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## Sukuk-waqf: A Proposed Instrument for mobilize cash waqf fund Case Study: Indonesia

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### **Abstract**

*This paper aims to discuss an instrument model to mobilize the potential cash waqf in Indonesia as a source of financing the development of land waqf. The model is built on the understanding of the concept of waqf, cash waqf, sukuk and conditions and cash waqf regulation in Indonesia. This study used primary data collected through observation and interviews with mosque and mosque management, while secondary data were collected from journals, articles, books, e-books and web sites. Sukuk Waqf is perfect instrument to mobilize cash waqf fund from Muslim communities in Indonesia through a regular and sustainable way. Sukuk waqf with retail concept is suitable with the condition of Indonesia and can reach all layers of Muslims to berwaqf. Waqf's sukuk requires the legitimation of the Government and the Ulema Council.*

**Practical Implications-** *The waqaf (nazhir) body may use Sukuk waqf as an instrument to mobilize the potential of cash waqf effectively as a source of financing to produce waqaf land so as to impact the economy on wellbeing.*

**Originality/value-** *Sukuk waqf is the most recent instrument in mobilizing cash waqf.*

**Keywords:** *Cash waqf, Sukuk Waqf, Financing, Waqf Land.*

### **1. Introduction**

Indonesia is the largest Muslim population in the world although it is not a wealthy country but has a wakaf asset and a huge wakaf potential. For the Muslim community of Indonesia waqaf is a worship that has been a hereditary tradition which is not only practiced by wealthy people but by all layers of society in accordance with its ability because waqaf is considered to be the practice of the hadith of the Prophet SAW which reads:

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ مِنْ صَدَقَةٍ جَارِيَةٍ وَعِلْمٍ يُنْتَفَعُ بِهِ وَوَلَدٍ صَالِحٍ يَدْعُو لَهُ

“When A man’s work ends upon his death except for three things: a contribution to knowledge, on-going charity, and faithful child” [Muslim].

According to the scholars such as Imam al-Suyuti stated that the charity of alms is a waqf.

Waqf tradition that applies and develops in Indonesia is the waqf of immovable property, especially land, so that the width of waqf land in Indonesia based on data from the Ministry of Religion of the Republic of Indonesia until 2016 has reached 4,359,443,170 M<sup>2</sup> or 43,594.43 Ha spread over 435,768 locations in 33 Provinces of Indonesia. This amount does not include the land not reported to the Ministry of Religious Affairs or submitted to non-formal Nazirs, such as village administrators, mosques or mosques. Waqf land use is dominated for places of worship, namely mosques and mosque 73.24%, schools and pesantren 13.80%, tombs 4.59% and other social needs 8.37% ([www.bwi.or.id](http://www.bwi.or.id)).

The use of waqf land only for social facilities either, places of worship or school economically have no impact on the welfare of the ummah. Therefore, several countries in the Middle East such as Turkey, Saudi Arabia and Jordan have transformed the utilization of zakat land in order to be productive and economic value that affects the welfare. Turkey in 1987 reformed its waqf institution by providing an opportunity to establish a company to develop waqf's wealth. As a result, the waqf management agency in Turkey succeeded in developing waqf assets in a more productive and income-generating manner, among others through the establishment of hotels and caravans, factories, commercial cultural facilities, homes for businesses, student dormitories, homes / apartments, various industries, and other properties . The development of waqf's wealth to be productive is also done in Saudi Arabia and Jordan. In Saudi Arabia, the development of Waqf is in various forms such as hotels, land, buildings (houses) for residents, shops, gardens, and places of worship. Likewise in Jordan, waqf management in Jordan can be said to be very productive which is generally in the form of developing waqf land for olive, date, almond and grape farming. The result of wakaf management is used by various community projects in the form of establishment of universities, madrasahs, hospitals, printing, scholarships and others (Hasanah, 2008).

Indonesia with the largest waqf land area in the world has enormous potential to be developed into productive waqf land. The main obstacle in developing waqf land productivity is the availability of funds to finance the development of waqf productivity projects in addition to management constraints, institutions and professionalism of Nazirism. However, with the issuance of Law Number 41 of 2004 concerning Waqf and Government Regulation (PP) Number 42 of 2006 which was followed by forming the Indonesian Waqf Board (BWI), as a manifestation of waqf management efforts to be more structured and institutionally organized. The latest paradigm in the Law and Government Regulation is that it allows the waqf of money that has a productive waqf charge. This change in paradigm provides space for development and produces waqf land through cash waqf as a source of financing.

