

# Legal Aspects of Banking and Financing in Cash Waqf-Based Building Development Projects: Integration of Sharia Principles and Legal Certainty

Khotami<sup>1</sup>, Endeh Suhartini<sup>2</sup>, Abraham Yazdi Martin<sup>3</sup>

<sup>1</sup>Magister Hukum, Universitas Djuanda Bogor, Indonesia ;

<sup>2</sup>Magister Hukum, Universitas Djuanda, Indonesia ;

<sup>3</sup>Magister Hukum, Universitas Djuanda, Indonesia ;

<sup>1</sup>radif.kr@unida.ac.id; <sup>2</sup>endeh.suhartini@unida.ac.id; <sup>3</sup>abraham.yazdi.martin@unida.ac.id;

---

## Abstract

**Background** - In recent years, there has been a growing interest in utilizing cash waqf (endowment) as a source of financing for building development projects, particularly in Muslim-majority countries. Cash waqf, a form of charitable giving under Islamic law, has the potential to fund a variety of community-based development initiatives, including educational institutions, hospitals, and infrastructure projects. However, the application of cash waqf in financing development projects introduces complex legal and financial questions, particularly around integrating Islamic finance principles with conventional banking systems. Legal certainty is essential to ensure that cash waqf financing aligns with Sharia principles, while also providing transparency, accountability, and protection for investors and beneficiaries. Despite the growing interest in cash waqf for development projects, significant gaps remain in terms of regulatory frameworks, integration with banking systems, and practical implementation. Key challenges include the absence of comprehensive legal structures to govern cash waqf in building development, uncertainty surrounding the treatment of waqf funds under Islamic law, and inconsistent application of Sharia-compliant banking principles in the context of real estate and infrastructure financing. Furthermore, there is a need for more research into how legal systems can reconcile the moral and religious obligations of waqf with modern financial practices, especially in building development projects.

**Purpose** - This study aims to: (1) Examine the legal aspects of banking and financing in cash waqf-based building development projects, (2) Analyze the integration of Sharia principles into the financing models of cash waqf development projects, (3) Identify the gaps in existing laws and propose strategies for ensuring legal certainty in cash waqf financing, and (4) Evaluate how Islamic banks can play a role in facilitating cash waqf for development projects.

**methodology** - The research employs a normative legal approach, focusing on an analysis of the relevant statutory provisions, legal precedents, and Sharia principles governing cash waqf and real estate development. Key sources include: 1. The Indonesian Waqf Law (Law No. 41 of 2004), which outlines the legal framework for waqf in Indonesia. 2. The Law on Islamic Banking (Law No. 21 of 2008), which sets out the regulations governing Islamic financial institutions. 3. Fatwas issued by the National Sharia Council (DSN-MUI), which guide the permissible uses of waqf funds. 4. The Regulations of the Financial Services Authority (OJK) on Islamic finance, particularly those relating to waqf funds in real estate projects. Case studies on the implementation of cash waqf in building projects, both domestically and internationally, are reviewed to provide practical insights. Comparative analysis with jurisdictions such as Malaysia, which has successfully integrated cash waqf for infrastructure development, offers valuable lessons.

**Findings** - 1. Legal Gaps: While the Indonesian legal framework provides a foundation for waqf, there are gaps in the implementation and oversight of cash waqf funds for large-scale projects. Regulations that govern the management of waqf endowments, such as in real estate development, are not fully integrated into the banking and financial sectors, leading to uncertainty in how waqf funds are treated legally. 2. Sharia Compliance: The integration of Sharia principles into cash waqf projects is largely guided by fatwas, which emphasize risk-sharing, prohibition of riba (usury), and the social welfare aspect of waqf. However, challenges arise in structuring financial instruments that are both Sharia-compliant and legally binding under national laws, especially in mixed-use development projects. 3. Role of Islamic Banks: Islamic banks have an essential role to play in facilitating the financing of cash waqf projects, particularly through mechanisms like sukuk (Islamic bonds) and profit-sharing investment models. However, the current regulatory framework does not sufficiently encourage Islamic banks to engage in waqf-based development, limiting their participation. 4. Legal Certainty: There is a need for clearer and more harmonized legal provisions to ensure that cash waqf funds can be used effectively in building development. Greater legal certainty would help align the interests of stakeholders, from donors and investors to developers and beneficiaries.

**Originality** - This research contributes to the existing body of knowledge by addressing the intersection of Islamic law, banking, and property development in the context of cash waqf financing. Unlike previous studies that focus on the theoretical aspects of waqf, this article provides a comprehensive analysis of the legal and financial challenges that arise in the practical implementation of cash waqf in real estate development. By offering recommendations for bridging the legal and regulatory gaps, this study provides valuable insights for policymakers, Islamic financial institutions, and developers seeking to incorporate Sharia-compliant financing mechanisms in large-scale building projects. The findings of this research are particularly valuable in the context of Indonesia's growing interest in sustainable and inclusive development models.

Keywords: Banking, Building Development Project, Cash Waqf, Financing, Legal Certainty, Sharia Principles

---