

A STUDY ON CROSS-BORDER *WAQF* WITH SPECIAL  
REFERENCE TO THE APPLICATION OF INDONESIAN  
*WAQF* CORE PRINCIPLES

BY

SHANDY PRIMANDASETIO FREDDY

A thesis submitted in fulfilment of the requirement for the  
degree of Doctor of Philosophy in Law

Ahmad Ibrahim Kulliyyah of Laws  
International Islamic University Malaysia

AUGUST 2025

## ABSTRACT

The *Waqf* Core Principles (WCP) are international rules governing *waqf* activity. It was launched by Bank Indonesia, the Indonesian Waqf Board, and the International Research and Training Institute-Islamic Development Bank (IRTI-IsDB) in October 2018. The WCP focuses primarily on *waqf* management aspects and has not yet addressed crucial elements necessary for facilitating cross-border *waqf*, which encompasses not just the transfer of funds but also the international transfer of goods. Furthermore, supporting the Indonesian and Kuwaiti governments' plans to undertake cross-border *waqf* transactions in the near future is another important reason for regulating cross-border *waqf* in the WCP. This study aims to provide a new international rule on cross-border *waqf* as part of the WCP's technical notes. The examination of *waqf*-related laws in Indonesia and Malaysia, along with international laws and rules, as well as selected cross-border *waqf* activities, was conducted using a doctrinal legal research methodology that employed various approaches depending on the type of source. This study also encompasses brief interviews with global organizations, scholars, and experts. Upon reviewing 52 Indonesian *waqf*-related regulations, 31 Malaysian *waqf*-related regulations, 15 international laws, 8 international rules, and 36 practices from various global institutions, it is clear that several core elements must be met to carry out cross-border *waqf* transactions prudently. These elements include the most secure methods for managing the cross-border movement of the *mawquf* and usufruct, the significance of applying Know Your Customer (KYC) principles to all involved parties in cross-border *waqf*, the choice of governing law, mechanisms for dispute resolution, and the protection of perpetuity and the *waqif*'s will in cross-border *waqf* transactions. The findings indicate that various key elements can be taken from Indonesian and Malaysian *waqf*-related regulations, international laws, and notable cross-border *waqf* practices to address the legal gap in the WCP and facilitate cross-border *waqf* transactions. All these elements were subsequently processed using the *sharia* legal framework and formulated as ready-to-implement international rules, featuring comprehensive clauses aimed at enhancing the quality of WCP. The clauses were organized according to the stages of implementation in cross-border *waqf*. Beginning with the stage prior to creation, followed by the creation stage, the management stage, and concluding with the development stage of cross-border *waqf*. This research recommendation is expected to potentially enhance the *waqf* sector worldwide by establishing a prudent framework for governing cross-border *waqf* transactions.

Keywords: Cross-Border *Waqf*, *Waqf* Legal Framework, Indonesia, Know Your Customer, *Waqf* Core Principles



## ملخص

مبادئ الوقف الأساسية (WCP) هي قواعد دولية تنظم نشاط الوقف، وقد أُطلقت من قبل بنك إندونيسيا، ومجلس الوقف الإندونيسي، والمعهد الإسلامي للبحوث والتدريب التابع للبنك الإسلامي للتنمية (IRTI-IDB) في أكتوبر 2018. يركز البرنامج بشكل رئيسي على جوانب إدارة الوقف، لكنه لم يتطرق بعد إلى العناصر الأساسية اللازمة لتيسير الوقف العابر للحدود، والتي تشمل تحويل الأموال والنقل الدولي للبضائع. وتبرز الحاجة إلى تنظيم هذا الجانب من الوقف ضمن WCP، لا سيما في ظل دعم خطط الحكومتين الإندونيسية والكويتية للقيام بمعاملات وقفية عبر الحدود في المستقبل القريب. وتهدف هذه الدراسة إلى تقديم قاعدة دولية جديدة بشأن الوقف العابر للحدود ضمن الملاحظات الفنية لـ WCP، من خلال دراسة القوانين المتعلقة بالوقف في إندونيسيا وماليزيا، بالإضافة إلى القوانين الدولية والممارسات المختارة، باستخدام منهجية بحث قانوني عقائدي اعتمدت على تحليل مصادر متنوعة، إلى جانب مقابلات قصيرة مع منظمات دولية، وعلماء، وخبراء. ومن خلال مراجعة 52 لائحة متعلقة بالوقف في إندونيسيا، و31 لائحة في ماليزيا، و15 قانوناً دولياً، و8 قواعد دولية، و36 ممارسة من مؤسسات علمية، تبين أن هناك عدة عناصر أساسية يجب توافرها لضمان تنفيذ معاملات الوقف العابر للحدود بشكل آمن، من أبرزها: تحديد أكثر الطرق أماناً لإدارة حركة الوقف ومنافعها، وتطبيق مبادئ "اعرف عميلك" (KYC)، واختيار القانون الحاكم، ووضع آليات لتسوية النزاعات، وضمان ديمومة الوقف، واحترام إرادة الواقف. وتشير النتائج إلى إمكانية الاستفادة من هذه العناصر لسد الفجوة القانونية في WCP، حيث تمت إعادة صياغتها ضمن إطار قانوني شرعي كقواعد دولية قابلة للتنفيذ، تتضمن بنوداً منظمة وفق مراحل تنفيذ الوقف العابر للحدود، بدءاً من المرحلة السابقة للتأسيس، ثم مرحلة التأسيس، تليها مرحلة الإدارة، وتنتهي بمرحلة التطوير. ومن المتوقع أن تُسهم هذه التوصيات البحثية في تعزيز قطاع الوقف عالمياً من خلال إنشاء إطار قانوني رشيد لتنظيم معاملات الوقف العابر للحدود.

الكلمات المفتاحية: معاملات الوقف عبر الحدود، الإطار القانوني للوقف، إندونيسيا، اعرف عميلك، المبادئ الأساسية للوقف

## APPROVAL PAGE

The thesis of Shandy Primandasetyo Freddy has been approved by the following:

---

Nor Asiah Mohamad  
Supervisor

---

Mohd Yazid bin Zul Kepli  
Co-Supervisor

---

Sharifah Zubaidah Bt. Syed Abdul Kader  
Internal Examiner

---

Helza Nova Lita  
External Examiner

---

Meftah Hrairi  
Chairman

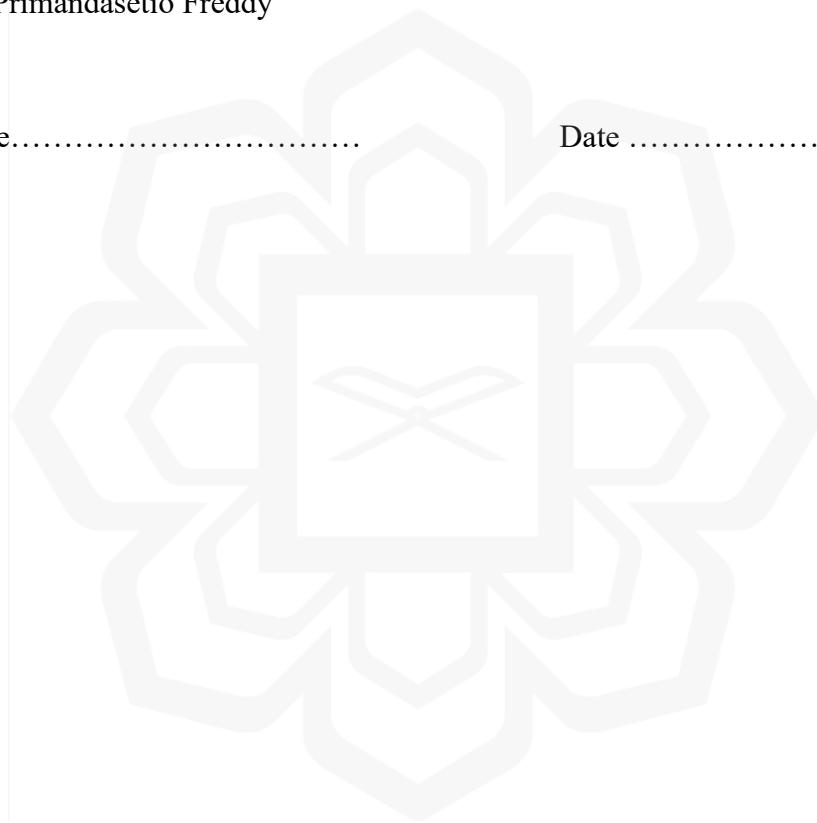
## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Shandy Primandasetio Freddy

Signature.....

Date .....



**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF  
FAIR USE OF UNPUBLISHED RESEARCH**

**A STUDY ON CROSS-BORDER *WAQF* WITH SPECIAL  
REFERENCE TO THE APPLICATION OF INDONESIAN *WAQF*  
CORE PRINCIPLES**

I declare that the copyright holder of this thesis is jointly owned by the student and IIUM.

Copyright © 2024 Student Name and International Islamic University Malaysia. All rights reserved.

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purpose.
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

By signing this form, I acknowledged that I have read and understand the IIUM Intellectual Property Right and Commercialization policy.

Affirmed by Shandy Primandasetio Freddy

.....  
Signature

.....  
Date

**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF  
FAIR USE OF UNPUBLISHED RESEARCH**

**A STUDY ON CROSS-BORDER *WAQF* WITH SPECIAL  
REFERENCE TO THE APPLICATION OF INDONESIAN  
*WAQF* CORE PRINCIPLES**

I declare that the copyright holder of this thesis is International Islamic University Malaysia.

Copyright © 2025 International Islamic University Malaysia. All rights reserved.

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purpose.
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

By signing this form, I acknowledged that I have read and understand the IIUM Intellectual Property Right and Commercialization policy.

Affirmed by Shandy Primandasetio Freddy

.....

Signature

.....

Date

**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF  
FAIR USE OF UNPUBLISHED RESEARCH**

**A STUDY ON CROSS-BORDER *WAQF* WITH SPECIAL  
REFERENCE TO THE APPLICATION OF INDONESIAN  
*WAQF* CORE PRINCIPLES**

I declare that the copyright holder of this thesis is Shandy Primandasetio Freddy.

Copyright © 2025 Shandy Primandasetio Freddy. All rights reserved.

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purpose.
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

By signing this form, I acknowledged that I have read and understand the IIUM Intellectual Property Right and Commercialization policy.

Affirmed by Shandy Primandasetio Freddy

.....  
Signature

.....  
Date

## ACKNOWLEDGEMENTS

In the name of Allah *Subhanahu Wa Ta'ala*, the most gracious and the most merciful. Blessings to our beloved Rasulullah Muhammad *Sallallahu Alaihi Wasallam*. As a mere human and a servant of Allah, I am fully aware that this thesis can only be completed due to relief and guidance provided by Allah.

I would like to express my utmost gratitude to my main supervisor, Prof. Dr. Nor Asiah Mohamad, for her valuable guidance, insightful suggestions, and her patience during the whole process of this thesis creation. I am also grateful to my second supervisor, Assoc. Prof. Mohd Yazid bin Zul Kepli, for essential hints that greatly helped me in creating this thesis with better quality.

My highest appreciation and purest love also go to Datuk Dr. Mohd. Ghazali Bin Md. Noor and Datin Narimah Fadzya Binti Abdullah for their kindness and nurture, which provided me with valuable experiences and more access to experts and practitioners in the *waqf* sector globally. Most importantly, for the parental love that they poured to me and my family during my entire study period.

I also would like to express my sincere gratitude to Dr. Dadang Muljawan, Assoc. Prof. Dr. Sonny Zuhuda, Prof. Mohd Yaziz Bin Mohd Isa, Assoc. Prof. Puteri Aina Binti Megat Ameir Noordin, Dr. Mohamad Noor Ropiah Bin Abu Bakar, Mr. Hamid Rashid, Br. Fahmi M. Nasir, all dearest member of World Zakat and Waqf Forum, and the members of the AIKOL Postgraduate Office and the Centre for Postgraduate Studies, IIUM.

Most importantly, to my parents, who have always prayed for this thesis completion. To my beloved wife and life-long companion, Nurmilah Maelani, thank you for all the support and care during the three years of my Ph.D. journey. I pray to Allah to regard this work as our good deed and multiply the reward for all who have supported and contributed, as *sadaqah jariyah*.

# TABLE OF CONTENTS

|                            |      |
|----------------------------|------|
| Abstract.....              | ii   |
| Approval Page.....         | iii  |
| Declaration.....           | v    |
| Copyright.....             | vi   |
| Acknowledgement.....       | ix   |
| List of Tables.....        | xiv  |
| List of Figures.....       | xvi  |
| List of Cases.....         | xix  |
| List of Statutes.....      | xx   |
| List of Abbreviations..... | xxiv |

## **CHAPTER ONE: BACKGROUND OF THE STUDY..... 1**

|       |                                                                                               |    |
|-------|-----------------------------------------------------------------------------------------------|----|
| 1.1   | Introduction.....                                                                             | 1  |
| 1.2   | Statement of the Problem.....                                                                 | 4  |
| 1.3   | Objectives of the Research.....                                                               | 6  |
| 1.4   | Research Questions.....                                                                       | 6  |
| 1.5   | Research Hypothesis.....                                                                      | 7  |
| 1.6   | Research Methodology.....                                                                     | 7  |
| 1.7   | Scope and Limitation of the Study.....                                                        | 8  |
| 1.8   | Literature Review.....                                                                        | 9  |
| 1.8.1 | Cross-Border <i>Waqf</i> Definition.....                                                      | 10 |
| 1.8.2 | Indonesia Main <i>Waqf</i> Regulations.....                                                   | 13 |
| 1.8.3 | <i>Waqf</i> Core Principles Coverage.....                                                     | 16 |
| 1.8.4 | Cross Border <i>Waqf</i> -Related Practices in Indonesia.....                                 | 24 |
| 1.8.5 | References About Cross Border <i>Waqf</i> -Related Law and Practices in Malaysia.....         | 25 |
| 1.8.6 | Saudi Arabia References Related to Cross-Border <i>Waqf</i> Practices.....                    | 33 |
| 1.8.7 | Singapore References Related to Cross-Border <i>Waqf</i> Practices.....                       | 34 |
| 1.8.8 | References from Other Countries Related to Cross-Border <i>Waqf</i> Practices.....            | 36 |
| 1.8.9 | International Rules References About Cross Border <i>Waqf</i> -Related Law and Practices..... | 37 |
| 1.9   | Significant Outcomes or Contribution of The Study.....                                        | 42 |
| 1.10  | Organization of the Research.....                                                             | 43 |

## **CHAPTER TWO: INDONESIA’S LAWS AND REGULATIONS RELATED TO CROSS-BORDER *WAQF*..... 44**

|        |                                                            |    |
|--------|------------------------------------------------------------|----|
| 2.1.   | Introduction.....                                          | 44 |
| 2.2.   | Organizational of <i>Waqf</i> Management in Indonesia..... | 47 |
| 2.3.   | The Framework of <i>Waqf</i> Law in Indonesia.....         | 49 |
| 2.3.1. | Law in Indonesia.....                                      | 50 |
| 2.3.2. | <i>Waqf</i> Law in Indonesia.....                          | 52 |



|        |                                                                                            |    |
|--------|--------------------------------------------------------------------------------------------|----|
| 2.3.3. | <i>Fatwa</i> .....                                                                         | 55 |
| 2.3.4. | <i>Sharia</i> Supervisory Board.....                                                       | 55 |
| 2.4.   | Cross-Border <i>Waqf</i> in Indonesia's Legal Framework.....                               | 56 |
| 2.5.   | Utilizing Indonesia's Law to Bolster Cross-Border <i>Waqf</i> Activities.....              | 58 |
| 2.5.1. | Securing the Movement of Cross-Border <i>Mawquf</i> and Usufruct....                       | 58 |
| 2.5.2. | Protecting the <i>Waqf</i> or <i>Waqif</i> 's Purpose.....                                 | 62 |
| 2.5.3. | Guaranteeing the Perpetuity of the <i>Waqf</i> .....                                       | 68 |
| 2.5.4. | Implementing the Know Your Customer Principles in Cross-Border <i>Waqf</i> Management..... | 76 |
| 2.5.5. | Determining the Governing Law and Dispute Resolution in Cross-Border <i>Waqf</i> .....     | 79 |
| 2.6.   | Conclusion.....                                                                            | 83 |

### CHAPTER THREE: *SHARIA* LEGAL FRAMEWORK FOR CROSS-BORDER

|                                                                          |           |
|--------------------------------------------------------------------------|-----------|
| <b>WAQF</b> .....                                                        | <b>85</b> |
| 3.1 Introduction.....                                                    | 85        |
| 3.2. The <i>Sharia</i> Legal Framework of Cross-Border <i>Waqf</i> ..... | 85        |
| 3.2.1. Charity and Humanity are Borderless.....                          | 86        |
| 3.2.2. Islamic Legal Maxims.....                                         | 90        |
| 3.2.3. <i>Maqasid al-Sharia</i> : The Objectives.....                    | 95        |
| 3.2.4. <i>Sharia</i> Economic Values and Principles.....                 | 99        |
| 3.2.5. <i>Sharia</i> Law and <i>Fatwa</i> .....                          | 107       |
| 3.2.6. Local Law: Civil Law and Case Law.....                            | 111       |
| 3.2.7. International Law and Rules.....                                  | 114       |
| 3.3. Proposed Legal Framework for Cross-Border <i>Waqf</i> .....         | 140       |
| 3.4. Conclusion.....                                                     | 143       |

### CHAPTER FOUR: CURRENT CROSS-BORDER *WAQF* PRACTICES AND

|                                                                                                                                |     |
|--------------------------------------------------------------------------------------------------------------------------------|-----|
| ISSUES.....                                                                                                                    | 144 |
| 4.1. Introduction.....                                                                                                         | 144 |
| 4.2. Selected Practices in Indonesia and Some Selected Countries Experience.....                                               | 145 |
| 4.2.1. Essential Elements for Cross-Border <i>Waqf</i> Practices.....                                                          | 145 |
| 4.2.1.1. Collaboration with Public and Private Sectors in The Host Country, Including the Islamic Financial Institutions.....  | 145 |
| 4.2.1.2. <i>Nazir</i> 's Professionalism and Integrity.....                                                                    | 150 |
| 4.2.1.3. Formation of a Special Managerial Unit for Cross-Border <i>Waqf</i> .....                                             | 154 |
| 4.2.1.4. Establishment of Representative Office or Strategic Partners Appointment in the Host Country or Surrounding Area..... | 157 |
| 4.2.1.5. Implementation of International Rules in the Movement of Cross-Border <i>Waqf</i> Assets.....                         | 165 |
| 4.2.1.6. Cross-Border <i>Waqf</i> 's Role in Creating Social Welfare through Monetary, Macroprudential, and Payment            |     |

|                                                                                                                                  |            |
|----------------------------------------------------------------------------------------------------------------------------------|------------|
| System Sectors.....                                                                                                              | 173        |
| 4.2.2. Issues and Challenges in Cross-Border <i>Waqf</i> .....                                                                   | 183        |
| 4.2.2.1. Regulatory and Policy Issues.....                                                                                       | 183        |
| 4.2.2.2. Acquisition by Local Authority in the Host Country.....                                                                 | 187        |
| 4.2.2.3. Terrorism Financing Issue.....                                                                                          | 188        |
| 4.2.2.4. Changes in Cross-Border <i>Waqf</i> Management.....                                                                     | 191        |
| 4.2.2.5. Barrier on Cross-Border Movement of <i>Waqf</i> Assets.....                                                             | 193        |
| 4.3. Conclusion.....                                                                                                             | 195        |
| <b>CHAPTER FIVE: ANALYZING AND DEVELOPING INTERNATIONAL<br/>RULES OF CROSS-BORDER <i>WAQF</i>.....</b>                           | <b>198</b> |
| 5.1. Introduction.....                                                                                                           | 198        |
| 5.2. Analyzing Countermeasures for Legal Gaps on Cross-Border <i>Waqf</i> in<br>The <i>Waqf</i> Core Principles.....             | 199        |
| 5.2.1. Cross-Border Movement of the <i>Mawquf</i> .....                                                                          | 199        |
| 5.2.2. Cross-Border Movement of the Usufruct.....                                                                                | 203        |
| 5.2.3. Know Your Customer Principles for Cross-Border <i>Waqf</i> .....                                                          | 204        |
| 5.2.4. Governing Law for Cross-Border <i>Waqf</i> .....                                                                          | 207        |
| 5.2.5. Dispute Resolution in Cross-Border <i>Waqf</i> .....                                                                      | 209        |
| 5.2.6. Protection of the Perpetuity of Cross-Border <i>Waqf</i> .....                                                            | 211        |
| 5.2.7. Protection of the <i>Waqif</i> 's Purpose in Cross-Border <i>Waqf</i> .....                                               | 219        |
| 5.3. Developing International Rules for Cross-Border <i>Waqf</i> as a<br>Technical Notes of the <i>Waqf</i> Core Principles..... | 223        |
| 5.3.1. Pre-creation Stage of Cross-Border <i>Waqf</i> .....                                                                      | 223        |
| 5.3.2. The Creation Stage of Cross-Border <i>Waqf</i> .....                                                                      | 226        |
| 5.3.3. Management Stage of Cross-Border <i>Waqf</i> .....                                                                        | 229        |
| 5.3.4. Development Stage of Cross-Border <i>Waqf</i> .....                                                                       | 240        |
| 5.4. Conclusion.....                                                                                                             | 248        |
| <b>CHAPTER SIX: FINDINGS, RECOMMENDATIONS, AND CONCLUSION...</b>                                                                 | <b>252</b> |
| 6.1. Introduction.....                                                                                                           | 252        |
| 6.2. Findings.....                                                                                                               | 254        |
| 6.2.1. The Outcome of Indonesian and Malaysian Cross-Border <i>Waqf</i><br>Regulations Assessment.....                           | 254        |
| 6.2.1.1. Securing the Movement of Cross-Border <i>Mawquf</i> .....                                                               | 255        |
| 6.2.1.2. Securing the Movement of Cross-Border Usufruct.....                                                                     | 256        |
| 6.2.1.3. Guaranteeing the Perpetuity of the <i>Waqf</i> .....                                                                    | 257        |
| 6.2.1.4. The Implementation of Know Your Customer Principles.....                                                                | 259        |
| 6.2.1.5. Determining the Governing Law and Dispute Resolution<br>Mechanism.....                                                  | 259        |
| 6.2.2. Legal Gaps on Cross-Border <i>Waqf</i> in the <i>Waqf</i> Core Principles....                                             | 260        |
| 6.2.3. Recommendations to Improve the <i>Waqf</i> Core Principles.....                                                           | 262        |
| 6.3. Contribution to Knowledge.....                                                                                              | 272        |
| 6.4. Limitations of Research.....                                                                                                | 273        |
| 6.5. Recommendations for Future Research.....                                                                                    | 274        |

|                          |            |
|--------------------------|------------|
| <b>REFERENCES.....</b>   | <b>275</b> |
| <b>APPENDIX I.....</b>   | <b>300</b> |
| <b>APPENDIX II.....</b>  | <b>303</b> |
| <b>APPENDIX III.....</b> | <b>307</b> |
| <b>APPENDIX IV.....</b>  | <b>310</b> |
| <b>APPENDIX V.....</b>   | <b>314</b> |
| <b>APPENDIX VI.....</b>  | <b>321</b> |
| <b>APPENDIX VII.....</b> | <b>343</b> |
| <b>GLOSSARY.....</b>     | <b>358</b> |



