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THE POLEMICS OF MAUQUF 'ALAIH IN CASH WAQF AND WAQF THROUGH CASH: PERSPECTIVES FROM SHAFI'I FIQH AND THE WAQF LAW

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Abstract

The practice of cash waqf and waqf through money in Indonesia still faces problems, particularly concerning the protection of the rights of the mauquf 'alaih (beneficiaries) and the condition of perpetuity of the assets. This research aims to analyze the position and requirements of the mauquf 'alaih in these waqf schemes, as well as the legal implications if there is a deviation in management. The method used is qualitative research with a normative approach through a literature study of the Shafi'i school of thought (fiqh) literature and Law Number 41 of 2004. The research results show that: (1) there is a difference of legal status between classical Shafi'i fiqh which rejects cash waqf and Indonesian regulations that legalize it (2) the weak competence of nazhir which has the potential to eliminate the waqf status and harm the rights of the mauquf 'alaih (3) legal protection mechanisms through LKS-PWU and BWI supervision are not yet optimal and weak enforcement of sanctions. This research emphasizes the necessity of socializing cash waqf and waqf through money to the community, strengthening the competence of nazhir, and implementing mechanisms to protect the rights of mauquf 'alaih from the risk of investment losses or depreciation of productive waqf assets.

Keywords: Fiqh Shafi'i, Mauquf 'Alaih, Cash Waqf, Waqf Through Money

INTRODUCTION

Waqf ranks among the most recommended practices in Islam. Through waqf, a Muslim can share wealth for the community's benefit without diminishing the principal asset itself (Al-Haitami, 1983, Volume 6:235). This ensures ongoing rewards as long as the waqf's benefits continue to be utilized.

The companions of Prophet Muhammad (PBUH) practiced waqf from Islam's earliest days. Umar bin Khattab dedicated his land in Khaibar, while Uthman bin Affan purchased and endowed the Well of Raumah in Madinah (Iskandar, 2023).

Historically in Indonesia, waqf was focused on land used for building mosques or as graveyards. However in modern times, its development has shifted toward movable assets, particularly cash waqf and waqf through cash. Cash waqf holds great potential due to its flexible denominations, lack of need for large capital, and accessibility for anyone in society (Irfany & Nurhalim, 2022).

Moreover the Indonesian government has provided a legal framework through Law Number 41 of 2004 on Wakaf and Government Regulation Number 42 of 2006, which explicitly recognize cash waqf as a valid asset (Bashori, 2022).

In terms of implementation, the management of cash waqf or waqf through cash has not yet been carried out optimally, particularly regarding the position of mauquf ‘alaih (the beneficiaries) and the requirement that the waqf object must not diminish. For example, mosque infaq boxes labeled "sedekah jariyah" (perpetual charity), even though "sedekah jariyah" means waqf, yet the infaq money is used for mosque operations. Similarly, nazhir (managers) who practice cash waqf by spending the principal amount on non-productive matters, thereby reducing the principal without generating income (Kamal, 2021). Even though according to fiqh principles and regulations, cash waqf must be managed productively or invested, with the profits distributed to the mauquf ‘alaih (beneficiaries) (Firdaus, 2022).

Even for nazhir who properly channel cash waqf, other issues persist, such as low competence in productively developing waqf assets, resulting in those assets failing to provide the intended waqf benefits or even shrinking (Mushaddiq et al., 2021).There are also nazhir who treat the waqf assets under their management as a source of livelihood for themselves and their families (*Problematika Wakaf Di Indonesia*, 2025).When nazhir fail to manage waqf assets productively, the rights of mauquf ‘alaih to receive sustainable benefits become threatened (Lubis et al., 2023).

Previous studies on cash waqf in Indonesia are generally polarized into three major themes. The first focuses on fundraising strategies and the digitalization of waqf (Thamrin et al., 2021). The second theme involves studies on the professionalism and certification of nazhir (Faujiah & Wicaksono, 2024). The third theme consists of studies on the nominal potential of cash waqf for national economic development (Chusma et al., 2022).

