf through cash is a legal act of a *waqif* to set aside and/or donate part of his money for the benefit of direct ownership of waqf assets, both movable and immovable, for the purposes of worship and/or public welfare in accordance with sharia. This is stated in the Fatwa of the Indonesian Ulema Council regarding Cash Waqf issued on May 11, 2002/28 Shafar 1423 H. In more detail, the fatwa stipulates the following statements. (1) Cash Waqf (*Waqf al-Nuqud*) is a waqf made in the form of cash by an individual, a group of people, an institution, or a legal entity. (2) What is meant by cash includes securities. (3) Cash Waqf is permitted (*jawaz*). (4) Cash Waqf can only be distributed and utilized for sharia-lawful purposes. (5) The principal value of Cash Waqf must be maintained and may not be sold, transferred, or inherited.

Waqf fund that can be donated is rupiah. If the funds to be donated are still in foreign currency, they must first be converted into rupiah. *Waqif* can only donate cash to be exchanged for movable property through Sharia Financial Institutions appointed by the Ministry of Religion. Currently, the Ministry of Religion has only appointed 40 Sharia Financial Institutions - Cash Waqf Recipients, including Bank Muamalat Indonesia, Bank Syariah Indonesia, and Bank Mega Syariah ([Huda, 2023](#)). This appointment, as stated in Article 24 of Government Regulation Number 42 Year 2006, is based on advice and considerations from the Indonesian Waqf Agency. These suggestions and considerations can be given to Islamic Financial Institution-Cash Waqf Recipient that meets the following requirements, namely submitting a written application to the Minister of Religion, attaching the articles of association and ratification as a legal entity, having an operational office in the territory of the Republic of Indonesia, engaging in sharia finance, and having the function of receiving deposits (*wadi'ah*) ([Badan Wakaf Indonesia, 2020](#)).

Islamic Financial Institutions that have been appointed by the Minister of Religion as Cash Waqf Recipients have tasks that must be carried out as mandated in Government Regulation Number 42 Year 2006, Article 25, namely: a. announcing to the public their existence as Islamic Financial Institution–Cash Waqf Recipient; b. providing Cash Waqf Certificate forms; c. receiving cash waqf from the *waqif* in the name of the *nazir*; d. placing the waqf cash into a deposit account (*wadi'ah*) in the name of the *nazir* appointed by the *waqif*; e. receiving the *waqif*'s statement of will which is stated in writing in the *waqif*'s statement of will form; f. issuing a Cash Waqf Certificate and submitting the certificate to the *waqif* and submitting a copy of the certificate to the *nazir* appointed by the *waqif*; and g. registering the cash waqf with the Minister in the name of the *nazir* (aum) ([Badan Wakaf Indonesia, 2020](#)).

The rules for cash waqf must go through the Sharia Financial Institution–Cash Waqf Recipient at least in Law Number 41 Year 2004 concerning Waqf and Government Regulation Number 42 Year 2006 concerning the Implementation of Law Number 41 Year 2004 concerning Waqf. According to Article 28 of the Waqf Law, the *waqif* can donate movable objects in the form of cash through a sharia financial institution appointed by the Minister. Then, Government Regulation Number 42 Year 2006 explains that the *waqif* must be physically present before the Sharia Financial Institution–Cash Waqf Recipient to convey his intention to donate Cash Waqf and receive a Cash Waqf certificate from the Sharia Financial Institution–Cash Waqf Recipient.

The *waqif* provides a written donation of funds to the Sharia Financial Institution–Cash Waqf Recipient, which then this institution issues a Cash Waqf Certificate. Allocation of waqf funds through Islamic Financial Institution–Cash Waqf Recipient is in the form of deposits (*wadi'ah*). Furthermore, the *nazir* can manage it by considering the wishes of the *waqif* and the investment manager's recommendations (if any).

In managing cash waqf funds, there must be a system or at least a standard pattern (implementation standard), so that the funds to be collected can be used effectively. The role and position of Islamic banking in organizing cash waqf are very diverse. As managers of cash waqf funds, banks have four objectives as follows: (1) providing banking services by issuing cash waqf certification and managing waqf funds; (2) contributing to the mobilization of social savings and the transformation of social savings into capital; (3) providing benefits to the community, especially the poor, by optimizing the resources of the capable community; and (4) contributing to the growth of the social capital market.

Article 15 paragraph (3) of Law Number 4 Year 2023 provides fundamental changes related to the position of Islamic Banks in carrying out their social functions. In Article 4 of Law Number 21 Year 2008 concerning Islamic Banking, the position of Islamic Banks is only to collect social funds originating from cash waqf and distribute them to waqf managers (*nazir*) in accordance with the waqf giver (*waqif*). Meanwhile, Article 15 paragraph (3) of Law Number 4 Year 2023 states that Islamic banks can collect social funds originating from cash waqf and become cash waqf managers/*nazir* and/or distribute them through waqf managers/*nazir* in accordance with the wishes of the *waqif*.

In the event that an Islamic Bank becomes a waqf manager or *nazir*, it must meet the requirements as a *nazir*, including individuals, organizations, and legal entities. A legal entity can only become a *nazir* if he meets the following requirements. First, it is the management of the legal entity concerned meets the requirements of an individual *nazir*. Besides that, it includes an Indonesian legal entity established in accordance with applicable laws and regulations. Additionally, the relevant legal entity is engaged in the social, educational, community, and/or Islamic religious fields. The legal entity form of Islamic Bank is a limited liability company. Islamic banks in the legal form of Limited Liability Companies are oriented towards seeking profit and are engaged in banking, not in the social, educational, and/or Islamic religious fields. Although it is in the legal form of a limited liability company, there is an obligation to carry out corporate social responsibility. Hence, the requirement as a *nazir* that must be a legal entity engaged in the social, educational, and/or socio-religious fields is not fulfilled. In addition, the change in Islamic Banks which used to only be Islamic Financial Institution–Cash Waqf Recipient, but now Islamic Banks can be *nazirs*.

In the case of Islamic Banks as *nazirs*, Islamic Banks no longer receive deposits based on *wadi'ah* contracts, but carry out the waqf pledge themselves together with the *waqif*. Islamic banks as *nazir* can develop the management of cash waqf into more productive activities. Sharia banks can carry out management and distribute to institutions or communities in need, so that economic equality and economic growth can be realized.

## 5. Conclusion

Cash waqf is an individual or organizational contribution to the equalization and improvement of the public economy. Cash Waqf in Islamic Banks is one of the methods for raising funds and financial resources to support economic equality. This is in accordance with the principles and objectives of Islamic economics which prioritize justice and community welfare. Law Number 4 Year 2023 establishes the legal framework or basis for the status of Islamic banks as *nazirs* of cash waqf. This will have a positive impact on increasing the equality of national development considering that Islamic banks have many advantages compared to other *nazir* waqf. However, Law Number 4 Year 2023 has not been in line with Law Number 21 Year 2008 concerning Islamic Banks, Law Number 41 Year 2004 concerning Waqf, and Government Regulation Number 42 Year 2006 concerning the Implementation of Law Number 41 Year 2004 concerning Waqf yet. Law Number 4 Year 2023 has not been supported by implementing regulations, such as the Regulation from the Financial Services Authority and the Indonesian Waqf Agency. Thus, Law Number 4 Year 2023 cannot be implemented yet.

## Author contribution statement

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