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Juridical Review of the role of Nazhir and LKS-PWU in Cash Waqf Linked Sukuk According to Law concerning Waqf

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ABSTRACT

The rapid development of technology and economy has spread into waqf sector, by giving convenience to conduct cash waqf transactions. Cash waqf sector in Indonesia has developed and linked into securities sectors. This instrument is called Cash Waqf Linked Sukuk (CWLS). CWLS involves wakif, Nazhir, LKS-PWU, Badan Wakaf Indonesia, Ministry of Religion, Ministry of Finance, and Mauquf Alaih. The peoples involved are larger than conventional cash waqf, specially by dividing General and Special Nazhir. Either general or special Nazhir are having cooperation with LKS-PWU, according to BWI Regulations number 1/2020. This research will analyze the type of contract on General and Special Nazhir cooperation with LKS-PWU.

This research employs normative legal research methods. Normative legal research methods is used to examine the regulations. This research also provides practice regarding the relation between CWLS Nazhir and LKS-PWU. To examine the regulations and practice, this research used Waqf act, implementing regulations, CWLS regulations, and BWI regulations. Besides regulations, this thesis also conducts primary data by interviewing general and special Nazhir regarding the between CWLS Nazhir and LKS-PWU.

The findings of this research shows that General and Special Nazhir are linked to LKS-PWU through various contracts. Based on BWI regulations number 1/2020, CWLS Nazhir and LKS-PWU are linked through cooperation contract. Other types of contract between CWLS Nazhir and LKS-PWU are wadi'ah contracts. Wadi'ah contract occurred from bank account opening from Nazhir in selected LKS-PWU. There could be another type of contract between CWLS Nazhir and LKS-PWU based on shariah investment on waqf funds.

Keywords: aqd; general nazhir; special nazhir; cash waqf linked sukuk.

I. INTRODUCTION

Article 1 Paragraph (3) of the 1945 Constitution explicitly states that Indonesia is a country based on the law. This implies that the law must be able to play a progressive role ahead than humans.[1] The advancement of the role of law is in line with the legal adagium "*het recht hinkt achter de faiten aan*" which means that the law always stumbles in keeping up with the changes and developments of the times. The dynamic role of laws certainly inseparable from other subsystems that form a legal system. One of the subsystems that forms and has a reciprocal relationship with law is the economic sector.

The constitutional basis of Indonesian economic law refers to Article 33 of the 1945 Constitution which emphasizes the principles of family, justice, and economic democracy. These principles are

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[1] Imam Prabowo. "Paradigma Peraturan Mahkamah Agung: Modern Legal Positivism Theory, Teori Hukum Progresif Dan Urgensi Kodifikasinya". 2022. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/paradigma-peraturan-mahkamah-agung-modern-legal-positivism-theory-teori-hukum-progresif-dan-urgensi-kodifikasinya-oleh-imam-prabowo-s-h-19-10>. [accessed 20/08/2024].

similar to the objectives of Islamic financial law. Islamic financial law is closely related to the objectives of fulfilling basic needs, economic stability, and justice in carrying out economic activities by considering the fairness among all.[2] These goals are inseparable from efforts to maintain the sustainability of economic activities in Islamic financial law.

The presence of Islamic financial law in Indonesia is inseparable from the multicultural conditions of society. Based on data from the Central Statistics Agency (BPS) uploaded by the BPS of Samarinda City, 87.2% of Indonesia's population are dominated by Muslim.[3] Islamic financial law is part of muamalah which aims to build harmony in human relations with humans. The goals to of Islamic financial law are not solely focused on worldly goals, but also includes the afterlife goals.[4]

One of the islamic financial sector that has both world and afterlife impacts are reflected in waqf sectors. The word waqf comes from Arabic language which means to hold or stay in place.[5] The word waqf in Arabic contains the meaning of holding property to not being transferred. The meaning of waqf agreed upon by Islamic scholars is to hold waqf assets or physical assets and utilize the results.[6] This meaning is based on the interpretation in viewing the nature of waqf.

The regulation of waqf in Indonesia specifically began since the enactment of Law Number 41 of 2004 concerning Waqf (hereinafter referred to as the Waqf Law). The Waqf Law makes waqf a strategic step to improve the welfare of society as well as the strength of the national economy. The authentic definition related to waqf is contained in Article 1 Number 1 which states:

"Waqf is a legal act of a waqif to separate and/or hand over part of his property to be used forever or for a certain period of time according to his interests for the purposes of worship and/or public welfare according to sharia."

The objects of waqf are not limited to immovable objects. The development of waqf assets are developed in a productive way, that commonly known as productive waqf. Productive waqf can be interpreted as the management of waqf assets to produce benefits given to mauquf alaih as waqf recipients. Productive waqf can be done through cash waqf and securities waqf.[7] Currently, the development of waqf in Indonesia is being intensified in the cash waqf sector, this lies on the doctrine and flexibility of cash waqf with a nominal value that can be adjusted to the standard of living and ability of the waqf.[8]

Productive management of waqf assets is considered a reliable sources of funds to achieve welfare of Muslims. Currently, the innovation of waqf has spread into integration of cash waqf and securities or sukuk. Waqf instrument that is being intensified is the Cash Waqf Linked Sukuk (CWLS)