Based on the literature review, a research gap exists where few studies specifically address the protection of mauquf ‘alaih rights in cash waqf schemes marred by mismanagement. Therefore, this study aims to analyze the position and conditions of mauquf ‘alaih in cash waqf, along with the legal implications if management deviations transform waqf into ordinary charity. The novelty lies in an integrative analysis between Shafi'i madhhab fiqh and the Waqf Law to address the phenomenon of consumptive cash waqf practices in Indonesia.

REVIEW OF LITERATURE

Wakaf And Mauquf Alaih

Waqf (وقف) etymologically means "Al-Habs" (الحبس)(al-Bughā, 2010, p. 766) or to hold back or restrain. Terminologically, waqf is holding back property so that its benefits are taken without reducing the property itself, severing the right to sell, trade, or transfer its ownership, so that it flows to permissible (shari'i) and existing beneficial purposes (al-Khin et al., 2013, Volume 2:213).

The evidence for waqf exists in the Qur'an and As-Sunnah, although not explicitly stated as waqf. As contained in the Qur'an:

لَن تَنَالُواْ ٱلۡبِرَّ حَتَّىٰ تُنفِقُواْ مِمَّا تُحِبُّونَۚ وَمَا تُنفِقُواْ مِن شَيۡءٖ فَإِنَّ ٱللَّهَ بِهِۦ عَلِيمٞ

"You will not attain righteousness until you spend from that which you love. And whatever you spend—indeed, Allah is Knowing of it." (QS Ali Imran:92).

Scholars use this verse as evidence for waqf based on the key words in the verse, namely righteousness, infaq, and beloved wealth (Anas & Nabila, 2023).

The hadith of the Prophet Muhammad (PBUH) always cited as evidence for waqf is his response to Umar bin Khattab regarding his property, as follows:

إِنْ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِخَيْبَرَ، فَأَتَى النَّبِيَّ ﷺ يَسْتَأْمِرُهُ فِيهَا، فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ، لَمْ أُصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ، فَمَا تَأْمُرُ بِهِ؟ قَالَ: (إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا). قَالَ: فَتَصَدَّقَ بِهَا عُمَرُ: أَنَّهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ، وَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ، وَفِي الْقُرْبَى، وَفِي الرِّقَابِ، وَفِي سَبِيلِ اللَّهِ، وَابْنِ السَّبِيلِ، وَالضَّيْفِ، لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، وَيُطْعِمَ غَيْرَ مُتَمَوِّلٍ

The hadith from Umar bin Khattab r.a. narrates that he acquired a piece of land in Khaibar, then came to the Prophet ﷺ for guidance. Umar said: "O Messenger of Allah, I have acquired a piece of land in Khaibar, and I have never obtained property more precious to me than this land. What do you command me to do with it?" The Prophet ﷺ said: "If you wish, hold its principal and give charity from it." So Umar gave charity from the land with the condition that it may not be sold, gifted, or inherited, and its benefits are channeled to the poor, relatives, freeing slaves, striving in the way of Allah, wayfarers, and guests. The manager of the land is permitted to eat from it in a proper manner or feed others, without intending to make it personal wealth (Narrated by Bukhari no. 2587).(al-Bukhari, 1993)

In this hadith, there is no word (وقف) but rather sadaqah (صدق), yet scholars understand the charity performed by Umar RA upon the instruction of the Prophet Muhammad SAW as constituting waqf, because the land that Umar donated as charity may not be sold, gifted, or inherited, while its benefits are for the poor as stated in the hadith (al-Khin et al., 2013).

Mauquf 'alaih (موقوف عليه) linguistically consists of two words: mauqūf, which is the isim maf'ūl form from the verb waqafa (وقف) (Bin Ghufron, 2007, p. 122), meaning "that which is stopped" or "that which is held back," and 'alaih (عليه), meaning "upon it" or "to it." Thus, mauqūf 'alaih literally means "the party to whom it is endowed."(al-Khin et al., 2013).

