

Juridical Analysis Of The Legal Standing Of Sharia Financial Institutions – Cash Waqf Recipients Of Sharia Banks Post-Establishment Of Indonesian Sharia Bank

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Abstract: *The selection of Sharia banks in accepting cash waqf is because in general Sharia banking has several advantages being expected for optimizing the operations of the cash waqf. However, since the election of Sharia banks in accepting cash waqf, in general, Sharia banking has several advantages which expected for optimizing the operations of the cash waqf. On the one hand, the merger raises questions regarding the legal standing and system of cash waqf Recipient by the Sharia banks themselves as Sharia Financial Institutions-Cash Waqf Recipient (SFI-CWR), which used to stand separately and are now incorporated in one management. This study aims to provide an overview of the legal standing and management system of the SFI-CWR of the Sharia banks post-establishment of Indonesian Sharia Bank which is a combination of the SFI-CWR of sharia banks. This research is a normative legal research, in which the data are secondary data sourced from laws and regulations, books and other references. Analysis method of the data used is content analysis, which analysing the content of the subject matter studied. From this research activity, it will be found how the status, legal standing and management system of SFI-CWR of Sharia Banks after the establishment of ISB.*

Keywords: *Sharia Financial Institutions; Cash Waqf Recipients; Indonesian Sharia Bank*

1. INTRODUCTION

Waqf is a form of instrument typical of Islamic economics which basing its function on the elements of virtue, goodness and brotherhood. Its main characteristic is that there is a shift private ownership to Muslim community ownership expected to be lasting and provide sustainable benefits.(Hartanto & Sup, 2021: 202) It is generally in the form of immovable objects and not being managed productively. In the sense that it is used for the establishment of mosques, prayer rooms, Islamic boarding schools, schools, graves, and so on. It's understandable because in general there are limitations of Muslims regarding the understanding of waqf, both regarding the waqf property and

its designation. In recent developments, waqf began to be developed into the form of the use of production tools and economic tools such as money, shares and so on. This waqf model is often known as Money waqf. Money waqf is translated as cash waqf, but if you look at the object of the waqf, namely money, it's more appropriate if money waqf is translated as cash waqf. (Wakaf, 2010: 3) Cash waqf, namely waqf carried out by a person, group of people, and institutions or legal entities in the form of cash. The maximum application of cash waqf has advantages, including the following: the target scope of the money waqf provider can be very broad compared to ordinary waqf. Cash waqf certificates can also be made in various denominations, which are tailored to the targeted Muslim segment, who have a high awareness of charity. (Wakaf, 2010: 26) The waqf management has to be handed over to a special person or body who has adequate competence to manage it professionally, and is trustworthy in order to get optimal results. It becomes even more important if it being associated with cash waqf, because cash waqf recipients have heavier duties and obligations for maintaining the principal value of the waqf by being able to make the cash waqf productive which can benefit the people.

Based on Act Number 21 of 2008 on Islamic Banking, it is stated that Sharia Banks and Sharia Business Units can collect social funds originating from cash waqf and distribute them to waqf managers (*nazhir*) in accordance with the will of the waqf giver (*wakif*) and also good sharia cooperatives, include the Sharia Savings and Loans and Financing Cooperative and the Sharia Microfinance Institution *Baitul Maal Wattamwil*. (Nurhayati & Nurjamil, 2020: 143) But, then based on Article 47 paragraph (1) of Act Number 41 of 2004 mandated the task of managing this waqf to an institution called the Indonesian Waqf Board (IWB). IWB as the authority has been given by law may appoint Sharia Financial Institutions either from Institutions in the form of Banks or Non-Bank Financial Institutions as Cash Waqf Recipients, then the appointed Banks are also known as Sharia Financial Institutions- Cash Waqf Recipients (SFI-CWR). To carry out the orders of the waqf law, the minister of religion appointed five sharia banks as SFI-CWR, namely Bank Syariah Mandiri, Bank Muamalat Indonesia, Bank Nasional Indonesia (BNI) Syari'ah, Bank Mega Syari'ah and Bank DKI Syari'ah, which in 2020, there have been 11 SFI-CWR, (Kamaluddin, 2020: 37) then in 2022 as we know it has increased to 27 SFI-CWR.

On February 1, 2021, which coincided with 19 Jumadil Akhir 1442 H, it marked the history of the merging of Syariah Mandiri Bank, BNI Syariah Bank, and BRI Syariah Bank into one entity, namely Indonesian Sharia Bank (ISB). This merger will unite the advantages of the three Sharia banks so as to provide a more complete service, wider reach, and have a better capital capacity. Supported by synergies with parent companies (Mandiri, BNI, BRI) and the government's commitment through the Ministry of SOEs, ISB is encouraged to be able to compete at the global level. (BSI, n.d.)