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[2] Ma'ruf Abdullah, HUKUM KEUANGAN SYARIAH PADA LEMBAGA KEUANGAN BANK DAN NON BANK, Yogyakarta: Aswaja Presindo, 2016,. 114.
[3] Badan Pusat Statistik Kota Samarinda, (2024) "Agama di Indonesia, 2024", <https://samarindakota.bps.go.id/id/statistics-table/1/MzI0IzE=/agama-di-indonesia-2024.html>, [accesed 29/08/2024].
[4] Harrieti, Nun, Lastuti Abubakar, Etty Djukardi, and Neneng Nurhasanah. "Integration of commercial finance and social finance: Challenges of sharia banking in Indonesia." *J. Legal Ethical & Regul. Isses* 23 (2020), 3.
[5] Siska Lis Sulistiani, Wakaf Uang Pengelolaan dalam Hukum Islam dan Hukum Positif Indonesia, Jakarta: Sinar Grafika, 2022, 25.
[6] Sunuwati, S. (2022). Hukum Perwakafan, Sulawesi: IAIN Parepare Press, 10.
[7] Firdaus, S. N. A., Wulani, T. S., Azizah, E. N., & Roziah, D. Q. Analisis Perbandingan Wakaf Uang Dan Wakaf Melalui Uang Di Indonesia. Tahkim. (Jurnal Peradaban Dan Hukum Islam), No 5 Vol 1, 2022.117. <https://ejournal.unisba.ac.id/index.php/tahkim/article/view/9123>. Accesed [20/08/2024]
[8] Rusli, Dodi Yarli, M. Maulana Darsono, Aris Fauzin, Ahmad Hasan Ridwan, and Atang Abdul Hakim. "Perkembangan wakaf uang di Indonesia dampaknya terhadap kemajuan pesantren." *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* No 01 Vol 7, 44.

instrument. CWLS is an instrument that integrates cash waqf and securities, was the first innovation in the world.[9] This integration scheme takes place with cash waqf funds invested in state sukuk.

CWLS involves collaboration between several stakeholders, namely wakif, LKS-PWU, Ministry of Finance, BWI, General and Special Nazhir, and mauquf alaih as recipients of CWLS yields. The CWLS platform was first launched by Sri Mulyani as the Minister of Finance of the Republic of Indonesia, at the International Monetary Fund (IMF) and World Bank Annual Meeting in Bali in 2018, with the first issuance on 2020.[10]

Nevertheless, the peoples involved in CWLS is quite different from conventional cash waqf. Specifically, Nazhir in CWLS are divided into General and Special Nazhir. The dividance of General and Special Nazhir does not exists in conventional Waqf. CWLS also requires Nazhir to cooperate with LKS-PWU. This shows that there is an agreement between the nazhir and LKS-PWU, both general Nazhir and Special Nazhir. The division of general and special nazhir may allows differences authority by both parties. CWLS expands the functions and duties of BWI, the legal basis of which can be found in Chapter VI of the Waqf Law. The authority as referred to in the Waqf Law does not include the authority of BWI as Nazhir, but rather BWI carries out the duties and functions as a Nazhir trainer. The presentation related to the differentiation of the role of Nazhir in CWLS is a bridge to the discussion of the analysis of the role of nazhir in CWLS in Indonesia, Nazhir in this study will be narrowed down to the role and responsibilities of general nazhir and special nazhir in the management and distribution of CWLS yields.

II. RESEARCH METHOD

This research employs normative legal research methodology. Normative legal research defined by Soerjono Soekanto and Sri Mamudji as a legal research method that analyze the problems from secondary data. The sources of secondary data is taken from library materials and legal documents.[11]

The research specifications are conducted with analytical descriptions on the function of CWLS Nazhir and the contract between CWLS Nazhir and LKS-PWU. These research problems will be analyzed according to the laws and regulations. The primary legal sources that will be used in this research is listed as follows:

a. 1945 Constitution of the Republic of Indonesia
b. Law Number 41 of 2004 concerning Waqf (Waqf Act)
c. Law Number 19 of 2008 concerning State Sharia Securities (State Sharia Securities Act
d. Government Regulation Number 42 of 2006 in conjunction with Government Regulation No. 28 of 2015 concerning the Implementation of Law Number 41 of 2004 concerning Waqf (Government Regulation on Implementation of Waqf Act)
e. Regulation of the Minister of Religious Affairs of Indonesia No. 1 of 2022 concerning the Management and Development of Cash Waqf Through Cash Waqf Linked Sukuk (Minister of Religious Affairs Regulation Concerning CWLS)
f. Regulation of the Indonesian Waqf Board Number 1 of 2020 concerning Guidelines for the Management and Development of Waqf Assets (BWI Regulation concerning Management and Development of Waqf Assets)

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[9] Neneng Puspitasari & Khusnul Khotimah. "Cash Waqf Linked Sukuk (CWLS) Dalam Kajian Fatwa DSN MUI Di Indonesia." *Tasyri': Journal of Islamic Law*, No 1 Vol 1, 2022. 172. <https://journal.stai-nuruliman.ac.id/index.php/tsyr/article/view/15>, accessed [15/09/2024]
[10] Neneng Puspitasari & Khusnul Khotimah. "Cash Waqf Linked Sukuk (CWLS)".
[11] Muhaimin, Metode Penelitian Hukum, Cetakan Pertama, Mataram: Mataram University Press, 2020, hlm. 47, <http://eprints.unram.ac.id/20305/1/Metode%20Penelitian%20Hukum.pdf>, accessed [13/06/2024].