## LIST OF TABLES

|            |                                                                                                                |     |
|------------|----------------------------------------------------------------------------------------------------------------|-----|
| Table 1.1. | <i>Waqf</i> Core Principles Coverage                                                                           | 20  |
| Table 2.1. | Contents of <i>Waqf</i> Management Report                                                                      | 71  |
| Table 3.1. | Correlation between Islamic Legal Maxims and Cross-Border<br><i>Waqf</i>                                       | 91  |
| Table 3.2. | <i>Sharia</i> Economic Values and Cross-Border <i>Waqf</i>                                                     | 102 |
| Table 3.3. | <i>Sharia</i> Economic Principles and Cross-Border <i>Waqf</i>                                                 | 106 |
| Table 3.4. | International Laws by the UNCITRAL and Cross-Border<br><i>Waqf</i>                                             | 121 |
| Table 3.5. | International Laws by the UNIDROIT and Cross-Border <i>Waqf</i>                                                | 125 |
| Table 3.6. | The International Payment Systems' Benefit for Cross-Border<br><i>Waqf</i>                                     | 137 |
| Table 3.7. | International Rules by the ICC and Cross-Border <i>Waqf</i>                                                    | 138 |
| Table 4.1. | The Muslims Around the World Foundation's Cross-Border<br><i>Waqf</i> Projects                                 | 159 |
| Table 4.2. | <i>Waqf</i> Lawsuits Resolved by Non- <i>Sharia</i> Court                                                      | 185 |
| Table 5.1. | The Application of Local Law in Cross-Border <i>Waqf</i>                                                       | 208 |
| Table 5.2. | The General Guidance: Pre-creation Stage of Cross-Border<br><i>Waqf</i>                                        | 224 |
| Table 5.3. | The General Guidance: The Creation Stage of Cross-Border<br><i>Waqf</i>                                        | 226 |
| Table 5.4. | The General Guidance: Management of Cross-Border <i>Waqf</i>                                                   | 229 |
| Table 5.5. | The General Guidance: Development of Cross Border <i>Waqf</i>                                                  | 240 |
| Table 6.1. | Chapters Connections with the Research Objectives and<br>Research Questions                                    | 253 |
| Table 6.2. | Findings Pertaining to Securing the Movement of <i>Mawquf</i><br>Based on Indonesian and Malaysian Regulations | 255 |

|             |                                                                                                                         |     |
|-------------|-------------------------------------------------------------------------------------------------------------------------|-----|
| Table 6.3.  | Findings Pertaining to Securing the Movement of Usufruct Based on Indonesian Regulations                                | 256 |
| Table 6.4.  | Findings About Guaranteeing the Perpetuity of the <i>Waqf</i> Based on Indonesian and Malaysian Regulations             | 257 |
| Table 6.5.  | Findings Pertaining to the Application of KYC principles Based on Indonesian and Malaysian Regulations                  | 259 |
| Table 6.6.  | Findings Pertaining to the Governing Law and Dispute Resolution Mechanism Based on Indonesian and Malaysian Regulations | 260 |
| Table 6.7.  | Legal Gaps on Cross-Border <i>Waqf</i> Regulations in The <i>Waqf</i> Core Principles                                   | 262 |
| Table 6.8.  | Findings from International Laws, Rules, and Global <i>Waqf</i> Practices                                               | 263 |
| Table 6.9.  | Answers to the <i>Waqf</i> Core Principles' Legal Gaps on Cross-Border <i>Waqf</i>                                      | 266 |
| Table 6.10. | Proposed The <i>Waqf</i> Core Principles' Technical Notes on Cross-Border <i>Waqf</i>                                   | 272 |

## LIST OF FIGURES

|              |                                                                                                                |    |
|--------------|----------------------------------------------------------------------------------------------------------------|----|
| Figure 1.1.  | International Elements in the <i>Waqf</i> of Hejaz Railway                                                     | 2  |
| Figure 1.2.  | Legal Gaps in Cross-Border <i>Waqf</i> in Indonesian <i>Waqf</i> -Related Laws and <i>Waqf</i> Core Principles | 5  |
| Figure 1.3.  | Research Flow                                                                                                  | 10 |
| Figure 1.4.  | International Elements in the <i>Waqf</i> of Ahmad Dawjee Dadabhoy                                             | 12 |
| Figure 1.5.  | Cross Border <i>Waqf</i>                                                                                       | 13 |
| Figure 1.6.  | Indonesian Positive Law about <i>Waqf</i>                                                                      | 14 |
| Figure 1.7.  | <i>Mawquf</i> Cross Border Movement: Elements to be Considered                                                 | 28 |
| Figure 1.8.  | Hamdard <i>Waqf</i> Pakistan, India, and Bangladesh                                                            | 37 |
| Figure 1.9.  | Important Factors in International Physical Distribution                                                       | 41 |
| Figure 2.1.  | Organizational Structure of Waqf Management in Indonesia                                                       | 49 |
| Figure 2.2.  | Source of Law in Indonesia                                                                                     | 51 |
| Figure 2.3.  | Legal Hierarchy in Indonesia                                                                                   | 52 |
| Figure 2.4.  | <i>Waqf</i> Laws in Indonesia                                                                                  | 54 |
| Figure 2.5.  | <i>Waqf</i> Core Principles Coverage in Indonesia's Regulations                                                | 57 |
| Figure 2.6.  | Securing the Movement of Cross-Border <i>Mawquf</i> and Usufruct in Indonesia's Law                            | 61 |
| Figure 2.7.  | Cross-Border <i>Waqf</i> Protection in Indonesia's Law                                                         | 67 |
| Figure 2.8.  | Guaranteeing the Perpetuity of Cross-Border <i>Waqf</i> in Indonesia's Law                                     | 75 |
| Figure 2.9.  | The Implementation of the Know Your Customer Principles for Cross-Border <i>Waqf</i> based on Indonesia's Law  | 78 |
| Figure 2.10. | The Flow of <i>Waqf</i> Dispute Resolution in Indonesia                                                        | 80 |
| Figure 2.11. | Determining the Governing Law and Dispute Resolution for Cross-Border <i>Waqf</i> based on Indonesia's Law     | 83 |

|              |                                                                                              |     |
|--------------|----------------------------------------------------------------------------------------------|-----|
| Figure 3.1.  | Borderless Charity and Humanity Activities Essential Elements                                | 90  |
| Figure 3.2.  | <i>Maqasid al-Sharia</i> and Cross-Border <i>Waqf</i>                                        | 99  |
| Figure 3.3.  | <i>Sharia</i> Economic Values                                                                | 100 |
| Figure 3.4.  | <i>Sharia</i> Economic Principles                                                            | 103 |
| Figure 3.5.  | <i>Sharia</i> Law and <i>Fatwa</i> in Malaysia                                               | 109 |
| Figure 3.6.  | Case Law Position as Source of Law in Malaysia                                               | 113 |
| Figure 3.7.  | INCOTERMS in Cross-Border <i>Waqf</i>                                                        | 127 |
| Figure 3.8.  | Bank Payment Obligation in Cross-Border <i>Waqf</i>                                          | 129 |
| Figure 3.9.  | Demand Guarantee in Cross-Border <i>Waqf</i>                                                 | 130 |
| Figure 3.10. | Standby Letter of Credit in Cross-Border <i>Waqf</i>                                         | 131 |
| Figure 3.11. | Open Account Payment Method in Cross-Border <i>Waqf</i>                                      | 133 |
| Figure 3.12. | Payment in Advance Method in Cross-Border <i>Waqf</i>                                        | 134 |
| Figure 3.13. | Documentary Collection in Cross-Border <i>Waqf</i>                                           | 135 |
| Figure 3.14. | Letter of Credit in Cross-Border <i>Waqf</i>                                                 | 136 |
| Figure 3.15. | Regulation Gap and the Legal Framework                                                       | 141 |
| Figure 3.16. | Proposed Legal Framework of Cross-Border <i>Waqf</i>                                         | 142 |
| Figure 4.1.  | <i>Nazir's</i> Professionalism and Integrity in Habib Bugak Al Asyi Cross-Border <i>Waqf</i> | 153 |
| Figure 4.2.  | <i>Waqf Tunai</i> by Bank Muamalat Malaysia Berhad                                           | 155 |
| Figure 4.3.  | The Global <i>Waqf</i> by Aksi Cepat Tanggap                                                 | 156 |
| Figure 4.4.  | Tabung Wakaf Indonesia by Dompot Dhuafa                                                      | 157 |
| Figure 4.5.  | Cross-Border <i>Waqf</i> by Aksi Cepat Tanggap                                               | 163 |
| Figure 4.6.  | Cross-Border <i>Waqf</i> by Dompot Dhuafa                                                    | 164 |
| Figure 4.7.  | Implementation of Ex Works INCOTERMS in the <i>Waqf</i> of Seulawah Aircraft                 | 167 |
| Figure 4.8.  | Implementation of Free Carrier INCOTERMS in the <i>Waqf</i> of Seulawah Aircraft             | 168 |
| Figure 4.9.  | Implementation of Delivered at Place INCOTERMS in the <i>Waqf</i> of Seulawah Aircraft       | 169 |

|              |                                                                                                                                   |     |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------|-----|
| Figure 4.10. | Implementation of Delivered at Place Unloaded<br>INCOTERMS in the <i>Waqf</i> of Seulawah Aircraft                                | 171 |
| Figure 4.11. | Implementation of Delivered Duty Paid INCOTERMS in the<br><i>Waqf</i> of Seulawah Aircraft                                        | 172 |
| Figure 4.12. | Muhammadiyah's Productive Agricultural <i>Waqf</i>                                                                                | 174 |
| Figure 4.13. | Bank Wakaf Tani and Inflation Rate Stabilization                                                                                  | 175 |
| Figure 4.14. | Effective Agriculture <i>Waqf</i> Distribution for Inflation Rate<br>Stabilization                                                | 176 |
| Figure 4.15. | Strengthening Foreign Exchange Reserve and Exchange Rate<br>Through Cross-Border <i>Waqf</i>                                      | 178 |
| Figure 4.16. | Complete Figure of <i>Sistem Wakaf Tunai Malaysia</i>                                                                             | 180 |
| Figure 4.17. | Things Need to Be Considered on Digital Cash <i>Waqf</i>                                                                          | 181 |
| Figure 4.18. | <i>Infraq Lil-Waqf</i> by Angkatan Kerjasama Kebangsaan Malaysia<br>Flow Chart                                                    | 183 |
| Figure 4.19. | <i>Istibdal</i> as Countermeasures of Cross-Border <i>Waqf</i> 's Assets<br>Acquisition by Local Authority                        | 188 |
| Figure 4.20. | Management Changes in The Habib Bugak Al Asyi Cross-<br>Border <i>Waqf</i>                                                        | 193 |
| Figure 5.1.  | Legal Gaps and Legal Framework as the Foundation for the<br>Development of the WCP Technical Notes on Cross-Border<br><i>Waqf</i> | 198 |



## LIST OF CASES

*Abdul Kahar Bin Ahmad v. Kerajaan Negeri Selangor Darul Ehsan* [2008] 8 MYFC 35(A)

*Ajar Bt Taib & Ors v Majlis Agama Islam dan Adat Istiadat Melayu Perlis* [2014] 3 SHLR 40

*Dalam Perkara Permohonan Ahmad Yahya; Majlis Agama Islam Negeri Pulau Pinang (intervener)* [2016] 1 CLJ 1018

*Fatimah & Ors v Logan & Ors.* [1871] 1 Ky. 255

*G Rethinasamy v Majlis Ugama Islam Pulau Pinang dan Satu yang Lain.* [1993] 2 MLJ 166

*Haji Embong Bin Ibrahim & Ors v Tengku Nik Maimunah Hajjah Binte Almarhum Sultan Zainal Abidin & Anor.* [1980] 1 MLJ 286

*Jitendir Singh a/l Pagar Singh v Pentadbir Tanah Wilayah Persekutuan* [2008] 7 MLJ 479

*Kamarolzaman bin Hajar v Majlis Agama Islam Selangor.* [2016] 4 SHLR 44

*Majlis Agama Islam Negeri Pulau Pinang v Abdul Latiff Bin Hassan & Anor* [2015] MLJU 1115

*Majlis Agama Islam Pulau Pinang v Katijah Yoan & Ors* [2010] 4 CLJ 592

*Majlis Agama Islam Selangor v Bong Boon Chuen & 146 Lagi.* [2008] 6 MLJ 488

*Majlis Agama Islam Selangor v Hicom Gamuda Development Sdn Bhd & Anor.* (2011) 1 SHLR 10

*Mohd Alias v Ibrahim v RHB Bank Bhd & Anor* [2011] 4 CLJ 654

*Mohd Ridza bin Abdul Latiff (berniaga sebagai Rimbunan Niaga) v Majlis Agama* [2016] MLJU 424

*Pesuruhjaya Hal Ehwal Agama dan Lain-Lain v. Tengku Mariam* [1970] 2 MLJ 222

*Tengku Zainul Akmal bin Tengku Besar Mahmud & Anor v. Majlis Agama Islam dan Adat Melayu Terengganu & Anor* [2012] 3 SHLR 39

## LIST OF STATUTES

Administration of Islamic Law (Federal Territories) Act 1993 (Malaysia)  
Administration of Islamic Law (Kedah Darul Aman) Enactment 2008 (Malaysia)  
Administration of Islamic Law (Pahang) Enactment 1991 (Malaysia)  
Administration of Muslim Law Act 1966 (Singapore)  
Administration of the Religion of Islam (Perlis) Enactment 2006 (Malaysia)  
Administration of the Religion of Islam (State of Penang) Enactment 2004 (Malaysia)  
Arbitration (Amendment) Act 2018 (Malaysia)  
Central Bank of Malaysia Act 2009 (Malaysia)  
Civil Law Act 1956 (Malaysia)  
Contracts Act 1950 (Malaysia)  
Control of Rent Act 1966 (Malaysia)  
Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994 (Malaysia)  
Federal Constitution of Malaysia, 1957 (Malaysia)  
Islamic Financial Services Acts 2013 (Malaysia)  
Land Acquisition Act 1960 (Malaysia)  
Labuan Business Activity Tax 1990 (Malaysia)  
Labuan Companies Act 1990 (Malaysia)  
Labuan Financial Services and Securities Act 2010 (Malaysia)  
Local Government Act 1976 (Malaysia)  
Majlis Islam Sarawak Ordinance 2001 (Malaysia)  
Majlis Ugama Islam Negeri Sabah Enactment 2004 (Malaysia)  
National Land Code (Act 828) 1965 (Malaysia)  
Instruksi bersama Menteri Agama dan Menteri Dalam Negeri Republik Indonesia No.1 Tahun 1978 tentang pelaksanaan Peraturan Pemerintah No.28 Tahun 1977 tentang Perwakafan Tanah Milik (Indonesia)  
Instruksi Bersama Menteri Agama dan Kepala Badan Pertanahan Nasional Republik Indonesia No.4 Tahun 1990 tentang Sertifikat Tanah Wakaf (Indonesia)  
Instruksi bersama Menteri Agama dan Menteri Dalam Negeri Republik Indonesia No.1 Tahun 1978 tentang pelaksanaan Peraturan Pemerintah No.28 Tahun 1977 tentang Perwakafan Tanah Milik (Indonesia)

Instruksi Menteri Agama Republik Indonesia No.3 Tahun 1979 tentang Petunjuk Pelaksanaan Keputusan Menteri Agama No.73 Tahun 1978 (Indonesia)

Instruksi Presiden Republik Indonesia No.1 Tahun 1991 tentang Kompilasi Hukum Islam (Indonesia)

Keputusan Direktur Jenderal Bimbingan Masyarakat Islam Republik Indonesia No.DJ.II/420 Tahun 2009 tentang Model, Bentuk dan Spesifikasi Formulir Wakaf Uang (Indonesia)

Keputusan Direktur Jenderal Bimbingan Masyarakat Islam Republik Indonesia No.800 Tahun 2014 tentang Pelaksanaan Peraturan Menteri Agama No.73 Tahun 2013 tentang Tata Cara Perwakafan Benda Tidak Bergerak dan Benda Bergerak Selain Uang (Indonesia)

Keputusan Menteri Agama Republik Indonesia No.73 Tahun 1978 tentang Pendelegasian Wewenang Kepala Kantor Wilayah Departemen Agama Propinsi/setingkat di Seluruh Indonesia untuk Mengangkat atau Memberhentikan Setiap Kepala Kantor Urusan Agama Kecamatan sebagai Pejabat Pembuat Akte Ikrar Wakaf (PPAIW) (Indonesia)

Keputusan Menteri Dalam Negeri Republik Indonesia No.348 Tahun 1982 tentang Penyertifikatan Tanah bagi Badan Hukum Keagamaan, Badan Hukum Sosial dan Lembaga Pendidikan yang Menjadi Objek Proyek Operasi Nasional Agraria (Indonesia)

Peraturan Daerah Provinsi Daerah Khusus Ibu Kota Jakarta No.18 Tahun 2010 tentang Bea Perolehan Hak Atas Tanah dan Bangunan (Indonesia)

Peraturan Pemerintah Republik Indonesia No.10 Tahun 1961 tentang Pendaftaran Tanah (Indonesia)

Peraturan Pemerintah Republik Indonesia No.38 Tahun 1963 tentang Penunjukan Badan-Badan Hukum yang dapat Mempunyai Hak Milik atas Tanah (Indonesia)

Peraturan Pemerintah Republik Indonesia No.28 Tahun 1977 tentang Perwakafan Tanah Hak Milik (Indonesia)

Peraturan Pemerintah Republik Indonesia No.42 Tahun 2006 tentang Pelaksanaan Undang-Undang No.41 tahun 2004 tentang Wakaf (Indonesia)

Peraturan Pemerintah Republik Indonesia No.71 Tahun 2008 tentang Perubahan Ketiga Atas Peraturan Pemerintah No.48 Tahun 1994 Tentang Pembayaran Pajak Penghasilan atas Penghasilan dari Pengalihan Hak atas Tanah dan/atau Bangunan (Indonesia)

Peraturan Pemerintah Republik Indonesia No.25 Tahun 2018 tentang Perubahan atas Peraturan Pemerintah Republik Indonesia No.42 Tahun 2006 tentang Pelaksanaan Undang-Undang No.41 tahun 2004 tentang Wakaf (Indonesia)

Peraturan Badan Wakaf Indonesia No.1 Tahun 2007 tentang Organisasi dan Tata Cara Kerja Badan Wakaf Indonesia (Indonesia)

Peraturan Badan Wakaf Indonesia No.1 Tahun 2008 tentang Prosedur Penyusunan Rekomendasi Terhadap Permohonan Penukaran/ Perubahan Status Harta Benda Wakaf (Indonesia)

Peraturan Badan Wakaf Indonesia No.2 Tahun 2008 tentang Perwakilan Badan Wakaf Indonesia (Indonesia)

Peraturan Badan Wakaf Indonesia No.3 Tahun 2008 tentang Tata Cara Pendaftaran dan Pergantian Nazir Harta Benda Wakaf Tidak Bergerak Berupa Tanah (Indonesia)

Peraturan Badan Wakaf Indonesia No.1 Tahun 2009 tentang Pedoman Pengelolaan dan Pengembangan Harta Benda Wakaf Bergerak Berupa Uang (Indonesia)

Peraturan Badan Wakaf Indonesia No.2 Tahun 2009 tentang Pedoman Penerimaan Wakaf Uang Bagi Nazir Badan Wakaf Indonesia (Indonesia)

Peraturan Badan Wakaf Indonesia No.1 Tahun 2010 tentang Tata Cara Pengangkatan dan Pemberhentian Anggota Badan Wakaf Indonesia (Indonesia)

Peraturan Badan Wakaf Indonesia No.2 Tahun 2010 tentang Tata Cara Pendaftaran Nazir Wakaf Uang (Indonesia)

Peraturan Badan Wakaf Indonesia No.3 Tahun 2010 tentang Perubahan atas Peraturan Badan Wakaf Indonesia No.2 Tahun 2008 tentang Perwakilan Badan Wakaf Indonesia (Indonesia)

Peraturan Badan Wakaf Indonesia No.4 Tahun 2010 tentang Pedoman Pengelolaan dan Pengembangan Harta Benda Wakaf (Indonesia)

Peraturan Badan Wakaf Indonesia No.2 Tahun 2012 tentang Perwakilan Badan Wakaf Indonesia (Indonesia)

Peraturan Direktur Jenderal Bimbingan Masyarakat Islam Republik Indonesia No.Kep/D/75/78 tanggal 18 April 1978 tentang Formulir dan Pedoman Pelaksanaan Peraturan tentang Perwakafan Tanah Milik (Indonesia)

Peraturan Mahkamah Agung Republik Indonesia No.2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah (Indonesia)

Peraturan Mahkamah Agung Republik Indonesia No.1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan (Indonesia)

Peraturan Menteri Agama Republik Indonesia No.1 Tahun 1978 tentang Peraturan Pelaksanaan Peraturan Pemerintah No.28 tahun 1977 Perwakafan Tanah Milik (Indonesia)

Peraturan Menteri Agama Republik Indonesia No.4 Tahun 2009 tentang Administrasi Pendaftaran Wakaf Uang (Indonesia)

Peraturan Menteri Agama Republik Indonesia No.73 Tahun 2013 tentang Tata Cara Pewakafan Benda Tidak Bergerak Dan Benda Bergerak Selain Uang (Indonesia)

Peraturan Menteri Agraria Republik Indonesia No.14 Tahun 1961 tentang Permintaan dan Pemberian Izin Pemindahan Hak Atas Tanah (Indonesia)

Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia No.2 Tahun 2017 tentang Tata Cara Pendaftaran Tanah Wakaf (Indonesia)

Peraturan Menteri Dalam Negeri Republik Indonesia No.6 Tahun 1977 tentang Tata Pendaftaran Mengenai Perwakafan Tanah Milik (Indonesia)

Peraturan Menteri Dalam Negeri Republik Indonesia No.2 Tahun 1978 tentang Biaya Pendaftaran Tanah (Indonesia)

Reglemen Indonesia Yang Diperbaharui Tahun 1848 (Indonesia)

Specific Relief Act 1950 (Malaysia)

Surat Dirjen Bimas Islam dan Urusan Haji Republik Indonesia No.DII/5ED/14/1981 tentang Petunjuk Pemberian Nomor pada Formulir Perwakafan Tanah Milik (Indonesia)

Surat Menteri Dalam Negeri Republik Indonesia No.SK.178/DJA/1982 tentang Penunjukan Badan Kesejahteraan Masjid (BKM) Pusat sebagai Badan Hukum yang dapat Mempunyai Tanah dengan Hak Milik (Indonesia)

The Federal Constitution of Malaysia (Malaysia)

The Johore Wakaf Rules 1983 (Malaysia)

Trustee Act, 1949 (Act 208) (Malaysia)

Undang-Undang Dasar Tahun 1945 (Indonesia)

Undang-Undang Republik Indonesia No.5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (Indonesia)

Undang-Undang Republik Indonesia No.7 Tahun 1989 tentang Peradilan Agama (Indonesia)

Undang-Undang Republik Indonesia No.12 Tahun 1994 tentang Perubahan atas Undang-Undang No.12 Tahun 1985 tentang Pajak Bumi dan Bangunan (Indonesia)

Undang-Undang Republik Indonesia No.30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa (Indonesia)

Undang-Undang Republik Indonesia No.16 Tahun 2001 tentang Yayasan (Indonesia)

Undang-Undang Republik Indonesia No.41 Tahun 2004 tentang Wakaf (Indonesia)

Undang-Undang Republik Indonesia No.3 Tahun 2006 tentang Perubahan atas Undang-Undang No.7 Tahun 1989 tentang Peradilan Agama (Indonesia)

Undang-Undang Republik Indonesia No.40 Tahun 2007 tentang Perseroan Terbatas (Indonesia)

Undang-Undang Republik Indonesia No.21 Tahun 2008 tentang Perbankan Syariah (Indonesia)

Undang-Undang Republik Indonesia No.48 Tahun 2009 tentang Kekuasaan Kehakiman (Indonesia)

Undang-Undang Republik Indonesia No.50 Tahun 2009 tentang Perubahan Kedua atas Undang-Undang No.7 Tahun 1989 tentang Pengadilan Agama (Indonesia)

Wakaf (Negeri Sembilan) Enactment 2005 (Malaysia)

Wakaf (Perak) Enactment 2015 (Malaysia)

Wakaf (State of Malacca) Enactment 2005 (Malaysia)

Wakaf (State of Sabah) Enactment 2018 (Malaysia)

Wakaf (State of Selangor) Enactment 2015 (Malaysia)

Wakaf (Terengganu) Enactment 2016 (Malaysia)