With the merger of the above-mentioned Sharia banks, 2 (two) of which are Islamic Financial Institutions-Cash Waqf Recipient (SFI-CWR), of course the question arises regarding the position of these Sharia banks as Sharia Financial Institutions appointed by Cash Waqf Recipients who in fact is *Nazhir* of cash waqf. In addition,

concerns about the impact of management system of the cash waqf after the merger of the two Sharia banks into ISB of course will more or less affect the performance of these Sharia banks as SFI-CWR. Regarding the merger of these Islamic banks, alif Ulfa in her research stated that this would definitely have an impact on customers, employees and society. a). customers can still transact as usual. However, customers only wait for information from ISB to search for information; b). the status of employees of BNI Syariah, BRI Syariah, and Bank Syariah Mandiri will remain employees of ISB and there will be no termination of employment. ISB opened a program of talent development for Officer Development Program (ODP) to recruit Superior HR; and c). ISB educates the public by launching a Sharia Economics literacy program that will score goals with major Indonesian organizations. ISB also supports the halal value chain in the development of the halal industry, supports MSME financing, and participates in financing giant projects using sharia schemes.(Ulfa, 2021: 1105) Meanwhile, according to Yenny Kornitasari et al, the merger of Islamic banks into Bank Syariah Indonesia is an effort to encourage the potential of Indonesia, which has a Muslim majority population, because this potential in the Islamic banking and finance sector can be realized through corporate restructuring, one of which is mergers. Mergers are carried out with the aim of generating company value which will increase profits for shareholders.(Kornitasari et al., 2022: 1472)

Based on the description above, and to find out and analysing how big the impact is on the SFI-CWR of Sharia Banks after the merger into ISB, the researchers are interested in conducting a juridical study of the position of the SFI-CWR of Sharia Banks after the establishment of ISB. This study aims to provide an overview of the legal position of the SFI-CWR of Sharia Bank post-establishment of the Indonesian Sharia Bank and to determine the Management System of the SFI-CWR of Sharia Bank post-establishment of the Indonesian Sharia Bank.

2. METHODS

This research is a normative legal research which uses library research methods. It's approach is using a normative juridical method, which is an approach method that uses the concept of positivist *legis*, where this theory views law as a normative system that is autonomous, closed and independent of people's lives.(Soemitro, 1990: 11) The research with a normative juridical approach according to Soerjono Soekanto is legal research carried out by examining library materials or secondary data as the basis for research by conducting searches on regulations and literature related to the problems studied. Sources of data used in this study are secondary data sources in the form of sources of legal materials including Act Number 41 of 2004 on Waqf, Government Regulation Number 42 of 2006 on the implementation of Act Number 41 of 2004 on Waqf, and Regulation of the Minister of Religion Number 4 of 2009 on Administration of Cash Waqf Registration.

The data analysis processing in this research is done by using content analysis technique or the analysing content or subject matter. Technique is an integrative

method of analysis and conceptually tends to be directed at finding, identifying, processing and analysing legal materials to understand their meaning, significance and relevance. From the analysis of the data, followed by drawing conclusions using the scientific method of deductive reasoning, namely by thinking that is fundamental to things that are general and then drawn to specific conclusions.(Bunging, 2007: 203)

3. RESULTS AND DISCUSSION

3.1. Legal Standing of the SFI-CWR of Sharia Banks post-Establishment of Indonesian Sharia Bank

Sharia financial institutions have a role in meeting the community's need for funds where economic activities must be in accordance with sharia principles, such as additional working capital, consuming an item, wanting to get the benefits or use value of an item, and having initial capital for people who want to invest, start a business and are constrained in capital, help distribute goods and encourage job opportunities.(Imaniyati, 2013: 50) Even most of Islamic Financial Institutions have a network of branch offices as well as many ATM facilities, SMS banking, Internet Banking, Phone Banking, and auto debit facilities. The breadth of its' network and facilities these makes it easier for Muslims in all corners of Indonesia to be able to participate in performing cash waqf worship.(Hastuti, 2018: 52)

As a financial institution, Sharia Financial Institutions also have the following meanings:

1. A business entity that has assets in the form of financial assets provided to run a business in the field of financial services, including financing; and
2. Business entities that only carry out business in the field of financing services, provide funds, goods, and capital without attracting and directly from the public.(Lis Sulistiani, 2021: 258)

Sharia banks can be interpreted as institutions that function for all economic activities and also enter the halal industry. Therefore, Sharia banks are also a vehicle for the development of waqf management in Indonesia. It illustrated the legitimacy and legality of the social function by syariah banks, one of which is accepting cash waqf. Some of the provisions regarding cash waqf are as follows:

- a. Waqf givers (*Wakif*) are allowed to endow movable objects in the form of money through SFI that have been appointed by the Minister.
- b. The implementation of cash waqf is carried out through a written statement of *wakif*.
- c. Waqf is issued in the form of a cash waqf certificate.
- d. The issuance of cash waqf certificates is carried out by ISF.
- e. ISF as waqf manager (*nazhir*) registers waqf assets in the form of money to the Minister no later than 7 (seven) days after the waqf certificate is issued.(Fauziah, 2021: 159)

Through Act Number 41 of 2004 on Waqf, the distribution rules of cash waqf have been regulated, namely through the services of a Sharia Financial Institution which is officially appointed as a Sharia Financial Institution Cash Waqf Recipient (SFI-CWR) so that the presence of sharia banking can be felt by all groups of society, both from the

upper middle class of society or vice versa (poor society),(Antonio & Nugraha, 2012: 243) considering the social intermediation function of the bank which has not been fully explored.

Sharia Banks that are recipients of cash waqf are regulated by the Decree of the Minister of Religion of the Republic of Indonesia (DMR-RI) on the Designation of Banks as Sharia Financial Institutions Cash Waqf Recipient (SFI-CWR), including: DMR-RI Number 92 of 2008 on the Determination of PT BNI (Persero) Tbk. Sharia Division as a Sharia Financial Institution Cash Waqf Recipient (SFI-CWR), DMR-RI Number 93 of 2008 on Designation of PT Indonesian Muamalat Bank as SFI-CWR, DMR-RI Number 95 of 2008 on Designation of PT Bank Syariah Mandiri as SFI-CWR, DMR-RI Number 96 of 2008 on the stipulation of PT Bank Mega Syariah Indonesia as SFI-CWR, and DMR-RI Number 14 of 2010 on Amendments to DMR-RI Number 94 of 2008 on the stipulation of PT Bank DKI Jakarta as SFI-CWR,(Lis Sulistiani, 2021: 259) and until now in 2022 it has increased to 27 SFI-CWR. There fore, based on the previos description and discussion, it appeared that SFI-CWR at the banks that have merged into ISB have legal standing, and all of its activities are protected by law.

3.2. Management System of the SFI-CWR of Sharia Bank post-Establishment of Indonesian Sharia Bank

Basically, as a new state-owned Sharia Bank, of course, Indonesian Sharia Bank has a clear and big target, namely it wants to become a global player in 2025 and penetrate the top 10 Sharia Banks in the world in terms of market capitalization. Apart from that, ISB actually has a strategic role for the Islamic economy in Indonesia. According to Sri Mahargiyantie in his research, the role of the strategy can be seen from two perspectives. The first strategic role relates to the role of strengthening sharia economics in Indonesia which allows market development and increasing access to sharia economics and finance so as to reduce the potential for usury, gharar, and despotic in economy in Indonesia. The role of the second strategy is related to the national economy caused by the development of capital and funds from ISB which is able to increase financing in business and national development.(Mahargiyantie, 2020: 207)

There fore, management system of Cash waqf at Indonesian Sharia Bank as SFI-CWR is to apply the concept of cash waqf linked retail Sukuk (Sharia Obligations), namely: cash waqf investment in state sukuk whose rewards are distributed by *Nazhir* (fund manager and waqf activity) to finance social programs and economic empowerment people. Cash Waqf linked retail sukuk can be interpreted as waqf-based sukuk.(BSI, n.d.) waqf-based sukuk is an innovation in empowering waqf assets so that be more productive. Sukuk have high potential as a instrument in mobilizing Islamic financial funds, because of its as a long-term financing instrument and can be alternative in obtaining project investment funds. Whereas waqf has the potential to generate social benefits.(Ilmiah, 2019: 140)

In addition, waqf-based sukuk is also one of the innovations to increase the productivity value of waqf assets. The value of the benefits of waqf assets must

continue to be developed so that they can benefit the wider community with social programs for the welfare of the people, of course by paying attention to the main principles of waqf management which are not allowed to reduce the main value of waqf.

Cash Waqf Linked Sukuk (CWLS) is a modern Sukuk-Waqf innovation, the provisions of CWLS are contained in the DSN-MUI fatwa No. B-816/ DSN-MUI/XI/2018, this fatwa provides a statement and statement that the CWLS issued by the government is legal according to sharia principles. The purpose of CWLS in the fatwa states that the CWLS sukuk contract is an effort to empower the number of unproductive waqf funds. The concept of waqf sukuk continues to be developed in accordance with the development of sharia financial and investment instruments and the need for the use of waqf funds.(Rahman et al., 2021) But, in the perspective of DSN-MUI Fatwa No: 131/DSN MUI/X/2019 that Waqf assets can be optimized through waqf sukuk, by The provisions for the issuance of sukuk may only be based on the benefits of assets waqf and business activities on waqf assets, while waqf assets do not can be used as the basis for the issuance of sukuk.(Hartanto & Sup, 2021: 215)

