

## Comparative Analysis of Waqf Link Governance of Sukuk (CWLS) Money to Finance Infrastructure in The Perspective Studies of Law Number 41 of 2004 and Sharia Economic Law Study

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### Abstract

Sukuk-waqf is an innovation for economic sustainability, overcoming the humanitarian funding gap, for charitable fundraising or humanitarian purposes, and a modern scheme for developing waqf assets. CWLS is a cash waqf program resulting from collaboration and innovation in Islamic finance and social investment in Indonesia. The existence of CWLS contributes to the development of the Islamic economy in Indonesia. This shows that the capacity of the sharia economy is broad and makes a contribution to national development. The approach in this study uses a Socio-Legal and Hermeneutic approach. In Law 41 of 2004 concerning Waqf related to Financing it is explained in Article 59, namely in carrying out BWI duties, the Government is obliged to assist with operational costs. CWLS is allowed because it is in Law Number 41 of 2004 and clarified by Law number 42 of 2006. In the governance of the implementation of CWLS in Indonesia it has been carried out in accordance with an Islamic economic perspective, it has been proven that the DSN-MUI Fatwa regarding Wakaf Sukuk has been established. CWLS governance for infrastructure financing from the perspective of sharia economic law concluded that the basic concept of waqf in Islam has been understood, and more than that, in practice many waqf assets will be found in Indonesia, this is in accordance with Syatibi's theory, namely hifdzul mal. Management and Development of CWLS regarding cash waqf procedures as set out in Article 3.

**Keywords:** *cwls; infrastructure financing*

### INTRODUCTION

Islam as a complete teaching (Ahyani et al., 2021), has a solutive economic concept including making zakat and waqf as part of the state's revenue sources (Ahyani et al., 2022). Islam has the concept of economic empowerment of the people (Ahyani & Nurhasanah, 2020), namely by maximizing the role of community economic empowerment institutions such as waqf and zakat (Ahyani et al., 2022). According to M. Anton Athoilah, in Islamic philanthropy, zakat can alleviate poverty (Athoillah, 2013). Apart from zakat, it is waqf, and this waqf is one of the Islamic ways of alleviating poverty and also increasing people's welfare (Athoillah, 2013). Waqf is holding assets that can be benefited for the benefit of many people over a long period of time, with the aim of getting closer to Allah SWT (Rizal et al., 2020).

Waqf has played an important role throughout the history of Islamic civilization. In the past, sukuk have been used for international trade in Muslim areas in the Middle Ages as a check of acknowledgment or a document or letter of obligation for someone requesting a deferral of time from a certain party. Currently, waqf and sukuk have evolved into a new instrument known as sukuk-waqf. Sukuk-waqf is an innovation for economic sustainability, a panacea in overcoming gaps in humanitarian funding, a brand for charitable fundraising or humanitarian purposes, and a modern scheme for developing waqf assets. There are two types of sukuk-waqf, namely sukuk linked waqf and waqf linked sukuk. In modern Islamic economics, both have three functions, namely as an investment function, to support money circulation, and as a tool to achieve sustainable development (Musari, 2019). Zakat and waqf are instruments of economic development. Empowerment and management in a coordinated manner between the government and the community make a positive contribution to the economic development of Muslims (Urif et al., 2019).

Empowerment of the people's economy through philanthropic programs is indeed quite proud in Indonesia (Muhyiddin et al., 2023), because today's sharia economy is able to boost the people's economy. In sharia economic law, what is important to uphold is sharia goals (maqasid sharia) (Mutmainah, et al., 2022). Sharia economic products such as the use of cash waqf for the needs of poor families are also used as a fundamental reason for maqashid in Islam (Firdaus, 2011).

Historically, waqf has existed since the time of Rasulullah SAW before moving to Medina, then continued by Umar Bin Khatab. And History records that in the golden era of Islam in the 8th to 15th centuries it could not be separated from the role of Waqf as an element of the people's economy. Because Waqf is one of the Islamic philanthropies that has succeeded in escorting Islamic civilization to glory (Kamarubahrin et al., 2018). The existence of waqf needs to be developed because historically related to waqf, a Muslim can develop a broader perception of waqf (Quddus et al. 2023). Waqf is one of the Islamic social institutions that is closely related to the socio-economic community. Even though it is an Islamic institution whose law is sunnah, this institution can develop well. This can be seen from the many places of worship, schools, tombs, and others that come from waqf objects.

Waqf was previously regulated in laws and regulations that specifically regulate waqf, namely Government Regulation No. 28 of 1977 concerning Waqf of owned land and Regulation of the Minister of Religion No. 1 of 1978 concerning Regulations for Implementing Government Regulation No. 28 of 1977 concerning Waqf of owned land. With the enactment of Law Number 41 of 2004 concerning Waqf, it is hoped that the utilization of waqf objects is in accordance with the sharia economic system which is currently being promoted. It is hoped that waqf assets will become a source of funding for the development of an Islamic economy that can prosper Muslims (Faudji et al., 2020).

Based on the waqf principle, an innovative waqf product was created, namely cash waqf, namely waqf that is not only in the form of property but waqf with funds (money) in cash. Efforts

to revitalize the waqf element to provide various kinds of economic benefits require a breakthrough in thinking about this concept which is in accordance with existing developments but does not leave sharia elements behind. In Indonesia, the application of cash waqf was legalized by the Fatwa Commission of the Indonesian Ulema Council (MUI) on May 11, 2002 and in 2004 it became Law number 41 concerning Waqf. With the largest Muslim population in the world, the potential for cash waqf in Indonesia is quite large (Badan Wakaf Indonesia, 2019).

Cash waqf has been implemented since the beginning of the second Hijri century. Imam az-Zuhri (died 124 H), one of the leading scholars and the founder of *tadwin al hadith*, stated that *dinar* and *dirham* endowments were recommended for the development of *da'wah*, social and educational facilities for the Islamic community (Prastyo et al., 2021). As for how to invest it, then distribute the profits as waqf. In fact, the opinion of some scholars of the *al-Shafi'i* school also allows cash waqf. The Hanafi school also allows cash waqf funds to be used for *mudharabah* investments or other profit-sharing systems. The number of poor people based on monthly per capita spending in Indonesia reached 27.76 million people, equivalent to 10.70 percent of the population in the December 2016 quarter. This then opened up opportunities for Islamic financial instruments to develop, one of which is philanthropic institutions such as waqf.

Currently, the development of nascent *sukuk* and the unique nature of waqf to be involved in such a structure is an interesting development to explore. There are three best practices for issuing waqf-*sukuk* in the world, namely in Saudi Arabia, Singapore and New Zealand. In Duzbakar (Omer, 2006), Shabana Hasan (Hasan, 2020), Shamsiah Bte Abdul Karim (Karim, 2010), described the *al-intifa'* *sukuk* as an innovative instrument for developing waqf since early 2000. In Makkah, King Abdul Aziz Waqf (KAAW) has developed a high-rise multiplex named Zam Zam Tower, which is located near Masjid Al-Haram. KAAW acted as *nazir*. *Nazir* is the body that collects waqf property from the *waqif* and also manages the property. KAAW for the two Holy Mosques own land adjacent to the Grand Mosque. The waqf has leased land to the Binladin Group under a Build-Operate-Transfer (BOT) concession contract for 28 years. In addition, Fitrianto's research also provides an overview of the prospects for *sukuk* as a disaster mitigation instrument (Fitrianto, 2012).