Besides the land waqf tradition, Indonesia also has a waqf tradition in the form of money collected through kenclengan or charity boxes every Friday and at every celebration of Islamic holidays. But by Nazir waqf money is only used for the development of social facilities such as places of worship, madrassas, etc., which are not productive and have economic value. This waqf tradition in the form of money is a huge potential for the development of productive cash waqf, one of which is to make cash waqf as a source of financing to produce a very wide waqf land. The government is aware of this huge cash waqf potential so that it issues Government Regulation No. PP No. 42 of 2006 which regulates rigorously the cash waqf mechanism, institutions and issuance of cash waqf certificates. But until now the practice of cash waqf is still not popular in Indonesia. One of the causes is the absence of instruments used to mobilize cash waqf with easy mechanisms and processes that can reach every element of Indonesian Muslims. Money Waqf Sharia Financial Institution (LKS-PWU) which was formally established by the Government is passive and only waits for waqf to hand over the money waqf and then issues a cash waqf certificate. Therefore, an instrument is needed to mobilize cash waqf in accordance with the regulations and waqf institutions in Indonesia. This study explores various practices and cash waqf instruments that are implemented in various countries to develop cash waqf instrument models that are suitable for Indonesian conditions and the use of cash waqf

funds as a source of financing to produce waqf land. For example, in Riau Province, especially in Bengkalis Regency, waqf land became dominant. This was demonstrated in the research of Zulhelmy and Abrar (2018).

## 2. Literature Review

### A. Theoretical Framework of Waqf

From Shari'ah point of view, waqf may be defined as holding a Maal (an asset) and preventing its consumption for the purpose of repeatedly extracting its usufruct for the benefit of an objective representing righteousness /philanthropy. Hence, Waqf is a continuously usufruct-giving asset as long as its principal is preserved. Preservation of principal may result from its own nature as in land or from arrangements and conditions prescribed by the Waqf founder. This definition covers perpetual Waqf and the Waqf that remains as long as its asset lasts, i.e., for the beneficial life of the assets. This is something that is agreed upon among four Schools of Fiqh. The definition also covers the kind of waqf that is made temporary by the will and conditions of its founder which is discussed and approved in the Maliki School only (Kahf, 1998). In other terms, Waqf is an endowment made by the rich to benefit the poor. It is one of the important elements in Islam in alleviating poverty through providing basic needs to increase general welfare of people (Sadeq, 2002).

The structure of Waqf is based on four elements: the *Waqif*, the element endowed (*Mawquf*), the beneficiary (*Mawquf 'alayh*) and the form of the contract (*Al-sighah*). For each element cited below, there is certain condition by which the process of *Waqf* is considered valid (Oubdia and Raghibi, 2018). Whereas according to the Waqf Law in Indonesia the elements of waqf consist of Wakif, Nazhir, Property of Waqf Objects, Waqf Pledges, allotments of waqf property and the period of waqf.

In addition to the dimensions of worship, waqf also has a much larger economic and social dimension than zakat in increasing poverty and poverty alleviation because the utilization of waqf property is more flexible than the use of zakat assets which are limited to eight (mustahik) asphalt. Studies and research results show the economic and social impact of waqf. According to Shaikh. etc, (2017) Most Muslim-majority countries are generally income-poor, and the governments are generally weak in their tax collection, effective governance and capacity for development spending. Private sector financial institutions are scarce and mostly cater to the people who can meet the income-based lending criteria. Thus, the institution of waqf can fill the gap as a social finance institution by providing intermediation services for effectively utilising perpetual social savings. Flexibility in the rules of waqf enables it to serve beneficiaries directly or through financial institutions and to provide a wide range of social.

Contribution of cash waqf to sosio-economic development in developing countries is significant. Fund collected through cash waqf certificate program can be allocated to social-related development areas (e.g., agriculture, education, health, and infrastructure), urban poverty alleviation program, and other public service development. This opportunity in turn will reduce poverty level and will allow people help themselves (Mannan,1998). the potential of cash waqf in financing not only religious areas but also financing different goods and services needed globally, such as education, health, social care and commercial activates, basic infrastructures, besides opening jobs for the majority of people. (Mohsin, 2013). According to Suhaimi, etc. (2014) the endowment fund scheme plays an important role in the economic development of the Muslim community in Penang. The Waqf Fund Scheme contributes by way of providing a financing facility towards the acquisition of waqf assets or through cash support channelled to associations or committees of a masjid.