This research also used secondary and tertiary legal materials from books and previous research.

III. DISCUSSION AND RESULTS

3.1 The concept and Regulations Cash Waqf Linked Sukuk According to Law of Waqf

According to islamic history, cash waqf gives positive outcome during Islamic Sultanate. Cash waqf practice occurred in Utsmaniyah Sultanate, which uses *istirbah, istıblâl and ribh* in providing financing from the cash waqf itself.[12] The validity of cash waqf is supported by islamic scholars. The validity lies on islamic scholars opinion that cash waqf aims to build economic power. This opinion were supported by Muhammad bin Abdullah al Anshori, some Hanafiyah, Malikiyah, Syafi'iyah and Hanafiyah scholars. One of the hadiths that supports this opinion is the hadith relating to a wells in the city of Medina, which reads as follows:[13]

مَنْ يَشْتَرِي بِئْرَ رُومَةَ فَيَجْعَلَ دَلْوَهُ مَعَ دِ لَاءِ الْمُسْلِمِينَ بِخَيْرٍ لَهُ مِ نْهَا فِي الْجَنَّةِ. فَاشْتَرَيْتُهَا مِنْ صُلْبِ مَالِي

"Meaning: Whoever buys the well of Raumah and makes its bucket with the buckets of the Muslims (to be used), then he will have a better reward in Paradise." (Narrated by Tirmidhi)."

The influence of cash waqf is also waving indonesia. In Indonesia, cash waqf is ruled in Article 16 Waqf Act. Article 16 paragraph 3 of Waqf Act classified cash as moving assets that would not be run out through consumption. Waqf act also regulated the mechanism of cash waqf. The mechanism is ruled in Article 28 - 30 Waqf Act. The main substance of the mentioned article are listed as follows:

a. Involvement of LKS-PWU in cash waqf

The involvement of LKS-PWU is regulated in Article 28 which reads:

"Wakif may waqf movable objects in the form of money through a sharia financial institution appointed by the Minister"

b. Issuance of cash waqf certificates

The issuance of cash waqf certificates as a statement of the will of the wakif is contained in Article 29 which reads:

1. *"Waqf of movable objects in the form of money as referred to in Article 28 is carried out by the Wakif with a written statement of the Wakif's will."*
2. *"Waqf of movable objects in the form of money as referred to in paragraph (1) is issued in the form of a cash waqf certificate."*
3. *"The cash waqf certificate as referred to in paragraph (2) is issued and submitted by the sharia financial institution to the Wakif and Nazhir as proof of the transfer of waqf assets."*

c. Registration of waqf assets

Registration of waqf assets in the form of money after the issuance of the cash waqf certificate is contained in Article 30 which reads:

"Sharia financial institutions in the name of Nazhir register waqf assets in the form of money to the Minister no later than 7 (seven) working days since the issuance of the Cash Waqf Certificate".

The merge of cash waqf linked sukuk is valid, starting from the validity of cash waqf and sukuk. The validity of CWLS has received statement of conformity from DSN-MUI, in Statement Number B-109/DSN-MUI/II/2019 concerning the Statement of Sharia Harmony

[12] Iskandar, Iskandar. "Implementasi Wakaf Uang Pada Masa Kesultanan Utsmaniyah." *Al Hisab: Jurnal Ekonomi Syariah* 1, no. 1 (2020): 4.
[13] BSI Maslahat, "Dari Sumur Tua Ke Hotel: Kisah Wakaf Sumur Utsman Bin 'Affan", < ttps://bsimaslahat.or.id/dari-sumur-tua-ke-hotel-kisah-wakaf-sumur-utsman-bin-affan/>, accessed [07/04/2025]

of Cash Waqf Linked Sukuk.[14] The issuance of CWLS also required Sharia Compliance Statement from DSN-MUI. Throughout the issuance, there has been five Sharia Compliance Statement, that listed as follows:

1. Sharia Compliance Statement from the National Sharia Council – Indonesian Ulema Council (Number B-578/DSN-MUI/IX/2020 dated 29 September 2020)".
2. Sharia Compliance Statement of SBSN Cash Waqf Linked Sukuk (CWLS) Retail by Bookbuilding Method in 2021, from DSN MUI, Number B-285/DSN-MUI/IV/2021, Dated 7 April 2021.
3. Sharia Compliance Statement of SBSN Cash Waqf Linked Sukuk (CWLS) Retail by Bookbuilding Method in 2021, from DSN– MUI, Number B-0263/DSN-MUI/III/2022, Dated 25 March 2022.
4. Sharia Compliance Statement of SBSN Cash Waqf Linked Sukuk (CWLS) Retail by Bookbuilding Method, from DSN– MUI, Number B 0352/DSN-MUI/IV/2023, Dated June 7, 2023.
5. Sharia Compliance Statement of SBSN Cash Waqf Linked Sukuk (CWLS) Retail by Bookbuilding Method, from DSN– MUI, Number B 0246/DSN-MUI/IV/2024, Dated April 18, 2024.

