

## Law development on cash waqf (Al Nuqud) to electronic waqf (E-Waqf) for public welfare

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### Abstract

The Waqf management innovation has been happening in Islamic countries including Kuwait, Qatar, Emirates, Jordan, Saudi Arabia, Egypt, Turkey, Bangladesh, Malaysia, Brunei, etc however Indonesia as one of the country in which many of its residents are Islam haven't innovate anything like Electronic Waqf or E-Waqf for example. Based on the matters described above, the problems discussed in this article is Why Cash Waqf (Al Nuqud) in Indonesia Currently are Not Being Transformed to Electronic Waqf (E-Waqf) Whereas the system has been applied in various sector and How to advance the Law Development on Cash Waqf (Al Nuqud) Towards Electronic Waqf (E-Waqf) for Public Welfare. The approach in this study using the Socio-Legal approach and hermeneutics, this study took place at the IIUM Endowment Fund. The research was conducted in Gombak, Selangor, Malaysia is one of the states in Malaysia are quite advanced both in terms of social welfare, education, health, etc. so interesting to study. This study was conducted from December 2018-April 2019.

The research shows that the Development of Cash Waqf (Al Nuqud) towards Electronic Waqf (E-Waqf) to be one chance in reconstructing use of cash waqf funds through the empowerment of community economic development. So automatically in the field, cash waqf could be reached by various groups including the lower middle class. In addition, the ease of electronically can be accessed by anyone, anywhere and at any time when a wakif want donating property held without having to raise a lot of money in advance. Through the development of waqf Cash Waqf (Al Nuqud) through the Electronic Waqf system (E-Waqf) then nadzir and potentially large endowments management agencies in collecting funds waqf in Indonesia. Especially, through bank partnerships that have been media tempaan raise endowment of wakif either through cash transfers, Point of sale transfers, Automatic Teller Machine (ATM), Transfers initiated by telephone, Electronic Data Interchange (EDI) and Virtual cash payment on the internet.

**Keywords:** law development, electronic waqf, public welfare

### 1. Introduction

The modern era is identified with the era of the digital society. Every human activity will be driven through a series of digital technology. This technology is operated by pressing a few digits (numbers) are collated with various sequences. Relationships created among individuals is a digital exchange relationships, each man can perform a series of transactions or interactions via digital symbols. Trade, communication, everything is driven digitally. For example, each individual will have a digital identity that is able to recognize who he is, every human being are consecutively numbered: through the identification number Electronic Identity Card (E-ID), Card payment, toll road electronic ID (E-Toll), bank account number, electricity account number, phone bills, water bills, PIN (Personal Identification number) ATM, all using the digital system <sup>[1]</sup>. Waqf are no exception as The management innovation has also been happening in Islamic countries including Kuwait, Qatar, Emirates, Jordan, Saudi Arabia, Egypt, Turkey, Bangladesh, Malaysia, Brunei, etc <sup>[2]</sup>.

Among the endowments with a paradigm shift arrangements

progressive approach fairly fundamental law, among others, first, in the case of an asset in *waqf* no longer confined to immovable property, but also against movable property. Evidence used to reinforce this view, as formulated in Article 16 Paragraph (1) of Act No. 41 of 2004 on endowments, which reads treasure be in *waqf* is immovable and moving objects.

In Article 16, paragraph 3, of Act No. 41 of 2004 on *Waqf*, which can be represented on Moving Bodies, namely <sup>[3]</sup>:

1. Money;
2. Precious metal;
3. Securities;
4. Vehicle;
5. Intellectual Property Rights;
6. ental Rights;
7. Other moving objects in accordance with the provisions of sharia and legislation in force.

Furthermore, regarding the position of the treasure after represented in progressive paradigm can be seen from the definition of *waqf* contained in Article 1 Paragraph (1) of Act No. 41, 2004. The article states that the endowment is a legal act *wakif* to separate and / or hand over part of their

<sup>1</sup> Al-Hadi, Abu Azam Upaya Pembedayaan Tanah Wakaf Produktif Bagi Kesejahteraan Ummat, dalam jurnal ISLAMICA, Vol. 4 No. 1, September 2009.

<sup>2</sup> <https://act.id/news/detail/wakaf-tunai/uang>, Accessed date. December 28, 2018 (IIUM Malaysia)

<sup>3</sup> Budi, Iman Setya, Revitalisasi Wakaf sebagai Penggerak Ekonomi Masyarakat, in journal: Al-Iqtishadiyah Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah, Volume: II, Nomor II. June 2015

wealth either permanently or for a certain period in accordance with their interests for purposes of worship and / or the general welfare according to sharia <sup>[4]</sup>.

In this article there is a paradigm shift endowment arrangement stating that “either permanently or for a specified period of time”. While in the previous arrangement just mentioned “institutionalize forever”. Such differences, indicating that the new arrangement was patterned progressive and existence are more flexible and can provide the opportunity for productive purposes.

Shifting the position of the treasure after represented were originally conventional, then becomes progressive, or in other words the first consumer to be productive for the sake of worship and to promote the general welfare and interests of other, more serious benefits in accordance with the times that are in line with the objectives and functions endowments. In Article 22 of Act No. 41 of 2004 on *waqf* stated that in order to achieve the objectives and functions of the *waqf*, *waqf* property can only be reserved for; facilities and worship activities, facilities and activities as well as health education, assistance to the poor, abandoned children, orphans, scholarships, advancement and economic improvement of the people, and other public welfare or advancement that is not contrary to the sharia and legislation <sup>[5]</sup>.

Similarly, with regard to the determination of *waqf* property designation as expressly provided in Article 23. In principle, the provisions specified in Article 23 Paragraph (2) above gives a flexible space to *nadzir* to determine the designation of *waqf* property to be appropriate and effective in accordance with the objectives and endowments function. The flexibility given to *nadzir* to determine the designation of *waqf* property can be positive, but also the likelihood of a negative thing wide open. Said the key lies in understanding *nadzir*, whether still or already progressive conventional patterned in accordance with changes in legislation the new *waqf* <sup>[6]</sup>.