Based on MUI Fatwa No. 29 concerning Cash Waqf which was stipulated on May 11, 2002, Cash Waqf is defined as waqf made by a person, group of people, institution or legal entity in the form of cash, with the meaning of money including securities. The legal cash waqf is *jawaz* (permissible) and can only be channeled and used for things that are permitted by *syar'i*. The principal value of Cash Waqf must be guaranteed for its sustainability, it may not be sold, donated, or inherited (Ali, 1994, p.379).

The shift in the form of waqf assets or objects to become more liquid, such as money, has had a broad impact. This shift has been able to change old views and habits, where it seemed as if the opportunity to do waqf could only be through fixed assets in the form of land or buildings. Another change is that the old view that waqf must be of great value has disappeared. With the form of money, waqf can be done with a certain small value, which of course becomes more

feasible for all groups. The existence of government support in the form of the issuance of Law No. 41 of 2004 concerning Waqf, one of the contents of which accommodates the implementation of cash waqf, has increasingly opened opportunities for people of all groups (not only the rich) to be able to participate in waqf. State Sharia Securities, hereinafter abbreviated as SBSN or may be called State Sukuk, are state securities issued based on shari'ah principles, as evidence of the equal share of SBSN assets, both in rupiah and foreign currency. SBSN Assets are SBSN financing objects and or State-Owned Goods that have economic value, in the form of land and/or buildings which are used as the basis for SBSN issuance in the framework of SBSN issuance (UU No. 19, 2008).

Furthermore, with the issuance of the Indonesian legal basis, namely Law no. 41 of 2004 concerning Waqf and Law no. 19 of 2008 concerning State Sharia Securities (SBSN) also supports the Cash Waqf Linked Sukuk (CWLS) instrument so that its legality can be accounted for. Referring to DSN-MUI Fatwa No. 131/DSN-MUI/X/2019 concerning Waqf Sukuk is the impetus for issuing CWLS based on sharia principles, where there are provisions governing the implementation of transactions in this sukuk-based waqf. These provisions consist of legal provisions, general provisions, contract provisions, provisions related to Nazhir, to provisions related to the sukuk mechanism.

At the same time, this can encourage product development in the Islamic financial market which has the goal of optimizing waqf assets and yields on sukuk for religious purposes as well as general welfare. The problem that then arises is that popular waqf is limited to issues of land and buildings that are utilized for burial grounds, schools, mosques, and so on, while cash waqf or movable objects that can be used for the benefit of self-help, independent economy, small people, research, hospitals are not widely known. the general public so that the great potential of existing cash waqf has not been maximized. In order to manage non-productive waqf to become non-productive, a lot of funds are needed, therefore an alternative funding through the Islamic financial market, namely sukuk, is needed. In this case the issuer of the sukuk is the government through the ministry of finance with the SWR001 series.

Cash Waqf Linked Sukuk is a term cash waqf program resulting from collaboration and innovation in Islamic finance and social investment in Indonesia. Developed to support the Islamic financial market to collect Islamic social funds and encourage a variety of Islamic bank businesses as well as a variety of SBSN instruments. (Directorate of Sharia Financing, Directorate General). The Urgency of Issuing Cash Waqf Linked Sukuk The government through the Ministry of Finance stated the urgency of issuing CWLS among others to:

1. Strengthening the Economic Capacity of Islamic Finance. The existence of CWLS contributes to the development of the Islamic economy in Indonesia. This shows that the scope or capacity of the Islamic economy is broad and can make a contribution to national development.

2. Institutional Strengthening of National Waqf Management. The existence of CWLS provides new activities or innovations in developing waqf management in Indonesia. CWLS is expected to be able to increase the collection of waqf funds and make it more productive for the benefit of the people.
3. Support for the achievement of SDGs. SDGs are Sustainable Development Goals which are a global action plan agreed upon by world leaders to end poverty and end inequality and optimize environmental protection. The results of CWLS can be used as social activities and development of waqf assets for the benefit of the people which can automatically increase the achievement of SDGs in Indonesia.
4. Development of Social Investment during the Pandemic Period (*Badan Wakaf Indonesia*). For the first time, the government has carried out the issuance of Wakaf Sukuk (CWLS) by way of Private Placement on March 10 2020 with a nominal value of Rp. 50,849,000,000.00 (fifty billion eight hundred forty nine million rupiah (Kementerian Keuangan, 2020).

Table 1 Description of Cash Waqf Linked Sukuk SW001

No	Deskripsi	SW001
1	Nominal Value	Rp. 50. 849,000,000.00
2	Form and Type of SBSN	Untradeable
3	Contract Type	Wakalah
4	Yield (yield)	6.15 %
5	Reward/Coupon Rate	Fixed 5.00 %
6	Date of issue	March 10, 2020
7	Due date	March 10, 2025
8	First Reward Payment	April 10, 2020
9	Next Reward Payment Date	10th of every month

The discount is paid once at the beginning of the SW001 issuance transaction and is used by BWI (Indonesian Waqf Agency) for the development of new waqf assets, namely renovation and purchase of medical equipment to support the construction of a retina center at the waqf Achmad Wardi hospital located in Serang, Banten Province, while the coupon is paid every month and will be used for free cataract surgery services for the poor at the waqf Achmad Wardi hospital with a target of 2,513 patients served for the poor for 5 years, as well as procuring ambulances to reach patients who are far from the hospital.

After the end of the offering period from April 9 to.d. June 3, 2021, today Monday, June 7, 2021, the Director General of Financing and Risk Management on behalf of the Minister of Finance determines the proceeds from the sale of Cash Waqf Linked Sukuk (CWLS) series SWR002. The total volume of purchase orders for SWR002 that has been determined is Rp. 24,141,000,000.- (twenty-four billion one hundred and forty-one million rupiah). The issuance of the Retail CWLS series SWR002 is a form of the Government's commitment to support the

National Waqf Movement, assisting the development of social investment and the development of productive waqf in Indonesia. Through the Retail CWLS series SWR002, the Government facilitates money endowments, both temporary and permanent, so that they can place their cash waqf in investment instruments that are safe and productive.

CWLS Retail series SWR002 has a 2-year tenor and offers a fixed rate of return/coupon of 5.57% per year, the rewards of which will be channeled to social programs/activities that have social and economic impacts on society. Distribution of rewards will be carried out by a credible Nazhir appointed by the Islamic Financial Institution-Recipient of Cash Waqf (LKSPWU) and approved by the Indonesian Waqf Board (BWI) as the regulator and supervisor of Nazhir (Badan Wakaf Indonesia, 2021).