In the hadith of Umar RA above, the mauqūf ‘alaih of Umar RA's land were the poor, relatives, freeing slaves, striving in the way of Allah, wayfarers (ibnu sabil), and guests (al-Bukhari, 1993).

Position Of Mauquf Alaih In Wakaf

In Islamic sharia, all forms of worship and muamalah have pillars and conditions, and waqf is no exception. Rukun etymologically in Arabic "is something that serves as a foundation." Terminologically in sharia, rukun is "the essential part that forms the essence of a practice or contract, and its existence is integrated within the act itself."(Zaidan, 2013).

As for the syarat or condition "is something outside the essence of the practice, but must exist for the practice to be valid."(Zaidan, 2013).

In the context of waqf, mauquf ‘alaih constitutes one of the essential pillars (rukun) that must be fulfilled for the waqf to be valid. As stated in fiqh texts, the pillars of waqf are as follows:(Anas & Nabila, 2023)

1. Waqif (the person who performs waqf)
2. Mauquf bih (the object that is endowed)
3. Mauquf alaih (the beneficiary of waqf)
4. Sighat or waqf declaration

Conditions Of Mauquf Alaih (Beneficiaries)

The recipients of waqf or mauqūf ‘alaih in fiqh are divided into two main categories. First, specifically designated recipients (mu‘ayyan), namely particular individuals or groups explicitly mentioned in the waqf contract (Asy-Syatiri, 2011). In this category, the requirement is that the beneficiaries must have legal capacity (ahliyyah) to own property. Therefore, a waqf is invalid if directed to an unborn child, as, legally, they are not yet considered a subject capable of ownership.

Likewise, a waqf is invalid if directed to a slave, since a slave is under their master's authority and lacks full ownership rights. The same applies if waqf is directed to a deceased person, to animals, or to inanimate objects like houses and the like, because none of them meet the requirement as parties capable of owning waqf property (Asy-Syatiri, 2011, p. 183).

Second, recipients not specifically designated (ghairu mu‘ayyan), such as a waqf directed to the poor in general or for certain collective social purposes. In this form, the primary condition is that the utilization of waqf property must not be directed toward matters contrary to Islamic sharia. Thus, a waqf channeled for sinful activities or destructive purposes is considered invalid, because the essence of a waqf is taqarrub (drawing closer to Allah) through providing sustainable benefits. This objective is lost if waqf property is instead used to support matters prohibited by religion. Therefore, both for waqf with specific recipients and general ones, the fundamental principle that must always be upheld is that waqf benefits must remain within the corridor of sharia and truly bring goodness to the ummah (Asy-Syatiri, 2011, p. 183).

Criteria For Parties Who Can Become Mauquf Alaih

As explained previously, waqf recipients (mauqūf ‘alaih) are broadly divided into two forms: specific recipients (mu‘ayyan) and general recipients. Specific recipients are parties explicitly designated in the waqf contract. In this category, there are several forms, including individuals, groups, and institutions.

Waqaf Muayyan (Specific) Beneficiaries

Refer to specific persons explicitly named by the wakif in the contract. For example, someone says, "I endow this garden for my son Ahmad," or "I endow this house for Khalid." In this case, the waqf is only valid if the individual truly exists at the time of the contract, possesses legal capacity to receive waqf benefits, and there is acceptance (qobul) from the mauquf ‘alaih (al-Khin et al., 2013, Volume 2:213). Therefore, waqf to a deceased person, an unborn child, or a fetus in the womb is invalid. The fuqahā unanimously agree that waqf must be given to real, identifiable recipients who can actually benefit from the property (Asy-Syatiri, 2011).

It is also required, in the Shafi'i madhhab, that there be an ijab from the waqif for a specific waqf (waqf muayyan), but the scholars differ in opinion regarding the requirement of qabul (al-Nawawī, 1991, Volume 5:324). For example, a father waqf's a portion of his land for his eldest son who is already an adult so that the harvest results can be used for education costs. This example shows that waqf for individuals is intended as a form of the waqif's attention to the needs of certain people.