There is no doubt that centralization and the damage inflicted upon the waqf system has been detrimental to the cause of these services in the Islamic world. It is clear that the state provided education and health services has not been a match for the waqf provided one. At the very least, the waqf system is needed to supplement the state provided education and health sectors. Presently, in the aftermath of the 1967 reforms, there are 166 universities in Turkey. Of these 62 are waqf universities. In Istanbul, there are 42 universities. Of these, 33 are

waqf universities. And Turkey, like Japan, S. Korea and Taiwan, is also a country without any natural resources. Yet, it has been achieving high rates of sustained growth. Much of this is thanks to its relatively healthy and well-educated work force. This is, to a large extent, an outcome of its reformed and dynamic waqf system. The positive impact of the waqfs on employment should also be remembered. Partly as a consequence, Western countries have now reversed their traditional hostilities to trusts/foundations. The French government, which used to be the most anti-waqf government throughout history, now subsidizes 60 % of the expenditures of French foundations. The result, all over the west, was a significant increase in employment. The non-profit sector accounted for an average of 13 percent of the net jobs added between 1980-1990 in France, Germany and the United States. In the U.S., the non-profit sector accounts for 6.9 percent of total employment. Clearly, in addition to all the advantages mentioned above, the revival of the system would contribute to the problem of employment in the Islamic world as well. (Çizakça,2014)

### **B. Cash Waqf and Cash Waqf Certificate**

Para fuqoha telah menyepakati definisi tentang waqf. According to them waqf means the appropriation of the property from private ownership and the dedication of its usufruct to charitable purposes. Following the same definition and proposing the creation of cash waqf at large, we may define cash waqf as the confinement of an amount of money by a founder(s), (individuals, companies, institutions, corporations or organisations private or public), and the dedication of its usufruct in perpetuity to the welfare of the society (Mohsin, 2013).

Professor Mannan introduced *Cash-Waqf* in Bangladesh through Social Investment Bank Limited (SIBL) in 1995. SIBL issues *Cash-Waqf* Certificate to collect funds from the rich and to distribute gains of the managed funds between the poor. Like those of Bangladesh, in other Islamic countries, most of people are poor. Therefore, effectiveness of cash *Waqf* certificate program to help reduce poverty in Bangladesh gives hope that a similar program can be successfully implemented in other countries. So, by the time, this *Waqf* model has developed by other Islamic bank of Bangladesh. These days this model is expanded through most of Islamic and even Western countries. (Islam, Nusrat and Abul, 2014)

According to Mannan (1998), the objectives of cash waqf certificate are;

- (1) to equip banks and other waqf management institutions with cash waqf certificate,
- (2) to help collect social savings through cash waqf certificate (cash waqf certification can be done in the name of other beloved family member to strengthen family integration among rich families),
- (3) to help transform the collected social savings to social capital, as well as to help develop social capital market,
- (4) to increase social investment,
- (5) to encourage rich communities' awareness on their responsibility for social development in their environment.,
- (6) to stimulate integration between social security and social welfare.

The Indonesian Ulema Council responded to the development of Cash Waqf by issuing a fatwa on cash waqf in Indonesia which was set on May 11, 2002 as follows (mui.or.id):

- a. Cash Waqaf (*Waqf al-Nuqud*) is waqf donated by individual, group of individuals, or legal entity, in cash.
- b. Cash waqf includes securities.
- c. Money donated as waqf is not forbidden (*jawaz*).
- d. Cash waqf can only be distributed and allocated for anything not against *syariah* (Islamic law).
- e. Existence of waqf fund should be conserved. Waqf fund cannot be transferred to anyone

Based on the MUI Fatwa, To implement cash waqf in Indonesia, the government issued a regulation in the form of Government Regulation no. 42 of 2006 as the implementation of Law no. 41 on Waqf in 2004. This

regulation rights the mechanism of issuing cash waqf certificate along with its institutions. In summary, cash waqf mechanism according to PP. 42 of 2006 commenced with Wakif surrendering money in Rupiah directly to Sharia Financial Institutions Receiving Money Waqf (LKS-PWU). Wakif sides the wakif will statement form that functions as a contract of waqaf (AIW). PWU LKS issues a Money Waqf Certificate containing information about: a) name of Money Waqf Receiver LKS, b) Wakif name and address, c) amount of money waqf and its allocation, d) waqf period, e) Nazhir's name and address selected, and f) place and date of issuance of cash waqf certificate submitted to wakif and copies to designated Nazhir. Furthermore, the LKS-PWU put the waqf money into a safekeeping account (wadi'ah) on behalf of the appointed Wakif Nazhir.