This research will explain in depth the Governance of Cash Waqf Link Sukuk (CWLS) for Infrastructure Financing Perspective of Law No. 41 of 2004 and Sharia Economic Law which are the subject of discussion and the focus of research. This is done by explaining the various backgrounds of the issues surrounding it.

## **MAIN ISSUES**

Based on these problems, the following questions arise:

1. How is the management of cash waqf link sukuk for infrastructure financing?;
2. How is the governance of cash waqf linked sukuk for infrastructure financing from the perspective of Law No. 41 of 2004 concerning waqf?;
3. How is the governance of cash waqf linked sukuk for infrastructure financing from the perspective of sharia economic law?

## **METHOD/APPROACH**

### **1. Research Paradigm**

Paradigm experts such as Thomas Kuhn, explain that a research paradigm is a set of shared beliefs and agreements between scientists with one another regarding how a problem should be handled and understood (Kuhn, 1962).

The paradigm used in this research is paradigm constructivism. The constructivism paradigm is an almost parallel paradigm is the antithesis of the notion that lays observation and objectivity in discovering a reality or science. this paradigm views social science as a systematic analysis of socially meaningful action through direct and detailed observation of social actors concerned create and maintain or manage their social world.

### **2. Research Approach**

Approach (approach) in this study using the approach Socio-Legal and Hermeneutic, namely based on legal norms and theory existing law enforcement. Thus in writing this paper the author uses a socio-legal approach (Cahyadi et al., 2009). Reviewing juridical law from the point of view of sociology and hermeneutics (in everyday terms interpreted as an



interpretation or interpretation (Interpretation Understanding). In addition, the essence of Socio-Legal Studies is to answer and explain various legal issues, with an interdisciplinary theoretical and methodological approach, primarily intertwined with the social sciences and humanities. According to Eugene Ehrlich and Klaus A. Ziegert in legal methods with social sciences, this qualitative sociolegal research is included in mixed methods (marriage) (Ehrlich et al., 2017). So that in legal research requires supporting data sources from the sociological (social) and legal (juridical) side.

### **3. Research Variables**

Research Variables are explanations of certain methods used by researchers to measure (optionalize) constructs into targetable research variables. Kerlinger stated that variables are constructs or properties to be studied (Kerlinger et al. 2000). So that it allows other researchers to replicate (repeat) measurements in the same way, or try to develop a better construct method of measurement. There are two variables in the research on "Comparative analysis of cash waqf linked sukuk (CWLS) governance for infrastructure financing from the perspective of Law No. 41 of 2004 and Islamic economic law, which include:

First, the Free Variable (independent variable) (X). The independent variable is a variable that influences or causes the change or emergence of the dependent (dependent) variable, this variable is often called the stimulus, predictor, antecedent variable. In this case the independent variable is cash waqf linked sukuk (cash waqf linked sukuk).

Second, the dependent variable (Y). The dependent variable or often referred to as the output variable, criteria, consequences are the variables that are affected or are the result, because of the independent variables. In this study the dependent variable is infrastructure financing.

### **4. Data and Data Sources**

Sources of data used in this study are primary data and secondary data. Primary Data, is data obtained from statements and information from respondents directly obtained through interviews and observations. In this case, the data obtained from "Cash Waqf Link Sukuk Management (CWLS) for Infrastructure Financing Perspective of Law No. 41 of 2004 and Sharia Economic Law".

While secondary data, is an indirect source that is able to provide additional and strengthening the research data. Secondary data sources were obtained through documentation and literature studies with the help of print and electronic media. In addition, secondary data sources can be archives and various additional data sources as appropriate. Sources of secondary data include: several publications of the Ministry of Finance of the Republic of Indonesia and the Directorate General of Financing and Risk Management (DJPPR)/Directorate of Sharia Financing, the Indonesian Waqf Board and the Indonesian Ministry of Religion Higher Education.

## 5. Data collection technique

Data collection techniques are ways or strategies to obtain the data needed to answer questions. Data collection techniques aim to obtain data in a way that is appropriate to research so that researchers will obtain complete data both orally and in writing. In this study, researchers used several data collection techniques, namely observation, interviews and documentation (Darmalaksana, 2022).

## 6. Data analysis techniques

Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing them into units, synthesizing them, compiling them into patterns, choosing names that are important and what will be studied and draw conclusions so that they are easily understood by oneself and others. In analyzing the data the researchers carried out steps such as; Data Collection, Data Reduction, Data Presentation and Conclusion Drawing.

In a study, a framework of thinking is also needed which is a conceptual thinking model of how theory relates to various factors that have been defined as important things, in this study the framework of thinking will be described as follows:

First, the analysis used is descriptive qualitative analysis to see the potential of each variable, namely (X) Governance of Cash Waqf Link Sukuk (CWLS) Perspective of Law No. 41 of 2004 and Sharia Economic Law on the dependent variable, namely (Y) infrastructure financing.

Second, the analysis used is descriptive qualitative analysis to explain the potential of each variable, namely variable (X) cash waqf linked sukuk to variable (Y) infrastructure financing. By adhering to and using the legal basis of the Al-Qur'an and Al-Hadith as a guide for this research.

## DISCUSSION

### 1. Governance of Cash Waqf Linked Sukuk for Infrastructure Financing

Governance regarding CWLS cannot be separated from the role of the Indonesian Ulema Council, whose authority is to make regulations regarding sukuk, in 2020 the Fatwa of the National Sharia Council-Indonesian Ulema Council No: 137/DSN-MUIAX2020 concerning Sukuk, in which Sukuk is a letter Has a Sharia price (Sharia Securities) in the form of a certificate or proof of ownership that has the same value" and represents an unlimited portion of ownership (musya) of the underlying asset (Sukuk/Ushul al-Shuhuk Assets) after receipt of the sukuk funds, closing of the order and the commencement of the use of funds according to their designation (DSN MUI, 2020).



a. *Cash Waqf*

Cash Waqf Linked Retail Sukuk (CWLS Retail) according to the Ministry of Finance of the Republic of Indonesia is a money waqf investment in state sukuk whose remuneration is distributed by Nazhir (fund manager and waqf activities) to finance social programs and economic empowerment of the people (Kementerian Keuangan Indonesia, 2023). Broadly speaking, Cash Waqf Linked Sukuk (CWLS) or waqf sukuk is an integration between cash waqf and sukuk. Basically, abstracted from the Legal Basis of Waqf in Indonesia, money is one of the assets that can be donated. In this case, the wakif (the party who endows his property) can endow money through an Islamic financial institution appointed by the Minister of Religion (UU RI Nomor 42, 2006). The waqf is carried out by the waqif with a written statement of the waqif's will. For the cash waqf, the Islamic financial institution receiving cash waqf (LKS-PWU), issues a cash waqf certificate, then submits the certificate to the waqif and a copy of the certificate to the nazhir (waqf manager) as proof of handover of the waqf property (PP Nomor 42, 2006). In addition, cash waqf can also be carried out for a certain period of time, in the sense that the nazhir is obliged to return the principal amount of the waqf money to the wakif or his heirs through the LKS-PWU (PP Nomor 42 Pasal 27, 2006).

b. *Sukuk*

Sukuk are sharia securities in the form of certificates or proof of ownership that are of equal value and represent an inseparable or undivided share of the underlying assets (Peraturan OJK, 2018). Sukuk are also known as sharia bonds. The First Dictum number 3 Fatwa DSN MUI 32/DSN-MUI/IX/2002 concerning Islamic Bonds defines Islamic bonds as long-term securities based on Islamic principles issued by issuers to Islamic bondholders which require the issuer to pay income to Islamic bondholders in the form of profit sharing/margin/fee as well as paying back the bond funds at maturity.