## LIST OF ABBREVIATIONS

|         |                                                                                |         |                                                             |
|---------|--------------------------------------------------------------------------------|---------|-------------------------------------------------------------|
| AAOIFI  | The Accounting and Auditing Organization for Islamic Financial Institutions    | ISIS    | Islamic State of Iraq and Syria                             |
| ACT     | Aksi Cepat Tanggap                                                             | ISP     | International Standby Practices                             |
| AD      | Anno Domini                                                                    | JAKIM   | Jabatan Kemajuan Islam Malaysia                             |
| AFAD    | Disaster and Emergency Management Presidency of Turkey                         | JAWHAR  | Department of Wakaf, Zakat and Hajj                         |
| AMLA    | Administration of Muslim Law Act                                               | KAPF    | Kuwait <i>Awqaf</i> Public Foundation                       |
| ANGKASA | Angkatan Kerjasama Kebangsaan Malaysia                                         | KOPUTRA | Koperasi Pelaburan Kakitangan Bank Muamalat Malaysia Berhad |
| ASEAN   | The Association of Southeast Asian Nations                                     | KYC     | Know Your Customer                                          |
| BMMB    | Bank Muamalat Malaysia Berhad                                                  | L/C     | Letter of Credit                                            |
| BNM     | Bank Negara Malaysia                                                           | LeT     | Lashkar-e-Taiba                                             |
| BOT     | Build, Operate, and Transfer                                                   | MAIWP   | Majlis Agama Islam Wilayah Persekutuan                      |
| BPO     | Bank Payment Obligation                                                        | MATW    | The Muslims Around the World                                |
| CAF     | Charities Aid Foundation                                                       | MoU     | Memorandum of Understanding                                 |
| CFSP    | The Common Foreign and Security Policy                                         | MUI     | Majelis Ulama Indonesia                                     |
| CISG    | The United Nations Convention on Contracts for the International Sale of Goods | MUIS    | Majelis Ugama Islam Singapore                               |
| CLOUT   | The Case Law on UNCITRAL Texts                                                 | NCOM    | National Co-Operative Movement of Malaysia                  |
| CSR     | Corporate Social Responsibility                                                | NGOs    | Non-Governmental Organizations                              |
| CWLS    | Cash <i>Waqf</i> Linked Sukuk                                                  | NLC     | National Land Code                                          |
| DOCDEX  | Documentary Instruments Dispute                                                | OFAC    | Office of Foreign Assets Control                            |

|           |                                                              |        |                                                                             |
|-----------|--------------------------------------------------------------|--------|-----------------------------------------------------------------------------|
| DAP       | Delivered at Place                                           | OIC    | The Organization of Islamic Cooperation                                     |
| DDP       | Delivery Duty Paid                                           | PKPMI  | Persatuan Pelajar-Pelajar Malaysia di Indonesia                             |
| DPU       | Delivered at Place Unloaded                                  | QR     | Quick Response                                                              |
| DT        | Daarut Tauhiid                                               | RM     | Malaysian Ringgit                                                           |
| EU        | European Union                                               | SAC    | <i>Sharia</i> Advisory Council                                              |
| EXW       | Ex Works                                                     | SIRC   | State Islamic Religious Council                                             |
| FCA       | Free Carrier                                                 | SWTM   | <i>Sistem Wakaf Tunai Malaysia</i>                                          |
| FIF       | Falah-e-Insaniyat Foundation                                 | TH     | Lembaga Tabung Haji                                                         |
| Fintech   | Financial Technology                                         | TWI    | Tabung Wakaf Indonesia                                                      |
| FSWM      | Food Security-Waqf Model                                     | URBPO  | The Uniform Rules for Bank Payment Obligations                              |
| GWC       | Global Wakaf Corporation                                     | URDG   | The Uniform Rules for Demand Guarantees                                     |
| H         | Hijriyah                                                     | URR    | The Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits |
| HCCH      | Hague Conference on Private International Law                | USA    | United States of America                                                    |
| ICC       | International Chamber of Commerce                            | S.A.W. | <i>Sallallahu 'Alayhi Wasallam</i>                                          |
| IFI       | Islamic Financial Institution                                | SIRC   | State Islamic Religious Council                                             |
| IFSB      | The Islamic Financial Services Board                         | S.W.T. | <i>Subhanahu Wa Ta'ala</i> (Praise be to Allah the Highest)                 |
| IHH       | Humanitarian Relief Foundation                               | VIP    | Very Important Person                                                       |
| IICO      | International Islamic Charity Organization                   | WCP    | <i>Waqf</i> Core Principles                                                 |
| IMF       | International Monetary Fund                                  | WKM    | Wakaf Kedah Muamalat                                                        |
| INCOTERMS | The International Commercial Terms                           | WMM    | Wakaf Maik Muamalat                                                         |
| INTRAC    | Indonesian Financial Transaction Reports and Analysis Centre | WNSM   | Waqf Negeri Sembilan Muamalat                                               |
| IRTI      | The International Research of Training Institute             | WSM    | Waqf Selangor Muamalat                                                      |

|       |                                                      |      |                              |
|-------|------------------------------------------------------|------|------------------------------|
| ISAM  | Centre for Islamic Research                          | WTO  | World Trade Organization     |
| ISBP  | International Standard Banking Practice              | YDPA | <i>Yang Di Pertuan Agong</i> |
| IsDB  | Islamic Development Bank                             | YWM  | Yayasan Waqaf Malaysia       |
| ISDGP | The International Standard Demand Guarantee Practice |      |                              |





# CHAPTER ONE

## BACKGROUND OF THE STUDY

### 1.1. INTRODUCTION

In Islam, all the affairs of human beings are supposed to be regulated by *Sharia*, including religious (*ibadah*), economic, social, and political phenomena. *Sharia* comprehensively addresses all matters, including *waqf* as an instrument within the Islamic social finance sector.

Cross-border *waqf* has been practiced since the Ottoman period.<sup>1</sup> One of the notable *waqf* practices from the Ottoman era was the Hejaz Railway.<sup>2</sup> This project started in 1864 with the idea to link Damascus and the Red Sea by railroad.<sup>3</sup> The uniqueness of the Hejaz Railway *waqf* is the inclusion of international elements. The *nazir* was the Ottoman government, led by Sultan Abdul Aziz.<sup>4</sup>

In the Hejaz Railway *waqf* project, the *waqif* originated from and the *mawquf* were collected from several jurisdictions. The *mawquf* were gathered from the Ottoman Ziraat Bank, the Sultan of Ottoman personal funds, members of the Ottoman army,<sup>5</sup> the Hejaz vilayet, Aydin region, Khudavendigar region, Sanjak Izmit region, Kudus or Jerusalem region, Benghazi region,<sup>6</sup> Muslims in British India,<sup>7</sup> Egypt,<sup>8</sup> Morocco, Algeria, Tunisia, South Africa, on the island of Java, China, Sudan, the United States of America and Latin

---

<sup>1</sup> Zeinoul Abedien Cajee, "How to Become an Effective Waqf Manager Nadhir/Mutawallee" in *Towards an Impactful Islamic Social Finance* (Jakarta, Indonesia: Awqaf South Africa, 2021), 1-36.

<sup>2</sup> William Ochsenwald, "A Modern Waqf: The Hejaz Railway, 1900-48," in *Religion, Economy, and State in Ottoman-Arab History* (Gorgias Press, 2010), 193-206.

<sup>3</sup> James Nicholson, "The Hejaz Railway," *Asian Affairs* 37, no. 3 (2006): 320-336.

<sup>4</sup> Ramil M Valeev, Alim M Abidulin, and Nailya I Ayupova, "The Project of Hejaz Railway Construction: A Historical and Historiographic Review," *European Research Studies Journal* 20, no. Special Issue (2017): 234-241.

<sup>5</sup> Ibid.

<sup>6</sup> William Ochsenwald, "The Financing of the Hejaz Railroad," *Die Welt Des Islams* 14, no. 1/4 (1973): 129-149.

<sup>7</sup> Omar Khalidi, "Indian Muslims and Palestinian Awqaf," *Jerusalem Quarterly*, no. 40 (2009): 52.

<sup>8</sup> Ochsenwald, "The Financing of the Hejaz Railroad".

America, the Balkans, Cyprus, Austria-Hungary, Britain, France, Germany, and Muslims of the Russian Empire.<sup>9</sup>

The *mawqūf alaih* of the Hejaz Railway *waqf* encompass the pilgrims,<sup>10</sup> military personnel from Muslim territories, and generally all Muslims in the world.<sup>11</sup> The project has international elements, including cross-border *waqif*, cross-border *mawqūf*, cross-border *nazir* or *mutawalli*, and cross-border *mawqūf alaih* or beneficiary. A summary of the Hejaz Railway project can be seen in the figure below:

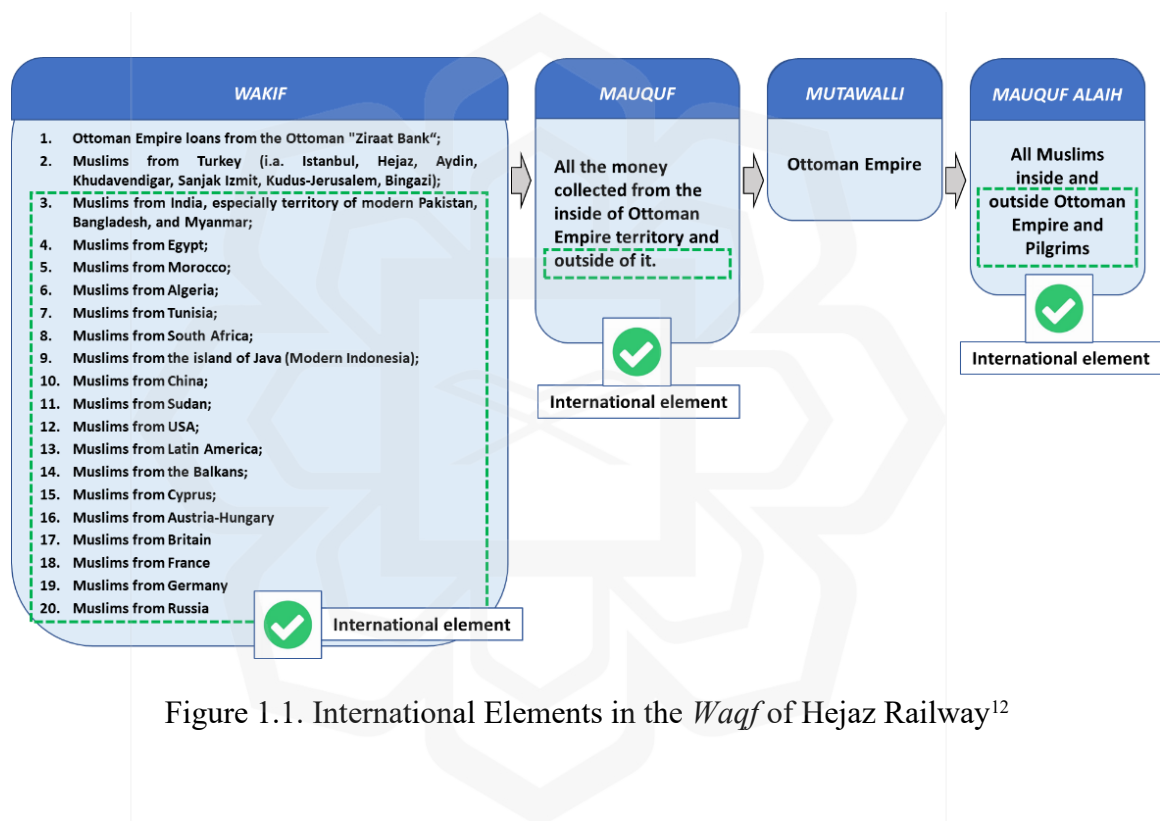


Figure 1.1. International Elements in the *Waqf* of Hejaz Railway<sup>12</sup>

Zeinoul Abedien Cajee stated that in the current time, an example of cross-border *waqf* could be seen at the World Congress of Muslim Philanthropists,<sup>13</sup> which has

<sup>9</sup> Murat Özyüksel, "A State Initiative in Ottoman Railway Operation: Hicaz Railway.," *Iktisad Magazine*, 292, 1989: 18-23.

<sup>10</sup> Metin Hülagü, "Topal Osman Nuri Pasha Life and Activities," *Ottoman History Research and Application Center Magazine OTAM*, 1994: 145-153.

<sup>11</sup> Valeev, Abidulin, and Ayupova, "The Project of Hejaz Railway Construction".

<sup>12</sup> Source: Analyzed by the Author from several sources about the *Waqf* of Hejaz Railway (Citations in Chapter One No.8-11).

<sup>13</sup> "Global Donor Forums," <<https://globaldonorsforum.org>> (accessed May 23, 2022).

recently been held annually since 2008.<sup>14</sup> Even though the previous information shows that cross-border *waqf* has been constantly practiced from the 19th to 21st centuries, the current development of international law and financial order raises concerns about the need for an international rule on *waqf* activities. In response, the Central Bank of Indonesia, the Indonesian Waqf Board, and the International Research of Training Institute-Islamic Development Bank (IRTI-IsDB) introduced the Waqf Core Principles (WCP) in October 2018.<sup>15</sup>

The WCP, which was developed using the Basel Core Principles as its primary reference, strictly governs *waqf* management aspects. The main issue is the absence of essential components in the WCP that could facilitate the practice of cross-border *waqf*, which involves both the movement of funds and goods globally.<sup>16</sup>

Another strong reason for conducting this study is the Indonesian, Kuwaiti, and Qatar governments' plan to conduct a cross-border *waqf* transaction in the near future.<sup>17</sup> Both governments are still trying to find the best method or model to facilitate the movement of cross-border *waqf* funds and goods in a prudent manner. As preparation for the project, by October 2024, the Central Bank of Indonesia, The Indonesian Waqf Board, the Ministry of Religion of the Republic of Indonesia, and the Ministry of Finance of the Republic of Indonesia are finalizing the initial preparation by collaborating with the IFSB.<sup>18</sup>

In conclusion, there are three primary causes that triggered this study. First, the Indonesian, Kuwaiti, and Qatar governments urgently require a comprehensive guidance for cross-border *waqf*, as they are prepared to implement it imminently. Second, the WCP encompasses numerous aspects of *waqf* management but has not addressed the components

---

<sup>14</sup> World Congress of Muslim Philanthropists, "1st World Congress of Muslim Philanthropists" (Istanbul, Turkey, 2008), 4.

<sup>15</sup> Sharia Economic and Financial Department of Bank Indonesia and Business and Economic Faculty of Airlangga University, *Wakaf: Pengaturan Dan Tata Kelola Yang Efektif*, 1st ed. (Jakarta, Indonesia: Bank Indonesia, 2016), 105-142.

<sup>16</sup> Goods or products are generally visible and tangible such as shoes, cars, phones, computers, etc.

<sup>17</sup> Sharia Economic and Financial Department of Bank Indonesia; Ministry of Religion of the Republic of Indonesia; Ministry of Finance of the Republic of Indonesia; National Committee of Sharia Economic and Financial of the Republic of Indonesia, "Indonesian Sovereign Waqf Funds Meeting, 22 November 2024" (2024).

<sup>18</sup> Vice Rector - Dadang Muljawan Ph.D. International Islamic University Indonesia, "Indonesia and Kuwait Cross-Border Waqf Future Transaction" (2022).

relating to cross-border *waqf* transactions. Third, the need for compliance with the current global order necessitates extensive guidelines to ensure the good governance aspect of cross-border *waqf* activities. This is due to the complex nature of cross-border *waqf*, which involves multiple jurisdictions and the international movement of *mawquf* and usufruct.

## 1.2. STATEMENT OF THE PROBLEM

Since 2022, the Government of the Republic of Indonesia has been trying to create a formal cross-border *waqf* project with other countries. Kuwait was the first country to support and gave commitment to this initiative. As preparation for the project, by October 2024, the Central Bank of Indonesia, The Indonesian Waqf Board, the Ministry of Religion of the Republic of Indonesia, and the Ministry of Finance of the Republic of Indonesia are finalizing the initial preparation by collaborating with the IFSB. The WCP, as international rules on *waqf*, is meant to be used as the guiding principles for the said cross-border *waqf* transaction between the governments of Indonesia and Kuwait.<sup>19</sup>

The main thrust of the WCP are aspects relating to *waqf* management. Despite the limited technical content of cross-border *waqf* in the WCP, there are still several clauses in the WCP that open the possibility to create technical notes on cross-border *waqf*.<sup>20</sup> As commonly known, cross-border transactions are more complex than domestic transactions due to the inclusion of international elements such as the difference in jurisdictions and the movement of goods and services.

Given the complex nature of cross-border *waqf* transactions, there is an urgent need for new international rules to oversee the prudential aspects of these transactions. Following careful examination of the WCP, Indonesian *waqf* laws, and Indonesian *waqf* regulations, seven legal gaps have been identified that must be addressed in the proposed international rules for cross-border *waqf*.

---

<sup>19</sup> Sharia Economic and Financial Department of Bank Indonesia; Ministry of Religion of the Republic of Indonesia; Ministry of Finance of the Republic of Indonesia; National Committee of Sharia Economic and Financial of the Republic of Indonesia, “Indonesian Sovereign Waqf Funds Meeting, 22 November 2024” (2024).

<sup>20</sup> WCP Clauses No.12, 39, and 40.

The first legal gap concerns how cross-border *mawquf* movement, whether in cash or goods, should be regulated and carried out. The second is how usufruct movement between nations should be regulated and handled. Third, it is essential to identify the stakeholders involved in cross-border *waqf* and to set up the implementation of Know Your Customer (KYC) principles for the relevant parties. Fourth, how should the parties choose the governing law, and what defines local law in the context of cross-border *waqf*. Fifth, how should the parties choose the way to resolve legal disputes in cross-border *waqf*. Sixth, how should the perpetuity of cross-border *mawquf* be registered and protected in the host country. Lastly, seventh, how should the purpose of cross-border *waqf* or *wakif* be protected in the host country.

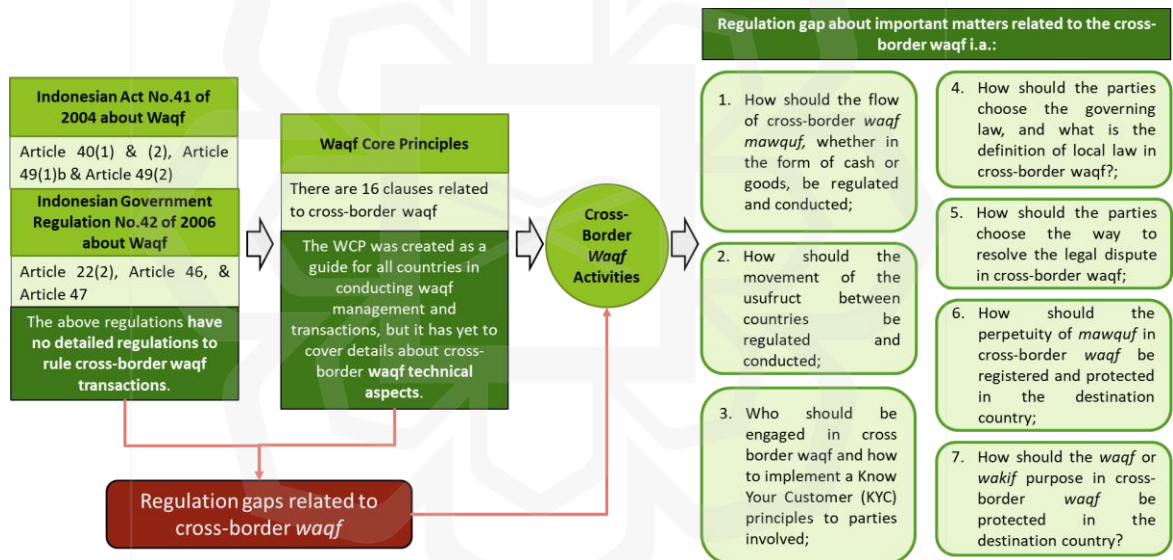


Figure 1.2. Legal Gaps in Cross-Border *Waqf* in Indonesian *Waqf*-Related Laws and *Waqf* Core Principles<sup>21</sup>

The WCP has not yet addressed the above legal gaps, so the only practical solution is to create an international legal framework which will be the basis for the creation of international rules that governs cross-border *waqf* transactions. This rules will be proposed

<sup>21</sup> Source: Analyzed by the Author from several sources related to Indonesian laws and regulations about *waqf*, *Waqf* Core Principles, and cross-border *waqf*.

to become the WCP technical notes on cross-border *waqf* that can support the implementation of cross-border *waqf* in the future.

### **1.3. OBJECTIVES OF THE RESEARCH**

After conducting a thorough analysis of WCP and cross-border *waqf* transactions, the primary goals of this research are outlined below:

1. To explore and analyze the framework of *waqf-related* laws in Indonesia and Malaysia and determine its advantages to cross-border *waqf* practice.
2. To identify the legal gap in the WCP compared to Indonesian and Malaysian regulations and *waqf* practices, as well as the current international laws and rules related to cross-border *waqf* transactions.
3. To formulate a set of amendment points and detailed clauses regarding cross-border *waqf* to improve the quality of the WCP.

### **1.4. RESEARCH QUESTIONS**

1. How does *waqf-related* laws in Malaysia and Indonesia regulate the cross-border *waqf*?
2. What are the legal gaps between the WCP compared to regulations and practices from Indonesia, Malaysia, and selected countries such as Singapore and Saudi Arabia, as well as the current international law rules related to cross-border *waqf* transactions?
3. What clauses must be added to the WCP to cover cross-border *waqf* transactions?

## 1.5. RESEARCH HYPOTHESIS

The current WCP is inadequate for facilitating cross-border *waqf* transactions because it lacks comprehensive details regarding foreign transactions. Therefore, the WCP may be enhanced by examining its legal gaps compared to the regulatory aspects of Indonesian and Malaysian regulations and practices, coupled with international transaction rules and laws. Addressing the legal gaps could enhance the WCP's ability to facilitate cross-border *waqf* transactions with greater care, thereby mitigating potential risks in the present and future.

## 1.6. RESEARCH METHODOLOGY

This study applies doctrinal legal research and qualitative research methodology with various approaches based on the data type. Fieldwork was also included in the form of short interviews with several international transaction experts and international *waqf* practitioners, as well as observations of *waqf*-related *Sharia* court decisions.

The major part of the thesis is library-based, consisting of primary and secondary sources. The primary sources of this study consist of: (i) Indonesia's and Malaysia's laws, regulations, court decisions, and fatwas related to *waqf*; (ii) International laws related to cross-border transactions; (iii) International rules related to cross-border transactions. Indonesia's and Malaysia's laws and regulations, court decisions, and *fatwas* are examined using the descriptive and critical approach. The international laws and rules related to international transactions are researched using a comparative approach.

The secondary sources of this study include journals, textbooks, certification materials, conference proceedings, newspaper articles, and trusted websites, which are assessed using the analytical and historical approach. These secondary sources cover cross-border *waqf* practices from various countries and selected practices of international transactions that could benefit cross-border *waqf*.

This research is also enriched with experts, practitioners, and academician opinions using a short questionnaire or interview and by attending several focus group discussions,

seminars, and an international certification program.<sup>22</sup> Opinions about the implementation of international best rules for cross-border transactions were taken from several experts at the International Chamber of Commerce (ICC). Cross-border *waqf* experiences were learned from practitioners. Possibilities and views on the study are also taken from *waqf* experts and academicians.

## 1.7. SCOPE AND LIMITATION OF THE STUDY

The topic of cross-border *waqf* mainly combines the elements of *waqf* and international rules. The *waqf* started from the earliest time of Islam. On the other hand, international rules are created in the current global world order. A connecting bridge must be made to combine these two main elements. During the process, it was found that although *waqf* started long ago, only limited sources of well-recorded cross-border *waqf* projects could be accessed. On the other hand, based on several experts, the current international transaction rules were originally not meant to support the *waqf* sector. Such conditions create limitations of available references that exclusively explain cross-border *waqf*.

Due to the accessibility limitation of primary sources, this research focuses on Indonesian and Malaysian laws, including regulations, court decisions, and *fatwas* related to *waqf*. The decision to choose Indonesian and Malaysian laws is because of the accessibility, and not to forget that both countries are the largest Muslim-majority countries in Southeast Asia that acknowledge Islamic law in their legal system. Despite the limitations, this research examines all primary *waqf* laws and *waqf*-related laws in Indonesia and Malaysia.

Due to limited language ability, most of the primary sources of this research can only be acquired from selected countries and international bodies that use English and Bahasa. There is a limitation in using primary sources that use Arabic and other languages, except those that have been translated into English and Bahasa.

---

<sup>22</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024" (London, England: International Chamber of Commerce, 2021).



This research also examines all possible international laws and rules related to cross-border transactions as one of the primary sources. However, due to accessibility limitations, only international rules from the ICC will be supported by further examination and practical analysis gathered from experts' and practitioners' opinion as secondary sources.

Due to the limited study duration the scholarship covers, this research mainly utilized text-based sources such as laws or regulations, journals, and books. Despite the said limitation, information is also gained from cross-border *waqf* practitioners and international transaction experts, through structured interview questions as written in the appendix III.