If the profile *nadzir* has had a progressive paradigm of endowments, flexibility in defining the sound clause contained in Article 23, Paragraph (2), both at the level of meaning textual and contextual meaning, opening up the innovation endowment as a source of economic potential that can be seeded according to the times and technology-information previously conventional, manually or cash / money into the *Electronic Waqf* (E-Waqf).

Based on the matters described above, the problems discussed in this article is as follows:

1. Why Cash *Waqf* (*Al Nuqud*) in Indonesia Currently are Not Being Transformed to *Electronic Waqf* (E-Waqf) Whereas the system has been applied in various sector ?
2. How to advance the Law Development on Cash *Waqf* (*Al Nuqud*) Towards *Electronic Waqf* (E-Waqf) for Public Welfare?

### Method of research

The paradigm used in this research is the paradigm of constructivism. Constructivism is a paradigm that is almost the antithesis of understanding that lays observation and objectivity in finding a reality or science. This paradigm of looking at social science as a systematic analysis of the

socially meaningful action through direct observation and detailed on the relevant social actors create and maintain or manage their social world. The method of Research approach used in writing this article is a qualitative research. Writing aims to provide a snapshot of a society or a particular group of people or a picture of a symptom or between two or more symptoms. Further, this research seeks to explain postulates fully investigated in accordance with the findings in the field <sup>[7]</sup>.

The approach in this study using the Socio-Legal approach and hermeneutics, which is based on legal norms and the theory of the existing legal enforceability. Thus in the writing of this article, researchers used the approach of Socio-Legal <sup>[8]</sup> reviewing the juridical law from the standpoint of sociology and Hermeneutics (in everyday terms is defined as the “Interpretation Understanding”).

This study took place at the IIUM Endowment Fund. The research was conducted in Gombak, Selangor, Malaysia is one of the states in Malaysia are quite advanced both in terms of social welfare, education, health, etc. so interesting to study. This study was conducted from December 2018-April 2019.

### Research Result and Discussion

#### 1. Why cash *waqf* (*al nuqud*) in Indonesia currently are not being transformed to *electronic waqf* (e-*waqf*)

In general, people do not understand the law endowments properly, in terms of both the pillars and terms of endowments, or purpose in endowments law. Understanding the pillars of *waqf* for the community is very important, because understanding the pillars of *waqf*, the public can find out who may give endowments, whatever that may be in *waqf*, for what and to whom endowments at designated, how give endowments, and anyone who may be *nadzir*. At this moment a lot of people who understand that objects can be in *waqf* are immovable such as land, buildings and objects do not move any more when moving objects such as cash, stocks, bonds, etc., can also represented.

Currently there are some countries that the management and the management *waqf* very alarming. As a result quite a lot of *waqf* property abandoned in its management, there is even a *waqf* property was missing. One reason among others is because Muslims generally only donating land and school buildings, in this case less thinking *Wakif* school operating costs, and *nadzir* less professional. Therefore, a study on the management of *waqf* is very important. Less involvement of endowments in the economic empowerment of the people in Indonesia because endowments are not managed productively. To overcome this problem, a new paradigm in the management of *waqf* should be applied. Endowments should be managed productively using modern management. To manage endowments productively, there are some things that need to be done before. In addition to formulating the conception of jurisprudence endowments and legislation, should professionals *nadzir* to develop treasures in its governance, especially if the *waqf* property in the form of money. In addition, to develop a national endowments are also in need of special entities between

<sup>4</sup> Ibid.

<sup>5</sup> <https://wakafkuburansinergifoundation.wordpress.com/tag/pengertian-wakaf/>, Accessed date. December 28, 2018 (IIUM Malaysia)

<sup>6</sup> Ibid.

<sup>7</sup> Altherton & Klemmack dalam Irawan Soehartono, 1999, Metode Penelitian Sosial Suatu Teknik Penelitian Bidang Kesejahteraan Sosial Lainnya, Bandung, Remaja Rosda Karya, p. 63

<sup>8</sup> Alimuddin, Aplikasi Pembaharuan Hukum dalam Teori Socio Legal Studies, Dirjen Badan Peradilan., [www.badilag.net](http://www.badilag.net), Accessed December 26, 2018. (IIUM Malaysia)

fostering *nadzir*, such as the Egyptian *Waqf* Board. Fortunately at the moment have Presidential Decree On Appointment of Members of Indonesian *Waqf* Board.

*Nadzir* is one of the important elements in endowments. Function or not depends on the ability endowments depend on *nadzir*. *Waqf* in various countries can develop and serve to empower the people, endowments managed by a professional *nadzir*. Unfortunately, there are still some countries that *waqf* managed by those who are less professional, even some who do not understand the law *nadzir* endowments, including a lack of understanding of their rights and obligations. Such cases also occurred in Indonesia, even in general *waqf* in Indonesia is managed *nadzir* that have not been able to manage endowments responsibility.

Legal behavior *waqf* manager cash / money following Law Endowments vary in the level of understanding and implementation. Differences in the understanding and management of cash *waqf* / money broadly divided in five categories, namely: 1) The understanding and implementation of cash *waqf* models / money arranged Act endowments as did BWI; 2) Understanding and management of cash *waqf* / money broadly in accordance with the *Waqf* Act but in some practical action violates the *Waqf* Act as happened in the management of *waqf* BMM and Water; 3) incomprehension or even misunderstandings about cash *waqf* models / money set Endowments Act as the cash *waqf* BMH and the PPA-Daqui and endowments ambulance PKPU; 4) Pragmatically, turned away from the understanding and management of cash *waqf* / money under Endowments Act, its products underneath to understanding the regulation of cash *waqf*/endowments as the investment in the real sector. Institutions that have the understanding and management model are TWI; 5) The fifth model cash *waqf* / money be avoided to do with the substantive reasons. The rejection reason cash *waqf* / money for money, the paper notes, is the product of usury. With this understanding, BMN-run on cash *waqf* in the form of *dinar* and *dirham* were collected to be used as a building or object other endowments.