Then, the Indonesia Stock Exchange in Sharia Products differentiates sukuk based on the issuer into state and corporate bonds. State Sukuk or known as State Sharia Securities (SBSN) are state securities issued based on sharia principles, as evidence of the share of participation in SBSN assets, both in rupiah and foreign currency. SBSN is issued with the aim of financing the State Revenue and Expenditure Budget (APBN) including project development.

c. *Cash Waqf Linked Sukuk (CWLS) or Waqf Sukuk*

CWLS or also known as waqf sukuk are SBSN issued under a socially responsible based investment scheme by means of bookbuilding in the domestic primary market for cash waqf management investments by waqf fund management institutions, where the returns will be used for social and cannot be traded on the secondary market. Waqf sukuk are sharia bonds or cash waqf-based bonds, in which the funds collected are

invested in state sukuk, so that they can assist fiscal financing in the context of social projects, such as in the fields of education, health and development.

Waqf sukuk is a government innovation in investment instruments that integrates cash waqf with sukuk. Until now, the government has offered two retail waqf sukuk series, namely SWR001 in 2020 which is regulated in the Cash Waqf Linked Sukuk Information Memorandum (Cash Waqf Linked Sukuk) Series SWR001 in Rupiah with Wakalah Contracts (Memorandum SWR001) and SWR002 in 2021 which set out in Memorandum SWR002.

In this case, all funds obtained from the issuance and sale (proceeds) of CWLS will be used by the government, the allocation of which varies according to what is stated in the information memorandum of information on retail waqf sukuk issued. For example, in SWR002, all funds obtained will be used by the government to finance part of the Indonesian State Budget (APBN) program. The waqf sukuk yields will be used to finance various waqf sukuk social programs/activities managed by the nazirs, including: First, development and development of physical waqf assets such as hospitals, health clinics, madrasas, Islamic boarding schools, and other social infrastructure facilities; Second, implementation of non-physical social programs, such as social programs for orphans and the poor, free health services for the poor, economic empowerment of low-income communities, and other social programs.

#### d. Waqf Sukuk Mechanism

The waqf Sukuk mechanism is carried out through several stages as follows:

- 1) Waqif donates money (both temporarily and perpetually) through LKS-PWU. Specifically for SWR002, waqf can be made offline or online with the following conditions:
  - a) If done offline, the waqif will sign or approve the Waqf Pledge Deed and fill out an order form for the purchase of Waqf Sukuk at the distribution partner;
  - b) If done online, the waqif will approve the Waqf Pledge Deed and place an order for the waqf sukuk through the electronic system provided by the distribution partner.
- 2) Cash waqf funds will be invested in waqf sukuk.
- 3) The government issues waqf sukuk, in which waqf sukuk ownership will be registered in the name of the wakif acting on the authority of the nazhir.
- 4) The government pays yields on waqf sukuk investments to nazhir, in the form of coupons/rewards which will be paid periodically every month.
- 5) Nazhir will distribute waqf sukuk investment returns through various social institutions to finance non-APBN social programs/activities, including:
  - a) construction and development of physical waqf assets; And
  - b) financing programs and social activities that are non-physical in nature.

- 6) At the maturity date of the waqf sukuk, in the case of temporary (temporary/term) waqf, the government will pay cash repayment of the waqf sukuk nominal to the waqif.
- 7) In the case of perpetual waqf (forever), cash repayment of nominal waqf sukuk is handed over to the nazhir through debiting the wakif fund account for further management.

## **2. Governance of Cash Waqf Linked Sukuk for Infrastructure Financing Perspective of Law No. 41 of 2004 concerning Waqf**

In Law 41 of 2004 concerning Waqf related to Financing it is explained in Article 59, namely in the context of carrying out the duties of the Indonesian Waqf Board, the Government is obliged to assist with operational costs. According to research conducted by Neneng Puspitasari (Puspitasari, 2021), that in Islamic law, the debate over cash waqf in Islamic law lies in the opinion of the Imams of the Madzhab, according to the Syafi'i Madzhab it is not permissible to endow dinars and dirhams (money) because dinars and dirhams will disappear by spending and it is difficult to preserve their substance. Meanwhile, Cash Waqf Linked Sukuk in Indonesia is permissible by referring to the permissibility of this Waqf Linked Sukuk contract, in line with the opinion of DSN MUI Number B-109/DSN-MUI/II/2019 concerning Statement of Sharia Conformity of Cash Waqf Linked Sukuk issued on 6 February 2019, supported by the DSN fatwa regarding sukuk and Articles 112-113 KHES (Compilation of Sharia Economic Law) regarding *bai al-wafa*.

In addition, it is also reinforced by the DSN-MUI fatwa No. 10/DSN-MUI/IV/2000, DSN-MUI fatwa No. 69/DSN-MUI/VI/2008, DSN-MUI fatwa No. 70/DSNMUI/VI/2008, DSN-MUI fatwa No. 95/DSN-MUI/VII/2014, DSN-MUI fatwa No. 131/DSN-MUI/X/2019. From a positive perspective, Cash Waqf Linked Sukuk is allowed because in Law Number 41 of 2004 and clarified by Law Number 42 of 2006 it is clearly stated that "Wakifs can donate movable objects in the form of money through Islamic financial institutions appointed by the Minister." Apart from that, Law No. 19/2008, PBWI No. 1 of 2020, PMK No. 139/2018 concerning Changes to PMK No. 239/2012 Concerning Issuance and Sale of SBSN by Private Placement.

## **3. Governance of Cash Waqf Linked Sukuk for Infrastructure Financing from the Perspective of Sharia Economic Law**

Sharia economic law legislation in Indonesia was born as a logical consequence of dialogue and intersection of Islamic teachings with their social environment. Therefore, the formulation, characteristics and expression of sharia economic law legislation manifest in various forms, in harmony with the diversity of local values (local wisdom) surrounding the growth of sharia economic law. The historical development of sharia economic law legislation in Indonesia displays a dynamic character with Indonesian characteristics. Values, socio-political and cultural settings are important elements that influence the rate and direction of Islamic sharia economic law legislation in Indonesia (Ridwan, 2018). In addition,

in resolving sharia economic disputes, laws or regulations are needed in order to be careful so that mistakes are not made in making decisions (Ridwan, 2021).