## **1.8. LITERATURE REVIEW**

This literature review assesses past and current sources of law related to cross-border *waqf*, which is relevant to the study and consists of acts or laws, court decisions, books, journals, and expert opinion. Legal analysis of the references could be used to fill the gap in the WCP, which has yet to cover cross border *waqf* transactions. The complete figure below portrays the flow of this research:

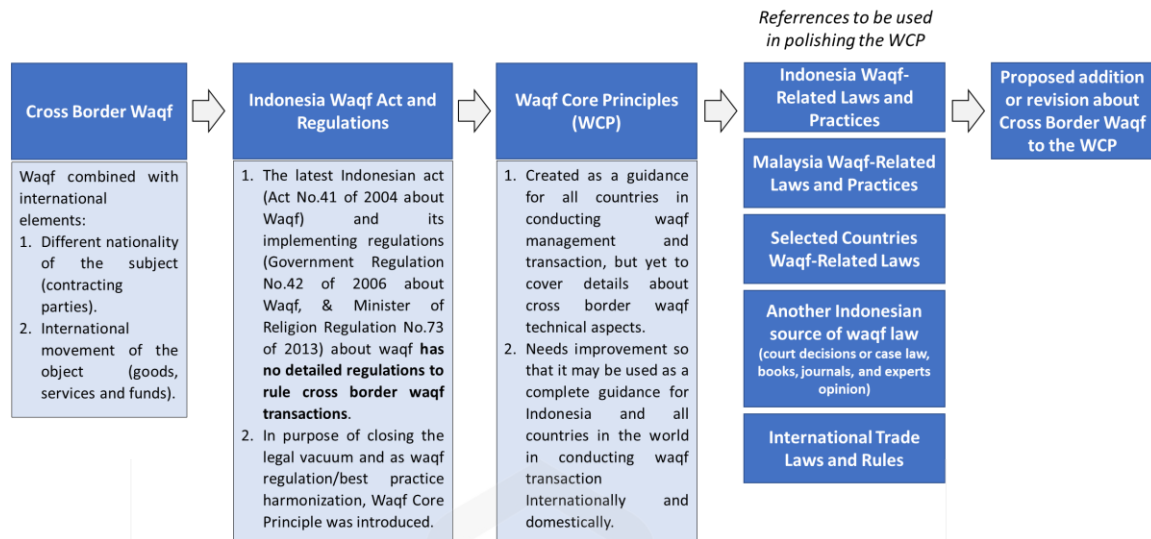


Figure 1.3. Research Flow<sup>23</sup>

### 1.8.1. Cross-Border *Waqf* Definition

Before examining what cross-border *waqf* is, we should take the definition of *waqf* as the fundamentals. In this chapter's first part, we quoted the *waqf* definition from several prominent scholars, including Monzer Kahf, Ahmed Raissouni, Nor Asiah Mohamad, Sharifah Zubaidah Bt. Syed Abdul Kader, and Siti Mashitoh Mahamood. From their explanation, in general, it can be concluded that four essential elements need to be fulfilled in creating a *waqf* which is: (i) *Waqif*: the donor; (ii) *Sighah*/deed: *Waqf* declaration; (iii) *Mawquf*: *Waqf* property, which must be kept intact by the *mutawalli* or *nazir*; and (iv) *Mawquf'alaih*: the beneficiaries. Nevertheless, none of the above prominent scholars have clearly mentioned the cross-border *waqf* definition and classification. Thus, it is necessary to determine the cross-border *waqf* definition in the first place before continuing this study.

The primary distinction between domestic and cross-border *waqf* transactions is the presence of international elements. There are many references that could be quoted about the international aspects, but those references are not related to the *waqf* transaction. Mazin

<sup>23</sup> Source: Analyzed by the Author from several sources related to Cross-Border *Waqf*, Indonesian Regulations, and *Waqf* Core Principles.

Abdulhameed Dawood Hassan stated that international transaction or trade provides an alternative way to transfer resources and goods from country to another.<sup>24</sup> This shows that there is an element of goods movement across the country or in *waqf*, and it can be equated with the movement of *mawquf* and usufruct. Yurdagül Meral also stated a similar definition of international trade, which is a cross-border trade between two different countries.<sup>25</sup>

In seeking the proper definition of cross-border *waqf*, it can also be learned from *waqf* practices, which include international or cross-border elements. The *waqf* of Ahmad Dawjee Dadabhoy from India is one of Malaysia's famous examples of cross-border *waqf* practice. Siti Mashitoh Mahamood mentioned that the most notable *mawquf* of Ahmad Dawjee *waqf* is a land measuring 1.2 acres located at lot 168 and 169 Perak Street, Kuala Lumpur.<sup>26</sup> Still, there is no clear definition of cross-border *waqf*. The *waqf* itself was declared in 1980. Aside from the land, Ahmad Dawjee Dadabhoy also endowed a shop lot in the Pertama Complex, two houses in Taman Melawati, and shares in and outside Malaysia.<sup>27</sup>

In developing the land of Ahmad Dawjee *waqf*, on 19 October 2011, Majlis Agama Islam Wilayah Persekutuan (MAIWP), landowner as sole trustee with the full support of 100% financing from Lembaga Tabung Haji (TH) amounting to RM151 million, built a 34-storey building above the land. The construction scheme uses BOT (Build, Operate, and Transfer).<sup>28</sup> Bank Islam Malaysia Berhad also gave its commitment as the primary tenant of the said building.<sup>29</sup> Bank Islam will be using a total of 30 floors, three floors for MAIWP and one floor for Lembaga Tabung Haji. This is a good example of how to effectively

---

<sup>24</sup> Mazin Abdulhameed Dawood Hassan, "Rights and Duties of the Buyer Under the Sale of Goods in *Shariah* and International Trade Law: A Comparative Analysis," *Journal of Contemporary Islamic Law* 9, no.1 (2018): 47-57.

<sup>25</sup> Yurdagül Meral, "Documentary Risk in International Trade," in *Strategic Design and Innovative Thinking in Business Operations* (Springer, 2018), 413-431.

<sup>26</sup> Siti Mashitoh Mahamood, "Pembentukan Dana Wakaf Menurut Perspektif Syariah Dan Undang-Undang Serta Aplikasinya Di Malaysia," *Jurnal Syariah* 15, no. 2 (2007): 61-83.

<sup>27</sup> Pejabat Mufti Wilayah Persekutuan, "Pejabat Mufti Wilayah Persekutuan - Irsyad Al-Fatwa Series 274 : Waqaf Ahmad Dawjee Dadabhoy," accessed July 21, 2022, [muftiwp.gov.my](http://muftiwp.gov.my).

<sup>28</sup> Azman bin Mohd Noor, "Application of the Build, Operate, Transfer (BOT) Contract as a Means of Financing Development of Waqf Land: Malaysian Experience," *Arab Law Quarterly* 28, no. 2 (2014): 136-157.

<sup>29</sup> Mohd Yusra Abdullah et al., "Tanggung Jawab Sosial Korporat (CSR): Penglibatan Institusi Perbankan Berasaskan Islam Terpilih Di Malaysia Dalam Industri Wakaf," *Journal of Islamic Philanthropy & Social Finance* 2, no. 1 (2019): 45-54.

manage the cross-border *waqf* to generate goods for the welfare of society and the important role of government institutions, quasi-government, and the private sector in supporting cross-border *waqf* activities. The usufruct then is used for funding many *waqf* development projects in Malaysia, such as the education, *waqf*, and religious sectors.

As can be known from several sources above, which explain details about Ahmad Dawjee Dadabhoy, we can barely see any definition of cross-border or international *waqf*. However, Ahmad Dawjee's *waqf* demonstrates international elements primarily related to his citizenship as a Gujarat-India citizen and his shares located inside and outside Malaysia.

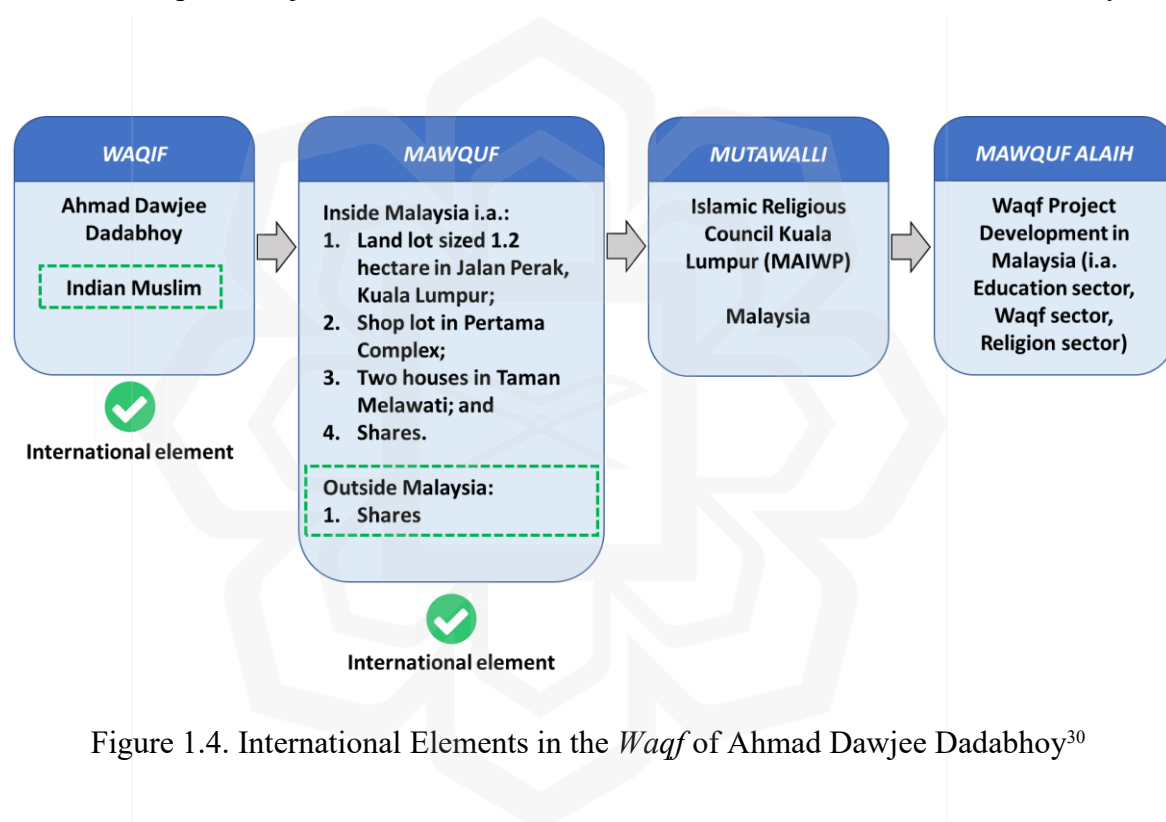


Figure 1.4. International Elements in the *Waqf* of Ahmad Dawjee Dadabhoy<sup>30</sup>

Combining both *waqf* and international trade definitions from the above explanations and an example from the *waqf* of Ahmad Dawjee Dadabhoy, it can be concluded that the cross-border *waqf* is a *waqf* transaction with international elements which includes: (i) different nationalities of the subject or the contracting parties involved;<sup>31</sup>

<sup>30</sup> Sources: Analyzed by the Author from several sources about Ahmad Dawjee Dadabhoy (Citations in Chapter One No.24-29).

<sup>31</sup> Frank Gardner, "The International Economy and the National Interest," *International Affairs* 56, no. 4 (1980): 697.

and (ii) International movement of the object or *mawquf* including the usufruct (goods, services,<sup>32</sup> and funds).<sup>33</sup> In conclusion, cross-border *waqf* is a *waqf* transaction that includes parties and/or *waqf* object from different countries, namely the *waqif*, *nazir*, *mawquf'alaih*, the movement of *mawquf* and its usufruct between countries. In other words, if there is a single international element in a *waqf* transaction, for example, even only the *waqif* or *mawquf* is in a different country, then it can be assumed the nature of as a cross-border *waqf*. This research is not limiting the scope of cross-border *waqf* in order to be able to get a maximum sample of cross-border *waqf* practices as a research sample.

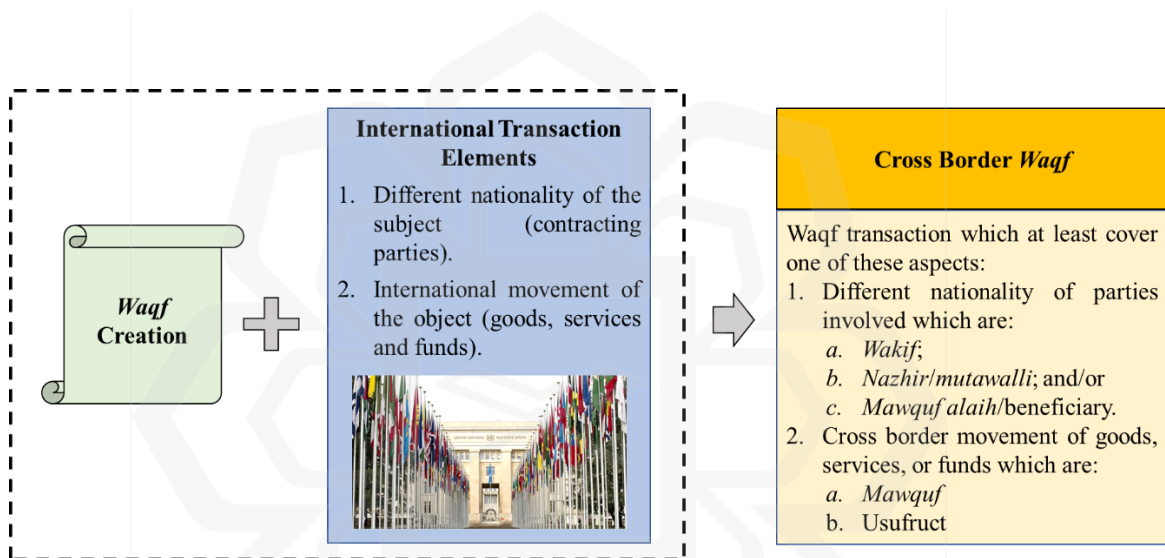


Figure 1.5. Cross-Border *Waqf*<sup>34</sup>

### 1.8.2. Indonesia Main *Waqf* Regulations

In enhancing the *waqf* sector, in 2004, the government of Indonesia introduced *Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf* (the Act of Republic of Indonesia Number 41 of 2004 concerning *Waqf*). The structure of the Act is mainly about general provision and regulation of *waqf*, such as the basics of *waqf*, the function of *waqf*, the elements of *waqf*, cash *waqf*, registration and announcement of *waqf*, changes

<sup>32</sup> Services are usually intangible, they could be experiences, advice, or acts.

<sup>33</sup> Shandy Primandasetio Freddy and Nor Asiah Mohamad, "Dispute in Cross-Border Waqf: Mitigation, Resolution, and the Role of Waqf Authority," *IJUM Law Journal* 32, no. 1 (2024): 261–308.

<sup>34</sup> Source: Analyzed by the Author from several sources about *waqf* and international transactions.

of *waqf* object status, management and development of *waqf* assets, Indonesian *Waqf* Board duties, dispute resolution, coaching and supervision, criminal provisions and administrative sanctions.

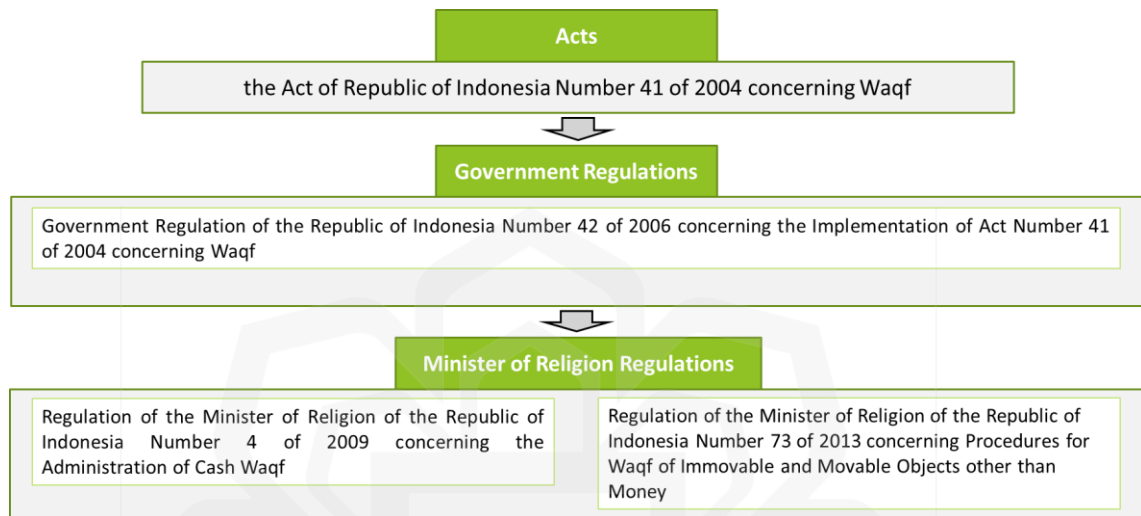


Figure 1.6. Indonesian Positive Law about *Waqf*<sup>35</sup>

Act Number 41 of 2004 concerning *Waqf* has a total of 71 articles. From that number, only a few have a connection with international aspects or may have correlations with cross-border *waqf*. In Article 40 point (1)(ii), the duties and responsibilities of a *Waqf* Board are to manage and develop both national and international *waqf* treasuries and abandoned *waqf* treasuries. In the same article, point (2) states that in carrying out its duties, the *Waqf* Board collaborates with communities, mass organizations, experts, international institutions, and both local and national government bodies. Article 49 (1)b states that the Indonesian *Waqf* Board manages and improves *waqf* assets nationally and internationally. Lastly, Article 49(2) states that the Indonesian *Waqf* Board may conduct partnerships nationally and internationally. From this explanation, it could be concluded that Act Number 41 of 2004 concerning *Waqf* does not provide a comprehensive and detailed framework to regulate cross-border *waqf* transactions. Sigi Hartati stated sources

<sup>35</sup> Source: Analyzed by the Author from several sources related to Indonesian laws and regulations about *waqf*.

and utilization of *mawquf* which are allowed by the laws but did not explain any knowledge about cross-border nor international *waqf* elements.<sup>36</sup>

In supporting the implementation of Act Number 41 of 2004 concerning *Waqf*, the government of Indonesia in 2006 issued the Indonesian Government Regulation No.42 of 2006 about *Waqf*. This regulation has 61 articles, mostly about technical aspects of Act 41 of 2004. Three articles have international elements: (i) Article 22(2): Foreign currency must be converted into domestic currency. If the money to be donated is still in foreign currency, then it must be converted to the local currency in the first place; (ii) Article 46: the management and development of *waqf* property from foreign nationals individual, foreign organizations and national or international scale foreign law entities, and abandoned *waqf* property, can be done by Indonesian *Waqf* Board; (iii) Article 47: If the *waqf* property originates from abroad, then *waqif* must deliver the proof of legal ownership of the property, and *nazir* must report to the affiliated institution. Siti Azah Fadilah, in her thesis about *Implementasi PP No.42 Tahun 2006 Tentang Pelaksanaan UU Wakaf: Studi Pengelolaan Wakaf Produktif Dompot Dhuafa di RS Mata Achmad Wardi Serang Banten* (2021), explained the way to improve *waqf* assets to generate more usufruct based on the said law. Still, she did not mention anything about cross border nor international elements of the *waqf*.<sup>37</sup>

In conclusion, based on the structure and regulations of Act 41 of 2004, it can be noticed that only two articles may relate to the practice of cross-border *waqf*. Moreover, in the Indonesian Government Regulation No.42 of 2006 about *Waqf*, as the implementing regulation, we have found three more detailed articles with international elements that might support the cross-border *waqf* practice. Most research related to both laws focused more on the *waqf*'s management aspects and did not cover the international or cross-border elements. Therefore, both regulations have a legal gap regarding the coverage of complete activities and risks emanating from cross-border *waqf*. One effort to mitigate this matter

---

<sup>36</sup> Sigi Hartati, "Wakaf Uang Menurut Hukum Islam Dan Undang-Undang No. 41 Tahun 2004 Tentang Wakaf," *Syakhshia: Jurnal Hukum Perdata Islam* 20, no. 2 (2019): 403–430.

<sup>37</sup> Siti Azah Fadilah, "Implementasi PP No. 42 Tahun 2006 Tentang Pelaksanaan UU Wakaf (Studi Pengelolaan Wakaf Produktif Dompot Dhuafa Di RS Mata Achmad Wardi Serang Banten)" (UIN SMH BANTEN, 2021), 1-20.

can be seen in the formulation of the WCP, which serves as the primary reference of *waqf* practice internationally and as one of the main objects of the research.

### 1.8.3. *Waqf* Core Principles Coverage

In revitalizing the *waqf* system or institution, it is commonly agreed that the rules of good governance should be adopted as a prerequisite, as stated by Hidayatul Ihsan and Abdullah Ayedh.<sup>38</sup> Jeffrey A. Schoenblum also stated that the law of *waqf* is almost uniformly perceived by Muslims, even when they are from different countries with different social, economic, and political circumstances.<sup>39</sup>

It is also known that the *waqf* institutions have evolved over time and across different regions. This condition aligns with Article 1 of WCP, which states that most regions have legal systems reflecting a traditional preservation concern. The preservation aspect is shown in the principles of perpetuity (assets/purpose), inalienability, and irreversibility. The main purpose of creating the WCP can be found in clauses number 10 and 11 of WCP's Technical Considerations, which state that the WCP acts as the primary reference for: (i) measuring the performance of *waqf* management while accommodating the technical and operational issues that different jurisdictions may involve; and (ii) the generation of various technical notes that cover specific technical aspects of *waqf* arrangement.<sup>40</sup>

The formulation of WCP was marked as an effort to harmonize regulations related to *waqf* management. The WCP can be regarded as the international rules of *waqf* management. The harmonization will generate many advantages to the Islamic economic sector as follows:<sup>41</sup> (i) Facilitating the industry's growth; (ii) Time and cost savings,

---

<sup>38</sup> Hidayatul Ihsan and Abdullah Ayedh, "A Proposed Framework of Islamic Governance for Awqaf," *Journal of Islamic Economics, Banking and Finance* 113, no. 3170 (2015): 1–17.

<sup>39</sup> Jeffrey A. Schoenblum, "The Role of Legal Doctrine in the Decline of the Islamic *Waqf*: A Comparison with the Trust," *Vand. J. Transnat'l L.* 32 (1999): 1192.

<sup>40</sup> Bank Indonesia, Badan Wakaf Indonesia, and Islamic Development Bank, "Core Principles for Effective Waqf Operation and Supervision" (Jakarta, Indonesia: Islamic Economic and Finance Department, Bank Indonesia, 2018), 2.

<sup>41</sup> Wafica Ali Ghoul, "The Standardization Debate in Islamic Finance: A Case Study," (Doha, Qatar, 2011), 1–14.



financial stability, greater transparency and consistency in financial reporting, as well as improved public confidence; (iii) Taking the compliance burden off and increasing cross-border marketability; (iv) Help the consolidation and further expansion of the industry; (v) Minimize the complexities of dealing with more than one *Sharia* boards.

Setiawan Budi Utomo, Dian Masyita, and Fitri Hastuti, stated that the WCP was created in 2018 by Indonesian Central Bank, Indonesian *Waqf* Board, and the Islamic Development Bank (IsDB) with a purpose to support the development of *waqf* sector in Indonesia. The WCP provides guidance and main principles in cash *waqf* management and its supervisory function. The two main components of the WCP are the supervision of *waqf* and good governance of *waqf*.<sup>42</sup>

The WCP, also known as “Core Principles for Effective *Waqf* Operation and Supervision”, was drafted by a group of international experts, *waqf* practitioners, scholars, and government officials known as “The International Working Group on *Waqf* Core Principles”. At that time, members of the group were: (i) Dr. Mohammed Obaidullah from Islamic Research and Training Institute, Islamic Development Bank; (ii) Dr. Hylmun Izhar from Islamic Research and Training Institute, Islamic Development Bank; (iii) Dr. Dadang Muljawan from Bank Indonesia; (iv) Dr. Rifki Ismal from Bank Indonesia; (v) Artarini Savitri, SE, MBA from Bank Indonesia; (vi) Dr. Imam Teguh Saptono from Indonesian Waqf Board; (vii) Dr. Hendri Tanjung from Indonesian Waqf Board; (viii) Dr. Nadrattuzaman Hosen from Indonesian Waqf Board; (ix) Dr. Husain Benyounis from Awqaf New Zealand; (x) Dr. Zeinoul Abedien Cajee, National Awqaf Foundation of Awqaf South Africa, South Africa; (xi) Mohd. Hisham Dafterdar, CPA., Ph.D. from Awqaf Australia; (xii) Emad A-Mutawa from Kuwait Awqaf Public Foundation; (xiii) Jasem Mohammad from Kuwait Awqaf Public Foundation; (xiv) Suliman Alobaid from Kuwait Awqaf Public Foundation; (xv) Dr. Senaid Zajimovic from Awqaf Bosnia Herzegovina; (xvi) Dian Masyita, Ph.D. from Padjadjaran University, Indonesia; (xvii) Irfan Syauqi Beik, Ph.D. from Institute Pertanian Bogor; and (xviii) M. Nazirwan from World Bank Group,

---

<sup>42</sup> Setiawan Budi Utomo, Dian Masyita, and Fitri Hastuti, “Why Cash Waqf Fails to Meet the Expectation: Evidence from Indonesia,” *Journal of Islamic Economic Studies (Issue October)*, 2020: 12.

as an observer. The WCP are divided into three main parts, which are: (i) Introduction; (ii) Assessment of compliance; and (iii) Proposed Regulatory Standard of Waqf Management.<sup>43</sup>

The first part of the WCP, the introduction, mainly discusses the consideration and position of WCP around the current *waqf* practices. This part also covers the objective, methodology, and regulatory aspects of WCP, which consist of: (i) general activities of optimal *waqf* management; (ii) general regulatory framework for optimal *waqf* management; (iii) institutional foundation; (iv) *waqf* managers (*nazir*) qualifications; and (v) supporting infrastructures.<sup>44</sup>

Technical considerations of WCP include: (i) to provide a clear positioning of the *awqaf* sector within the economic structure, especially in terms of providing direct socio-economic benefits or utilization of the corpus of *awqaf* in the form of fixed or non-fixed assets, and the contribution of low-cost financing from the returns on investment of the corpus of *awqaf*; (ii) to provide clear and standardized systematics on the supporting elements of the worldwide-applicable *waqf* system; (iii) to place the operational standards and supervision of the *waqf* sector at the same prudential level as that of other financial sectors; and (iv) to dissect the elements of supervision related to the operationalization of the *waqf* system into a systematic arrangement.<sup>45</sup>

The regulatory aspects part of WCP covers general activities of *waqf* management, which explains the flow of *waqf* activities, and the role of the parties involved. Several essential guidance that could be taken includes: (i) If the *nazir* is faced with potential conflicts of interest between the *waqif*, beneficiaries (*mawquf'alaih*), and other external parties. Therefore, the *nazir* must prioritize the interests of the *mawquf'alaih*; (ii) Temporary and permanent *waqf* assets can be accommodated in the regulatory *waqf* framework, as well as temporary and permanent cash *waqf*; (iii) In the event of any discrepancy with the *waqf* programs, the local law shall take precedence in the

---

<sup>43</sup> Bank Indonesia, Badan Wakaf Indonesia, and Islamic Development Bank, "Core Principles for Effective Waqf Operation and Supervision", 1-75.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

resolution of cases; and (iv) *Waqf* assets may be expanded in various forms to enhance their potential value, including the merger of *waqf* assets.<sup>46</sup>

On the general regulatory framework of *waqf* management, there is a piece of important information that may relate to cross-border *waqf*. It is stated that *waqf-related* laws may differ widely across countries and jurisdictions. In the event of recourse to the law, local laws shall take precedence in resolving any issues.<sup>47</sup> However, the words “local laws” could mean the local law of the *waqif*, *nazir*, or *mawquf’alaihi*. Nevertheless, suppose we refer to the regulatory aspects part of WCP, which stated that “the *nazir* must prioritize the interests of the *mawquf’alaihi*”. In that case, it is believed that the local law refers to the law of where the *mawquf’alaihi* is domiciled.