3.2 The concept Aqd According to Islamic Law

Indonesia is an archipelagic country with a population of 278.8 million people and a jurisdictional area of 5,193,250 square kilometers. The land area of Indonesia is 1,916,906.77 square kilometers, consisting of 17,504 islands, while the remaining 3,276,344 square kilometers is maritime territory. The government has not yet succeeded in meeting the needs of telecommunications infrastructure, while private companies do not prioritize expanding networks to sparsely populated rural areas.[15] The government collects Universal Service Obligation (USO)[16] fees from private operators to be used to develop areas that still need ICT infrastructure provision, ICT ecosystem provision, and digital economic ecosystems in remote, isolated, outermost, pioneering, and economically unfeasible border areas, as stipulated in the Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 10 of 2018 on Implementation of Universal Service Obligation for the Telecommunication and Informatics ("**MOCI Reg. 10/2018**").[17]

Furthermore, Article 4 of MOCI Reg. 10/2018 regulates that, the implementation of the telecommunications and information technology USO along with supporting management activities is carried out based on funding from USO contribution to telecommunications and informatics and other legitimate sources in accordance with statutory provisions. However, the accumulated USO funds are insufficient to finance the development of the vast rural areas of Indonesia, resulting in many regions lacking broadband access, crucial for education and the economy in the e-commerce era.[18]

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[14] Fad, Mohammad Farid. "Waqf Linked Sukuk dalam Perspektif Maqashid Syari'ah." *Journal of Islamic Studies and Humanities* 6, no. 1 (2021): 56.
[15] Oki O and Lawrence MO, 'Cost-Effectiveness of Fibre Optic Technology Deployment in Rural Area' (2022) 13 Journal on Innovation and Sustainability RISUS 111
[16] Aldiano D and Simatupang DPN, 'Obligation to Pay Telecommunications Operation Rights Fees and Contribution of Universal Service Obligations for The Palapa Ring Project by The Palapa Ring Project Implementing Business Entity' (2022) 11 Legal Brief 2914
[17] Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 10 of 2018 on Implementation of Universal Service Obligation for the Telecommunication and Informatics.
[18] Muda I and Erlina E, 'Sustainable HR Development to Support Successful Implementation of Offline Accounting Apps by Rural Enterprises in Indonesia' (2020) 13 Journal of International Studies 70

Starlink can operate without utilizing the national telecommunications network from the configuration of its network. This represents a technological advancement in satellite technology but threatens the existence of conventional telecommunications operators because bypassing their networks means avoiding interconnection fees. The loss to national operators does not just impact the particular operator but has broader repercussions, affecting the workforce and all economic stakeholders supporting the telecommunications industry. Ultimately, this results in financial losses for the country due to the potential reduction in the telecommunications industry's contribution to the national budget. Such a scenario is also inconsistent with the principles of utilizing the country's economic resources as stipulated in Article 33 of the 1945 Constitution and the principle of self-reliance as stated in the Telecommunications Law.[19] In line with the International Telecommunication Union (ITU) constitution, Indonesia exercises sovereignty over its telecommunications.[20] The national telecommunications market is governed by laws[21], and policies formulated by the government are based on Indonesia's national interests. Therefore, all telecommunications providers in Indonesia must comply with Indonesian telecommunications laws and their implementing regulations.

Starlink and other mega satellite constellations that can operate in the Indonesian market by providing direct from satellite high-quality internet access to the Indonesian public. Because it is technically bypassing the national telecommunications network it becomes challenging from the perspective of law and regulation. Law enforcement remains complex to any legal events occurring within these foreign operator networks. Crimes or violations occurring on the OTT platforms using Starlink's network would be challenging to prosecute since they are foreign-owned networks.

3.3 The concept Aqd According to Islamic Law

The word aqd comes from Arabic word *"al-Aqd*" which means agreement, engagement, contract, relationship and guarantee. The scholars divide the meaning of al-aqd into two parts, namely general meaning and special meaning. The general meaning of the *al-aqd* means obligations and bonds carried out either by one or both parties. While the specific meaning of the word *al-aqd* means a bond between two ends.

According to hanabilah, shafi'iyah, and hanafiyah theology, the meaning of contract is defined as the determination of both parties entering into a contract or vow to do something that begins with a consent to make an agreement. While the meaning of contract in Indonesia is referring to the definition from the compilation of sharia economic law. Aqd defined as an agreement made by two or more parties to carry out and/or not carry out certain legal acts. The term Aqd in Indonesia is widely known as contract.

Contracts in sharia economic law are divided into two parts, namely the *tabarru* contract and the *tijarah* contract. Tabarru comes from the word *tabarra'a yatabarra'u-tabarruan* which interpreted as grant, donation, fund, virtue, and charity. The terminological definition of *tabarru* is giving something to someone else voluntarily, without compensation. *Tabarru* results in the transfer of property to the intended person. The important point in the *tabarru* contract is the absence of a compensation to the recipient. This makes the nature of the *tabarru* contract *ta'awun* and *tadhamun,* related to willingness. One of the verse in Al-quran concerning about Aqd could be found in Surah Al-baqarah:177, that is written as follows:

[19] Law of the Republic Indonesia Number 36 of 1999 on Telecommunication.
[20] ITU, *Collection of the Basic Texts of the International Telecommunication Union Adopted by the Plenipotentiary Conference – Edition 2023 (ITU Publications 2023)*
[21] Law of the Republic Indonesia Number 36 of 1999 on Telecommunication.