Furthermore, with regard to waqf and sukuk which in fact are Indonesian government policies, this needs to be studied more deeply where waqf plays two important roles in Islamic history, namely economic and social. One of the innovations in waqf development is Cash Waqf Linked Sukuk (CWLS), which is an integration of waqf funds invested through State Sharia Securities (SBSN) or Sukuk (Rahayu et al., 2020). In the governance of the implementation of Cash Waqf Linked Sukuk in Indonesia it has been carried out in accordance with an Islamic economic perspective, this has been proven by the issuance of the DSN-MUI Fatwa regarding Sukuk Waqf. Namely DSN-MUI Fatwa No: 137/DSN-MUI/IX/2020 concerning Sukuk, that in order to fulfill economic activities that require large amounts of funding and there is a need for investors to participate in investment activities, the industry and Islamic capital market products in Indonesia growing rapidly, including sukuk-based products (Hartanto et al., 2021).

## **ANALYSIS**

### **1. Analysis of the Governance of Cash Waqf Linked Sukuk for Infrastructure Financing**

The Indonesian government, in its efforts to equalize the economic gap in society, has taken various methods, including meeting the basic needs of the community in terms of infrastructure, education and health as stated in the RPJMN (National Medium Term Development Plan). However, the government experienced a major obstacle, namely the lack of available budget to implement the plan. Islamic finance has a very potential instrument to be used as an alternative source of financing in the form of Cash Waqf Link Sukuk. This instrument has a double benefit impact, namely the principal funds are used by the State to develop Indonesia, while the monthly returns are used for the benefit of mauquf alaih by way of social assistance or building useful facilities. In this instrument there is also cooperation between the government and the community in the process of national development.

This is in line with the research conducted by Rizal Hendrawan (Hendrawan, 2020), that to solve the problem of sources of funds in the medium-term national development. The government makes waqf as an alternative source of funds. Waqf has enormous potential to be developed as a source of national development funds. However, until now this potential has not been optimally optimized. Indonesia can follow the example of other countries that have been relatively successful in managing and running cash waqf such as Saudi Arabia, Turkey, Kuwait, Singapore, Bangladesh, Jordan, Malaysia, etc. Waqf Link Sukuk can be used as an alternative financing instrument by the government to carry out national development, this instrument has several benefits, including: as waqf support for national development. Investment in cash waqf through the cash waqf link sukuk supports deepening of the Islamic financial market Providing a sustainable impact and synergy of the waqf sector with national development. Increasing the role of society in building the State. Doing equal

distribution of socio-economic justice through the development of infrastructure, education, health facilities, and others.

According to research by Eko Fajar Cahyono and Sutan Emir Hidayat, (Cahyono, et al., 2022) Cash Waqf Linked Sukuk (CWLS) is a means of placing cash waqf on Indonesian Government Securities (SBSN) which was developed to support social facility development programs. With the presence of CWLS, the private sector can actively contribute to the construction of public facilities by the government for the benefit of the wider community. The main advantage of CWLS is that it can be enhanced through the provision of government-managed public infrastructure with solid governance and a low level of risk. The Indonesian Waqf Board, Bank Indonesia, the Ministry of Finance, Islamic Financial Institutions, Zakat Institutions, the Ministry of Religion, Investors and Beneficiaries (Mauquf Alaih) are involved in managing CWLS.

The Importance of Issuing Cash Waqf Linked Retail Sukuk (CWLS Retail), among others, is useful for: a) Increase the capability of the Islamic financial sector; b) Strengthening the National Waqf Administration; c) Support the implementation of the Sustainable Development Goals; d) Increasing social investment amid the Covid-19 pandemic.

Optimizing Cash Waqf Linked Retail Sukuk (CWLS Retail) for Social Project Financing has several benefits, including: a) Provision of free pre-service health facilities, such as: Ahmad Wardi Eye Hospital, for those who need them; b) Development of CSR funds for social activities, such as BUMN CSR funds; c) Empowerment of Micro, Small and Medium Enterprises with Institutional Waqf through Productive Waqf; d) Financing regional social infrastructure and social activities, such as: as Beneficial Waqf Exploration in Riau Province; e) Use of unproductive land for livestock/plantation, such as the Dompot Dhuafa Plantation Waqf; f) Scheme of giving free Umrah to Al-Quran teachers in the regions; g) Establishment of an Endowment Fund for social institutions, including the Hajj Financial Management Agency (BPKH) Fund; h) Free health care, including free cataract surgery, for the poor.

The characteristics of Cash Waqf Linked Retail Sukuk (CWLS Retail) include the following: a) Designed for individual and institutional investors/waqifs. b) In accordance with sharia norms; c) The minimum order quantity is IDR 1,000,000 and there is no maximum order amount; d) 100% temporary Waqf will be returned to the investor/wakif after two years, while Nazhir will manage the permanent Waqf funds; e) Fixed returns, extended by the appointed Nazhir for social programs/activities; f) Cannot be traded in the secondary market.

From the above discussion regarding the analysis of the governance of cash waqf link sukuk for infrastructure financing, it can be concluded that Cash Linked Waqf Sukuk is a practice of the sharing economy. This means that CWLS can benefit the government and beneficiaries (mauquf alaih) through cash waqf investments in sukuk. This resource shift adheres to the sharing economy, which aims to create a more cost-effective and efficient

economy. Due to the use of the internet, CWLS is also classified as a kind of sharing economy. For example, when a potential investor wants to make an investment, the investor must register and have an online account, and Nazhir manages his Waqf funds online. This is consistent with the principles of the sharing economy, which employs the Internet as a mechanism. Another principle of the sharing economy is the openness of information to economic actors, while CWLS is open to all investors.

Next in the theory of financial innovation. CWLS is an example of innovation because it is a new innovation and a different financial product. CWLS combines Waqf (which is an activity) and investment operation (commercial activity). CWLS is capable of addressing several issues including sharia compliance. CWLS was preceded by a Fatwa issued by the National Sharia Council of the Indonesian Ulema Council. This fatwa was established on the basis of solid and deliberative fiqh. This fatwa can serve as a reference for CWLS managers to manage Waqf properly and carefully (Al-Salem, 2009).

## **2. Analysis of the Governance of Cash Waqf Linked Sukuk for Infrastructure Financing Perspective of Law No. 41 of 2004 concerning Waqf**

Cash Waqf Linked Sukuk, hereinafter abbreviated as CWLS, is an investment of Cash Waqf funds in state sukuk issued by the government to facilitate Waqifs in empowering the people's economy and social activities. That the practice of cash waqf through cash waqf linked sukuk has an important and strategic role in improving the people's economy and social welfare, so state sukuk are issued by the government to facilitate waqifs in empowering the people's economy and social activities.

In Article 2 (1) Regulation of the Minister of Religion Number 1 of 2022 concerning Management and Development of Cash Waqf Linked Sukuk, it is explained that: Cash Waqf can be managed through the CWLS instrument. Continue on point (2) Cash Waqf through CWLS has the following objectives: a) make it easier for the public to make cash waqf in a safe and productive manner; b) encourage economic growth that is inclusive and sustainable; And c) strengthening the cash waqf ecosystem in Indonesia.