In 2010 BWI heavily socialized to the community and the management of *waqf* in Indonesia. The implication of this socialization is delegimitasi strong effect on cash *waqf* projects that have been running and is considered incompatible with the design of the legislation. The response to delegimitasi process cash *waqf* / cash by cash *waqf* management institutions / money differently. Some agencies admit cash *waqf* managed design agency violated the law. This is the weakness of the practice of cash *waqf* / money that causes no overall welfare of the Indonesian people.

As a model of charity that are considered new in the community and has not appeared examples of cash *waqf* institutions / money can be a role model and develop massif in the community, then the presence of charitable endowments model of cash / money is a device new values and norms in society. With these conditions, the birth of the MUI's *fatwa* about *halal* of cash *waqf* / money and the Act makes the rules *waqf*/cash *waqf* can be viewed as a process that puts the law as a tool of social engineering. The success of the process of social engineering is highly dependent on the ability of law as an agent of change to limit the possibility of disorganization as a result of the changes. The ability to limit the occurrence of subsequent disorganization

depends on the success of the institutionalization of the new elements that cause these changes<sup>[9]</sup>.

Regulatory effectiveness contained in the *Waqf* Act and the regulations under it as a means of social engineering is very low. This is evidenced by the high negative behavior in terms of behavior that violates the law or ignore the positive law shown by the management of cash *waqf* / money. The high tendency to neglect or even avoidance of regulatory cash *waqf* / money made by the management of cash *waqf* / money reflects a cash *waqf* regulation / money that has not been generally accepted in society. Perception and public opinion against cash *waqf* does not grow as well as the concept of cash *waqf* / money designed laws and regulations under it.

The potential problems that arise due to the weakness of the adaptive management of endowments with the development of information technology in the Electronic *Waqf* system (E-*Waqf*) due to the development of *Waqf* Electronic information technology (E-*Waqf*) is not accompanied by the development of human resources, in this case *nadzir*; information technology in the *Electronic Waqf* (E-*Waqf*) applied *nadzir* not acceptable, wrong assumption that the development of information technology can lead to zero lazy and wasteful, but if we understand well how to manage and use technology particularly in view of an *Electronic Waqf* (E-*Waqf*) then this will be a great potential in the welfare of society.

## 2. How to advance the law development on cash waqf (al nuqud) towards electronic waqf (e-waqf) for public welfare

Construction Indonesian *Waqf* Board in the context of the management of cash *waqf*/endowments under the laws of Indonesia has a lot of authority. Privileges based Indonesian *Waqf* Board functions as a builder *nadzir*, supervisors, regulators, mediators, judges, and endowments object owner (owner). Double the authority held in the construction of Indonesian *Waqf* Board is as *nadzir* BWI and builder *nadzir* of cash *waqf*. *Nadzir* of cash *waqf* should partner with LKS-PWU.

In setting the law (dogmatic) there is a law for regulating political cash *waqf* in Indonesian law. The articles in the legislation endowments Indonesia vague (unclear) as legal arrangements on *nadzir* BWI construction Indonesian *Waqf* Board and the legal position for Financial Institution Sharia Recipient Cash *waqf* (LKS-PWU).

Problems that occur in the practice of law in post-legalization community Endowments Act that the results of the allotment of cash *waqf* conducted by *nadzir* of BWI and other *nadzir* of cash *waqf* are not for sustainable communities, nor to provide lasting benefits unlike other countries as stated by wahyu widodo<sup>[10]</sup>. This is due to the factor that the legal concept of cash *waqf* has not been popular in the community, ordinances give endowments money on LKS-PWU considered difficult and hard to understand by the public to be made on LKS-PWU.

In the development of the legal concept of cash *waqf* does not run as mandated by the legislation endowments. Management of *waqf* impressed stagnant. The slow progress is no indication of retreat in some institutions, on both

<sup>9</sup> Op.cit., p. 127

<sup>10</sup> Wahyu Widodo, Gunarto, Maryanto, 2017, Regulation Of Waqf Land Managed By Institution In Indonesia: A Comparative Study, Journal of Law, Policy and Globalization, Vol 63 (2017).



managed by the Indonesian *Waqf* Board, National *Zakat* Organization or institution managed by a specialized institution of *waqf* manager<sup>[11]</sup>, Especially in the construction Indonesian *Waqf* Board as an independent state has not been widely recognized by society as an institution that is authorized and responsible for the development endowments in Indonesia. Similarly, Indonesian *Waqf* Board authorized the development endowments money in Indonesia conducted by BWI *nadzir* not as professionally done by *nadzir* of cash *waqf* under its auspices. Privileges Indonesian *Waqf* Board in collaboration with LKS-PWU to be scrutinized further. In terms of the legality of the position and function of LSK-PWU unclear, as *nadzir* cash *waqf* or guarantee institution of sharia. The procedure for acceptance of cash *waqf* for *nadzir* BWI with other *nadzir* different, there are special arrangements for *nadzir* BWI. Acceptance of cash *waqf* for BWI *nadzir* greater than for other *nadzir* of cash *waqf* under its auspices.

Based on the above issues, the function Indonesian *Waqf* Board as the authorized state agencies to develop endowments in Indonesia has not been optimal in accordance with the mandate of the law. The benefit of a sustainable society has not materialized properly. For that we need to do research on cash *waqf* in a legal and political perspective in order to achieve the benefit of a sustainable society.

Explanation of paragraph (1) UUD 1945 implies the state make laws and conduct its policies in line with the basic belief in God Almighty. Explanation of paragraph (2) UUD 1945, the state guarantees the freedom of each citizen to profess his own religion and to worship according to their religion or belief it. Give endowments teachings contain great wisdom. From the aspect of legal history, endowments proved to have lasting benefits for many people's lives. It has been proven in the history of Islam since the past until now, endowments have benefits. Institutions develop endowments established and contributed greatly to the development of Islam in supporting educational institutions of Islam or madrassas<sup>[12]</sup>,

Thought cash *waqf* law in Indonesia needs to be further developed according to time and place. Cash *waqf* is the implementation of new products in the economic history of Islam, led by Mohammad Abdul Mannan in Bangladesh. Endowments money received serious attention because it has long roots in Islamic history<sup>[13]</sup>, Cash *waqf* whose use can be used flexibly for the development of productive activities<sup>[14]</sup>, How to hold the value of cash *waqf* is to manage productively through Islamic business. Structuring management and management of *waqf* in Act No. 41 of 2004 on *Waqf* and Government Regulation No. 42 Of 2006 on the Implementation of the Law of *Waqf* has the spirit of the structuring and management of *waqf* management so as to achieve the maximum result is known as the endowments

of productive<sup>[15]</sup>, Endowments productive part of society to empower existing economic assets in the *waqf* property<sup>[16]</sup>, The development of *waqf* law in Indonesia experienced significant progress following the legal age of globalization and technological advances in other Islamic countries. Malaysia, Brunei, Bangladesh, etc. have started to develop the concept of electronic-based cash *waqf*. Indonesia *waqf* law also cannot miss in developing cash *waqf* law, one way through the *Electronic Waqf* (E-*Waqf*).