On the institutional foundation, there is also a statement that may correlate to cross-border *waqf* transactions. It is stated that the main duties of the *Waqf* Board are to manage *waqf* assets through the *nazir* nationally and internationally. Additionally, the *Waqf* Board must collaborate with communities, mass organizations, experts, and international institutions.<sup>48</sup> Therefore, it is vital to cooperate with the *Waqf* Board from countries participating in cross-border *waqf* transactions and have the *nazir* involved be registered in the *Waqf* Board of the host country where the *mawquf* is located. This part also covers the qualification of *nazir* or *mutawalli* and its reporting system.

The second part is the assessment of compliance. This part is mainly about evaluating the implementation of the core principles by assessing compliance. In general, the result will be grouped into four grades which are: (i) Compliant, a country will be considered compliant with a principle when all essential criteria applicable to the country are met without any significant deficiencies; (ii) Largely compliant, a country will be considered largely compliant with a Principle whenever only minor shortcomings are observed that do not raise any concerns about the authority’s ability and clear intent to achieve full compliance with the Principle within a prescribed period of time; (iii) Materially non-compliant, a country will be considered materially non-compliant with a

---

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

principle whenever there are shortcomings, where several essential criteria are either not complied with or supervision is manifestly ineffective; and (iv) Non-compliant, a country will be considered materially non-compliant with a principle whenever there are severe shortcomings, where none of the essential criteria are complied with or supervision is manifestly ineffective. Although, it is also stated that grading is not an exact science, and the Core Principles can be met in different ways. The assessment criteria should thus not be seen as a checklist approach to compliance but rather as a qualitative exercise.<sup>49</sup>

The third part is the proposed regulatory standard of *waqf* management. This part consists of detailed clauses about the Core Principles. The general structure of twenty-nine clauses or regulations in WCP can be found in exhibits 2(a) and 2(b) of WCP in the following table:

Table 1.1. *Waqf* Core Principles Coverage<sup>50</sup>

| Clause Number | Dimensions              | Regulation                                                                             |
|---------------|-------------------------|----------------------------------------------------------------------------------------|
| WCP 1         | Legal Foundations       | Responsibilities, objectives, powers, independence, accountability, and collaboration. |
| WCP 2         |                         | Asset classes.                                                                         |
| WCP 3         |                         | Permissible activities.                                                                |
| WCP 4         |                         | Licensing criteria.                                                                    |
| WCP 5         |                         | Transfer of <i>waqf</i> management.                                                    |
| WCP 6         |                         | Takeover of <i>waqf</i> institution and assets.                                        |
| WCP 7         | <i>Waqf</i> Supervision | <i>Waqf</i> supervisory approach.                                                      |
| WCP 8         |                         | <i>Waqf</i> supervisory techniques and tools.                                          |
| WCP 9         |                         | <i>Waqf</i> supervisory reporting.                                                     |
| WCP 10        |                         | Corrective and sanctioning powers of <i>waqf</i> supervisors.                          |

<sup>49</sup> Ibid.

<sup>50</sup> Source: *Waqf* Core Principles.

|        |                          |                                                       |
|--------|--------------------------|-------------------------------------------------------|
| WCP 11 |                          | Consolidated supervision.                             |
| WCP 12 |                          | Home–host relationships.                              |
| WCP 13 | Good Nazir Governance    | Good Nazir governance.                                |
| WCP 14 | Risk Management          | Risk management.                                      |
| WCP 15 |                          | Collection management.                                |
| WCP 16 |                          | Counterparty risk.                                    |
| WCP 17 |                          | Disbursement management.                              |
| WCP 18 |                          | Problem <i>waqf</i> assets, provisions, and reserves. |
| WCP 19 |                          | Transactions with related parties.                    |
| WCP 20 |                          | Country and transfer risks.                           |
| WCP 21 |                          | Market risk.                                          |
| WCP 22 |                          | Reputation and <i>waqf</i> asset loss risk.           |
| WCP 23 |                          | Revenue/profit-loss sharing risk.                     |
| WCP 24 |                          | Disbursement risk.                                    |
| WCP 25 | <i>Sharia</i> Governance | Operational risk and <i>Sharia</i> -compliant.        |
| WCP 26 |                          | <i>Sharia</i> compliance and internal audit.          |
| WCP 27 |                          | Financial reporting and external audit.               |
| WCP 28 |                          | Disclosure and transparency.                          |
| WCP 29 |                          | Abuse of <i>waqf</i> services.                        |

From all the above principles in the WCP as the table above, there are several clauses, although only a few compared to the content of the WCP, which correlates with cross-border *waqf*. Clause No.12 of the WCP uses the context of the home and host *waqf* supervisory relationship. The home and host *waqf* supervisors (the *Waqf* Board) of cross-border *waqf* institutions have to share information and cooperate for effective supervision of the group and the group entities. *Waqf* supervisors require the

local *waqf* operations of foreign *waqf* institutions to be conducted to the same standards as those of domestic *waqf* institutions.<sup>51</sup>

In supporting the achievement of the vision and mission of the *Waqf* Board throughout the world, clauses number 39 and 40 of the WCP regulatory aspects of *waqf* regulate the importance of: (i) Increasing the competency and national and international networks of the *Waqf* Board; and (ii) Collecting, managing, and developing both national and international *waqf* assets. It is also stated in the WCP that the main duties of the *Waqf* Board are to manage *waqf* assets through the nazir both nationally and internationally. Additionally, the *Waqf* Board must collaborate with communities, mass organizations, experts, and international institutions.<sup>52</sup>

Exchange rate risk is another matter that will be permanently attached to cross-border transactions nowadays. In the WCP, exchange rate risk has been regulated under core principle no.16, essential criteria no.4, which states:

“The *waqf* supervisor determines that *waqf* institutions have policies and processes to monitor the total financing of entities to which they extend credit and any risk factors that may result in default, including significant unhedged foreign exchange risk.”

Jeffrey J. Schott stated that a transactional risk is considered an unavoidable risk in cross-border transactions. These risks are closely related to the movement of funds and goods across countries. Based on the World Trade Organization (WTO), 575 cases have been brought to the WTO's current international trade since 1995.<sup>53</sup> The number will increase if we count every lawsuit related to the international transaction administered and resolved in each country's court system. Furthermore, once there is a breach in an international transaction contract, the next thing that will be needed is a way to resolve it, the choice of law, and the place to conduct dispute resolutions, whether through alternative dispute resolutions or litigation.

---

<sup>51</sup> Bank Indonesia, Badan Wakaf Indonesia, and Islamic Development Bank, “Core Principles for Effective Waqf Operation and Supervision”, 31.

<sup>52</sup> Ibid.

<sup>53</sup> Jeffrey J. Schott, “China-US Relations and the Global Economic System,” The Peterson Institute for International Economics (PIIE) and the China Finance 40 Forum (CF40), Washington, DC, USA, 2019, <<https://www.piie.com/research/piie-charts/united-states-relies-wto-settle-trade-disputes-more-any-other-member>> (accessed 23 May, 2022).

Another example of transaction risk is related to the movement of funds, which could be used as a tool in conducting money laundering activities. Cross-border *waqf* transaction is no exception. This adds to the importance of regulating the parties involved and the source of money in cross-border *waqf*. Providing specific criteria to the parties involved in cross-border *waqf* transactions could be an alternative solution.<sup>54</sup> For example, by regulating that only authorized parties in the home and host countries are allowed to conduct cross-border *waqf* transactions. If it is considered too strong or not flexible, at least the parties should attain an approval or statement letter from their *waqf* authority. Furthermore, for the source of money, parties from the home country may have to guarantee the sharia compliance aspects by issuing an official document or statement that the money used to fund the *waqf* originated from halal sources.

Considering that point of view, undoubtedly, the transactional risk needs a robust pre-emptive measure as a mitigation effort. It is believed that the first thing to do is to have a complete set of guidelines or rules that could be acknowledged by parties in the transaction, such as the WCP in cross-border *waqf* transactions, to prevent the dispute from happening. For the second layer, including a dispute resolution-related clause in refining the WCP is crucial.

The above discussion shows that *waqf* regulation in the WCP lays particular emphasis on *waqf* management aspects. In line with the statement, studies related to the application of WCP mainly examine the management aspects of *waqf*. An example could be taken from Muttaqin Choiri and Ahmad Makhtum. Their study on the implementation of the WCP shows the focus of the WCP on the supervisory of domestic *waqf* management, performance, and supervisory aspects, and does not mention the international elements of *waqf*.

---

<sup>54</sup> *Sharia Economic and Financial Department of Bank Indonesia and Business and Economic Faculty of Airlangga University, Wakaf: Pengaturan Dan Tata Kelola Yang Efektif.*

#### 1.8.4. Cross Border *Waqf*-Related Practices in Indonesia

In Indonesia, *fatwa* is not considered a positive law, but it usually functions as a rule for the Muslim population. To support the government's plan to endorse the *waqf* sector, in 2002, the Majelis Ulama Indonesia (MUI) published a *fatwa* about Cash *Waqf*. They responded to the need for a cash *waqf* certificate program in Indonesia by issuing the following *fatwa*:<sup>55</sup> (i) Cash *Waqf* (*Waqf al-Nuqud*) is *waqf* donated by individuals, groups of individuals, or legal entities, in cash; (ii) Cash *waqf* includes securities; (iii) Money donated as *waqf* is not forbidden (*jawaz*); (iv) Cash *waqf* can only be distributed and allocated for anything not against *Sharia* (Islamic law); and (v) The existence of *waqf* funds should be conserved. *Waqf* funds cannot be transferred to anyone. This is one example of a *fatwa* in Indonesia covered in this research, especially as a reference to formulate clauses about the transfer of funds in cross-border *waqf*.

Muhammad Nurul Alim and Djaka Suryadi, stated that based on cash *waqf* practice in Indonesia, the *waqif* must channel the funds to the Islamic Financial Institution Receiving Cash *Waqf* (LKS-PWU) before being used for productive *waqf* projects.<sup>56</sup> Even though this paper did not examine the relationship between cash *waqf* and cross-border *waqf*, we believe that this practice can be the basis to propose a clause in cross-border *waqf* contracts that regulates financial institutions that can participate. It may be proposed that the bank involved in the transaction should be a bank that has cooperation with the *waqf* authority in each respective country. Another possibility that could be further examined is to have the Cash *Waqf* Linked Sukuk (CWLS) as an alternative mechanism for conducting cross-border *waqf*.

Muhammad Nurul Alim and Djaka Suryadi, described another interesting cash *waqf* practice in Indonesia. In that practice, the *mutawalli* or *nazir* of cash *waqf* must be an organization or legal entity registered with the Indonesian *Waqf* Board.<sup>57</sup> Although this paper did not mention cross-border *waqf*, this practice could be essential to propose a

---

<sup>55</sup> Majelis Ulama Indonesia, “*Fatwa* Majelis Ulama Indonesia Dated 11 May 2002 about Cash *Waqf*,” *Fatwa*, 2002, <<http://mui.or.id/wp-content/uploads/files/fatwa/29.-Wakaf-Uang.pdf>> (accessed May 26, 2022).

<sup>56</sup> Muhammad Nurul Alim and Djaka Suryadi, “Proposing Model of Sukuk *Waqf* with Wasiyyah Contract as a Cash *Waqf* Fund Raising Strategy,” in *Global Waqf Conference Series: Waqf Past, Present and Future* (International Islamic University Malaysia, 2021), 154–171.

<sup>57</sup> *Ibid*.



clause in cross-border *waqf* that regulates the *nazir* that can be involved in the transaction namely, that such *nazir* must be registered within the *waqf* authority in each respective country.

The benefit of using *sukuk* in cross-border *waqf* has also been acknowledged by Fahmi M. Nasir, who stated that based on several studies about *waqf* investment in Mecca, it is known that such conduct has been generating positive result especially if combined with *sukuk* innovation.<sup>58</sup> It is further stated that the issuance of *sukuk al-intifa'a* plays an important role in developing *waqf* assets in Mecca, for example, the Zam-Zam Tower.<sup>59</sup> Even though the article did not mention cross-border *waqf*, the utilization of *sukuk* internationally could be examined further in this research.

Regarding Indonesian *waqf* in Mecca, there is a study conducted by Snouck Horgronje about the “Jawi” community in Mecca.<sup>60</sup> Aside from that, Aceh people from Indonesia had conducted *waqf* in various countries in the past. Izrin Muaz Md Adnan, stated that Tunku Syed Husein in 1808 has built a mosque in *Pulau Pinang*, which is now known as the Malay Mosque Lebuah Aceh. Tunku Syed Husein also gave 13 houses at Chulia Street and Acheen Street in *Pulau Pinang*.<sup>61</sup> Although the above sources did not examine cross-border *waqf* in detail, all those *waqf* practices can be used as evidence with the possibility to be discussed in the following chapter.

#### **1.8.5. References About Cross Border *Waqf*-Related Law and Practices in Malaysia**

In Malaysia, the legal basis of *waqf* is regulated by the Administration of the Religion of Islam (Federal Territories) Act 1993 and similar Enactments for individual states. The details of *waqf* regulations in Malaysia are as follows:<sup>62</sup> (i) the Federal Constitution 1957;

---

<sup>58</sup> Fahmi M Nasir, “Menengahi Polemik Rencana Investasi BPKH Pada Tanah Wakaf Baitul Asyi,” *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam* 12, no. 1 (2019): 27–44.

<sup>59</sup> Securities Commission Malaysia, “Waqf Assets: Development, Governance and the Role of Islamic Capital Market,” *Securities Commission Malaysia, Kuala Lumpur* (Kuala Lumpur, Malaysia, 2014), 38-40.

<sup>60</sup> Christiaan Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning. The Moslems of the East-Indian Archipelago* (Berlin, Germany.: De Gruyter Brill, 2007), 229-312.

<sup>61</sup> Izrin Muaz Md Adnan, “A History of the Acheen Street Malay Enclave from Oral History Accounts,” *Journal of the Malaysian Branch of the Royal Asiatic Society*, 2012, 1–44.

<sup>62</sup> Nor Asiah Mohamad, SZSA Kader, and Zuraidah Ali, “*Waqf* Lands and Challenges from the Legal Perspectives in Malaysia,” in *IUM-Toyo Symposium* (Citeseer, 2012): 1-9.

(ii) Administration of Islamic Law (Federal Territories) Act 1993 (Act 505); (iii) Selangor Wakaf Enactment (No.7 of 1999); (iv) Trustee Act 1949 (Act 208); (v) Malacca Wakaf Enactment 2005; (vi) Negeri Sembilan Wakaf Enactment 2005; (vii) the respective Administration of Islamic Law Enactments of the various states; and (viii) the National Land Code 1965 (Act 828) as well as other laws affecting the administration of *waqf* like the Trustee Act 1949, Specific Relief Act 1950, Contracts Act 1950 etc. Therefore, it is crucial to study the regulation details from the above-mentioned sources to have the essence of *waqf* regulation that can be used in formulating clauses related to cross-border *waqf* in the WCP.

In line with the purpose of this study, Siti Mashitoh Mahamood stated that the urgency to have guidance for conducting *waqf* transactions could be learned from legal cases in Malaysia. It is known that the practice of *waqf* in Malaysia started sometime after the advent of Islam in Malaysia, and the first codified law about *waqf* in Malaysia was enacted in Pahang Laws in 1596.<sup>63</sup> Therefore, it is believed that through that long period, Malaysia's legal system has many laws and precedents that can be used as a source in framing regulations as well as mitigating and solving legal problems related to cross-border *waqf*.

Although most of the precedents in Malaysia are about domestic *waqf* cases, still, many insights could be taken considering that cross-border *waqf* is also dealing with domestic *waqf-related* law in the host country. An example can be seen in *Haji Embong Bin Ibrahim & Ors v Tengku Nik Maimunah Hajjah Binte Almarhum Sultan Zainal Abidin & Anor* (1980), there is a legal risk of *waqf* revocation, whether wholly or partially of the *mawquf*.

There is also the case between *Majlis Agama Islam Selangor v Bong Boon Chuen & 146 Lagi* (2008) which explained that there is a chance to file a lawsuit to revoke the status of *waqf*. Another critical case is about the error in registering the type of *waqf*, which is explained in *Kamarolzaman bin Hajar v Majlis Agama Islam Selangor* (2016). In *Majlis Agama Islam Selangor v Hicom Gamuda Development Sdn Bhd & Anor* (2011), we learned

---

<sup>63</sup> Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspectives* (Kuala Lumpur, Malaysia: University of Malaya Press, 2006), 34-93.

the importance of choosing the proper court and law to resolve a *waqf* lawsuit, as well as the importance of having a *waqf* deed as evidence in the trial.

The urgency to have *waqf* evidence could be learned from *G Rethinasamy v Majlis Ugama Islam Pulau Pinang dan Satu yang Lain* (1993). The above legal problems could occur in cross-border *waqf* if we do not have mitigation rules. The rules are also needed to regulate and guarantee the accomplishment of *waqf* purpose, as shown in the *waqf* of Ahmad Dawjee Dadabhoy, which will be explained later.

In relation to the cross-border *waqf* practice in Malaysia, we could refer to Majlis Agama Islam Johor (MAIJ) where through a *waqf* stock program in 2006, MAIJ bought a 6-storey building in the Qahirah area, Egypt. The building was then represented as a dormitory for students from Johor studying at Al Azhar University, Egypt. The building purchase project was also carried out with a fundraiser worth RM4,500,000 through *waqf* shares.<sup>64</sup> Even though this transaction did not clearly mention the cross-border *waqf* elements, we could further research the possibility of using fundraisers and *waqf* shares in cross-border *waqf* regulation.

As an Islamic-based country, Malaysia is known as a leader in Southeast Asia's Islamic economy for decades, with several *waqf*-related laws and references. The paragraph below discusses a portion of it, with a short conclusion about the lesson learned from each reference that may be used in the cross-border *waqf* transaction.

The delivery of *mawquf* is one core element in cross-border *waqf*. Ali and Manaf stated that property transfer is only constructive as once a *waqf* is created, the ownership of the property belongs to Allah SWT.<sup>65</sup> The Hanafi school of thought from Abu Yusuf and Shafie's school also emphasizes that a *waqf* is effective and binding as soon as the *waqif* makes the declaration without the need to deliver possession to the *mawquf'alaih* or the *Mutawalli*. From the perspective of the *Hukum Syarak*, even though it does not require the transfer of *mawquf* to the *mutawalli*, it is felt that proper and effective transfer

---

<sup>64</sup> Sharia Economic and Financial Department of Bank Indonesia and Business and Economic Faculty of Airlangga University, *Wakaf: Pengaturan Dan Tata Kelola Yang Efektif*.

<sup>65</sup> Zuraidah Ali and Zati Ilham Abdul Manaf, "Requirement of Complete Constitution of Property in Express Trust: Whether Relevant in Waqf," in *Global Waqf Conference: Waqf Past, Present and Future*, 2021, 140–153.

to *mutawalli* must be pursued to ease the administration of the *waqf* and to avoid any breach of *amanah* and any oversight in terms of its management. Nevertheless, there is a need to identify who has the right to deal with the property.<sup>66</sup> Although the study above did not mention cross-border *waqf*, two essential elements should be appropriately addressed in *waqf*, including cross-border *waqf*, which is the time of *waqf* declaration and the obligation to pursue the most effective and efficient way of transporting the *mawquf*.

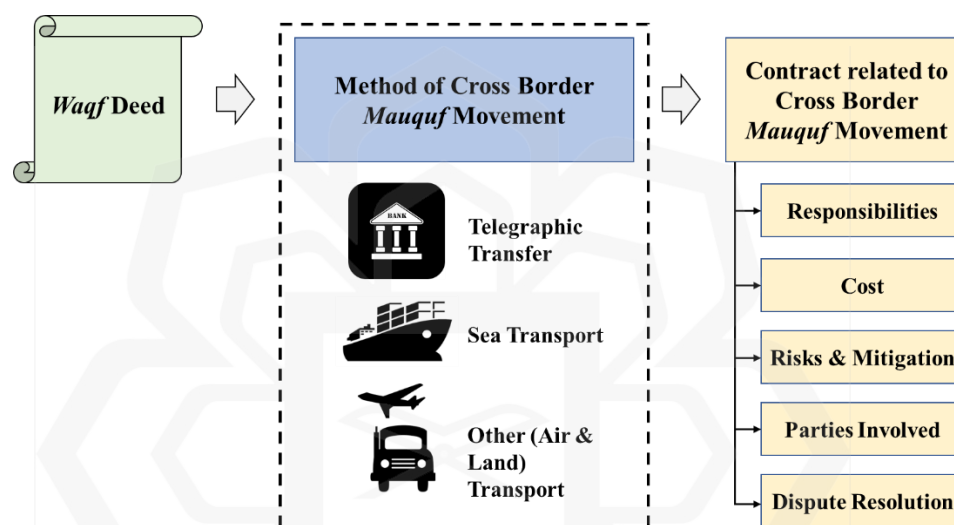


Figure 1.7. *Mawquf* Cross Border Movement: Elements to be Considered<sup>67</sup>

Mohamad and Haron stated that if the *waqf* could not perform well in generating usufruct to fulfil its purposes, the *mutawalli* or *nazir* is allowed to conduct *istibdal*. Based on Section 2 of the Wakaf (State of Selangor) Enactment 2015, *istibdal* is legally referred to as “replacing a *mawquf* with another property or money having the same value as or higher value than the *mawquf*, by exchanging, purchasing, selling or any other manner under *Hukum Syarak*”.<sup>68</sup> Even though the study did not mention the implementation of *istibdal* in cross-border *waqf*, this practice could be a reference to propose a clause

<sup>66</sup> Ibid.

<sup>67</sup> Source: Analyzed by the Author from several sources about cross-border movement of *waqf* assets (Citations in Chapter One No.62-66)

<sup>68</sup> Nor Asiah Mohamad and Amer Hazim Haron, “Perpetuity of Waqf: Issues and Discussion,” in *Global Waqf Conference: Waqf Past, Present and Future*, 2021, 61–75.

regarding risk mitigation in cross-border *waqf* to conduct *badal* (replacement) or *istibdal* (substitution) during the period of the contract. For example, if it is impossible to transport the goods because of a natural disaster or war, then the parties in a cross-border *waqf* contract could propose an agreement to change the form of the goods.

Sharifah Zubaidah Syed Abdul Kader stated that from the case of *Fatimah & Ors v Logan & Ors* (1871), it can be learned that despite the testator clearly describing the gifts as a *waqf*. Still, the court then applied English law in construing the will. The court then categorized each of the gifts according to whether the gift was a charitable trust or not. Those not considered charitable trusts were held void for tending to be in perpetuity. The general rule in Penang about the construction of wills during the British era is that the court would apply English law unless the testator had declared expressly in the will that his personal law shall apply. The same rule would similarly apply to testamentary *waqfs* created during the Straits Settlements period in the 19th century in Malaysia's history.<sup>69</sup> While the said legal case did not mention cross-border *waqf*, from the mentioned case, it could be learned the importance of having a choice of law, mechanism, and location to resolve the *waqf-related* lawsuit. Choosing a *Sharia*/Islamic-based law and dispute resolution mechanism is preferable. This is another essential factor to be accommodated in a cross-border *waqf* contract.