لَيْسَ الْبِرَّ اَنْ تُوَلُّوْا وُجُوْهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلٰكِنَّ الْبِرَّ مَنْ اٰمَنَ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ وَالْمَلٰۤىِٕكَةِ وَالْكِتٰبِ وَالنَّبِيّٖنَۚ وَاٰتَى الْمَالَ
عَلٰى حُبِّهٖ ذَوِى الْقُرْبٰى وَالْيَتٰمٰى وَالْمَسٰكِيْنَ وَابْنَ السَّبِيْلِۙ وَالسَّاۤىِٕلِيْنَ وَفِى الرِّقَابِۚ وَاَقَامَ الصَّلٰوةَ وَاٰتَى الزَّكٰوةَۚ وَالْمُوْفُوْنَ بِعَهْدِهِمْ اِذَا
عَاهَدُوْاۚ وَالصّٰبِرِيْنَ فِى الْبَأْسَاۤءِ وَالضَّرَّاۤءِ وَحِيْنَ الْبَأْسِۗ اُولٰۤىِٕكَ الَّذِيْنَ صَدَقُوْاۗ وَاُولٰۤىِٕكَ هُمُ الْمُتَّقُوْنَ ١٧٧

Meaning: Righteousness is not in turning your faces towards the east or the west. Rather, the righteous are those who believe in Allah, the Last Day, the angels, the Books, and the prophets; who give charity out of their cherished wealth to relatives, orphans, the poor, ⌜needy⌝ travellers, beggars, and for freeing captives; who establish prayer, pay alms-tax, and keep the pledges they make; and who are patient in times of suffering, adversity, and in ⌜the heat of⌝ battle. It is they who are true ⌜in faith⌝, and it is they who are mindful ⌜of Allah⌝.

Tabarru contract divided into various type of contract, that listed as follows:[22]

a. Wadiah

Wadiah is simply defined as a deposit. Wadiah contract means the safekeeping of goods or services to a party entrusted. The receiving party is in charge to maintain the safety, security and integrity of the goods entrusted.

b. Wakalah

Wakalah is a contract where muwakkil giving authority of them to the wakil or receiving party. Wakalah can be interpreted as assistance to act in doing something, to be done by another person.

c. Qard

Qard is simply defined a loan agreement with a predetermined time limit, without expectation, interest, or any reward.

d. Rahn

Rahn is a loan agreement with collateral. The guarantee as intended acts as a condition for the loan. Generally, a rahn contract is known as a gadai contract.

e. Hiwalah

Hiwalah is the provision of loans to other parties. This loan transfer aims to transfer the debitors debt to be paid by capable party. This type of contract cannot be separated from the aim of freeing the debtor from difficulties.

f. Kafalah

Kafalah is a contract of giving collateral by one party to another party.

g. Hibah

Hibah is a contract of giving something for free. The object of hibah is ownership of something during life, given without asking for compensation. According to Imam Qudamah from Umar that the validity of the Hibah is not required by a statement of acceptance from the recipient of the gift.

h. Waqf

Terminologically, waqf is defined as holding an object that is eternal in its physical and substance. Waqf is included in the type of gift contract, with the designation of which is useful for public benefit.

While the tabarru contract is related to giving, voluntary and willingness, Islamic financial law also regulates contracts related to muamalah and commercial. This contract is known as tijarah contract. Tijarah contract is defined as the type of contracts that are used for commercial purposes. Based on the level of certainty of the the outcome, the tijarah contract is divided into two groups, namely the Natural

[22] Rafsanjani, Haqiqi. "Akad Tabarru'Dalam Transaksi Bisnis." *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah* 1, no. 1 (2016), 120.

Uncertainty Contract and the Natural Certainty Contract. The division of each type of contract is as follows:[23]

Table 1. the Natural Uncertainty Contract and the Natural Certainty Contract

No.	Natural Certainty	Natural Uncertainty
1.	Al-murabahah Murabahah is a contract for the sale and purchase of goods. The price determination in the murabahah contract is count by adding profit that has been agreed by the parties.	Musyarakah Musyarakah is a cooperation agreement between two or more parties to conduct a certain business. Each party contributes funds with the benefits and risks to be joint together according to the agreement. The musyarakah contract is not limited to funds, but also can be perform by giving service. This service inclusion is known as syirkah abdan, as a form of mixing skills between the parties.
2.	Salam Salam is a type of contract for ordering goods with payment in advance. The salam contract in short can be interpreted as a contract with a down payment system. Ordering goods in the salam contract has been required and determined to be delivered on a determined date.	Muzara’ah Muzara'ah is a partnership contract that is practically used in agricultural sector. The form of the muzara'ah contract is the uncertainty of wage payments, because workers will be paid with agricultural products that are not certain or uncertain in number.
3.	Istishna Istishna is a type of sales contract between the buyer and the manufacturer of goods through an order. The manufacturer of goods is obliged to fulfill the buyer's order according to the specified specifications. Payment in the istishna contract can be made in advance, through installments, or deferred until a predetermined time limit.	Musaqah Musaqah is a cooperation or association contract in the agricultural sector to obtain fruit or its results. One party owns the tree, while the other party works on it
4.	Ijarah Ijarah is a contract for the transfer of the right to use goods or services by means of rent. The ijarah or lease contract is not followed by the transfer of ownership of the goods or services. The ijarah contract can also be combined with a sale and purchase contract, or known as a hire-purchase contract system. The hire-purchase contract allows for the transfer of ownership of goods. The transfer of ownership of the goods by the lessee takes place at the end of the rental period.	