*Waqf* law in Indonesia has been agreed as the legal community (living law) and ratified by Act No. 41 of 2004 on *Waqf*. Indonesia is a country of law and provides an opportunity for Islamic law to be a part of Indonesian law. Law endowments belonging to the territory the power of the Religious Courts. Religious Courts as one of the Indonesian justice system has the authority to deal with a civil matter Muslims. Religious Court the duty and authority to examine, decide and resolve cases at the first level among people who are Muslims in the areas of marriage, inheritance, wills, grants, endowments, charity, infaq, sadaqah, and economic sharia (Act No. 3 Of 2006 on the Amendment of Act No. 7 of 1989 concerning the Religious Courts, Article 49).

*Waqf* law in Indonesia dipositifisasi by the state because he saw great potential in the *waqf* institutions from various aspects. Positifisasi endowments Indonesia by state law to provide community economic impact. One important factor which also adds to the pattern and development of endowments in the modern era, is when the state also regulates the endowment policy through a set of positive law<sup>[17]</sup>. There has been a politicization of Indonesian law in the management of *waqf*/endowments of money, because no economic potential. Politics is often synonymous with the government's decision is authoritative, since the authority imposed and monopolized by the government<sup>[18]</sup>.

In the view of Islamic law setting the legal and political state politics are interconnected. From a political point of law, the state put the Islamic law into national law. Some suggested that the imposition of Islamic law on formal aspects legalistik, Islamic law must go through acculturation values of Islamic law into positive law<sup>[19]</sup>.

In Act No. 41 of 2004 on *Waqf* is a legal act of a person or legal entity that is separate or give up some of his belongings to either permanently or for a specified period in accordance with their interests and well-being for the purpose of public worship according to Islamic principles. Based on these principles, made a cash *waqf* product innovation. With the implementation mechanism will facilitate the Cash *Waqf* Certificate *wakif* to provide funds to *nadzir*.

The mechanism of endowments indirect or non-cash is a system by way of prospective *wakif* transfer money to the account of Indonesian *Waqf* Board (BWI) as *nadzir* cash *waqf*. BWI account will be maintained as appropriate Islamic Bank accounts of more will get a bonus or profit sharing according to the type and Sharia principles used such as checking, savings *wadi'ah*, or savings *mudhorobah*.

<sup>11</sup> Hilmi, Hasbullah, "Dinamika Pengelolaan Wakaf Uang: Studi Sosio-Legal Perilaku Pengelolaan Wakaf Uang Pasca Pemberlakuan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* (Online). 2012, Volume 12, No. 2

<sup>12</sup> Ibid.

<sup>13</sup> Dahlan, Rahmat, "Faktor-faktor Yang Memengaruhi Persepsi Nazhir Terhadap Wakaf Uang". *al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* (Online). 2015

<sup>14</sup> Kasdi, Abdurrahman, "Potensi Ekonomi Dalam Pengelolaan Wakaf Uang di Indonesia", *Equilibrium: Jurnal* (Online). Juni 2014, Volume 2, No. 1, p. 36

<sup>15</sup> Ibid, Tuti A. Najib, and Ridwan al-Makassary, (eds) 2006, P.1

<sup>16</sup> Ibid, Abdurrahman Kasdi, 2014, p. 36

<sup>17</sup> Ibid, Rozalinda 2011

<sup>18</sup> Ibid, Ramlan Surbakti, 2010, p. 261

<sup>19</sup> Mohdar, Yanlua, Maret 2012, "Legalitas Hukum Islam dalam Hukum Nasional", <http://yanluamohdar2010.blogspot.com>, accessed February 25, 2019, Tuesday, 06.03 pm

Then transfer the evidence was brought to the Syariah Financial Institution (LKS) to be made *Waqf* Certificate Exchange <sup>[20]</sup>. Another form of indirect mechanisms can also contact LKS via telephone, then the candidate *wakif* express the intent and purpose for give endowments money by directly debiting the amount of money that want represented of the *wakif* candidate account. Furthermore LKS issue a Certificate of Cash *waqf* <sup>[21]</sup>. BWI Regulation No. 1 Of 2009 Guidelines for the Management and Development of Property Endowment Moving Form of Money mandated the LKS-PWU to prepare transaction services endowments of non-cash, and also provides payment services endowments via E-Banking are not only shaped transfer service alone but there are features of payment services endowments, As in Article 6 paragraph 3 of the Regulation Board *Waqf* of Indonesia (BWI) No. 1 of 2009 mentions the elements of what was mentioned in the E-Banking that LKS-PWU shall prepare online receipt of cash *waqf* that uses electronic media channel which contains information that is:

- a. A list of names of *nadzir* who will be selected *wakif*.
- b. List of cash *waqf* nominal denomination.
- c. Forms will *wakif* statement that serves as AIW.
- d. Approval deposit cash *waqf* which has swore.