Considering the cost and time concern, most parties in cases related to global transactions tend to have an alternative way to resolve the dispute. Usually, for the first approach, they will conduct a bilateral forum to reach an agreement. Secondly, if this does not work, it would be preferable to choose alternative dispute resolution as a way out rather than go to litigation. Md. Zahidul Islam and Md. Tuhin Mia stated that a mediation and assertion questioning meeting should be conducted before placing a dispute to the court.<sup>70</sup> Even though the study above did not discuss cross-border *waqf*, this could be the basis for having a clause about alternative dispute resolution in the cross-border *waqf* contract.

---

<sup>69</sup> Sharifah Zubaidah Syed Abdul Kader, "Analysis of the Law Applicable to the Creation of Waqfs During the British Era in Penang," in *Global Waqf Conference: Waqf Past, Present and Future*, 2021, 16–30.

<sup>70</sup> Md. Zahidul Islam and Md. Tuhin Mia, "Framework of *Waqf* Management and Administration in Bangladesh: Challenges and Way Forward," in *Global Waqf Conference Series: Waqf Past, Present and Future* (International Islamic University Malaysia, 2021), 103–118.

From the above paragraph, it can be concluded that the cost of dispute resolution must be calculated. Muhammad Fazlul Karim stated that *waqf* institutions should be excluded from paying fees related to the lawsuit. Legal proceedings involving religious or charitable *waqf* should be covered by the state, as the state serves as the guardian of public interest, and *waqf* is regarded as a public issue. However, in terms of *waqf ahli* or family *waqf*, the *mawquf'alaih* should be the ones who are responsible for taking care of the expenses because it is their private matter.<sup>71</sup> Although the study did not discuss cross-border *waqf*, this could be the foundation for having a clause that governs dispute resolution expenses in cross-border *waqf* transactions. It is proposed that each respective country or *waqf* authority should bear the expenses.

*Waqf* perpetuity is another thing that should be mentioned. Sharifah Zubaidah Syed Abdul Kader stated that based on Malaysian legal history, the rule against perpetuities comes from the English law of property as propounded originally in the *Duke of Norfolk's* case. The rule is that there is a prohibition against vesting any interest in the property for an indefinite period except for charitable trusts.<sup>72</sup> The said case did not examine cross-border *waqf*, but pondering from that case, it is preferable to propose a clause regarding the period of *waqf* in a cross-border *waqf* contract. The period can refer to the *waqf* deed, which should be included as an appendix in the cross-border *waqf* contract.

One renowned *waqf* practice in Malaysia that may have an international element is the *waqf* of Ahmad Dawjee Dadabhoy. It has been known as one of the infamous examples of cross-border *waqf* practice in Malaysia. The *mawquf* is a land measuring 1.2 acres located in lots 168 and 169 Perak Street, Kuala Lumpur.<sup>73</sup> The *waqf* itself was done in 1980. On 19 October 2011, Majlis Agama Islam Wilayah Persekutuan (MAIWP), as the landowner with the full support of 100% financing from Lembaga Tabung Haji (TH) amounting to RM151 million, built a 34-story building on the land. The construction scheme uses BOT (Build, Operate, and Transfer).<sup>74</sup> Bank Islam Malaysia Berhad also gave

---

<sup>71</sup> Muhammad Fazlul Karim, "Problems and Prospects of Awqaf in Bangladesh: A Legal Perspective," *Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Jalan Gombak, Kuala Lumpur, Malaysia*, 2010: 13.

<sup>72</sup> Kader, "Analysis of the Law Applicable to the Creation of *Waqfs*,".

<sup>73</sup> Mahmood, "Pembentukan Dana Wakaf Menurut Perspektif Syariah Dan Undang-Undang Serta Aplikasinya Di Malaysia".

<sup>74</sup> bin Mohd Noor, "Application of the Build, Operate, Transfer (BOT),".

its commitment as the primary tenant of the said building.<sup>75</sup> Bank Islam will use 30 floors, three for MAIWP and one floor for Lembaga Tabung Haji. This is a good example of how to effectively manage the cross-border *waqf* to generate goods for the welfare of society. Mustapahayuddin Bin Abdul Khalim, in his thesis about *Amalan Dalam Pengurusan Pentadbiran Tanah Wakaf di Negeri Johor* (2018), stated that this successful cross-border *waqf* practice points out the importance of government institution's support and cooperation as well as coordination with quasi-government and the private sector.<sup>76</sup> Lessons learned from Ahmad Dawjee Dadabhoy *waqf* include: (i) It is preferable to have a clause in the WCP that could encourage the role of the *waqf*-related government agency or institution in managing the cross-border *waqf* transaction such as the *waqf* authority and registered *nazir* within the *waqf* authority in the host country; and (ii) the *Waqf* Core Principles has to open an option to have active collaboration and cooperation with quasi-government and private sector in cross border *waqf* management to pursue the achievement of the main purpose of the *waqf*.

Another source that should be taken into account is the *fatwa*. Monzer Kahf stated that everything about *waqf* is subject to *Ijtihad* and that there is no single ruling in it other than it must be benevolent.<sup>77</sup> Even though the paper did not mention cross-border or international *waqf*, we believe that the essence that should be taken into account is the importance of *fatwa* about *waqf*, which Islamic institutions in Malaysia and Indonesia have issued.

Nor Asiah Mohamad stated that *fatwas* in Malaysia had been institutionalized and played a significant role in clarifying and harmonizing *Hukum Syarak*. One example is the application of *fatwas* from *Fatwa Committee Melaka* in 1994 and *Fatwa Committee Pulau Pinang* in 2003, which is related to the *istibdal* and land acquisition. The said *fatwas* state that any acquisition of *waqf* land for public purposes must be paid with adequate

---

<sup>75</sup> Abdullah et al., "Tanggung Jawab Sosial Korporat (CSR),".

<sup>76</sup> Mustapahayuddin Bin Abdul Khalim, "Amalan Dalam Pengurusan Pentadbiran Tanah Wakaf Di Negeri Johor" (Universiti Tun Hussein Onn Malaysia, 2018), 72-99.

<sup>77</sup> Monzer Kahf, "Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider," in *Harvard Forum on Islamic Finance and Economics*, vol. 1 (New York, United States: Harvard University New York, NY, 1999), 1-16.

compensation, and land must be replaced with other lands of equal size or value.<sup>78</sup> Although the said chapter did not mention the practice of *istibdal* in cross-border *waqf*, we believe that this kind of rule has yet to be accommodated in the current WCP, especially to guarantee the perpetuity of cross-border *waqf*.

Hafizah Shamshuddin et al. stated that Yayasan Wakaf Antarabangsa (YWA) in Labuan is a foundation on a global level and across borders without having to be bound by the provisions of the law in Malaysia. Labuan offshore, which enables the administration of *waqf* property to be operated independently by waqif, cross-border *waqf*, and more efficient *waqf* administration and management.<sup>79</sup> Even though the said article mention the cross-border *waqf*, it has yet to have a detailed discussion about cross-border *waqf-related* laws and the practice of cross-border *waqf* in Malaysia. Nevertheless, it gave a clue that there is a possibility of finding shreds of evidence about cross-border *waqf* practices in Malaysia.

Razali Haron and Sheila Ainon Yussof stated that in order to harness greater cooperation amongst the Association of Southeast Asian Nations (ASEAN) member nations, especially in the area of the Islamic financial market, it is recommended to establish an International *waqf* bank through IDB. The idea of setting up an international *waqf* bank has been bandied around at international *waqf* conferences. It is hoped that the pooling of *waqf* resources and assets will be a step towards helping to enrich ASEAN members, specifically in Cambodia, Laos, Myanmar, and the Philippines.<sup>80</sup> However, the study does not elaborate more on the method of the *waqf* bank, especially its correlation with cross-border *waqf*.

Ahmed Tahiri-Jouti stated that the idea of *offshore waqf* centers is to encourage the cross-border *waqf* that can be initiated and duplicated in different locations in the world.

---

<sup>78</sup> Nor Asiah Mohamad, "Protection of Property Through Waqf Institution: Analysis of Court Decisions in Malaysia Pre and Post-Independence," in *Waqf in Selected Asian Countries*, ed. Nor Asiah Mohamad et al. (Kuala Lumpur, Malaysia: International Islamic University Malaysia, 2019), 40–54.

<sup>79</sup> Hafizah Shamshuddin, Suhaili AlmaAmun, and Riayati Ahmad, "Yayasan Wakaf Antarabangsa (YWA) Di Bawah Pusat Kewangan Pesisir Pantai Labuan: Cadangan Model Penubuhan Berdasarkan Kepada Peruntukan Perundangan: International Waqf Foundation (IWF) Under Labuan Offshore Financial Center: A Proposed Model of Establishme," *International Journal of Islamic Economics and Finance Research* 3, no. 1 July (2020): 30–43.

<sup>80</sup> Razali Haron and Sheila Ainon Yussof, "The ASEAN Market: Cross-Border Collaboration in Islamic Finance between Malaysia and Thailand," *Islamic Banking and Finance* 4 (2017): 21.



Based on the IMF 2000 report on offshore financial centers, there are eight centers in the Islamic world, which are Bahrain, Malaysia, Qatar, United Arab Emirates, Kingdom of Saudi Arabia, Brunei, Lebanon, and Maldives. These centers could create a network of *waqf* centers to connect different national cash *waqf* ecosystems or at least potential international *waqf* donors to national *waqf* ecosystems.<sup>81</sup>

In his book, Ahmed Tahiri-Jouti also stated that in Malaysia, the Labuan International Financial and Business Center has introduced the concept of *waqf* in the form of a foundation in line with the Labuan Foundations Act 2010 and is also a legal entity based on the Labuan Financial Services Authority (Labuan FSA). The Labuan International Waqf Foundation is an Islamic private foundation that holds and manages properties for identified beneficiaries (*mawquf'alah*) in line with *Sharia* principles governing the *waqf* operations. It also guarantees that the *waqf* property cannot be sold, mortgaged, given away as a gift, or inherited. In Labuan, both non-Malaysians and non-Muslims are allowed to set up a Labuan International Waqf Foundation as long as it is in line with *Sharia* principles. One benefit that a *waqf* project could gain by connecting it to the *waqf* offshore centre is the possibility of gaining more funds and allocating the profits inside and outside of the country.<sup>82</sup> It can be presumed that the implementation of the *waqf* offshore centre could encourage the cross-border *waqf* practice. In conclusion, the book discussed the *waqf* offshore centres, the process of their creation, operation, and risk mitigation. However, it only examines the cash *waqf* as the sole method of funds transfer between countries, whether in the form of *mawquf* or usufructs. It does not explain about the movement of the *mawquf* and/or usufructs in the form of goods or commodities.

#### **1.8.6. Saudi Arabia References Related to Cross-Border *Waqf* Practices**

The current practice of cross-border *waqf*, especially in Saudi Arabia, may also play an important role in developing the WCP. Looking back into the history of Islam, *waqf* transactions have been conducted in the Arabian Peninsula since the time of Rasulullah.

---

<sup>81</sup> Ahmed Tahiri-Jouti, "Waqf Offshore Centers and Cross-Border Waqf Operations," in *Financial Instruments and Cash Waqf* (Springer, 2022), 251–271.

<sup>82</sup> Ibid.

Many aspects could be learned from the history of *waqf* in Saudi Arabia, such as how it has been conducted, decisions related to *waqf* that were made in the past, and the current positive laws that regulate *waqf* in Saudi Arabia. All those factors may help us deduce several valuable features will be useful in cross-border *waqf*. Furthermore, we could also learn about the supporting *waqf* elements practiced in Saudi Arabia, such as the derivative contracts, the type of cooperation conducted between parties, possible risks, and legal problems that might be faced.

Saudi Arabia has many experiences in cross-border *waqf* implementation that might be useful in this research. As stated by Bank Indonesia and Airlangga University, several Saudi Arabia's cross-border *waqf* projects include: (i) The allocation of *waqf* funds to various *da'wah* study centers, such as in Argentina, Spain, and also to some various educational institutions in America, London, Albania, and Moscow, for example, the Centers for Islamic Studies at Harvard University and London; (ii) Zam-Zam Tower was built on *waqf* land area given by the King of Saudi Arabia under the management of King Abdul Azis *Waqf* (KAAW) as *nazir*. The *waqf* land by KAAW is leased to the Binladin Group conglomerate with a concession system called BOT (Build-Operate-Transfer) for up to 28 years. Later, Binladin Group subcontracted its concessions to Munshaat, a Kuwait-based property company.<sup>83</sup> Even though the above examples did not associate *waqf* practices with cross-border *waqf*, it is believed that the *waqf* practices done by the Saudi Arabia *waqf* can be used as a basis to propose clauses about cross-border *waqf* subcontract. Some of the key elements from those practices that need to be considered are: (i) the recognition of *waqf* assets; (ii) the prohibition of *waqf* assets to be used as collateral; and (iii) the subcontracting process must be carried out in accordance with *Sharia* principles.

#### **1.8.7. Singapore References Related to Cross-Border *Waqf* Practices**

The Majlis Ugama Islam Singapura (MUIS) states that the first *waqf* on record in Singapore was created in 1820, which is the *Wakaf* Masjid Omar Kampung Melaka, located along the Singapore River. The *waqif* is Syed Omar Ali Aljunied, a successful trader from Indonesia

---

<sup>83</sup> *Sharia* Economic and Financial Department of Bank Indonesia and Business and Economic Faculty of Airlangga University, *Wakaf: Pengaturan Dan Tata Kelola Yang Efektif*.

who originated from Hadhramaut, also known as Yemen. Syed Omar Ali Aljunied also set up *Wakaf* Bencoolen, which consists of Masjid Bencoolen and several properties along Bencoolen Street. Traders and money changers who came from India also established *waqf* in Singapore. They built several endowment properties, such as Masjid Jamae in 1826 and Masjid Al-Abrar in 1827. Both mosques belong to *Waqf* Jamae. Another Indian trader, Ahna Ally Mohammad Kassim, created *Wakaf* Kassim. His *waqf* includes Masjid Kassim and a piece of land along Changi Road.<sup>84</sup>

R. Sari Pertiwi et al. stated that throughout the nineteenth century, other wealthy merchants from Yemen came to Singapore and continued their strong tradition of establishing *waqf*. *Waqf* regulations in Singapore are found in the Administration of Muslim Law Act (AMLA) in the Act. No. 27 of 1966.<sup>85</sup> In section 58, it is stated that all *waqf* in Singapore must be administered in the Majlis Ugama Islam Singapura (MUIS).

Regarding the cross-border *waqf* in Singapore, as stated by Mas Nooraini Mohiddin, MUIS has distributed the *waqf* both within the state and outside the state to countries such as Hadramaut and Saudi Arabia, India and Indonesia. As for the percentage, the total *waqf* foreign disbursement in 2012 was SGD418,270 including founders from Yemen SGD234,547(56%), India SGD100,500 (24%), Indonesia SGD39,000 (9%) and Saudi Arabia SGD44,223 (11%).<sup>86</sup>

The above information explains the position of foreign *waqf* in Singapore in 2012 but does not classify foreign or cross-border *waqf*. However, it has gained enough evidence of cross-border *waqf* practices in Singapore, which may be further examined in the following chapter. Although the above references and laws from Singapore did not mention cross-border *waqf* clearly, it is shown that Singapore has many histories on *waqf* and a well-established law about *waqf*, which can be used as references in this research.

---

<sup>84</sup> Majlis Ugama Islam Singapura, "History of Wakaf," < <https://www.muis.gov.sg/wakaf/Understanding-Wakaf/History-of-Wakaf> > (accessed July 24, 2022).

<sup>85</sup> R Sari Pertiwi, M Nafik Hadi Ryandono, and Khofidlotur Rofiah, "Regulations and Management of Waqf Institutions in Indonesia and Singapore: A Comparative Study," *KnE Social Sciences*, 2019, 766–783.

<sup>86</sup> Mas Nooraini Mohiddin, "Waqf Development in Minority Muslim Country: Singapore's Experience," *Journal of Islamic Philanthropy & Social Finance* 2, no. 1 (2019): 19–34.

### 1.8.8. References from Other Countries Related to Cross-Border *Waqf* Practices

The *waqf* of Hamdard is the most renowned one in Pakistan. Naeem Hayat and Ammara Naeem, stated that the *waqf* of Hamdard was created in 1953. At that time, Hamdard Pakistan had become a big pharmaceutical company, and Hakim Mohammed Said, the founder, declared it as a *waqf*. In the following years, from 1953 to 1963, many humanitarian activities were accomplished by Hamdard Laboratories (*Waqf*) Pakistan. Nowadays, Hamdard's charitable movement comes in many activities, for example, free eye camps, mobile dispensaries, outdoor clinics, free medicines, scholarships to deserving students, and health education through the media.<sup>87</sup>

In Pakistan, Naeem Hayat and Ammara Naeem, in the same article as above, stated that Hamdard Pakistan has a sister organization known as Hamdard Laboratories (*Waqf*) India. Managed by the elder brother of Hakeem Mohammed, Hakeem Abdul Hameed, in 1948, Hamdard India reorganized itself as a *waqf*. There are 25 different institutions that Hakeem Abdul Hameed established to pursue the goals of the Hamdard National Foundation India. These institutions are in fields like health care, medicine, education, Islamic Culture, and Indian Civilization.<sup>88</sup>

In Bangladesh, Rashedul Hasan and Siti Alawiah Siraj stated that Hamdard Bangladesh was established in 1953 in Dhaka as a *waqf* institution.<sup>89</sup> Continuing the explanation, Naeem Hayat and Ammara Naeem stated that, like others, Hamdard in India and Pakistan, medical centers managed by Hamdard Bangladesh are free of charges. Free consultancy and medicines are available for the poor.<sup>90</sup> All of those references about Hamdard did not mention cross-border *waqf*, but it is known that each Hamdard operates in their country and has their *mawquf'alaih* in it as well. Still, it is interesting to further examine the cooperation between the three Hamdard to see whether there are *mawquf* movements between them to determine its international element.

---

<sup>87</sup> Naeem Hayat and Ammara Naeem, "Corporate Waqf: A Case of Hamdard (Waqf) Pakistan," *SSRN*, 2014: 1–10.

<sup>88</sup> *Ibid.*

<sup>89</sup> Rashedul Hasan and Siti Alawiah Siraj, "Complexities of Waqf Development in Bangladesh," *Journal of Emerging Economies and Islamic Research* 4, no. 3 (2016): 1–10.

<sup>90</sup> Hayat and Naeem, "Corporate Waqf,".



Figure 1.8. Hamdard *Waqf* Pakistan, India, and Bangladesh<sup>91</sup>

### 1.8.9. International Rules References About Cross Border *Waqf*-Related Law and Practices

International rules are an important aspect of every cross-border transaction worldwide, including cross-border *waqf*. Based on the previous information, it is known that the Basel Core Principles is an international rule that had been used as the main reference in creating the structure of WCP.<sup>92</sup> Hence, other international rules could be used in refining the WCP. Considering that in cross-border *waqf*, there will be a movement of funds and goods or services, this research also observes the international rules and private international law related to an international transaction.

In cross-border transactions, parties must follow certain laws and rules. There are some notable international laws and rules that may relate to cross-border *waqf* practice. First, international laws created by The United Nations Commission on International Trade

<sup>91</sup> Source: Analyzed by the Author from several sources about Hamdard *Waqf* (Citations in Chapter One No.87-90)

<sup>92</sup> Lisa Listiana, Syed Musa Alhabshi, and Agastya Widhi Harjunadhi, "Waqf for Socio-Economic Development: A Perspective of Ibn Khaldun," *Ibn Haldun Çalışmaları Dergisi* 5, no. 1 (2020): 83–94.

Law (UNCITRAL), which consist of: (i) The United Nations Convention on Contracts for the International Sale of Goods (CISG);<sup>93</sup> (ii) United Nations Convention on the Carriage of Goods by Sea;<sup>94</sup> (iii) United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea;<sup>95</sup> and international court decisions or results of dispute resolution.

Second, private international laws are developed and promoted by The International Institute for the Unification of Private Law (UNIDROIT). UNIDROIT has been studying the needs and methods for modernizing, harmonizing, and coordinating private and commercial law to formulate uniform law instruments, principles, and rules since 1926. In 2019, it was recorded that UNIDROIT has 63 member states worldwide. Products of UNIDROIT that may have correlations with cross-border *waqf* are as follows: (i) UNIDROIT Principles of International Commercial Contracts 2016; (ii) The Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts; and (iii) Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts.<sup>96</sup>

Third, Toto Sutopo and Meydia mentioned several international rules from the ICC that have correlations with Islamic social finance international transactions: (i) The International Commercial Terms (INCOTERMS) 2020; (ii) The Uniform Rules for Bank Payment Obligations (URBPO); (iii) The Uniform Rules for Demand Guarantees (URDG 758); (iv) The International Standard Demand Guarantee Practice (ISDGP); and (v)

---

<sup>93</sup> United Nations Commission on International Trade Law (UNCITRAL), “United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG),” 2024, <[https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)> (accessed February 5, 2024).

<sup>94</sup> United Nations Commission On International Trade Law (UNCITRAL), “United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the ‘Hamburg Rules’),” 2024, <[https://uncitral.un.org/en/texts/transportgoods/conventions/hamburg\\_rules#:~:text=%22Hamburg Rules%22\)-,United Nations Convention on the Carriage of Goods by Sea,\(the %22Hamburg Rules%22\)&text=Adopted by a diplomatic conference,carriage of goods by sea](https://uncitral.un.org/en/texts/transportgoods/conventions/hamburg_rules#:~:text=%22Hamburg Rules%22)-,United Nations Convention on the Carriage of Goods by Sea,(the %22Hamburg Rules%22)&text=Adopted by a diplomatic conference,carriage of goods by sea)> (accessed February 5, 2024).

<sup>95</sup> United Nations Commission On International Trade Law (UNCITRAL), “United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea” (Vienna, Austria, 2009), <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>> (accessed February 5, 2024).

<sup>96</sup> UNIDROIT, “The International Institute for the Unification of Private Law (UNIDROIT),” <<https://www.unidroit.org>> (accessed July 29, 2022).

International Standby Practices (ISP98).<sup>97</sup> This is important to smoothen the process of international *waqf* transactions, considering that the current international rules have been ratified or used by most countries in the world.

Shafiqul Hassan et al. stated that international legal structure plays significant roles in cross-border transactions, international trade, and world economic growth, which in the end will boost the economic growth.<sup>98</sup> Even though the said article did not mention the correlation between an international legal structure and Islamic social sector transactions, especially *waqf*, we believe this is a valid statement considering that the cross-border *waqf* also includes international elements.

In correlation with that, to show the vital role of international laws, this study observes the most ratified UNCITRAL treaty, the UN Convention on Contracts for the International Sale of Goods (CISG). Md Habib Alam stated that the main objective of CISG is to eliminate trade barriers in international commerce to uphold international trade worldwide.<sup>99</sup> It has a similar purpose to that we found in the WCP, which is to harmonize regulations about *waqf*. Based on the UNCITRAL data, as of November 2023, the total of CISG members has reached 97 states, including advanced economy countries such as the United States of America, Australia, Canada, China, Germany, France, Russia, and Japan. There are notable Muslim states in the membership, such as Turkiye, Palestine, Egypt, and Iraq.<sup>100</sup> Rahand Raouf Ali stated that the convention applies to all contracts for the sale of goods between parties whose places of the business lie in different contracting countries. The CISG has been in force since 1988 and is routinely applied by courts and arbitration tribunals as the source of international law for international sale contracts.<sup>101</sup> Although in

---

<sup>97</sup> International Chamber of Commerce Indonesia, "International Banking and International Trade Program," in *International Banking and International Trade Program* (Jakarta, Indonesia: International Chamber of Commerce Indonesia, 2022), 26.

<sup>98</sup> Shafiqul Hassan et al., "Exploring Nexus between International Legal Structure, Cross-Border Transactions, and Approach for Economic Development," *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1 (2022): 1–11.

<sup>99</sup> Md Habib Alam, "Application of CISG in Arbitration: A Combined Procedure or Parallel Procedure?," *International Journal of Community Service & Engagement* 2, no. 1 (2021): 50–53.

<sup>100</sup> United Nations Commission on International Trade Law (UNCITRAL), "CISG Member States", <https://cisg-online.org/cisg-contracting-states> (accessed October 22, 2024).

<sup>101</sup> Rahand Raouf Ali, "Assessment of Damages Under the Convention on Contracts for the International Sale of Goods (CISG)" (Kuala Lumpur: Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2012), 1-15.

CISG there are no articles that directly specify *waqf*, we believe that the study on CISG, the purpose of which is to get rid of trade barriers in international commerce, will benefit cross-border *waqf* endorsement.