As for the specific waqf (waqf mu‘ayyan) directed to an institution, its purpose is when the waqif explicitly mentions a certain institution as the recipient of the waqf benefit. The institution here can be in the form of an educational institution, social institution, da'wah institution, or health institution that has a clear structure and is recognized legally or socially. This type of waqf is valid as long as the institution truly exists at the time of the contract, has legality or real existence, and can utilize the waqf property in accordance with sharia provisions (Kementrian Agama Republik Indonesia Direktorat Jendral Bimbingan Masyarakat Islam Direktorat Pemberdayaan Wakaf, 2006). For example, someone waqfs a piece of land to a specific pesantren so that it can be used as land for constructing a students' dormitory. Or, a donor waqfs a shophouse building to an Islamic hospital so that the rental income can be used to subsidize costs for underprivileged patients. In this case, the institution becomes the benefiting party that is administratively and operationally responsible for managing the waqf so that its benefits truly reach the entitled parties.

Contemporary scholars also emphasize the importance of waqf to institutions because it aligns with the demands of the times. With an institution as mauquf ‘alaih, waqf assets can be managed more easily in a professional and organized manner. This is in line with the explanation of the Directorate of Waqf Empowerment of the Ministry of Religious Affairs of the Republic of Indonesia in Fiqih Wakaf (2006), that one form of waqf development is through educational and social institutions, because the beneficial effects can be felt more widely compared to if it were only directed to individuals.(Kementrian Agama Republik Indonesia Direktorat Jendral Bimbingan Masyarakat Islam Direktorat Pemberdayaan Wakaf, 2006)

Recipients of Non-Specific Waqf (Ghairu Muayyan)

Recipients of ghairu mu‘ayyan waqf are those not specifically mentioned by the waqif in the contract. This means the waqif only mentions the beneficiaries in general terms, without designating a particular individual, group, or institution. In such cases, the waqf benefits are directed to the wider community, especially Muslims, with more open targets in accordance with the waqif's intention. The primary condition for this type of waqf is that its use must not be directed toward matters contrary to Islamic sharia (al-Khin et al., 2013, Volume 2:225) .

For example, a waqif states, “I waqf this land for the poor,” without specifying which poor people are meant. Then, the waqf manager (nazhir) is obliged to distribute the proceeds or benefits of the waqf to the poor in general, without being tied to a specific location or community. This model of waqf is often considered more flexible because its benefits can reach more parties, while also easing the nazhir's responsibility in determining who is entitled to receive it. This is also in line with the practice of waqf during the time of the Prophet Muhammad ﷺ, where some companions waqf'ed gardens or wells to be utilized by the entire Muslim ummah without mentioning specific recipients (Kementrian Agama Republik Indonesia Direktorat Jendral Bimbingan Masyarakat Islam Direktorat Pemberdayaan Wakaf, 2006).

Cash Waqf Theory in Contemporary Fiqh

Cash waqf is a form of waqf where the majority of scholars from the Shafi'i, Maliki, and Hanbali madhhabs reject its validity because it does not meet the condition of waqf property, namely that the property does not diminish when its benefit is taken, as quoted by NU Online (*Penjelasan tentang Wakaf Tunai dalam Islam (1)*, 2018)

العين المعينة بشرطها الآتي، غير الدراهم والدنانير، لأنها تنعدم بصرفها، فلا يبقى لها عين موجودة

Meaning: "Tangible assets with the following conditions: not consisting of dirham and dinar, because they can disappear due to their circulation. Thus, the condition of the asset's permanence is lost." (Abu Bakar bin Muhammad Shatha’, I’ânatuth Thâlibîn, Dâru Ihyâi al-Kutub al-Arabiyyah, Juz 3, hal. 186).

As for the Hanafi madhhab, it permits this practice on the condition that its management preserves the principal value, providing an alternative for Muslims in utilizing modern financial instruments (Bushiri, 2025; *Legalitas Wakaf Uang dalam Perspektif Hukum Islam*, n.d.).