In the event of endowments money via E-Banking, in Article 6, paragraph 4 states that the LKS-PWU must prepare certificates of deposit *Wakif* of endowments Money which is indirectly based on information obtained on line from electronic media channel. Then *wakif* can redeem endowment proof of deposit acquired through electronic media channel to LKS-PWU to obtain the Certificate of Cash *waqf*. LKS-PWU will issue a Certificate of Cash *waqf* <sup>[22]</sup>. And in this case proof of deposit *wakif* not redeem the certificate of Cash *Waqf*. Rather Certificate of Cash *Waqf* will be given to BWI to administer. Give endowments using electronic media owned by the bank, or better known as E-Banking, a new mechanism in endowments in Indonesia. Cash *waqf* in Indonesia also has the same potential as other countries are able to manage productively and contribute to the economy in Indonesia. This is supported by the potential of cash *waqf* in Indonesia, according to Indonesian *Waqf* Board (BWI), which amounted to 20 trillion rupiah. This figure is obtained when 20 million people in Indonesia, or about 9% of the total population of Indonesia allocated Rp 1,000,000 per year for the cash *waqf*. But the fact of raising cash *waqf* has not been effective, visible from endowments amount collected from 2018 to 2019 only amounted to about 3.6 billion rupiah <sup>[23]</sup>. As described in the following table:

**Table 1:** Data of Cash *Waqf* Input in Indonesia in 2017-2018

		Initial Balance	Increased Balance	Final Balance
<b>Year 2017</b>				
No	Name of Bank	(Rp)	(4)	2018(80)
1.	Bank Muantalat Indonesia	18046734114	182200,000	361871114
	Bank Syariah Mandiri	1,944,033.140	281,352,755	2.225.385.895
	BNISyar4ah	487.001500	8.206.434	495109534
4.	Bank DM Syariah	218.051.410	53.714,000	271.765.410
	Bank Mega %Pariah	225,573.230	7.409.300	233.982.590
	Bank Bukopin Syanah	8,050,000	11451,450	264501,450
7.	Bank BIN Syariah	3.000.000	14.943,100	17.943.100
	Total	3.067384,454	566,227,039	3,633.661.493

The technology used by the Ventura Bank affect the effectiveness and efficiency of the collection and management of cash *waqf*. This is consistent with the results of research conducted by Wardian as a researcher Informatics Research Center-Institute of Sciences of Indonesia Complex LIPI which states that the development of information technology to improve performance and enable a wide range of activities can be implemented quickly, precisely and accurately, so that eventually will improve productivity. Developments in information technology evidenced by the emergence of various types of activities that are based on technology, such as e-government, e-commerce, e-education, e-medicine, e-laboratory, and others which are all based electronics. Besides the influence of information technology to the field of management a <sup>SOURCE</sup> endowments, it also brought about significant changes in the system especially its application in the context of planning, control and management decisions of *Electronic Waqf* <sup>[24]</sup>. Besides the implementation of the E-*Waqf* also affected the number of internet users. According to the Association of Indonesian Internet Service Provider (APJII) explains that the most number of Internet users aged 25-29 years and 35-39 years. Meanwhile, total internet users from age 20 to 50 years and over as many as 119.2 million. The number of internet users in Indonesia, especially the mobile Internet, enabling integration between the online payment system (e-payment) in the world of electronic endowments to improve the effectiveness of the collection and management of *waqf* property-based online payment (e-payment). The use of e-payment application starting with the cash

<sup>20</sup> Op.cit.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Yuliafitri, Indri and Arie Indra Rivaldi., Pengaruh Penerapan Prinsip-Prinsip Good Governance dan Promosi terhadap Penerimaan Wakaf Tunai (pada Lembaga Pengelola Wakaf di Indonesia). Jurnal InFestasi Volume 13 No. 1, June 2017, 2017, p.89.

<sup>24</sup> Maharsi, Sri, Pengaruh Perkembangan Teknologi Informasi Terhadap Bidang Akuntansi Manajemen. Jurnal Akuntansi dan Keuangan Volume 2 Nomor 2, November 2000, p. 127-137

Waqf Bank to open an account by filling an online form that has been provided on the Bank's website of *Waqf*. After filling the form, *wakif* will get an e-mail containing a *Waqf* Bank account numbers and passwords. That is, *wakif* been registered as *Waqf* Bank customers. The account number

and password

Can be used *wakif* to activate and log in application of E-payment which have been downloaded on Google Play Store or the Apple Store.