In Chapter II of Regulation of the Minister of Religion Number 1 of 2022 concerning Management and Development of Cash Waqf Linked Sukuk regarding the procedures for cash waqf linked Sukuk as set forth in Article 3 it is explained that: a) Cash Waqf through CWLS must be included in AIW. b) Cash Waqf through CWLS is carried out by placing it as: 1) corporate funds (private placement); 2) retail funds; and/or 3) other means in accordance with the provisions of the legislation.

Meanwhile, Cash Waqf Linked Sukuk in Indonesia is permissible by referring to the permissibility of this Waqf Linked Sukuk contract, in line with the opinion of DSN MUI Number B-109/DSN-MUI/II/2019 concerning Statement of Sharia Conformity of Cash Waqf Linked Sukuk issued on 6 February 2019, supported by the DSN fatwa regarding sukuk and Articles 112-113 KHES (Compilation of Sharia Economic Law) regarding bai al-wafa.



In addition, it is also reinforced by the DSN-MUI fatwa No. 10/DSN-MUI/IV/2000, DSN-MUI fatwa No. 69/DSN-MUI/VI/2008, DSN-MUI fatwa No. 70/DSNMUI/VI/2008, DSN-MUI fatwa No. 95/DSN-MUI/VII/2014, DSN-MUI fatwa No. 131/DSN-MUI/X/2019.

From the explanation above, it can be concluded that from positive law, Cash Waqf Linked Sukuk is allowed because in Law Number 41 of 2004 and clarified by Law number 42 of 2006 it is clearly stated that "Wakif can donate movable objects in the form of money through financial institutions sharia appointed by the Minister." Apart from that, Law No. 19/2008, PBWI No. 1 of 2020, PMK No. 139/2018 concerning Changes to PMK No. 239/2012 Concerning Issuance and Sale of SBSN by Private Placement. Also strengthened by Regulation of the Minister of Religion Number 1 of 2022 concerning the Management and Development of Cash Waqf Linked Sukuk regarding the procedures for cash waqf linked Sukuk cash waqf as set forth in Article 3 explaining that: a) Cash Waqf through CWLS must be included in AIW. b) Cash Waqf through CWLS is carried out by placing it as: (1) corporate funds (private placement); (2) retail funds; and/or (3) other means in accordance with the provisions of the laws and regulations.

### **3. Analysis of the Governance of Cash Waqf Linked Sukuk for Infrastructure Financing from the Perspective of Sharia Economic Law**

With regard to the governance of cash waqf linked sukuk for infrastructure financing from the perspective of sharia economic law, it can be concluded that for Muslims in Indonesia, the basic concept of waqf in Islam is very deeply understood, and more than that, in practice, if explored further, you will find many waqf assets in Indonesia. However, there are still many waqf assets that have not been optimally managed, which can actually be more productive so as to produce greater benefits. One way to develop waqf assets is through waqf sukuk. In Indonesia, waqf sukuk provisions are based on the DSN-MUI Fatwa. Sukuk issuance may only be based on the benefits of waqf assets and business activities on waqf assets, while waqf assets may not be used as the basis for issuing sukuk. The contract schemes used in the issuance of waqf sukuk are mudharabah, ijarah, wakalah bil alistitsmar, musyarakah, or other contracts in accordance with sharia principles.

Governance of Cash Waqf Linked Sukuk for Infrastructure Financing The Perspective of Sharia Economic Law needs to be adjusted to maqashid sharia, which according to Syatibi explains that sharia objectives (al-Syatibi, tt), that is, according to Imam Syathibi, Allah sent down the Shari'a (rule of law) for nothing other than to benefit and avoid harm (jalbul mashalih wa dar'ul mafasid). In easier language, the legal rules that God determines are only for the benefit of man himself.

According to Al-Syatibi, the determination of the five points (hifz al-din; hifz al-nafs; hifz al-'aql; hifz al-nasl; and hifz al-mal) is based on the arguments of the Qur'an and hadith. These arguments function as al-qawaid al-kulliyyat in establishing al-kulliyyat al-khams. The verses of the Qur'an which are used as the basis are generally Makkiyah verses, which are not in the text and Madaniyyah verses which confirm Makkiyah verses. Among these

verses are those related to the obligation to pray, the prohibition on killing the soul, the prohibition on drinking intoxicating drinks, the prohibition on adultery and the prohibition on consuming other people's property in an improper way. After conducting careful research, he concluded that because the arguments used to establish al-kulliyat al-khams included qat'i arguments, they could also be grouped as qat'i. Presumably what is meant by the term qat'i by al-Syatibi is that al-kulliyat al-khams, in terms of legal basis, can be accounted for, and therefore it can be used as a basis for establishing law.

In the interest of establishing law, the five elements above are divided into three ranks, daruriyyat, hajiyyat, and tahsiniyyat. This grouping is based on the level of need and priority scale. The importance of this ranking order will be seen, when the benefits that exist in each rank are contradictory to each other. In this case the rank of daruriyyat ranks first, followed by hajiyyat, then followed by tahsiniyyat. But on the other hand it can be seen that the third rank complements the second rank, and the second rank complements the first rank.

What is meant by maintaining a daruriyyat group is maintaining essential needs for human life. The essential need is to maintain religion, soul, mind, lineage and property, within the limits of not endangering the existence of the five points. Not meeting or not maintaining these needs will result in the threat of the existence of the five points above. In contrast to the daruriyyat group, the needs of the hajiyyat group do not include essential needs, but needs that can prevent humans from experiencing life's difficulties. Failure to maintain this group does not threaten the existence of the five points above, but will only cause difficulties for themukallaf. This group is closely related to rukhsah or relief in the science of fiqh. While the needs in the tahsiniyyat group are needs that support the increase in one's dignity in society and before God, in accordance with decency.

a. Maintaining Religion (*Hifz al-Din*)

Protecting and maintaining religion, based on its interests, can be divided into three ranks:

- 1) Maintaining religion at the daruriyyat level, namely maintaining and carrying out religious obligations that are included in the primary level. Example: performing the five daily prayers is an obligation. If prayer is neglected, the existence of religion will be threatened.
- 2) Maintaining religion at the hajiyyat level, namely carrying out religious provisions, with the intention of avoiding difficulties, for example: congregational prayers and qasr prayers for people who are traveling. If this provision is not implemented then it will not threaten the existence of religion, but will only make things difficult for those who do.
- 3) Maintaining religion at the tahsiniyyat level, namely following religious instructions to uphold human dignity, as well as completing the implementation of obligations to God, for example: covering the genitals, both inside and outside prayers, cleaning the body, clothes and places. This activity is closely related to

commendable morality. If this is not possible to do, then this will not threaten the existence of religion nor make it difficult for those who do it. That is, if there is no covering of the private parts, a person may pray, do not leave the prayer that belongs to the daruriyyat group. It seems that covering this genitalia cannot be categorized as a complement (tahsiniyyat), because its existence is very necessary for human interests. At least this interest is included in the category hajiyyat or daruriyyat. However, if you follow the grouping above, it does not mean that something that includes tahsiniyyat is considered unimportant, because this group will strengthen the hajiyyat and daruriyyat groups.