3.4 The Role of Nazhir and LKS-PWU according to CWLS Regulations

Nazhir, as ruled in Article 9 Waqf Act is divided in three classifications, namely individual Nazhir, organizational Nazhir, and legal entities Nazhir. The requirements of individual Nazhir,

[23] Afkar, Taudlikhul, Grahita Chandrarin, and Lilik Pirmaningsih. "Moderation of Non Performing Financing on Natural Uncertainty Contracts To The Profitability of Islamic Commercial Bank In Indonesia." *International Journal of Economics, Business and Accounting Research (IJEBAR)* 4, no. 02 (2020), 333.

organizational Nazhir, and legal entities Nazhir has been ruled in article 10. Nevertheless, every Nazhir must followed the requirements in Article 9 paragraph 1, that listed below:

a. Indonesian citizen;
b. Muslim;
c. adult;
d. trustworthy;
e. physically and mentally capable; and
f. not hindered from carrying out legal acts.

The role of nazhir has been ruled in Article 11, that listed as follows:

Nazhir has the following duties:

a. administering waqf assets;
b. managing and developing waqf assets in accordance with their purpose, function, and designation;
c. supervising and protecting waqf assets;
d. reporting on the implementation of tasks to the Indonesian Waqf Board

Article 9 - 11 shows clearly the classification and rule of Nazhir. From the previous article, it shows that the Waqf Act divided Nazhir into individual Nazhir, organizational Nazhir, and legal entities Nazhir.

In CWLS, the classification of Nazhir are different from Waqf Act. The involvement of Nazhir in CWLS is divided into two, namely general nazhir and special nazhir. The legal basis of distinction can be found in Article 17 of BWI Regulation Number 1 of 2020, which reads:

"Management of Cash Waqf to purchase State Sukuk can be carried out by BWI as a general Nazhir and/or Nazhir other than BWI as a special Nazhir."

The requirement of specific nazhir aforementioned, lies in Article 17 paragraph 3, which requires:

a. letter of application addressed to the Head of BWI;
b. photocopy of proof of Nazhir registration;
c. current Nazhir profile;
d. report on collection and management of Cash Waqf and distribution of results of management of Cash Waqf submitted to BWI; and
e. stamped statement letter on compliance with the Basic Principles of Waqf.

This provision shows that Nazhir in CWLS does not solely depends on the requirements of Individual Nazhir. The requirements of CWLS Nazhir also lies on cash waqf management reports and a statement of compliance with the Waqf Core Principles.

BWI Regulation Number 1 of 2020 also regulates cooperation between Nazhir and LKS-PWU. This provision is contained in Article 18 paragraph (1), which reads:

"Nazhir Waqf Uang Link Sukuk cooperates with LKS-PWU and opens a Waqf Uang account at LKS PWU"

The relationship between Nazhir and LKS-PWU in CWLS could be found in various aspects. Based Ministerial Regulation concerning CWLS, LKS-PWU in CWLS acts as CWLS Nazhir's distribution partner. LKS-PWU as Nazhir's distribution partner held a role in administrative function. These function are ruled in Article 4 paragraph (3) of the Ministerial Regulation concerning CWLS, which contains:

a. administering the type, nominal waqf, and other documents submitted by the Wakif;
b. issuing and sending Akta Ikrar Waqaf (AIW) or Cash Waqf and SWU forms to the Wakif with copies to BWI and the ministry that organizes government affairs in the field of religion; and

c. registering Cash Waqf with the Minister on behalf of BWI as Nazhir.

Through the provisions aforementioned, it can be concluded that there are various contracts that occured between Nazhir and LKS-PWU. The first contract is reflected in the cooperation as regulated in Article 18 of BWI Regulation Number 1 year 2020. The concept of cooperation contract is similar to musharakah contract. The musharakah contract is a type of cooperation contract between two or more parties to conduct a certain business.[24] Both parties contribute, either through funds or service participation. The musharakah contract with service participation is known as syirkah abdan. Definitively, syirkah abdan is an agreement made by two or more people using labor or expertise without any capital/assets remaining as services.

The second contract refers to the type of contract mentioned in the Government Regulation on Implementation of Waqf Act. As stated in Article 25 letter c, LKS-PWU had a role in with placing waqf money into a deposit account (wadi'ah) in the name of the Nazhir which appointed by the Wakif. The placement of waqf funds takes place by placing the waqf funds into a deposit account in the name of the nazir. This placement contract is known as the wadi'ah contract.

According to the scholar Al-Jaziri, the wadi'ah contract is a contract between one person and another party by entrusting their goods or assets to be properly guarded, in accordance with the owner's habits transparently or with a signal that has the same meaning. The principle of wadi'ah can be found in the MUI Fatwa on savings, with various principles:

1. It is in the form of savings.
2. Savings can be withdrawn at any time or based on agreement.
3. There is no required reward, except in the form of a voluntary gift ('athaya) from the bank.

3.5 Cooperation Between Nazhir and LKS-PWU according to Best Practice

The parties in CWLS are bound from the collection of waqf funds to the distribution of CWLS. The relationship between the parties is reciprocal. This reciprocal relationship is reflected in the relationship between LKS-PWU and the Nazhirs. As aforementioned, the Nazhir in CWLS are divided into two types of nazhir. The role of each Nazhir are held by different parties. The function of general nazhir is held by BWI, with LK-BWI as the operator. CWLS expands the functions and duties of BWI, the legal basis of which can be found in Chapter VI of the Waqf Law. The authority as referred to in the Waqf Law does not include the authority of BWI as Nazhir, but rather BWI carries out the duties and functions as a Nazhir trainer.