### Flow of E-payment Endowments Money

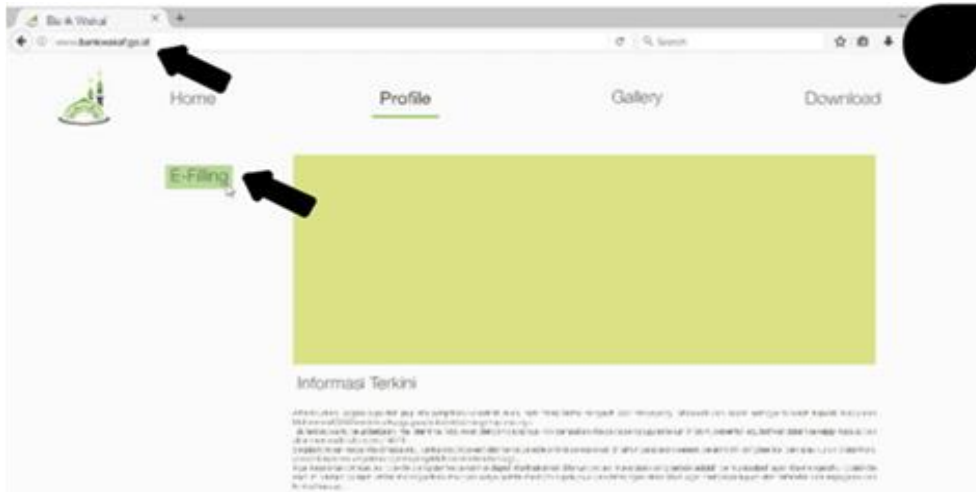


Fig 1

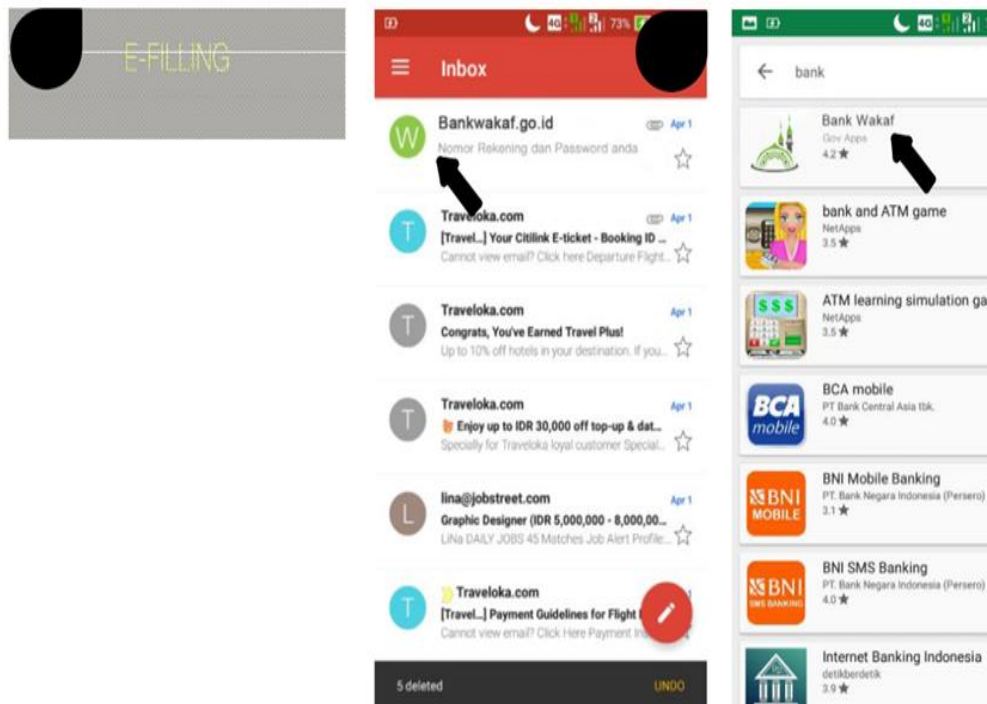


Fig 2



Source: Illustration by author

Fig 3

Wakif of endowments can then depositing the balance of commercial bank accounts owned by the application of e-payment endowment. Once the balance is filled, wakif then choose peruntuk's endowment is desired, such as endowments for MSME, endowments for development of education, endowments for agricultural empowerment, etc. Wakif of endowments allocation chosen by a substitute *Sighoh* as one of the pillars of *waqf*. Just as in buying and selling, *Sighoh* also become one of the pillars of sale. But in practice, *Sighoh* can be done with the money given to the buyer as a form of handing over the purchase of goods. After all the stages do. Wakif then print the Certificate of Cash *waqf* (SWU) as proof of payment endowment.

Based on that it can be concluded that in order to advance the law on Cash *Waqf* (*Al Nuqud*) To *Electronic Waqf* (*E-Waqf*) must be in line with Compilation Of Islamic Law, Mui's *Fatwa*, and Act No. 41 Of 2004 For The Public Welfare with the result as follows:

- a. Law development occurred cash *waqf* is set in the tenth part of article 28 of Act No. 41 Of 2004 on *Waqf*, which reads <sup>[25]</sup>: *Wakif* can give endowment moving objects in the form of money through Islamic financial institution designated by the law. In this case, including the kind of thing does not move into *waqf*/endowments based on electronic *waqf* (*e-Waqf*) and the process of distribution of cash *waqf* base on *E-Waqf* requires by *wakif* have to transfer money to *nadzir* that money can be distributed in the manner intended. Along with the development of information technology and to simplify all matters, including matters of electronic media used in the banking sector, is commonly referred to as the payment

system. In this case, banking institutions have the intermediary function, namely as one of the institutions that can bring together the parties pay and receive payment in the payment system <sup>[26]</sup>. Currently, the payment system has expanded, not only nationally but the payment system have crossed state borders <sup>[27]</sup>. Electronic payment systems (electronic funds transfer system) is essentially a process of value exchange using electronic media through a credit or debit orders. Methods used are as follows <sup>[28]</sup>: 1) Point of sale transfers. 2) Automatic Teller Machine (ATM), 3) Transfers initiated by telephone, 3) Electronic Data Interchange (EDI), and Virtual cash payment on the internet

- b. The development of *waqf* law through Act No. 11 of 2008 on Information and Electronic Transactions (UU ITE) in terms of payment methods via the internet for goods and services using a credit card. The use of electronic media in terms of the distribution of the cash *waqf*, we can see its settings in the ITE Law in article 1, paragraph (2) which states that, "the electronic transaction is a legal act performed by using a computer, computer network and / or other electronic media".
- c. The development of *waqf* law occurred pecuniary meaning moving objects and in addition to the money towards Toward *Electronic Waqf* (*E-Waqf*) in Government Regulation (PP) No. 42 of 2006 on the

<sup>25</sup> Act No. 41 of 2004 on *Waqf*

<sup>26</sup>Budi Agus Riswandi, *Aspek Hukum Internet Banking*, Jakarta: Rajagrafindo press, 2018, p. 58

<sup>27</sup>Ibid., p. 60

<sup>28</sup> Ibid., p.79



implementation of Act No. 41 of 2004 on endowments. Article 15 of the Regulation describes the types of *waqf* property, include:

1. Immovable
2. Moving objects other than money
3. Moving objects in the form of money.

Also occurs the developing laws *Waqf*/endowments Towards Electronic (E-*Waqf*) in article 22 of the Regulation, namely:

1. Cash *waqf* can represented is currency.
2. In terms of money that will represented still in foreign currency, it must first be converted into the currency.

d. Further development Towards *Electronic Waqf*/endowments law (E-*Waqf*) in Article 16, paragraph (1) of the treasures of *waqf* paragraph 2 of objects moving toward the virtual object / *Electronic Waqf* (E-*Waqf*):

1. Immovable; and
2. moving objects <sup>[29]</sup>;

In terms of moving objects is as contemplated in paragraph (1) letter b is a treasure that cannot be discharged because they are consumed, include:

1. Money;
2. Precious metal;
3. Securities;
4. Vehicle;
5. Intellectual property rights;
6. Rental rights; and
7. Other moving objects in accordance with the provisions of sharia and legislation in force <sup>[30]</sup>.

e. Further development of legislation regarding the placement of money endowments set out in Article 25 (d), namely:

"Islamic Financial Institutions Submission of Endowments Money (LKS-PWU) in charge of putting money into the endowment deposit account (*wadi'ah*) on behalf of a designated *nadzir* by *wakif*. In this case the placement and management of cash *waqf* Towards Electronic (E-*Waqf*) contained in Ventura Bank of *nadzir*."

f. Law development occurred *Electronic Waqf*/endowments law (E-*Waqf*) of cash into a Virtual Account / E-Money in *Fatwa* Indonesian Ulama Council (MUI) on Endowments Money:

Cash *waqf* (money/ *al-nuqud*) are endowments that a person, group, institution or legal entity in the form of cash. Included in the sense of money is securities.