In Indonesia, the legality of cash waqf is affirmed through the Fatwa of the Indonesian Ulema Council (MUI) in 2002 (*WAKAF UANG*, n.d.), which states that cash waqf is permissible (jawāz) as long as its principal is preserved and only its benefits are distributed. This fatwa serves as the normative foundation for the development of cash waqf in Indonesia and acts as the primary reference in modern waqf practices, affirming that cash waqf has been widely accepted as a modern philanthropic instrument (Nawawi et al., 2024) dan (Mufid, 2024)

NU Online in its article "The Legality of Cash Waqf in the Perspective of Islamic Law" explains that cash waqf is valid as long as it fulfills the basic principles of waqf, namely preserving the principal and channeling the benefits. The article affirms that money can be the object of waqf because it can be managed productively so that its benefits are sustainable (Bushiri, 2025).

Cash Waqf in Indonesian Regulations

Cash waqf in Indonesia is comprehensively regulated through Law No. 41 of 2004 and Government Regulation No. 42 of 2006 (Badan Wakaf Indonesia | Www.Bwi.Go.Id | Pasti Berkah Ayo Berwakaf, n.d.). The Waqf Law recognizes cash waqf as a valid form of waqf that can be performed by any person who meets the requirements as a waqif.

PP 42/2006 Pasal 28 affirms that cash waqf must be deposited through the Sharia Financial Institution Receiving Cash Waqf (LKS-PWU), which is tasked with safeguarding

the principal of the cash waqf. This regulation aligns with contemporary fiqh principles that the principal of cash waqf must remain intact.

Research such as (Setiawan et al., 2021) and (Aryana, 2021) shows that Indonesian regulations emphasize the professionalism of nazhir, transparency of reports, and supervision by the Indonesian Waqf Board (BWI).

Thus, Indonesian regulations affirm:

- the validity of cash waqf
- the obligation to preserve the waqf principal
- the obligation to develop assets
- the role of LKS-PWU as the principal guardian
- the role of BWI as supervisor

Difference Between Cash Waqf and Waqf Through Money

In contemporary practice, there is an important difference between cash waqf and waqf through money, which is often misunderstood as the same thing.

a. Cash Waqf

Cash waqf is a waqf where the principal money itself is waqfed. In classical fiqh, three madhhabs prohibit it except the Hanafi madhhab which permits it on the condition that the principal money remains intact and only the proceeds of its development may be channeled to the mauquf ‘alaih (Bushiri, 2025). Research (Chusma et al., 2022) affirms that cash waqf is liquid and flexible so it can be invested in various sharia instruments.

Cash Waqf Process Flow ("Cara Mudah Wakaf Uang," 2021):

1. Waqif comes to LKS-PWU
2. Fills out the Waqf Pledge Deed (AIW) and attaches a photocopy of a valid identity card
3. Waqif deposits the waqf amount and the funds automatically enter the BWI account
4. Waqif recites the waqf shighah and signs the AIW together with:
    a. 2 witnesses
    b. 1 bank official as the AIW Maker Official (PPAIW)
5. LKS-PWU prints the Cash Waqf Certificate (SWU) for Cash Waqf with an amount, for example, Rp. 1,000,000 (one million rupiah)
6. LKS-PWU gives the AIW and SWU to the Wakif.

b. Waqf Through Money

Waqf through money is a waqf where money is used to purchase a specific asset, and that asset becomes the object of the waqf. For example, there is a waqf program for school construction valued at Rp. 10 billion. To support the smooth running of this program, different people contribute Rp. 100 thousand, Rp. 500 million, and so on. The object of the waqfed property is the school, not the money (ilham, 2021). This differs from cash waqf which requires depositing money to LKS-PWU..

It also differs from cash waqf where the development of waqf funds can be done broadly and without limits; waqf through money is limited to programs provided by the nazhir (Firdaus, 2022).