The establishment of LK-BWI is ruled in Article 6 of the Regulation of the Chairperson of the Indonesian Waqf Agency Executive Board Number 1 year 2021 concerning the Nazhiran of the Indonesian Waqf Agency, which reads:

> *"In terms of carrying out the duties and authority to manage, develop waqf assets on a national and international scale, BWI can form a Nazhiran Institution, Foundation and Limited Liability Company."*

LK-BWI as a Nazhir institution has an orientation in optimizing the collection of cash waqf. The waqf collection strategy owned by LK-BWI is carried out through the Berkah Waqf site.[25] Berkah Waqf has various productive waqf programs that can be chose according to the interests of the wakif. The second strategy is carried out through collaboration with the Ministry of Finance, by CWLS instrument. CWLS is a retail strategy used by BWI to approach institutions that have managed waqf funds. The

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[24] Hasanah, U., & Ichfan, H. (2021). Aplikasi Pembiayaan Akad Musyarakah Pada Perbankan Syariah. *Muhasabatuna: Jurnal Akuntansi Syariah*, *3*(1), 2.

[25] BerkahWakaf, <https://donasi.online/mp/berkahwakaf-hub/berkah-wakaf/program>, accessed [15/03/2025]

yield form retail CWLS are intended for social, religious, health, and educational purposes. Apart from retail CWLS, LK-BWI also received waqf funds by private placements.[26]

Private placements of waqf funds mainly come from educational institutions. Based on ongoing practices, placement of waqf funds through the private placement method has been done Sepuluh Nopember Institute of Technology, Bogor Agricultural Institute, West Java State Universities, Padjadjaran University, Telkom University, and the Terbuka University.[27]

Waqf funds placed by these educational institutions are managed by LK-BWI through CWLS. The utilization and distribution of funds are also adjusted according to the purpose of tri dharma in higher education institution. One of the waqf fund development done by LK-BWI was carried out in collaboration with the Solidarity of Alumni of the People's Animal Husbandry School (SASPRI) IPB. This collaboration took place on CWLS series 003.[28] The distribution of yields was aimed for procurement of cows during Eid al-Adha. The profit of the farming was divided according to the agreement with the farmers. The profit-sharing agreement was given with a percentage of 65% for the farmers, 35% was given to the IPB Business and Waqf Investment Agency (BISWAF).[29]

In addition to educational institutions, private placements received by LK-BWI also came from the YASIS Hospital Foundation and the Ministry of Religion's ASN Cash Waqf. Placement of funds through private placement, especially by educational institutions, was preceded by an agreement with BWI. This agreement was held with the aim that the use of funds would be directed to the tri dharma of higher education.[30]

There is not much differences between the role of General Nazhir and the Special Nazhir. The special Nazhir mentioned in BWI Regulation Number 1/2020 is a Nazhir other than BWI. The Nazhir other than BWI that will be analyzed is the Dompet Dhuafa Republika Foundation as Special Nazhir in CWLS. Nazhir Dompet Dhuafa has existed in the management of CWLS series 001. CWLS series 001 was the first issuance of CWLS, by private placement from wakif. The majority of wakif of CWLS 001 comes from institutional wakif. The yield of CWLS 001 were used for the management of Achmad Wardi Hospital that is located in Serang, Banten. Nazhir Dompet Dhuafa held a role in managing Achmad Wardi Hospital, with a musharakah agreement between BWI and Nazhir Dompet Dhuafa.[31] Besides the CWLS series 001, Nazhir Dompet Dhuafa also have its own projects. The projects initiated by Dompet Dhuafa are no different from other Nazhirs. The projects initiated still focused on social, religious, health, and education projects.

The basis for the dividance of General Nazhir and Special Nazhir is based on the desire of the Indonesian Waqf Board to carry out a coordination function on CWLS. However, this goal has not]optimally implemented. In current implementation, there is no significant difference between the duties of general and special Nazhirs. Although LK-BWI is under BWI, there is no difference in treatment between LK-BWI and other Nazhirs. Both Nazhirs still have the obligation to report CWLS returns, as stated in Article 18 paragraph (3) of BWI Regulation Number 1 of 2020. The reports made by these Nazhirs are addressed to BWI, the Ministry of Religion, and Wakif.

Nazhir in carrying out his duties has a relationship with LKS-PWU as a distribution partner. The selection and pairing of LKS-PWU distribution partners with Nazhir CWLS has been determined directly by the Ministry of Finance. The pairing of Nazhir and LKS-PWU can be seen on pictures below:

[26] Primary sources from Interview with Badan Wakaf Indonesia on 27 February 2025
[27] Primary sources from Interview with Badan Wakaf Indonesia on 27 February 2025
[28] Primary sources from Interview with Badan Wakaf Indonesia on 27 February 2025
[29] Primary sources from Interview with Badan Wakaf Indonesia on 27 February 2025
[30] Primary sources from Interview with Badan Wakaf Indonesia on 27 February 2025
[31] Primary sources from Interview with Dompet Dhuafa Republika Foundation Indonesia on 4 February 2025