*Jawaz* /legal of cash *waqf* (allowed).

Endowments money should only be channeled and used for things that are permitted by Islamic law.

g. Law development occurred in paragraphs 1, 4, 6 and 9 in Book III of the Law endowments Article 215-229, while the general provision in Article 215 KHI Towards

*Electronic Waqf* (E-*Waqf*) <sup>[31]</sup>:

1. *Waqf* is a legal act of a person or group of persons or legal entities that separates most of her possessions and instituted them in perpetuity for the benefit of worship or other public kerpeluan in accordance with Islamic teachings.
2. *Wakif* is a person or persons or legal entities donating his possessions.
3. The Pledge is a statement of the will of *wakif* for donating his possessions.
4. *Waqf* objects are any objects either movable or immovable objects money resilience not only disposable and valued according to the teachings of Islam.
5. *Nadzir* is a group of persons or legal entities entrusted with the task of maintenance and management of *waqf* objects.
6. Officials Pledge Deed of Endowment hereinafter abbreviated PPAIW are government officials appointed under the rules applicable regulations, berkewajiban received a pledge from *wakif* and handed it to *nadzir* and perform surveillance for preservation endowments.
7. Officer Pledge *Waqf* as referred to in paragraph (6), appointed and dismissed by the Minister of Religious Affairs.
8. Referring to the provisions of the KHI *waqf* objects, objects of *waqf* there are two types, ie, contained in Chapter 1 General Provisions Article 215 paragraph (4): movable. On moving objects or moving objects themselves are described that included a moving object is Money, Securities, Stocks, etc.
9. Cash *waqf* is one source of potential social funds are closely related to the welfare of the people in addition to charity, donation and charity. Especially for religious teaching be the main motivation for give endowments society. In Indonesia, endowments has been recognized and implemented by Muslims since Islam entered Indonesia. As one of the religious institutions that are closely related to socio-economic, endowments have helped overall development in Indonesia, both in the development of human resources and the development of social resources.

## Conclusion

1. Cash *Waqf* (*Al Nuqud*) in Indonesia has yet to transform Become *Electronic Waqf* (E-*Waqf*) due legal instruments governing electronic cash *waqf*/endowments toward unclear and require interpretation in understanding the new law and applies this dig for the welfare of society one through the Indonesian *Waqf* Board (BWI) as mandated in Article 47 paragraph (2) of Act No. 41 of 2004 on *Waqf* is an independent institution in its duty to develop endowments in Indonesia. On the other hand many management institutions are still lacking professional endowments in collecting funds endowments of *Wakif* mainly through the help of digital technology one of the electronic system. Therefore necessary efforts as mentioned in Article 49 paragraph (1): to provide guidance to *nadzir* manage and develop the

<sup>29</sup> Ditjen Bimbingan Masyarakat Islam, Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf dan Peraturan Pemerintah Nomor 42 tahun 2006 tentang Pelaksanaanannya, (Jakarta: Pustaka Bimas Islam, 2007), p.9

<sup>30</sup> Ibid.

<sup>31</sup> Syamsul Ma'arif, Kompilasi Hukum Islam (Hukum Perkawinan, Kewarisan, dan Perwakfan), Revisi 2012, (Bandung: Nuasa Aulia, 2012), p.189



- endowments of money through electronic systems; conduct property management and development of endowments national and international scale; giving approval and / or permit the change in designation and status of *waqf* property; remove and replace *nadzir* unprofessional; gave approval for exchange of *waqf* property; and providing advice and consideration to the Government in policy development in the field of endowments. In addition, BWI is currently being intensively launched a movement endowments productive and endowments of money, which has not become a tradition in Indonesia and committed to investing *waqf* property, either land or money in the property sector, plantation, manufacturing, hospitals and so on. Furthermore, in Article 28 of Act No. 41 of 2004 on *Waqf* mentioned that *wakif* can give endowment moving objects in the form of money through Islamic financial institution designated by the Minister. At the moment there are five Islamic Bank engaged by the Minister of Religious Affairs as Receiver *Waqf* Islamic Financial Institutions Money, PT. Bank Negara Indonesia (Persero) Tbk. Syariah Division; PT. Bank Muamalat Indonesia Tbk.; PT. Bank DKI Jakarta; PT. Bank Syariah Mandiri; and PT. Bank Mega Syariah Indonesia. Development of cash *waqf* in itself carries risks such as the possibility of reduction or loss of property value endowments. These risks can be by comparing operating losses productive on the run, the risk of losing the value of natural (inflation and depreciation), risks due to force majeure (natural disasters, fires, etc.), or risks due to lack of professional or not amanahnya *nadzir* or managers of endowments money / cash through electronic system designated by *nadzir* itself. Besides the application of risk management is costly, on the other hand increase the confidence *wakif* and the general public against certain *waqf* institutions hard enough. This risk management should be carried on in the development of Cash *Waqf (Al Nuqud)* towards *Electronic Waqf (E-Waqf)* includes risk identification, analysis and risk assessment, management and risk control as well as monitoring and evaluation.
2. The Law development Cash *Waqf (Al Nuqud)* Towards *Electronic Waqf (E-Waqf)* for Public Welfare is as follows:
    - a. KHI, MUI's *fatwa*, and No. 41 of 2004 provides legal framework for the implementation of the law development of cash *waqf* / money into electronic endowments (*E-Waqf*) that cater for the welfare of the people.
    - b. Endowments in cash Cash *Waqf (Al Nuqud)* through the *Electronic Waqf* system (*E-Waqf*) is much more effective and flexible both in terms of *wakif* and *nadzir* manage endowment funds in this modern era. This is indicated in the editorial that the Cash *Waqf (Al Nuqud)* via an *Electronic Waqf (E-Waqf)* became one of the alternatives, innovation and referral endowments modern permissible form of moving objects, especially money, stocks and bonds, either explicitly or implicitly that the *waqf* system allowed and the allocation for community economic development.
    - c. Development of Cash *Waqf (Al Nuqud)* towards *Electronic Waqf (E-Waqf)* to be one chance in reconstructing use of cash *waqf* funds through the

empowerment of community economic development. So automatically in the field, cash *waqf* could be reached by various groups including the lower middle class. In addition, the ease of electronically can be accessed by anyone, anywhere and at any time when *wakif* want donating property held without having to raise a lot of money in advance.