b. Nurturing the Soul (*Hifz al-Nafs*)

Maintaining the soul, based on the level of importance can be divided into three levels:

- 1) Maintaining the soul at the daruriyyat level, for example: meeting basic needs in the form of food to sustain life. If this basic need is ignored, it will result in the threat of the existence of the human soul.
- 2) Keeping the soul in the rank of hajiyyat, for example: it is permissible to hunt animals to enjoy delicious and halal food. If this activity is neglected, it will not threaten human existence, but will complicate his life.
- 3) Maintaining the soul at the tahsiniyyat level, for example: implementing the procedures for eating and drinking. This activity is only related to decency and ethics, in no way will it threaten the existence of the human soul, or complicate one's life.

c. Nurturing Mind (*Hifz al-'Aql*)

Maintaining reason in terms of its importance can be divided into three levels:

- 1) Maintaining the intellect in the level of daruriyyat, for example: it is forbidden to drink liquor. If this provision is not heeded, it will result in the threat of the existence of reason.
- 2) Maintaining reason in the hajiyyat level, for example: it is recommended to seek knowledge. If this were done, it would not damage one's mind, but would make it difficult for one's self, in relation to the development of knowledge.
- 3) Maintaining reason at the level of tahsiniyyat, for example: avoiding imagining or listening to something that is not useful. This is closely related to etiquette, will not directly threaten the existence of reason.

d. Caring for Offspring (*Hifz al-Nasl*)

Caring for offspring, in terms of their needs, can be divided into three levels: 1) Maintaining offspring at the daruriyyat level, for example: it is prescribed for marriage and forbidding adultery. If this activity is neglected, the existence of offspring will be threatened; 2) Maintaining offspring at the hajiyyat level, for

example: establishing provisions for mentioning dowry for the husband at the time of the marriage contract and giving him talaq rights. If the dowry is not stated at the time of the contract, then the husband will experience difficulties, because he has to pay the dowry, for example. Whereas in the case of talaq, the husband will experience difficulties, if he does not use his right of talaq, even though his household situation is not harmonious; 3) Maintaining offspring at the tahsiniyyat level, for example: it is prescribed khitbah or walimah in marriage. This is done in order to complete the marriage activities. If this is neglected, it will not threaten the existence of the offspring, nor will it make it difficult for the people who do the marriage.

- e. Maintaining Property (Hifz al-Mal) In terms of its importance, maintaining assets can be divided into three levels, namely: 1) Maintaining assets at the dlaruriyyat level, for example: the shari'ah regarding procedures for owning assets and the prohibition of taking other people's assets in an illegal manner. If the rule is violated, it will result in the threat of the existence of property; 2) Maintaining assets at the hajjiyyat level, for example: the shari'ah regarding buying and selling by greeting. If this method is not used, it will not threaten the existence of assets, but will make it difficult for people who need capital; 3) Maintaining assets at the tahsiniyyat level, for example: provisions regarding avoiding deception or fraud. This is closely related to mu'ammalah ethics or business ethics. This will also affect the legitimacy of the sale and purchase, because this third rank is also a requirement for the second and first ranks.

From the explanation above in relation to the governance of cash waqf linked sukuk for infrastructure financing from the perspective of sharia economic law, it can be concluded that for Muslims in Indonesia, the basic concept of waqf in Islam is very deeply understood, and more than that, in practice, if explored further, then there will be many waqf assets found in Indonesia, this is in accordance with Syatibi's theory, namely hifdzul mal (safeguarding assets). However, there are still many waqf assets that have not been optimally managed, which can actually be more productive so as to produce greater benefits. One way to develop waqf assets is through waqf sukuk. In Indonesia, waqf sukuk provisions are based on the DSN-MUI Fatwa. Sukuk issuance may only be based on the benefits of waqf assets and business activities on waqf assets, while waqf assets may not be used as the basis for issuing sukuk. The contract scheme used in the issuance of waqf sukuk is mudharabah, ijarah, wakalah bil alistitsmar, musyarakah, or other contracts that are in accordance with sharia principles, this is in accordance with Syatibi's theory, namely hifdzul al-din (safeguarding religion). This is in line with the opinion of Rahmatul Fadhil and Nurbalqis that based on a review from the perspective of Maqâshid ash-Syarî'ah Cash Waqf Linked Sukuk (CWLS) transactions are included in the ifdz al-mâl category at the al-hâjiyyât level and ifdz ad -dîn at the al-hâjiyyât level (Fadhil et al., 2021).

Meanwhile, Mohammad Farid Fad (Fad, 2021), explained in his research that waqf and sukuk consist of two different product orientations, namely Tabarru and Tijaroh, which are transformed and correlated in an effort to realize greater value benefits. The legal basis for permitting this WLS product is Q.S. Al-Maidah verse 1, Q.S. al-Isra' verse 34, Q.S. Al-Baqarah verse 275, the hadith of the Prophet, the rules of fiqh are "basically all muamalah are permissible unless there is evidence forbidding it", the rules of fiqh are "no harm to oneself or others, basically all forms of muamalah are permissible unless there is evidence prohibiting it", DSN-MUI statement Number B-109/DSN-MUI/II/2019 concerning Sukuk Statements Related to Sharia Cash Waqf and the principle of "an act (a government arrangement whose core is guaranteeing the interests and welfare of its people). WLS products when viewed from the perspective of maqashid sharia are very in accordance with the six elements of maqashid sharia.

In the DSN MUI Fatwa NO: 131/DSN-MUI/X/2019 regarding sukuk, it is explained that waqf Sukuk are Sharia Securities (Sharia Securities) in the form of certificates or proof of ownership that are of equal value and represent a share of ownership whose boundaries cannot be determined (musya) on the underlying asset (Sukuk/ushul al-Shukuk Assets) after receipt of the sukuk funds, closing of the order and disbursing the use of the funds according to their designation. Assets of Sukuk Ashul al-Shukuk) are assets that form the basis for the issuance of Sukuk consisting of tangible assets (al-a'yan), benefits of tangible assets (manafi' al-a'yan), services (al-khadamat), project assets certain assets (maujudat nasyru' mu'ayyan) and/or certain investment activity assets (nasyath istitsmar Khashsh). While relating to waqf is the legal act of waqif urtfrik separating and/or handing over part of his property to be used forever or for a certain period of time in accordance with its designation for the purposes of worship and/or public welfare according to sharia. Waqf Sukuk is Sukuk issued in order to optimize the Benefits of Makaf Assets and/or yields for the public interest (mashalih 'ammah) which do not conflict with sharia principles (MUI, 2019).

As for some of the arguments regarding waqf sukuk as explained in the MUI fatwa No 131/DSN-MUI/X/2019 regarding Waqf Sukuk, they include:

a. Al-Qur'an

1) Al Quran sura al-Baqarah verse (2): 275

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ

Meaning: "Those who eat (take) usury cannot stand but are like the standing of a person possessed by the devil lantoron (pressure) of madness.