In accordance with the provisions of BWI and the Ministry of Finance, CWLS is offered to institutional and individual wakif (buyers) and is public or open. The government ensures that these Sukuk Waqf funds are safe and productive, either permanently or temporarily. CWLS is an instrument that has low risk and is even risk free, and this instrument is guaranteed by the Government and protected by two laws, namely the SBSN Law and the Act State Budget.(Rahman et al., 2021)

The use of waqf funds in sukuk is divided into two contracts:

1. Social waqf, where the wakif only expects the pleasure of Allah SWT and does not expect any returns from the use of waqf sukuk, the returns obtained are managed by Nadzir for the benefit of the people; and
2. Sukuk of Waqf with an *ijarah (lease)* contract where the purpose of the contract is business, the return is obtained by the wakif by managing it for the benefit of the people and personally. From the two contracts, sukuk-based waqf are collaborated to increase the value of greater benefits and benefits.(Paul & Faudji, 2020)

The model of management of Cash Waqf Linked Sukuk by ISB management as SFI-CWR is carried out by the following mechanism:(Rahman et al., 2021: 90-91)

- a. The Indonesian Waqf Board (IWB) is the coordinator of *nazhir* of waqf who manages CWLS which mandates Sharia Financial Institutions Cash Waqf Recipient (SFI-CWR) and *nahzir* partners to collect CWLS cash waqf. In this case, it is regulated by the government and offered openly to the public. The Waqf is obtained from individuals or institutions or organizations that manage people's funds and waqf that have been approved by IWB.
- b. The implementer of the National Economic Recovery (NER) Program provides social infrastructure development projects and programs to improve the welfare of people affected by the Covid-19 pandemic to the Ministry of Finance.

- c. The Ministry of Finance issues CWLS in the form of Sukuk of Waqf which is offered to the public in accordance with the social infrastructure development project affected by the Covid-19 pandemic proposed by the NER Program Implementer. In accordance with the provisions of the DSN-MUI, this Sukuk of waqf cannot be transacted and transferred or non-tradable, because it is devoted to waqf. The Ministry of Finance can use the underlying asset with State-Owned Goods (SOG).
- d. The Indonesian Waqf Agency purchased Sukuk-Waqf (SW) using CWLS cash waqf collected by FSI-CWR and nadzir partners.
- e. The Ministry of Finance provides funds from the collection of Sukuk-Waqf (SW) to the Covid-19 Recovery Fund Management Agency, which can be appointed as amil institutions or community fund management institutions such as LAZIS (Institution of Amil, Zakah, Infaq and shadaqa) which has previously been coordinated with the NER Program Implementer for Covid-19 recovery programs and projects. .
- f. The Ministry of Finance provides coupons or fees for Waqf Sukuk which are issued periodically to *nahzir* (IWB) according to the tenor determined through the custodian bank.
- g. The profit sharing of the waqf sukuk coupon is then distributed by *nahzir* (IWB) to nadzir partners to be distributed to *mawquf'alayh*.
- h. After the tenor of the waqf sukuk ends, the Ministry of Finance pays the sukuk capital in full to *nahzir* (IWB). The returned sukuk waqf funds are IWB's assets and can be replayed to buy the next waqf sukuk. However, if the wakif is waqf temporarily, then after maturity, the waqf asset is returned to the wakif according to the initial nominal.

The management system of other SFI-CWR of Sharia Banks certainly refers to the management that has been determined by each of these Sharia Banks as determined in the Regulations related to cash waqf.

4. CONCLUSIONS

Based on the results of the study, it can be concluded that the position of the SFI-CWR of Sharia bank in the Sharia banking legal system in Indonesia is based on the Waqf Law and the Decree of the Minister of Religion of the Republic of Indonesia. With the Birth of Indonesian Syariah Bank (ISB) certainly has an impact on the Sharia banks that have merged, namely BRI Syariah Bank, Syariah Mandiri Bank and BNI Syariah Bank, so that the legal basis for the three Sharia banks as SFI-CWR follows the position of ISB as SFI-CWR which has a strong and strong foundation. legally valid. The SFI-CWR of Sharia bank Management System after the establishment of ISB, of course, for Sharia banks that are not involved in the merger still refer to the management that has been determined by the respective Sharia banks as stipulated in the Regulations related to cash waqf. Meanwhile, of course the SFI-CWR management for BRI Syariah Bank, Mandiri Syariah Bank and BNI Syariah Bank which merged to become Indonesian

Syariah Banks must refer to the system built by ISB management, namely Cash waqf linked retail Islamic bond.

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