One of the tasks of the LKS-PWU that is not carried out massively is to announce to the public the existence of the Money Waqf Recipient LKS so that cash waqf becomes unpopular and not optimal in Indonesia. Besides that, from the cash waqf mechanism stipulated by the Government Regulation shows that the PWU-LKS is only passive and only waits for Wakif to submit cash waqf.

Differ with cash waqf di Indonesia, Bangladesh through Social Investment Bank Limited (SIBL) issues Cash-Waqf Certificate to collect funds from the rich and to distribute gains of the managed funds between the poor. Another significant aspect of the Cash-waqf Certificate lies in the fact that it has corrected the misperception that the privilege of making *waqf* belongs only to the rich. Since Cash-waqf Certificate as introduced by Social Investment Bank is expressed in terms of a small denomination of Tk. 1000/- (US\$21 only), it has become affordable to a large section of the Muslim population; it can also be expressed in even smaller denominations also. Seen in this light, the Cash-waqf Certificate Scheme can be seen as a movement of social reconstruction and development in which a vast majority of the population can participate (Mannan, 1999).

### C. Sukuk and Development Land of Waqf

According to AAOIFI, Sukuk is defined as: "Investment sukuk are certificates of equal value representing undivided shares in ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity, however, this is true after receipt of the value of the sukuk, the closing of subscription and the employment of funds received for the purpose for which the sukuk were issued."

According to IFSB 2 Paragraph 194 sukuk can be categorized as (ISRA, 2015):

- a) Asset-based Sukuk, when its underlying assets offer fairly predictable benefits to the sukuk holder, as well as salam, istishna 'and ijarah (Note: the asset may be held by a musharaka transaction or a securitized mudaraba)
- b) Sukuk-based Equity, when the benefits are determined on the distribution of the underlying investment income, which does not offer sufficiently predictable benefits (eg, musharaka or mudharabah related to trade reasons)

The parties involved in the issuance of sukuk are:

1. Obligor, the party responsible for the payment of the bond and the nominal value of the sukuk issued until the sukuk matures
2. Special Purpose Vehicle (SPV), a legal entity established in the framework of the issuance of sukuk and has functions:
  - a. as a sukuk publisher
  - b. acting as trustee to represent investors
  - c. become a government counterpart in asset transfer transactions.
3. Investor / sukuk holder is the holder of the sukuk which has the right to remuneration, margin and nominal value of sukuk according to their respective participation.

This instrument is issued with an Underlying Asset according to clear sharia principles. Underlying Asset referred to here is a certain asset that is the object of the agreement, where the asset must have economic value. While the function of Underlying Assets is to avoid usury and as a condition to be traded on the secondary market.

Assets that can be used as Underlying Sukuk according to the Financial Services Authority Regulation No. 18 / POJK.04 / 2015 are:

- a. certain tangible assets (a'yan maujudat);
- b. the value of the benefits of certain tangible assets (manafiul a'yan) either existing or existing;
- c. existing and existing services (al khadamat);
- d. certain project assets (maujudat masyru 'mu'ayyan); and / or
- e. predetermined investment activities (nasyath ististmarin khashah).

Issuance of sukuk must first obtain a statement / fatwa concerning conformity with the principles of sharia (sharia endorsement) from institutions that are competent in the field of sharia. This is important to get the confidence of investors that the issuer has implemented sharia principles. For sukuk issuance in Indonesia, the intended Islamic endorsement can be granted by the National Sharia Council of the Indonesian Ulama Council.