- 2) Al Quran sura al-Baqarah verse (2):283

وَأِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنَ مَقْبُوضَةً فَإِنْ مِنْ بَعْضِكُمْ بَعْضًا  
فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ  
أَنْتُمْ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

Meaning: If you are on a trip, while you do not get a registrar, there should be collateral held. However, if some of you trust some others, let that trusted person fulfill his trust (his debt) and let him fear Allah, his Lord. Do not hide testimony because whoever hides it, verily his heart is sinful. Allah is All-Knowing of what you do.

- 3) Al Quran sura al-Nisa verse (4):29

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ  
تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who believe! Do not eat each other's wealth in a vanity (immoral) way, except in trade that applies on the basis of likes and dislikes between you..."

- 4) Al Quran sura al-Maidah verse (5): 1

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ  
مُحَلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

Meaning: O you who believe, fulfill the promises! Cattle are lawful for you, except for those which will be mentioned to you (forbidden) by not making hunting lawful while you are in ihram (hajj or umrah). Indeed, Allah determines the law according to what He wills.

- 5) Al-Qashash verses of the Koran (28):26

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

"One of the two women said: 'Yes, my father, take him as a person who works (for us), because actually the best person you take to work (for us) is someone who is strong and trustworthy.'"

b. Hadith

The Hadith of the Prophet s.a.w regarding Waqf Sukuk include:

- 1) Hadith of the Prophet narrated by Imam Ahmad, Abu Dawud, and Ad-Daraquthni from Sa'd Ibn Abi Waqqash (text Abu Dawud), he said:

Meaning: "In the past we rented out land with (payment) of agricultural products that grew on the edge of the ditch and which grew on the part where water flowed;



so, the Prophet forbade us to do this and ordered us to rent it out with gold or silver."

- 2) Hadith of the Prophet narrated by Imam al-Thabrani from Ibn Abbas, he said:  
Meaning: "Abbas bin Abdul Muthalib if he hands over his property as a mudharabah, he requires his mudharabah so that the property (capital) is not carried across the ocean and not down the valley, and is not used to buy livestock. If this requirement is violated, he (mudharib) must bear the risk. When the requirements set by the abbot were heard by the Prophet I ah, he allowed it. "
- 3) Hadith Qudsi narrated by Abu Dawud, al-Daruquthni and al-Hakim from Abu Hurairah, Rasulullah s.a.w. said:  
Meaning: "Allah SWT. said: 'I am a third party of two people who partner as long as one party does not betray the other party. If one party has betrayed, I leave them'."
- 4) Hadith of the Prophet narrated by al-Baihaqi and Ibn Majah: From Abu Sa'id Al-Khudri that Rasulullah s.a.w. said:  
"Indeed, buying and selling must be done with mutual respect (pleased)." Hadith of the Prophet al-Tirmidhi reported from his grandfather 'Amr bin 'Auf al-Muzani, and al-Hakim's narration from his grandfather Katsir bin Abdillah bin Amr bin 'Aun r.a .:  
"Shulh (dispute resolution through deliberations for muJ'aknt) can be carried out between Muslims except shulh which forbids what is lawful or prohibits what is unlawful; and Muslims are bound by the conditions imposed between them except for conditions that forbid what is lawful or forbid unclean."
- 5) Hadith of the Prophet narrated by Imam al-Daruquthni, al-Hakim, al-Baihaqy and others, from Abu Sa'id al-Khudri, the Prophet s.a.w. said:  
" Do not harm (harm) yourself or others."

c. Ijma' Ulama

Ijma Ulama 'Jumhur Ulama from four Madzhabs, namely Hanafiyah, Malikiyah, Syafi'iyah and Hanabilah, that Waqf is permissible and mustahab.

d. Fiqh rules

الأصل في المعاملة الاباحة حتى يدل الدليل على تحريمه

" In principle, all forms of muamalat can be done unless there is evidence that prohibits it."

أينما وجدت المصلحة فثم حكم الله

" Where there is benefit, there is God's law."

درء المفسد مقدم على جلب المصالح

"Avoiding mafsadat (damage/danger) must take precedence over bringing benefit".

الخراج بضمان

" Income is proportional to the readiness to bear the burden. "

## CONCLUSION

From the discussion and comparative analysis of the governance of cash waqf link sukuk (CWLS) for infrastructure financing from the perspective of Law No. 41 of 2004 and Islamic economic law above, the researchers concluded that:

1. Governance of cash waqf linked sukuk for infrastructure financing is a practice of the sharing economy. This means that CWLS can benefit the government and beneficiaries (mauquf alaih) through cash waqf investments in sukuk. This resource shift adheres to the sharing economy, which aims to create a more cost-effective and efficient economy. Due to the use of the internet, CWLS is also classified as a kind of sharing economy. For example, when a potential investor wants to make an investment, the investor must register and have an online account, and Nazhir manages his Waqf funds online. This is consistent with the principles of the sharing economy, which employs the Internet as a mechanism. Another principle of the sharing economy is the openness of information to economic actors, while CWLS is open to all investors.
2. Governance of Cash Waqf Link Sukuk for Infrastructure Financing Perspective of Law No. 41 of 2004 Concerning Waqf, practice is permitted because in Law No. 41 of 2004 and clarified by Law No. 42 of 2006 it is stated clearly that "Wakifs can donate objects move in the form of money through an Islamic financial institution appointed by the Minister." Apart from that, Law No. 19/2008, PBWI No. 1 of 2020, PMK No. 139/2018 concerning Changes to PMK No. 239/2012 Concerning Issuance and Sale of SBSN by Private Placement. Also strengthened by Regulation of the Minister of Religion Number 1 of 2022 concerning the Management and Development of Cash Waqf Linked Sukuk regarding the procedures for cash waqf linked Sukuk cash waqf as set forth in Article 3 explaining that:  
a) Cash Waqf through CWLS must be included in AIW. b) Cash Waqf through CWLS is carried out by placing it as: (1) corporate funds (private placement); (2) retail funds; and/or (3) other means in accordance with the provisions of the laws and regulations.
3. Governance of Cash Waqf Link Sukuk for Infrastructure Financing from the Perspective of Sharia Economic Law, this is in accordance with the objectives of sharia, namely to empower the people, besides that from the perspective of Maqâshid ash-Syarî'ah Cash Waqf Linked Sukuk (CWLS) transactions are included in the ifdz al- mâl at the al-hâjjiyyât level and ifdz ad-dîn at the al-hâjjiyyât level.
4. Comparison of Governance of Cash Waqf Link Sukuk for Infrastructure Financing Perspective of Law No. 41 of 2004 Concerning Waqf and Sharia Economic Law Perspective can be said to be in line with maqashid sharia, namely in accordance with the objectives of Islamic law, namely governance of cash waqf link sukuk for infrastructure financing aims to maintain wealth (hifz al-mal), maintaining offspring (hifz al-nasl), maintaining reason (hifz al-'aql), maintaining the soul (hifz al-nafs), and maintaining religion (hifz al-din).

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