One of the most famous waqfs is the waqf of the Raumah well in Madinah by Uthman bin Affan. During the time of the Prophet Muhammad ﷺ, the well belonged to a Jew who charged a high price to Muslims in need of water. The Prophet Muhammad ﷺ said: “Whoever

buys the Raumah well, then makes its buckets shared with the buckets of the Muslims, for him is paradise." (HR Nasai, 3608) (al-Nasā'ī, 2018, p. 6,443).

Uthman bin 'Affan ra. then bought it at a very high price and waqfed it with the mauquf alaih being the entire Muslim community. Until now, this waqf still functions in Madinah as a water source and even its land produce is still managed for the welfare of the ummah (Setiadi, 2023).

RESULTS AND DISCUSSION

In the implementation of cash waqf in Indonesia, there are several practices that still do not meet the basic principles of waqf according to both fiqh and applicable regulations. Suboptimal practices will impact the reduction of the rights of Mauquf alaih to receive sustainable benefits, and even eliminate the essence of waqf as an ongoing charity (sadaqah jariyah).

According to Suaramuhammadiyah, many Nazhir, who are generally Kyai or Ulama (who have knowledge), lack sufficient knowledge in waqf asset governance or management. Even rarely, waqf assets become a source of hereditary livelihood for them. Indeed, in Shafi'i fiqh, nazhir is allowed to take a portion of the waqf proceeds as compensation for his service in managing waqf property (*Problematika Wakaf Di Indonesia*, 2025). This is recorded in the hadith of Umar bin Khattab narrated by Bukhari (1993), which states: "The person managing that land is permitted to eat from it in a proper manner (bi al-ma'ruf) or feed others, without intending to make it personal wealth (ghayra mutamawwil)."

The phrases "bi al-ma'ruf" (in a proper manner) and "ghayra mutamawwil" (without intending to make it personal property) constitute clear limitations. A nazhir may take reasonable compensation commensurate with their work and responsibilities, but they may not exploit waqf assets for personal gain or turn the management of those assets into a hereditary inheritance passed down through generations, even though, according to the Waqf Law, the position of nazhir cannot be inherited (*Problematika Wakaf Di Indonesia*, 2025).

The second problem is the practice of nazhirs spending the principal of cash waqf on non-productive matters, thereby reducing or even depleting the principal without replacement income (Kamal, 2021). This clearly contradicts the basic principle of waqf, which requires the principal asset to remain intact.

According to (Firdaus, 2022) cash waqf must be managed productively or invested, with the resulting profits then channeled to the beneficiaries (mauquf alaih). Government Regulation No. 42 of 2006, Article 28, also stipulates that cash waqf must be deposited with Sharia Financial Institutions Receiving Cash Waqf (LKS-PWU), which are responsible for safeguarding the principal of the cash waqf. This regulation aligns with contemporary fiqh principles that the principle of cash waqf must remain intact.

When a nazhir spends the principal of waqf on non-productive purposes, a double violation occurs. First, from a fiqh perspective, the condition of the perpetuity of waqf assets is not met because the principal asset diminishes or is depleted. Second, from a regulatory perspective, the Nazhir has violated the management provisions mandated by law.

The third problem, as noted by (Mushaddiq et al., 2021) is the low competence of nazhirs in productively developing waqf assets (both money or through money), causing those assets to fail to provide the intended waqf benefits or even experience depreciation.

When nazhirs fail to manage assets productively, the rights of the beneficiaries (mauquf alaih) are not realized (Lubis et al., 2023).

According to Kamal's (2021) research, the waqf funds channeled by cash waqf management institutions to the real sector remain very limited, at only 6%. This means that cash waqf as working capital to drive the real sector has not yet been achieved (Kamal, 2021).