Regarding the international rules, Jin-Hwan Kim stated that the INCOTERMS 2020 is an international rule that has been used in the process of international trade and international physical distribution because it stipulates the responsibilities and risks of both parties in a standardized form. The INCOTERMS will also prevent misunderstandings and different interpretations resulting from the application or operation of different practices by the parties. Thus, it will make the process of international physical distribution smoother and avoid any possible disputes. The article also stated several important factors that need to be determined in trade transactions as well as international physical distribution, such as the delivery place, delivery method, delivery proof, transportation/*takaful* contract, import/export customs clearance, risk, and cost burden. In line with that, we believe the said factors should be appropriately addressed in cross-border *waqf* transactions, which include the physical movement of goods between countries. The said research concludes that INCOTERMS is the standard for trade transactions and international distribution of goods. In the process of international physical distribution, it is emphasized that the conditions for sea and multimodal transport are clearly understood and can be used in the field.<sup>102</sup>

---

<sup>102</sup> Jin-Hwan Kim, "The Comparative Study of Incoterms 2020 and 2010 in International Physical Distribution," *Journal of Distribution Science* 20, no. 4 (2022): 101–110.



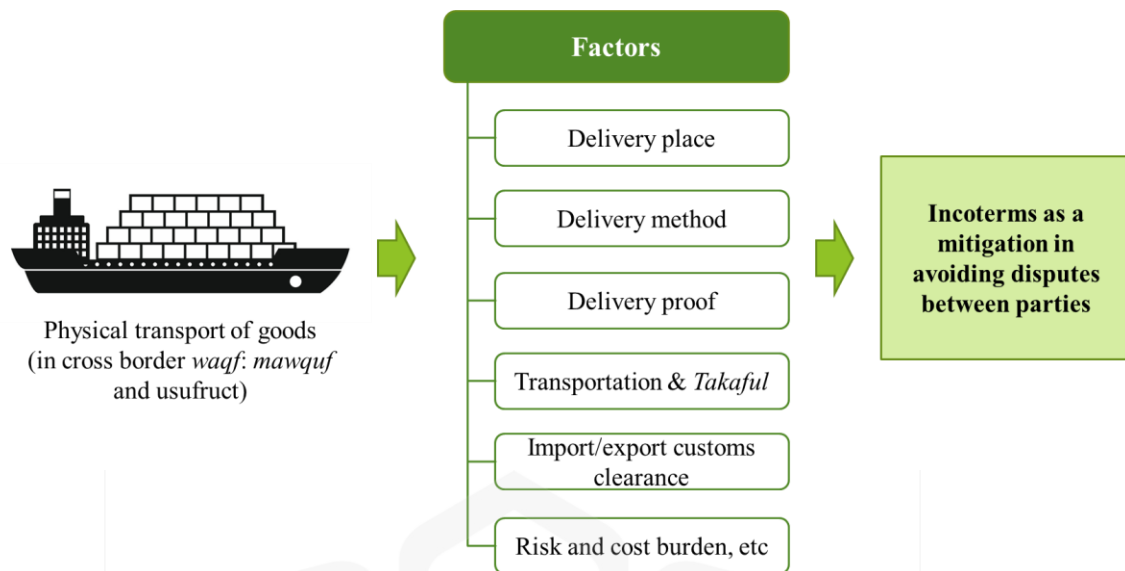


Figure 1.9. Important Factors in International Physical Distribution<sup>103</sup>

Soon-Hwan Jeon stated that there are a total of 11 rules (standard trading conditions) in INCOTERMS 2020. Each of the said rules has its characteristic and classification related to the modes of transportation, either using sea, air, or land transport in delivering the goods.<sup>104</sup> The 11 rules consist of: (i) EXW (Ex Works): Factory delivery; (ii) FCA (Free Carrier): Delivery; (iii) CPT (Carriage Paid To): Delivery; (iv) CIP (Carriage and Insurance Paid to): Delivery of transportation and insurance premiums; (v) DAP (Delivered at Place): Delivery to destination; (vi) DPU (Delivered at Place Unloaded); (vii) DDP (Delivered Duty Paid): Delivery of duty payment; (viii) FAS (Free Alongside Ship): Delivery on the side of the ship; (ix) FOB (Free on Board): FOB delivery; (x) CFR (Cost and Freight): Delivery including freight; (xi) CIF (Cost, Insurance and Freight): Delivery including freight and insurance.<sup>105</sup>

It is believed that such modes could be applied in conducting the international transport of the physical form of *mawquf* and usufruct in cross-border *waqf*. Another core

<sup>103</sup> Source: Analyzed by the Author from several international laws and rules related to international physical distribution of goods (Citations in Chapter One No.91-102).

<sup>104</sup> Soon-Hwan Jeon, "An Analysis of Delivery/Transport Documents Content in Relation to the Contract of Carriage under Incoterms 2020 Rules," *Journal of Korea Trade* 25, no. 1 (2021): 203–219.

<sup>105</sup> Kim, "The Comparative Study of Incoterms,".

issue is that the obligation to protect the perpetuity of the *mawquf* could also be linked to the *takaful* practices which have been set in the INCOTERMS 2020, who should bear the *takaful* cost, and the mode of coverage of the *takaful*. Such possibilities will be elaborated in the following chapter of this study.

In the first part of this sub-chapter, we have mentioned that the CISG consists of 101 articles. Aside from that, several international laws and rules can be observed to fill the regulation gap in the WCP in relation to cross-border *waqf*. At least there are three international laws from UNCITRAL,<sup>106</sup> three international laws from UNIDROIT,<sup>107</sup> and five international rules from the ICC,<sup>108</sup> which will be further examined in the following chapters of this research.

## **1.9. SIGNIFICANT OUTCOMES OR CONTRIBUTION OF THE STUDY**

This thesis contributes to the area of *waqf*, especially cross-border *waqf*. First, the novelty of this research can be seen from the utilization of international rules, commonly used in international transactions and trade, to support cross-border *waqf* activities. Second, this research determines issues, challenges, mitigations, and the prudent way to conduct cross-border *waqf* transactions by extracting core information and data from at least 52 (fifty-two) Indonesian *waqf*-related regulations, 31 (thirty-one) Malaysian *waqf*-related regulations, 15 (fifteen) international laws, 8 (eight) international rules, and 36 (thirty-six) practices from various institutions globally. Third, this research creates a new international rule on cross-border *waqf* transactions and fills the gap in the current WCP by suggesting a set of amendment points and detailed clauses related to cross-border *waqf* to be added to the WCP. The result of this research is a significant contribution to international or cross-border *waqf* transactions worldwide, especially in Indonesia, which plans to conduct a cross-border *waqf* transaction in the near future.

---

<sup>106</sup> CISG, United Nations Convention on the Carriage of Goods by Sea, and United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

<sup>107</sup> UNIDROIT Principles of International Commercial Contracts 2016, The Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, and Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts.

<sup>108</sup> INCOTERMS 2020, URBPO, URDG 758, ISDGP, and ISP98.

## 1.10. ORGANIZATION OF THE RESEARCH

This thesis is divided into six chapters. Chapter I is the background of the study, which includes the definition of cross-border *waqf*, a statement of the problem, the objective of the project, research questions, literature review, and research methodology. In order to get a general understanding of cross-border regulation in Indonesia and take beneficial points for cross-border *waqf* transactions, chapter II accommodates an in-depth study of *waqf*-related law in Indonesia, focusing on the cross-border *waqf* legal aspects in Indonesian regulations. Chapter III is about forming a legal framework of cross-border *waqf*, which will be used in setting the arrangement of proposed WCP's technical notes on cross-border *waqf*. In Chapter IV of this research will discuss the legal essence of the current cross-border *waqf* practice in Malaysia, Indonesia, and other selected countries. Chapter V will focus on analyzing countermeasures to fill legal gaps on cross-border *waqf* found in the WCP and developing international rules for cross-border *waqf*. Chapter VI will be the conclusion that includes the proposed improvement for the WCP to cover the cross-border *waqf* transactions as its technical notes.

## CHAPTER TWO

### INDONESIA'S LAWS AND REGULATIONS RELATED TO CROSS-BORDER *Waqf*

#### 2.1. INTRODUCTION

As a country with the largest Muslim population in the world, Indonesia has a long history and adequate regulations for supporting *waqf* practices. This chapter enumerates nearly fifty laws that either directly or indirectly pertain to *waqf* and are presently in operation. On that basis, this study needs to investigate all relevant essences of those regulations to benefit cross-border *waqf*. This is important because the WCP must cover more details on cross-border *waqf* transactions. All findings in this chapter will be used to improve the WCP.

It is commonly known that in learning about the *waqf* of a specific country, study about history of Islam of the country must be examined in the first place. Islam has arrived in Indonesia since the 13th century.<sup>1</sup> Nowadays, Indonesia has become the country with the largest Muslim population in the world, reaching 237.53 million or 86.9% of the total population in 2021.<sup>2</sup> With a large Muslim population, Islamic law, including endowments, has become a common practice for Indonesian people.

Historically, Indonesian Muslims have known and practiced *waqf* since the arrival of Islam in Indonesia. The need for land to construct mosques in the early days of Islamic entrance triggered the massive granting of *waqf* land. Demak Great Mosque and Ampel Mosque from the 15th century are two examples of the earliest *waqf* evidence in Indonesia.<sup>3</sup>

---

<sup>1</sup> Wahyuni Retnowulandari, *Hukum Islam Dalam Tata Hukum Di Indonesia, BUKU DOSEN-2020*, 2nd ed. (Jakarta, Indonesia: Universitas Trisakti, 2020), 1-5.

<sup>2</sup> Ministry of Home Affairs of the Republic of Indonesia, "Muslim Population in Indonesia" <<https://dataindonesia.id/ragam/detail/sebanyak-869-penduduk-indonesia-beragama-islam>> (accessed October 22, 2024).

<sup>3</sup> Itang Itang and Iik Syakhabyatin, "Sejarah Wakaf di Indonesia (Waqf History in Indonesia)," *Tazkiya* 18, no. 02 (2017): 220–237.

During colonization, the Dutch East Indies government enacted several laws to control *waqf* in Indonesia. The first attempt to manage *waqf* in the colonial period was the erection of the Religious Court (*Priesterraad*) through *Staatsblad* No.152 of 1882 to resolve *waqf* disputes.<sup>4</sup> Hereinafter, under *Staatsblad* No.605, jo. *Besluit Gouvernment General Van Ned Indie ddp.* 12 August 1896 No.43, *joddo.* 6 November 1912. No.22 (*Bijblad* 7760), the use of earnings from mosque-owned agricultural land to fund the maintenance of the mosque and cemetery of the *imam* located within the mosque complex is permissible.<sup>5</sup>

In 1905, the Dutch East Indies government obliged the registration of mosques, including any *waqf* adjacent to the mosque.<sup>6</sup> In 1931, the Dutch East Indies government required that each *waqf* must obtain a government permit.<sup>7</sup> In 1934, they gave power to the regents to resolve *waqf* disputes.<sup>8</sup> In 1935,<sup>9</sup> the Dutch East Indies government governed the *waqf* creation procedure, including reporting obligation to the regent.<sup>10</sup> These regulations show the effort of the Dutch East Indies government to control the *waqf* sector in Indonesia during the colonization period.<sup>11</sup>

Post-independence of Indonesia in 1945, *waqf* matters have been administered and developed under the Ministry of Religion. During that period, the Indonesian government enacted several regulations to cover *waqf* practices. *Jawatan Urusan Agama* (Office of Religious Affairs), with vertical channel offices in each province, was obliged to investigate, determine, register, and supervise or organize *waqf* selection.<sup>12</sup> Furthermore, to

---

<sup>4</sup> Ahmad Mujahidin, *Hukum Wakaf Di Indonesia Dan Proses Penanganan Sengketanya (Waqf Law in Indonesia and Its Dispute Resolution)*, 1st ed. (Jakarta, Indonesia: Kencana, 2021), 65-128.

<sup>5</sup> H M Munir SA, "Wakaf Tanah Menurut Islam Dan Perkembangannya Di Indonesia," *Pekan Baru: UIR Pres Pekan Baru*, 1991, 140-143.

<sup>6</sup> Governor Secretary Circular Letter of Dutch East Indies No.435 dated January 31, 1905, as contained in *Bijblad* 1905 No.6196, about *Toezicht op den houw van Muhammedaansche bedehuizen*.

<sup>7</sup> Governor Secretary Circular Letter of Dutch East Indies No.1361/A dated June 4, 1931, as contained in *Bijblad* 1931 No.12573, on *Toezicht van de regeering op Mohammedaan schebedehuizen, Vrijdagdienstten en wakaf*.

<sup>8</sup> Retnowulandari, *Hukum Islam Dalam Tata Hukum Di Indonesia*, 1-5.

<sup>9</sup> Governor Secretary Circular Letter of Dutch East Indies dated 24 December 1934 as contained in *Bijblad* 1934 No.13390.

<sup>10</sup> Governor Secretary Circular Letter of Dutch East Indies No.1273/A dated 27 May 1935, as contained in *Bijblad* 1935 No.13480 about *Teozijh Vande Regeering Muhammedaansche bedehuizen en Wakafs*.

<sup>11</sup> Itang and Syakhabyatin, "Sejarah Wakaf di Indonesia": 220-237.

<sup>12</sup> As seen in article 4 of *Peraturan Pemerintah No.33 Tahun 1949* tentang Peraturan Tentang Lapang Pekerjaan, Susunan, Pimpinan Dan Tugas Kewajiban Kementerian Agama (Government Regulation of the

preserve the *waqf*, the Indonesian government transferred the authorization of *waqf* land from the regent to the head of the agricultural supervisor<sup>13</sup> and governed *waqf* that does not belong to the mosque.<sup>14</sup> The government also regulates land rights for sacred and social purposes.<sup>15</sup> Substantial and technical regulation on *waqf* was then regulated in the third book of *Kompilasi Hukum Islam* (Islamic Law Compilation).<sup>16</sup> All of these regulations show that even before the reformation in 1998, the Indonesian government had made various efforts to improve the *waqf* sector.<sup>17</sup>

After the reformation, the renewal of *waqf* laws continued. Currently, the highest regulation about *waqf* in Indonesia is *Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf* (the Law of Republic of Indonesia Number 41 of 2004 concerning *Waqf*). The law is then supported by various implementing regulations such as the Government Regulation and Ministry of Religion Regulation. These regulations and their correlation with cross-border *waqf* will be examined in this chapter.

In recent developments, to enhance the *waqf* management practice in Indonesia, Bank Indonesia (The Central Bank of Indonesia) and Badan Wakaf Indonesia (Indonesian Waqf Board) collaborated with the Islamic Development Bank introduced the WCP in 2018 during the International Monetary Fund (IMF) Annual Meeting in Bali. The WCP is a set of general principles that aims to create a sound *waqf* management system.

---

Republic of Indonesia No.33 of 1949). And article 4 *Peraturan Menteri Agama No.10 Tahun 1952* (Minister of Religion Regulation of the Republic of Indonesia No.10 of 1952).

<sup>13</sup> As seen in *Keputusan Bersama Menteri Dalam Negeri dan Menteri Agraria No. Pem. 19/22/23/7.SK/62/Ka/59 tanggal 5 Maret 1956* (Joint Decree of the Minister of Home Affairs and the Minister of Agrarian Affairs of the Republic of Indonesia No. Pem. 19/22/23/7.SK/62/Ka/59 dated 5 March 1956), and *Surat Pusat Jawatan Agraria Kepala Pusat Jawatan Agraria tanggal 13 Februari 1960 No. 2351/34/11* (Letter of the Central Bureau of Agrarian Affairs of the Head of the Central Bureau of Agrarian Affairs dated 13 February 1960 No. 2351/34/11).

<sup>14</sup> As seen in *Surat Edaran Jawatan Urusan Agama No.3/D/1956 tanggal 8 Oktober 1956 tentang Wakaf yang bukan Milik Kemasjidan* (Circular of the Bureau of Religious Affairs of the Republic of Indonesia No.3/D/1956 dated 8 October 1956 concerning *Waqf* that does not belong to mosques).

<sup>15</sup> As seen in article 49 of *Undang-Undang No.5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria* (Law of the Republic of Indonesia No.5 of 1960 concerning Basic Agrarian Regulations). And article 1 *Peraturan Pemerintah No.28 Tahun 1977 tentang Perwakafan Tanah Milik* (Government Regulation of the Republic of Indonesia No. 28 of 1977 concerning *Waqf* of Owned Land).

<sup>16</sup> *Instruksi Presiden No.1 Tahun 1992 tentang Penyebaran Kompilasi Hukum Islam* (President Instruction of the Republic of Indonesia No.1 of 1992 regarding the Wide Spread of Islamic Law Compilation).

<sup>17</sup> Abdul Rasyid, "Hukum Perwakafan Di Indonesia Dari Masa Ke Masa (*Waqf* Law in Indonesia from Time to Time)" <<https://business-law.binus.ac.id/2016/06/28/hukum-perwakafan-di-indonesia-dari-masa-ke-masa/>> (accessed October 23, 2024).

Examining all Indonesian positive laws about *waqf* aligns with one of this research's objectives, which is to explore and analyze the framework of *waqf-related* law in Indonesia. The result of this chapter may determine the elements from Indonesian laws that could be used to improve the WCP in supporting cross-border *waqf* practice.

As mentioned in the first chapter, this research aims to find the best solution to several issues about cross-border *waqf*. This chapter is expected to find information taken from the current Indonesian *waqf* laws to answer the legal gaps about cross-border *waqf* found in the WCP.

In creating proper guidance for cross-border *waqf* transactions, this chapter will divide Indonesian regulations into two groups. The first will examine Indonesian laws directly related to *waqf*, and the second will be about Indonesian laws that correlate with or can support the *waqf* sector.

## 2.2. ORGANIZATIONAL OF *WAQF* MANAGEMENT IN INDONESIA

*Badan Wakaf Indonesia*, or the Indonesian Waqf Board, is an independent agency<sup>18</sup> that regulates and develops the *waqf* sector in Indonesia.<sup>19</sup> The Indonesian Waqf Board also acts as the grand *nazir*<sup>20</sup> and as the *nazir* for cash *waqf*.<sup>21</sup> There are twenty to thirty members of the Indonesian Waqf Board, which are directly appointed by the President.<sup>22</sup> The Indonesian Waqf Board's headquarters is located in the capital city and can open representatives or branch offices in every province and city.<sup>23</sup>

There are ten main tasks of the Indonesian Waqf Board. The first task is conducting *waqf* management training for *nazir*. This one is crucial because *nazir*'s negligence,

---

<sup>18</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 47(2).

<sup>19</sup> Indonesian Waqf Board Regulation No.2 of 2008 concerning Representatives of Indonesian Waqf Boards, article 1.

<sup>20</sup> Zaenuri, "The Ideal Institutional Form of the Indonesian Waqf Board and the Role of the Ministry of Religion in Guiding, Supervising the Nazir and Securing Waqf Assets," Indonesian Waqf Board, <<https://www.bwi.go.id/wp-content/uploads/2020/09/Dr.-Zaenuri-MH.pdf>> (accessed May 16, 2023).

<sup>21</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, article 1.

<sup>22</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 55.

<sup>23</sup> Ibid, article 48.

whether intentional or not, is one of the major causes of the *waqf* dispute. Some examples include the failure to follow the *Sharia* principles, running non-halal business activities as part of the *waqf* management, and even seeking personal gain from the *waqf*.<sup>24</sup>

The Indonesian Waqf Board has the authority to create guidance for *waqf* asset management and development. They also provide advice and considerations to the Government in formulating policies in *the waqf* sector. The Indonesian Waqf Board can also manage and develop *waqf* assets nationally and internationally, including abandoned *waqf*.<sup>25</sup> It can be utilized to create *waqf* guidance that can support the practice of cross-border *waqf* in Indonesia. These tasks can be referenced as the fundamental of cross-border *waqf* management in Indonesia.

As the authority, any changes in the purpose, status, and exchange of *waqf* assets need to be approved by the Indonesian Waqf Board. These tasks are related to the process of *istibdal*. Seventh, to accept, assess, issue evidence of *nazir*'s registration, and reappoint *nazir* whose license has expired.<sup>26</sup>

The Indonesian Waqf Board can appoint and dismiss *nazir*. They also provide suggestions to the Ministry of Religion about financial institutions that can accept cash *waqf*. Lastly, they register the *waqf* deed or certificate.<sup>27</sup> Another piece of evidence also shows the Indonesian Waqf Board's role as a mediator in resolving *waqf* disputes.<sup>28</sup>

In running its role, the Indonesian Waqf Board may cooperate with central and provincial or district government, social organizations, experts, international organizations, and other relevant parties.<sup>29</sup> The Indonesian Waqf Board may also consult with the Ministry

---

<sup>24</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

<sup>25</sup> Indonesian Waqf Board Regulation No.1 of 2007 concerning the Organization and Working Procedures of the Indonesian Waqf Board, article 8.

<sup>26</sup> As seen in article 49(1) The Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar to articles 8d, 8e, and 8g of Indonesian Waqf Board Regulation No.1 of 2007 concerning the Organization and Working Procedures of the Indonesian Waqf Board.

<sup>27</sup> Indonesian Waqf Board Regulation No.1 of 2007 concerning the Organization and Working Procedures of the Indonesian Waqf Board, articles 8h, 8i, and 8j.

<sup>28</sup> Jakarta Religious Court, "Keputusan Pengadilan Agama Jakarta (Jakarta Religious Court Decision) No.38/Pdt.G/2007/PTAJK Dated 24 May 2007" (Jakarta, Indonesia, 2007).

<sup>29</sup> As seen in article 49(2) The Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 9 of Indonesian Waqf Board Regulation No.1 of 2007 concerning the Organization and Working Procedures of the Indonesian Waqf Board. The same in article 2(2) of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.



of Religion and the Indonesian Council of Ulama (*Majelis Ulama Indonesia*).<sup>30</sup> All of those important relations between the Indonesian Waqf Board and relevant agencies are shown in the figure below:

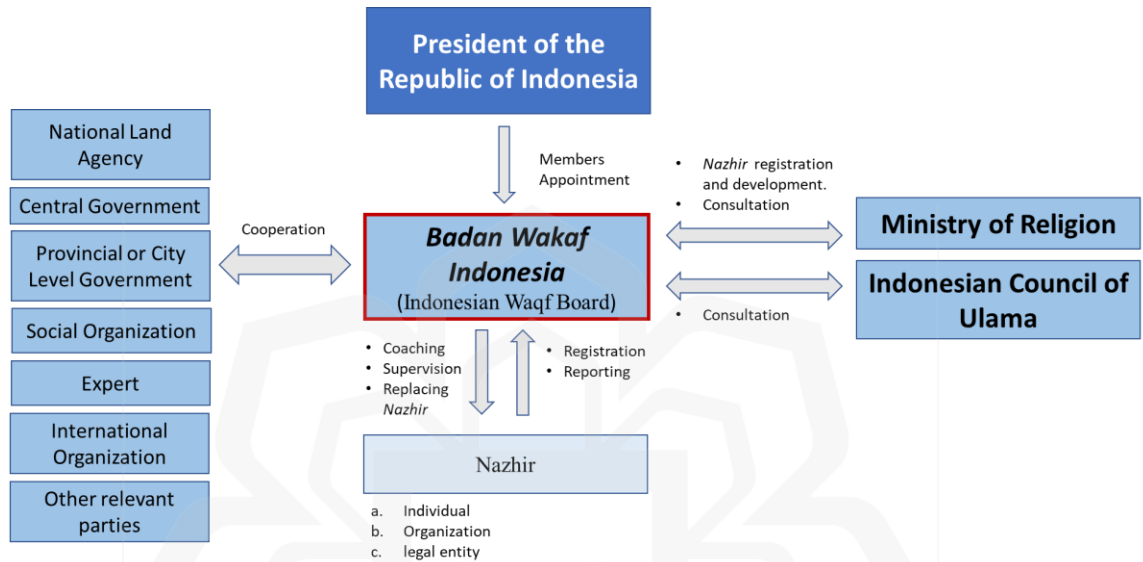


Figure 2.1. Organizational Structure of *Waqf* Management in Indonesia<sup>31</sup>

### 2.3. THE FRAMEWORK OF *WAQF* LAW IN INDONESIA

Indonesia is a republic consisting of thirty-eight provinces,<sup>32</sup> with a constitution as the highest law known as *Undang-Undang Dasar Tahun 1945*.<sup>33</sup> The preamble of the Indonesia's constitution contains the *Pancasila*, or the five bases, as the philosophy of the country.<sup>34</sup> The first principle is to believe in the one and only God, which is in line with

<sup>30</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 50.

<sup>31</sup> Source: Analyzed by the Author from several sources about *waqf* management structure in Indonesia (Citations in Chapter Two No.17-30).

<sup>32</sup> Ministry of Communication and Information of the Republic of Indonesia, "Provinsi Papua Barat Daya Diresmikan, Indonesia Sekarang Miliki 38 Provinsi (Southwest Papua Province Inaugurated, Indonesia Now Has 38 Provinces)," Government News, 2022, <[https://www.kominfo.go.id/content/detail/46247/provinsi-papua-barat-daya-diresmikan-indonesia-sekarang-miliki-38-provinsi/0/berita#:~:text=Jakarta Pusat%20Kominfo - Menteri Dalam,Raja%20Indonesia%20kini%20memiliki%2038%20provinsi](https://www.kominfo.go.id/content/detail/46247/provinsi-papua-barat-daya-diresmikan-indonesia-sekarang-miliki-38-provinsi/0/berita#:~:text=Jakarta%20Kominfo%20Menteri%20Dalam,Raja%20Indonesia%20kini%20memiliki%2038%20provinsi)> (accessed May 16, 2023).