Sukuk is one of the popular financial instruments as a source of financing to produce waqaf assets in various countries, including as practiced in Malaysia, Singapore and Saudi Arabia. One of the most phenomenal land development projects is the construction of the Zam-zam Tower in Mecca, Saudi Arabia. Tower Zam-Zam is built on a piece of land owned by Raja Abdul Aziz, managed by King Abdulaziz Endowment Waqf (KAEW) by using B.O.T (build, operate and transfer) rules. KAEW (Nazhir) leases the waqaf land he manages to Binladin Group Company within a period of 28 years to build using the build-operate-transfer (B.O.T) concept. Binladin Group Company in cooperation with Munshaat Real Estate Project to finance the entire development cost of Hotel (ZamZam Tower) worth USD 390 Million. Real Estate Project issued a USD 390 million time share base bond to investors to fund the construction of the hotel. The sale of the Sukuk al-intifa' (الاتنفاع صكوك) is sold based on the utilization benefit of the building (usufruct) to be submitted to the sukuk investor within 24 years. Investors have the right to use the building's benefits and can sublease (sub-lease) to other tenants within 24 years. After 28 years (the redemption limit of all assets), Munshaat Real Estate Project handed over all Building Rights to the Waqf Waqf (KAEW) waqf institution through the Binladin Group Company (Omar and Asmak, 2013).

### 3. Sukuk Waqf Modeling

Sukuk used as a source of financing for the development of land waqf, whether practiced in Saudi Arabia, Malaysia and Singapore is still a commercial Sukuk with a yield. In contrast to practices in Saudi Arabia, Malaysia and Singapore, Bangladesh uses Cash Waqf Certificate issued by Social Investment Bank Limited (SIBL) as an instrument to collect cash waqf which is used as a source of financing the development of productive waqaf and waqaf land. Cash Waqf Certificate is issued with fractions of US \$ 21 so that it can reach all levels of society without complicated processes and procedures.

Indonesia can learn from the success of Bangladesh in raising cash waqf funds as a source of financing the development of land waqaf because of the potential cash waqf Indonesia is very large. The amount of potential cash waqf funds is not only due to the large Muslim population of Indonesia but also because of the cash waqf tradition in the Muslim community in Indonesia. Examples are cash waqf collected by Mosque and Mosque Management at least once a week every Friday through kenclengan and charity boxes. To calculate the potential cash waqf in Indonesia can be done simply based on the number of Mosques and Mosques in Indonesia. There are 236,925 mosques in Indonesia and 245,500 public musholla

(<http://simas.kemenag.go.id>). Assuming that on average every mosque collected cash waqf minimum Rp 500.000 and mushola Rp 100.000 per week it will collected cash waqf from mosque Rp 6.16 trillion / year (236.925 x Rp 500,000 x 52) and from mosque Rp 1.28 triliyun (245,500 x Rp 100,000 x 52 weeks). Thus, within a year the potential cash waqf is Rp 7.44 trillion that can be used as a source of financing the development of land waqaf.

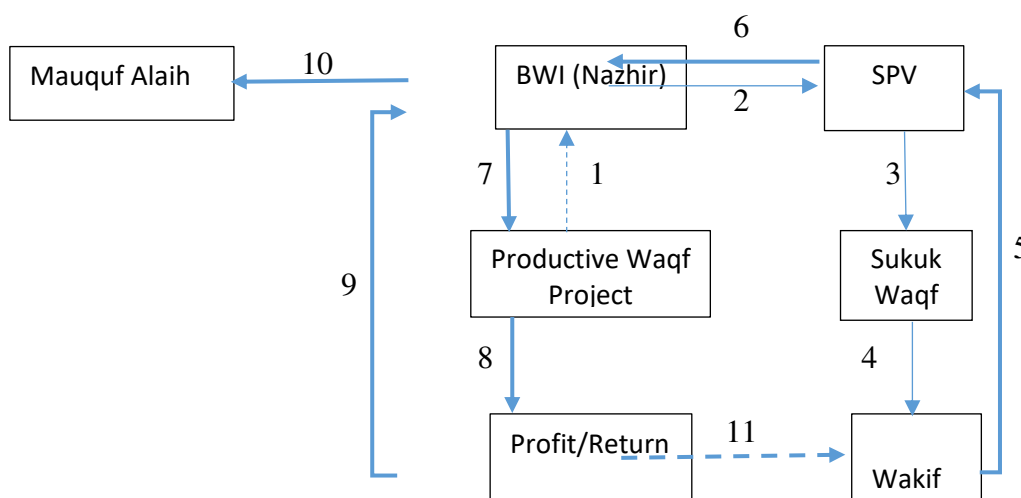
The main obstacle facing Indonesia in raising Cash waqf funds is the absence of an instrument to collect cash waqf that can reach all layers of Muslims in Indonesia with easy mechanisms and procedures. Indonesia cannot issue cash waqf certificates like in Bangladesh because:

- 1) In Indonesia there is no Social Bank as an institution authorized to issue cash waqf certificate and as a fund manager. Bank Waqf's establishment plan as Social Bank has not been realized yet.
- 2) The regulation governing cash waqf establishes Cash Waqf Certificate issued by LKS-PWU after wakif submit cash waqfnya to LKS-PKU so Cash Waqf become unpopular and can not reach all the layers of society potentially cash waqf with amount not big, for example Rp 100,000

Given these constraints, the proposed instrument as a solution to maximize the potential cash waqf as a source of financing the development of land to produce productive waqf sukuk waqf which is the development of the concept of Cash Waqf Certificate issued by Social Investment Bank Limited (SIBL) in Bangladesh.

Sukuk waqaf is a non-commercial sukuk which is a merger between sukuk and waqf. Waqf sukuk can be defined as a Certificate / Proof of Wakaf of money of equal value and represents an inseparable part of the participation of a certain productive productive project without return. Sukuk waqf is an equity-based sukuk with a wakalah contract without a yield. Sukuk Waqf as a securities certificate can also be traded in the secondary market at its nominal value. There is no capital gain/loss because the concept of waqf is fixed. The difference between Sukuk waqf and Cash Waqf Certificate -SIBL is: a) Sukuk waqf indicates the participation or ownership of wakaf for productive waqf project, while Cash Waqf Certificate is only limited to evidence of having zakat for certain purpose in general, b) sukuk waqf holder (wakif) can control, hold Nazhir accountable in relation to the waqaf project underlying the sukuk waqf, while the wakif holders of Cash Waqf Certificate-SIBL have no right to control or hold accountable to nazhir because the Cash Waqf Certificate-SIBL is not a proof of participation / ownership specifically against the waqf project, and c) Cash Waqf Certificate-SIBL can not be traded in the secondary market because it is not a tradable category of securities.

The process of issuance of sukuk waqf can be described as follows:



**Explanation:**

- Step 1: Indonesian Waqf Board (BWI) / stipulates a productive waqf project to be financed and its cost.
- Step 2: To meet the regulations in the issuance of sukuk BWI form Special Purpose Vehicle ("SPV")
- Step 3: SPV publishes Waqaf Sukuk
- Step 4: Sukuk waqf is circulated through mosques, Sharia banks and waqf institutions
- Step 5: The proceeds from the sale of sukuk waqf are collected in SPV
- Step 6: SPV hands over the waqf funds to BWI / Nazhir
- Step 7: BWI / Nazhir using Waqf Fund to build Waqf Project productive on waqf land
- Step 8: Productive Waqf Project generates profit / return
- Step 9: Productive Waqf Profit / Return is managed by BWI / Nazhir
- Step 10: BWI / Nazhir distributes waqf funds to Mauquf-Alaih
- Step 11: Wakif receive reward from Allah SWT in the form of reward continue to flow indefinitely.

Sukuk waqf which is published is sukuk waqf retail with fractions of at least Rp 100.000, - distributed through Mosque, Islamic banks and other Islamic financial institutions will be able to reach all layers of Muslims. Sukuk waqf with Rp 100.000 denomination, - will dismiss the assumption that the only thing that can berwaqaf rich people who have excess property.

**4. Implications**

Sukuk Waqf combines the flexibility of sukuk and the sustainability of waqf so that can be considered as the perfect instrument to mobilize cash waqf fund from Muslim communities through a regular and sustainable way. The use of sukuk waqf as an instrument to collect cash waqf from Muslims requires formal government, regulatory and institutional support. The supporting components to be prepared in the issuance of sukuk waqf are:

1. Government regulations on the existence of sukuk waqf as certificates of tradable securities.
2. Institutional Reform. The Indonesian Waqf Board should be an independent institution from the Center to the region as the National Zakah Agency. There should be BWI at the Provincial Level, BWI at the Regency / City Level and for Sub-District level established the Waqf Collecting Unit.
3. MUI fatwa about the permissibility of sukuk waqf as a cash waqf instrument
4. Increased professionalism of Nazhir / Mutawalli in producing and managing land waqf.

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