- d. Through the development of *waqf* Cash *Waqf (Al Nuqud)* through the *Electronic Waqf* system (*E-Waqf*) then *nadzir* and potentially large endowments management agencies in collecting funds *waqf* in Indonesia. Especially, through bank partnerships that have been media tempam raise endowment of *wakif* either through cash transfers, Point of sale transfers, Automatic Teller Machine (ATM), Transfers initiated by telephone, Electronic Data Interchange (EDI) and Virtual cash payment on the internet.
- e. The third law of the referring cash *waqf* law development Cash *Waqf (Al Nuqud)* towards *Electronic Waqf (E-Waqf)* (KHI, MUI's *fatwa*, and Act No. 41 of 2004) in Indonesia, it can be seen that the cash *waqf* / money through the electronic system is potential for the economic development of the people, if the allotment of endowments in cash Cash *Waqf (Al Nuqud)* via an *Electronic Waqf (E-waqf)* directed at the empowerment productive business people, without reducing the value the principal of the cash *waqf*, then it becomes one of the tools to achieve the purpose of the State, especially creating general welfare of explicit and implicit at the opening of the 1945 passage to the 4th. Given the legal umbrella already allow tertama association with Act No. 11 of 2008 on Information and Electronic Transactions (UU ITE) in Article 1 (2), then the efforts of law development in the allocation of Cash *Waqf (Al Nuqud)* toward *Electronic Waqf (E-waqf)* need for immediate management agency endowments synergized with both government and private institutions, so that efforts to make electronic endowments as one of the bases of strengthening and development of the people can be achieved. Plus bonus demographic and technological developments spread among the Muslim Indonesia, the socialization of Cash *Waqf (Al Nuqud)* via an *Electronic Waqf (E-Waqf)* can be optimized to help the government resolve problems of poverty especially in achieving the welfare of society.

## References

1. Act No. 41 of on *Waqf*, 2004.
2. Al-Hadi Abu, Azam Upaya PEMBERDAYAAN Tanah Wakaf Produktif Bagi Kesejahteraan Ummat, dalam jurnal ISLAMICA, 2009, 4(1).
3. Alimuddin, Aplikasi Pembaharuan Hukum dalam Teori Socio Legal Studies, Dirjen Badan Peradilan, www.badilag.net, Accessed December 26, 2018. (IIUM Malaysia)
4. Altherton, Klemmack dalam, Irawan Soehartono, Metode Penelitian Social Suatu Teknik Penelitian Bidang Kesejahteraan Social Lainnya, Bandung, Remaja Rosda Karya, 1999, 63
5. Budi Agus Riswandi, Aspek Hukum Internet Banking, Jakarta: Rajagrafindo press, 2018, 58.
6. Budi Iman Setya, Revitalisasi Wakaf sebagai, Pengerak Ekonomi Masyarakat, in journal: Al-

- Iqtishadiyah Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah, 2015, 2(2)
7. Dahlan Rahmat, "Faktor-faktor Yang, Memengaruhi Persepsi Nazhir, Terhadap Wakaf Uang". *al-Iqtishad: Jurnal Ilmu Ekonomi Syariah (Online)*, 2015.
  8. Ditjen Bimbingan Masyarakat Islam, Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf dan Peraturan Pemerintah Nomor 42 tahun 2006 tentang Pelaksanaannya, Jakarta: Pustaka Bimas Islam, 2007, 9
  9. Hilmi, Hasbullah, "Dinamika Pengelolaan Wakaf Uang. Studi Sosio-Legal Perilaku Pengelolaan Wakaf Uang Pasca Pemberlakuan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan (Online)*, 2012, 12(2)
  10. Kasdi Abdurrahman, "Potensi Ekonomi Dalam Pengelolaan Wakaf Uang di Indonesia", *Equilibrium: Jurnal (Online)*. Juni, 2014, 2(1):36
  11. Maharsi Sri, Pengaruh Perkembangan Teknologi Informasi Terhadap Bidang Akuntansi Manajemen. *Jurnal Akuntansi dan Keuangan*. 2000; 2(2):127-137
  12. Mohdar Yanlua Maret. "Legalitas Hukum Islam dalam Hukum Nasional", <http://yanluamohdar2010.blogspot.com>, accessed February 25, 2019, Tuesday, 06.03 pm
  13. Syamsul Ma'arif, *Kompilasi Hukum Islam (Hukum Perkawinan, Kewarisan, dan Perwakfan)*, Revisi 2012, Bandung: Nuasa Aulia, 2012, 189
  14. Wahyu Widodo, Gunarto Maryanto. Regulation of Waqf Land Managed By Institution In Indonesia: A Comparative Study, *Journal of Law, Policy and Globalization*, 2017, 63.
  15. Yuliafitri Indri, Arie Indra Rivaldi, Pengaruh Penerapan Prinsip-Prinsip Good Governance dan Promosi terhadap Penerimaan Wakaf Tunai (pada Lembaga Pengelola Wakaf di Indonesia). *Jurnal InFestasi*. 2017; 13(1):89.
  16. <https://act.id/news/detail/wakaf-tunai/uang>, Accessed date. December 28 (IIUM Malaysia), 2018.
  17. <https://wakafkuburansinergifoundation.wordpress.com/tag/pengertian-wakaf/>, Accessed date. December 28, (IIUM Malaysia), 2018.