Protection of Beneficiaries' Rights (Mauquf Alaih) Regarding Cash Waqf

To address various deviations in cash waqf practices, Indonesia has established a comprehensive regulatory framework through Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006. These regulations establish mechanisms for the legal protection of beneficiaries' rights to ensure that waqf benefits can be channeled sustainably, as follows:

a. Obligation to Preserve the Waqf Principal (PP 42/2006 Article 28)

This is a fundamental principle in Indonesia's cash waqf regulations, namely the absolute requirement to maintain the integrity of the waqf principal asset. This provision adopts the conditions set forth by Hanafi scholars for the permissibility of cash waqf (Bushiri, 2025). This obligation carries clear legal implications: any use of the waqf principal that causes its nominal value to diminish or be depleted constitutes a violation of statutory provisions. In the context of protecting beneficiaries' rights, this provision ensures that waqf benefits will not cease due to the exhaustion of the principal asset, thereby safeguarding their right to ongoing benefits.

Role of LKS-PWU and BWI

Indonesian regulations designate two key institutions in the system for protecting beneficiaries' rights: Sharia Financial Institutions Receiving Cash Waqf (LKS-PWU) and the Indonesian Waqf Board (BWI).

LKS-PWU serves as the guardian of the cash waqf principal. This institution is responsible for receiving, registering, and managing cash waqf funds with principles of prudence. Through LKS-PWU, the cash waqf principal is not handed directly to the nazhir in cash form, which is prone to misuse, but is instead deposited in secure sharia financial instruments(M.H, 2025).

According to hukumonline.com, the procedure for cash waqf is that the waqif does not hand over the money directly to the nazhir, but rather to the LKS-PWU. Only then will it be disbursed from the LKS-PWU to the nazhir for management (M.H, 2025).

Meanwhile, the Indonesian Waqf Board (BWI) serves as the supervisory and developmental institution for waqf management in Indonesia. The BWI has the authority to provide guidance to nazhirs, establish technical policies for waqf management, and conduct field supervision. If deviations occur, the BWI has the authority to take corrective actions, including imposing sanctions or even revoking the licenses of nazhirs proven to have committed violations (Harahap & Darwanto, 2021).

Research by Setiawan et al. (2021) and Aryana (2021) affirms that Indonesian regulations position the BWI as the frontline guardian of accountability and transparency in waqf management.

b. Legal Consequences of Deviations in Management

Law No. 41 of 2004 on Waqf also stipulates legal consequences for parties committing deviations. The general principle of waqf law in Indonesia emphasizes that violations of waqf management provisions may incur administrative to criminal sanctions, depending on the severity of the violation(Mujahidin, 2021).

For nazhirs who spend the waqf principal on non-productive or consumptive purposes, the legal consequences may include: first, reprimands and guidance from the BWI; second, the obligation to repay unlawfully used waqf funds; third, revocation of the nazhir certificate, rendering the individual no longer eligible to manage waqf assets; and fourth, in cases of severe misuse, criminal prosecution for embezzlement or misappropriation of entrusted funds (Sylvianie, 2023).

Thus, the rights of beneficiaries (mauquf alaih) are not only protected by law but also safeguarded through systematic institutional oversight

CONCLUSION

Based on the discussion of the polemic surrounding beneficiaries (mauquf ‘alaih) in cash waqf schemes (waqf al-nuqud) and waqf through money (waqf through money), this study concludes three main points:

1. Dualism of Legal and Fiqh Status: Juridically, Law No. 41 of 2004 provides strong legitimacy for both types of waqf. However, there is a difference in principles between waqf through money and cash waqf in fiqh, particularly in the Shafi’i school, which serves as the reference for the majority of Muslims in Indonesia. Waqf through money is generally accepted because the money is immediately converted into physical assets (istibdal). In contrast, cash waqf (as perpetual funds) faces validity challenges in classical Shafi’i fiqh because the substance of money is considered lost when utilized, thus requiring the adoption of Hanafi thought, which permits cash waqf provided it is managed with strict guarantees for capital security.
2. Vulnerability of Beneficiaries' Rights: Field violations indicate that beneficiaries are often the most disadvantaged party. In waqf through money, deviations occur where the community's "sadaqah jariyah" funds are used for operational expenses (electricity/consumables) that are depleted, failing to become perpetual assets. Meanwhile, in a cash waqf, the nazhirs' incompetence in investment often erodes the principal capital, halting the flow of benefits to beneficiaries.

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