Picture 1. The Pairing of Nazhir and LKS-PWU

Nazhir Sukuk Wakaf Seri SWR005	Contact Center	
PT Bank Syariah Indonesia, Tbk.		
BSI Maslahat	Telp	021-23599040/08111888465
Alamat : Jl. Surabaya No 58 RT 001 RW 07 Kec. Menteng, Kel. Menteng, Jakarta Pusat, Kode Pos 10310	Email	kotaksurat@bsimaslahat.or.id
No. Rek. : 7180048008 Pemilik Rek. : BSI Maslahat Nama Bank : PT Bank Syariah Indonesia, Tbk	Website	bsimaslahat.or.id
PT Bank Muamalat Indonesia, Tbk.		
Baitulmaal Muamalat Alamat : Ruko Mitra Matraman Blok A1/27, Jalan Matraman Raya, Kebon Manggis, Matraman, Jakarta Timur 13150	Telp	021-8591 8138 WhatsApp 0856-9504-1308 / 0851-7158-1180
	Email	kholid.abdillah@bmm.or.id totok.hadi@bmm.or.id
No. Rek. : 3400.999.999 Pemilik Rek. : Baitulmaal Muamalat Nama Bank : Bank Muamalat	Website	www.bmm.or.id www.ayowakaf.com
PT Bank Mega Syariah		
Badan Wakaf Indonesia (BWI)	Telp	021- 87799232, 87799311
Alamat : Gedung Bayt Al-Quran Lantai 2 Jl. Pintu Utama Taman Mini Indonesia Indah, Jakarta 13560	Email	bwi@bwi.go.id kenazhiran@bwi.go.id
No. Rek. : 1000028800 Pemilik Rek. : Badan Wakaf Indonesia Nama Bank : Bank Mega Syariah	Website	www.bwi.go.id www.berkahwakaf.id
PT Bank KB Bukopin Syariah		
LEMBAGA WAKAF MAJELIS ULAMA INDONESIA (LWMUI)	Telp	(081)2111577 (0812)11157767
Alamat : Jl. Proklamasi 51 Jakarta Pusat	Email	mui.wakaf@gmail.com
No. Rek. : 88.034.631.08 Pemilik Rek. : Lembaga Wakaf Majelis Ulama Indonesia Nama Bank : PT Bank KB Bukopin Syariah	Website	wakafmui.org
Majelis Pendayagunaan Wakaf PP Muhammadiyah	Telp	081381111979
Alamat : Gedung Dakwah Muhammadiyah, Jalan Menteng Raya Nomor 62 Jakarta 10340	Email	mpwppmuhammadiyah@gmail.com
No. Rek. : 88.119.110.12 Pemilik Rek. : MPW PP Muhammadiyah Nama Bank : PT Bank KB Bukopin Syariah	Website	https://muhammadiyah.or.id/majelispendayagunaan-wakaf/
PT Bank CIMB Niaga, Tbk. (CIMB Niaga Syariah)		
Yayasan Dompet Dhuafa Republika	Telp	+62 21 7821292 Fax: +62 21 7821333
Alamat : Kantor Pusat (PHILANTHROPY BUILDING) Jl. Warung Jati Barat No.14 Jakarta Selatan 12540	Email	layandonatur@dompetdhuafa.org
No. Rek : 860004734900	Website	www.dompetdhuafa.org

Source(s): CWLS Information Memorandum 005

The pairing of Nazhir and LKS-PWU Distribution Partners remains fixed and permanent. The contract between Nazhir and LKS-PWU as Distribution Partners takes place by opening a wadiah account, which resembles wadiah aqd. Based on the practice carried out by General Nazhir LK-BWI with LKS-PWU distribution partners of Bank Mega Syariah, the contract used depends on the account opening contract. The account opening is carried out using a wadi'ah contract with a current account type. If the amount of funds is too large, the funds will be transferred to a deposit account. When funds are transferred to a deposit account, the fund placement contract can change to a mudharabah contract.[32]

In addition to the fund placement contract, there are other types of contracts that connect Nazhir and LKS-PWU in collecting and distributing CWLS returns. Both parties are connected in a cooperation contract, with an agreement stated in the form of an MoU. This is based on the practices carried out by Nazhir Dompet Dhuafa and LKS-PWU, CWLS distribution partners. Through this agreement, the parties have rights and obligations in managing CWLS returns. This joint program agreement also provides moral implications for LKS-PWU and Nazhir, which to support national development of waqf.[33] This implication is implemented through education and socialization carried out by both parties related to CWLS.

[32] Primary sources from Interview with Badan Wakaf Indonesia on 27 February 2025
[33] Primary sources from Interview with Dompet Dhuafa Republika Foundation Indonesia on 4 February 2025

IV. CONCLUSION

The arrangement of the agreement between Nazhir CWLS has been explicitly and clearly stated in the Regulation of the Indonesian Waqf Agency Number 1 of 2020. The agreement is stated with the type of cooperation agreement between Nazhir and LKS-PWU in collecting, distributing, and educating and developing waqf in Indonesia.

The duties of Nazhir in CWLS are not much different from the function of Nazhir in cash waqf. The difference in Nazhir's duties in CWLS lies in the involvement of LKS-PWU as a distribution partner of CWLS. LKS- as a distribution partner of Nazhir plays a role in administrative tasks. These administrative tasks include administering the nominal waqf, issuing the AIW, and registering cash waqf with the minister. Though both parties are bond within cooperation agreement, cooperation agreement is not similar to the concept of musharaka. The cooperation between Nazhir CWLS and LKS-PWU does not have the potential for loss as in the concept of musharaka. The cooperation agreement between CWLS and LKS-PWU does not only concern the relationship between Nazhir and LKS-PWU in the functions and duties in CWLS, but rather, this agreement also concerns moral obligations in the development of national waqf.

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