<sup>33</sup> Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pac. Rim L. & Pol'y J.* 19 (2010): 279.

<sup>34</sup> Khoiruddin Buzama, "Pemberlakuan Teori-Teori Hukum Islam Di Indonesia (Application of Islamic Law Theories in Indonesia)," *Al-'Adalah* 10, no. 2 (2012): 467–472.

Islamic values.<sup>35</sup> Even though Indonesia is not an Islamic country, but the basis of the country has values that are in line with Islam itself.

Furthermore, Article 29(1) of the Constitution of the Republic of Indonesia also states that the country is based on belief in one supreme God. Furthermore, Article 29(2) of the Constitution states that the country guarantees the freedom of each resident to embrace their religion and to worship according to their faith and belief.<sup>36</sup> These sources and articles are the legal basis for implementing all religious activities in Indonesia, including *waqf*.<sup>37</sup>

### 2.3.1. Law in Indonesia

Indonesia is a country that adopts the civil law system, which more oriented to the codified law. As for the source of law, after the Indonesian independence in 1945, plural legal system has been implemented which accommodated a combination of colonial laws from the Netherlands, customary or *adat* laws, and Islamic legal influence.<sup>38</sup> This is the reason behind the introduction of the Pancasila, or the five bases, a part of Indonesia's constitution preamble, as the primary source of all sources of laws in Indonesia.<sup>39</sup>

There are several legal expert's views in classifying the source of laws in Indonesia.<sup>40</sup> This research has simplified those views that classified Indonesia's law into two groups, written and unwritten laws.<sup>41</sup> The written law comprises codified and uncoded law, while unwritten law covers the customary (*adat*) law.<sup>42</sup>

---

<sup>35</sup> Retnowulandari, *Hukum Islam Dalam Tata Hukum Di Indonesia*, 1-5.

<sup>36</sup> Undang-Undang Dasar Republik Indonesia Tahun 1945 (Constitution of the Republic of Indonesia 1945), article 29.

<sup>37</sup> Ali Makrus, "Wakaf Produktif (Productive Waqf)," *Jurnal Al-Hikmah* 4, no. 1 (2016): 87–93.

<sup>38</sup> Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (Leiden, Netherland.: kitlv Press Leiden, 2004), 385-388.

<sup>39</sup> Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional (Pancasila as a Source of Law in the National Legal System)," *Jurnal Konstitusi* 15, no. 1 (2018): 21–49.

<sup>40</sup> Umar Said Sugiarto, *Pengantar Hukum Indonesia (Introduction to Indonesia's Law)* (Sinar Grafika, 2021), 30-34.

<sup>41</sup> Muchamad Iksan and Sri Endah Wahyuningsih, "Development of Perspective Criminal Law Indonesian Noble Values," *Legal Standing: Jurnal Ilmu Hukum* 4, no. 1 (2020): 178–192.

<sup>42</sup> Faisal Arif, Bernat Panjaitan, and Nimrot Siahaan, "Implementation of Unwritten Law as a Breakthrough in Criminal Law Enforcement in Indonesia," *Journal of Social Research* 2, no. 4 (2023): 1311–1316.

There are three codified laws in Indonesia, The Criminal Code (*Wetboek van Strafrecht*), The Civil or Private Law Code (*Burgerlijk Wetboek*), and The Commercial Law Code (*Wetboek van Kopphandel*). The Dutch created all of them during the colonization period.

The uncoded law covers all laws and enactments in Indonesia, Islamic law, jurisprudence, ratified treaties, and legal doctrine. The government of Indonesia has legislated the Islamic law into several laws that cover marriage, inheritance, *zakat*, *waqf*, *haji*, and Islamic banking.<sup>43</sup> Laws originated from judge-made law (*rechtsterecht*), also known as jurisprudence (*jurisprudentierecht*) is also acknowledged in Indonesia. The jurisprudence could be taken from any decision by the Supreme Court and the Constitutional Court.<sup>44</sup>

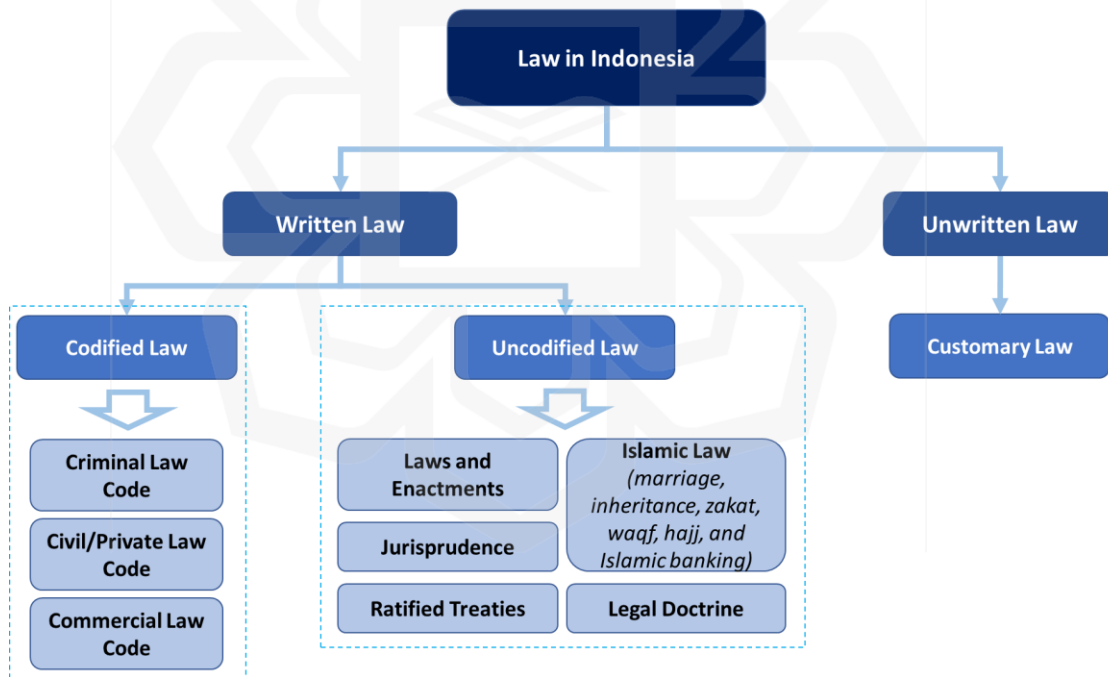


Figure 2.2. Source of Law in Indonesia<sup>45</sup>

<sup>43</sup> Sri Wahyuni, "Islamic Law in Indonesia (History and Prospects)," *Batulis Civil Law Review* 4, no. 1 (2023): 6–19.

<sup>44</sup> Enrico Simanjuntak, "Peran Yurisprudensi Dalam Sistem Hukum Di Indonesia (The Role of Jurisprudence in Indonesia's Legal System)," *Jurnal Konstitusi* 16, no. 1 (2019): 83–104.

<sup>45</sup> Source: Analyzed by the Author from several sources about the history of Indonesia (Citations in Chapter Two No.38-44) and Indonesia's laws.

Learning the hierarchy of law in a country is also essential to find the exact position of *waqf* laws in a country. Legal hierarchy in Indonesia is regulated under the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws (*Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan*).<sup>46</sup> There are seven levels of laws and regulations in Indonesia, as shown in the figure below:<sup>47</sup>



Figure 2.3. Legal Hierarchy in Indonesia<sup>48</sup>

### 2.3.2. *Waqf* Law in Indonesia

The Constitution of the Republic of Indonesia, particularly Article 29, is the basis for inferior laws about *waqf*. Currently, there are 19 (nineteen) regulations dealing with

<sup>46</sup> “Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan” <<https://peraturan.bpk.go.id/Home/Details/39188/uu-no-12-tahun-2011>> (accessed May 17, 2023).

<sup>47</sup> Shandy Primandasetio Freddy and Nor Asiah Mohamad, *Waqf Core Principles: Scope and Implementation Issues in Indonesia*, ed. Huma Nawaz and Barjoai Bardai, *Latest Thought on Global Waqf Development*, vol. 10th GWC (Kuala Lumpur, Malaysia, 2022): 5-6.

<sup>48</sup> Source: Analyzed by the Author from Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations).

*waqf* in Indonesia that have been issued by the executive branch as well as the Indonesian Waqf Board (*Badan Wakaf Indonesia*).<sup>49</sup>

The Law of the Republic of Indonesia No.41 of 2004 concerning Waqf (*Undang-Undang Republik Indonesia No.41 Tahun 2004 tentang Wakaf*) is the highest *waqf* positive law. In implementing this law, the Ministry of Religion of the Republic of Indonesia has enacted a government law<sup>50</sup> that allows the Indonesian Waqf Board to issue technical regulations about *waqf*. The complete figures of Indonesian *waqf* laws are as follows:



---

<sup>49</sup> Badan Wakaf Indonesia, *Himpunan Peraturan Perundang-Undangan Tentang Wakaf, Badan Wakaf Indonesia*, 4th ed. (Jakarta, Indonesia: Badan Wakaf Indonesia, 2018), iii-v.

<sup>50</sup> Peraturan Pemerintah Republik Indonesia No.42 Tahun 2006 Tentang Wakaf, article 46.

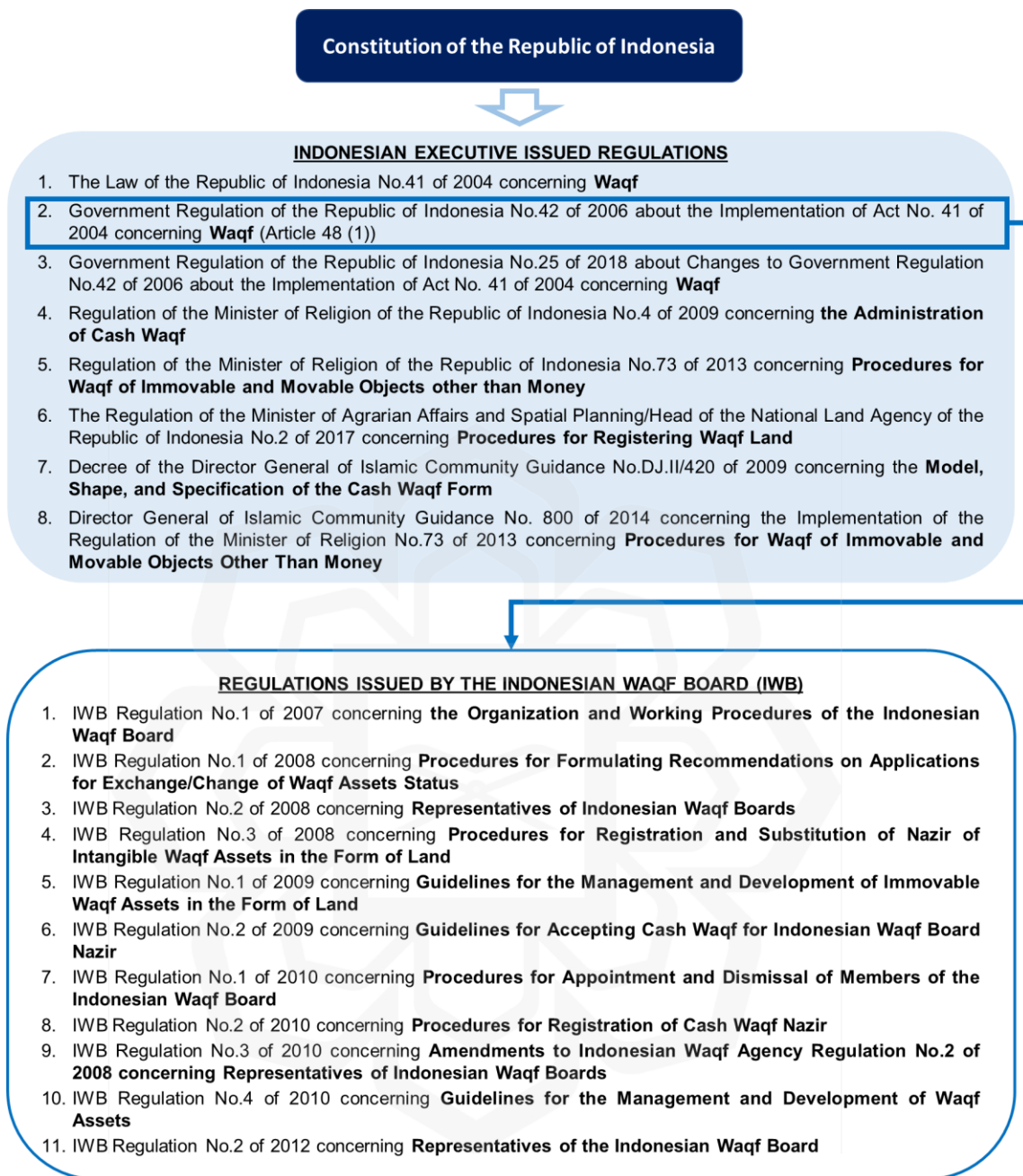


Figure 2.4. *Waqf* Laws in Indonesia<sup>51</sup>

<sup>51</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

### 2.3.3. *Fatwa*

Most of the Indonesian Muslim population adheres to the *Shafi'i* school of thought. However, the four Sunni schools are generally recognized in Indonesia.<sup>52</sup> Regarding *fatwa*, most of the *fatwa* in Indonesia was produced by the Indonesian Council of Ulama (*Majelis Ulama Indonesia*) as an independent body. Up to January 2021, the Indonesian Council of Ulama has produced a total of 138 *fatwas*, which covers the banking sector, non-bank financial industry sector, capital markets sector, business sector, and general *fatwas*.<sup>53</sup>

Based on the Indonesian legal perspective, a *fatwa* is not a law. It is more of a recommendation and can only impose a sanction if it is adopted into law by any governmental body.<sup>54</sup> In Indonesia's litigation process, *fatwas* can be categorized as part of legal experts' opinions. Judges will hear the *fatwa* as a legal opinion on Islamic law, as a consideration in making decisions.<sup>55</sup>

### 2.3.4. *Sharia* Supervisory Board

In Indonesia, the role of the *Sharia* supervisory board is closely related to the *Sharia* banking sector. The innovations of the *Sharia* financial products paired with *Sharia* compliance were the foundation of the *Sharia* supervisory board's establishment.<sup>56</sup>

In firming the position of the *Sharia* supervisory board, Indonesian government has enacted two laws, the Law of the Republic of Indonesia No.40 of 2007 concerning Limited

---

<sup>52</sup> Anny Nailatur Rohmah and Ashif Az Zafi, "Jejak Eksistensi Mazhab Syafii Di Indonesia," *Tamaddun: Jurnal Sejarah Dan Kebudayaan Islam* 8, no. 1 (2020): 173–192.

<sup>53</sup> Majelis Ulama Indonesia, "The Indonesian Council of Ulama Profile," Profil DSN-MUI Institute, <[https://dsnmuuiinstituteweb.com/profil-dsn-mui-institute/#:~:text=Tentang DSN-MUI&text=Jumlah Fatwa DSN-MUI hingga,dan Fatwa yang bersifat general](https://dsnmuuiinstituteweb.com/profil-dsn-mui-institute/#:~:text=Tentang%20DSN-MUI&text=Jumlah%20Fatwa%20DSN-MUI%20hingga,dan%20Fatwa%20yang%20bersifat%20general)> (accessed November 29, 2023).

<sup>54</sup> Diana Mutia Habibaty, "Peranan *Fatwa* Dewan Syariah Nasional Majelis Ulama Indonesia Terhadap Hukum Positif Indonesia," *Jurnal Legislasi Indonesia* 14, no. 4 (2017): 447–453.

<sup>55</sup> Ibnu Elmi A S Pelu, "Kedudukan *Fatwa* Dalam Konstruksi Hukum Islam (The Position of *Fatwa* in the Construction of Islamic Law)," *El-Mashlahah Journal* 9, no. 2 (2019): 167–181.

<sup>56</sup> Bagya Agung Prabowo and Jasri Bin Jamal, "Peranan Dewan Pengawas Syariah Terhadap Praktik Kepatuhan Syariah Dalam Perbankan Syariah Di Indonesia (The Role of the *Sharia* Supervisory Board in *Sharia* Compliance Practices in *Sharia* Banking in Indonesia)," *Jurnal Hukum Ius Quia Iustum* 24, no. 1 (2017): 113–129.

Liability Companies, and the Law of the Republic of Indonesia No.21 of 2008 concerning *Sharia* Banking.

By law, every *Sharia* or conventional bank with a *Sharia* unit must form a *Sharia* supervisory board. The general meeting of shareholders appoints the board members based on the recommendation from the Indonesian Council of Ulama. The main task of the *Sharia* supervisory board is to provide advice and suggestions to the directors and supervise the Bank's activities.<sup>57</sup> They also act as representatives of the National *Sharia* Council of the Indonesian Council of Ulama in each *Sharia* financial institution to supervise the implementation of various *fatwas* that have been issued.<sup>58</sup>

#### **2.4. CROSS-BORDER *WAQF* IN INDONESIA'S LEGAL FRAMEWORK**

Indonesia's regulation has an open stance to the practice of cross-border *waqf*. This can be seen in Article 49 of the Law of the Republic of Indonesia No.41 of 2004 concerning *Waqf* which allows the Indonesian Waqf Board to manage international *waqf* assets and cooperate with international organizations.<sup>59</sup> On technical level regulations, Indonesia's law also permits the local *nazir* to distribute their usufruct to internationally registered social institutions.<sup>60</sup>

The above regulations are further detailed into technical level regulations and *waqf* rules, namely the WCP. However, the current Indonesia's positive laws are yet to fully support the implementation of cross-border *waqf*, as seen from the adoption level of the WCP. Only 12 of 29 core principles have been adopted into Indonesia's *waqf*

---

<sup>57</sup> Law of the Republic of Indonesia No.21 of 2008 Concerning *Sharia* Banking, article 32.

<sup>58</sup> Utary Maharany Barus and Yudika Dwi Erwanda, "Peran Otoritas Jasa Keuangan Dan Dewan Pengawas Syariah Dalam Pengawasan Akad Pembiayaan Pada Perbankan Syariah Yang Mengandung Klausula Eksonerasi (The Role of the Financial Services Authority and the *Sharia* Supervisory Board in Supervising Financing Agr," *Naskah Publikasi* 16 (2015): 1-5.

<sup>59</sup> Law of the Republic of Indonesia No. 41 of 2004 Concerning Waqf, article 49.

<sup>60</sup> As seen in article 15 of the Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar to article 6 of the Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.



regulations.<sup>61</sup> Not to mention that the WCP still need to be improved to support the cross-border *waqf* transaction.

| Clause Number | Dimensions            | Regulation                                                                             |
|---------------|-----------------------|----------------------------------------------------------------------------------------|
| WCP 1         | Legal Foundations     | Responsibilities, objectives, powers, independence, accountability, and collaboration. |
| WCP 2         |                       | Asset classes.                                                                         |
| WCP 3         |                       | Permissible activities.                                                                |
| WCP 4         |                       | Licensing criteria.                                                                    |
| WCP 5         |                       | Transfer of waqf management.                                                           |
| WCP 6         |                       | Takeover of waqf institution and assets.                                               |
| WCP 7         | Waqf Supervision      | Waqf supervisory approach.                                                             |
| WCP 8         |                       | Waqf supervisory techniques and tools.                                                 |
| WCP 9         |                       | Waqf supervisory reporting.                                                            |
| WCP 10        |                       | Corrective and sanctioning powers of waqf supervisors.                                 |
| WCP 11        |                       | Consolidated supervision.                                                              |
| WCP 12        |                       | Home–host relationships.                                                               |
| WCP 13        | Good Nazir Governance | Good Nazir governance.                                                                 |
| WCP 14        | Risk Management       | Risk management.                                                                       |
| WCP 15        |                       | Collection management.                                                                 |
| WCP 16        |                       | Counterparty risk.                                                                     |
| WCP 17        |                       | Disbursement management.                                                               |
| WCP 18        |                       | Problem waqf assets, provisions and reserves.                                          |
| WCP 19        |                       | Transactions with related part.                                                        |
| WCP 20        |                       | Country and transfer risks.                                                            |
| WCP 21        |                       | Market risk.                                                                           |
| WCP 22        |                       | Reputation and Waqf Asset Loss Risk.                                                   |
| WCP 23        |                       | Revenue/profit-loss sharing risk.                                                      |
| WCP 24        |                       | Disbursement risk.                                                                     |
| WCP 25        | Shari'ah Governance   | Operational Risk and Shari'ah-Compliant.                                               |
| WCP 26        |                       | Shari'ah compliance and internal audit.                                                |
| WCP 27        |                       | Financial reporting and external audit.                                                |
| WCP 28        |                       | Disclosure and transparency.                                                           |
| WCP 29        |                       | Abuse of waqf services.                                                                |

 = Covered in Indonesia's Regulations

Figure 2.5. *Waqf* Core Principles Coverage in Indonesia's Regulations<sup>62</sup>

<sup>61</sup> Freddy and Mohamad, *Waqf Core Principles: Scope and Implementation Issues in Indonesia*: 16.

<sup>62</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

## 2.5. UTILIZING INDONESIA'S LAW TO BOLSTER CROSS-BORDER *Waqf* ACTIVITIES

This sub-chapter examines the core law of Indonesia about *waqf*, which includes core and related laws about *waqf* to find the best answers for the research objective, which is to explore and analyze the framework of *waqf-related* law in Indonesia and Malaysia and determine its advantages to cross-border *waqf* practice.

Indonesia's core and related laws about *waqf* should be examined to obtain essential information that could be used to fill up the legal gaps found in the WCP and create technical notes on cross-border *waqf*. This essential information includes: (i) The legal aspects in securing the transfer of the *mawquf* and usufruct; (ii) *Waqf* protection; (iii) Guaranteeing the perpetuity of the *waqf*; (iv) Implementing the KYC principles; and (v) Dispute resolution.

### 2.5.1. Securing the Movement of Cross-Border *Mawquf* and Usufruct

Determining the *mawquf* in cross-border *waqf* is essential, because the type of a *mawquf* will determine how it will be transported or transferred to the host country. Based on Indonesian law, *mawquf* can be classified into movable and immovable objects.<sup>63</sup>

Movable objects that can be donated as a *mawquf* must fulfil the condition that it cannot run out due to consumption or durable, can be used repeatedly, and have value according to Islamic teachings.<sup>64</sup> Several examples are money, precious metals, securities, Islamic bonds, vehicles, intellectual property rights, lease rights (*ijarah*), and other movable objects allowed by Islamic and positive laws.<sup>65</sup>

---

<sup>63</sup> As seen in article 16(1) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 2 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money. The same in article 215(4) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>64</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 216(4).

<sup>65</sup> As seen in article 16(3) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in articles 19 and 21 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 9 of Regulation of the Minister

Based on Indonesia's law, immovable objects include any right of land, property, plant, object adjacent to the ground, and other immovable objects allowed by the Islamic and positive laws.<sup>66</sup> Each type of the said *mawquf* will have a different method of shipping or transfer and risks in cross-border *waqf* transaction. Thus, it is crucial to classify it in first place and determine the best way to transport it into the host country.

*Mawquf*'s origin in cross-border *waqf* must also be looked closely. In international trade, proof of ownership is very important, for example in a Letter of Credit (L/C) transaction, where the issuing bank will only disburse the funds if the buyer has received the proof of ownership of the goods. The same principles should be implemented in cross-border *waqf*. Indonesian law regulates that a *waqf* asset can only be donated if legally owned and controlled by the *waqif*.<sup>67</sup> In the case that the *mawquf* comes from abroad, the *waqif* must deliver proof of ownership.<sup>68</sup>

Dispute free guarantee for the *mawquf*'s status is crucial in cross-border *waqf*. Indonesia's laws regulate that the *waqif* must also guarantee that the *mawquf* is free from all burdens, bonds, encumbrances, disputes,<sup>69</sup> confiscation, any other commitment, and is not being used as collateral.<sup>70</sup> This provision shows the importance of having the said guarantee in a cross-border *waqf* transaction.

*Mawquf*'s condition must be checked before transporting. Indonesian law gives the power to inspect the condition of the *mawquf* and the authenticity of its administrative documents to the *waqf* authority.<sup>71</sup> In cross-border *waqf*, this provision can be useful

---

of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money. And in articles 12, 15, and 16 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>66</sup> As seen in article 16(2) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar to article 16 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>67</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 15.

<sup>68</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 47.

<sup>69</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 217(3).

<sup>70</sup> Regulation of the Minister of Home Affairs of the Republic of Indonesia No.6 of 1977 concerning Procedures for Land Registration Regarding Waqf of Owned Land, article 1.

<sup>71</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 34.

considering parties in international transactions will prioritize the condition of the goods, packaging,<sup>72</sup> transport method, and the legality of the documents.<sup>73</sup>

If the *mawquf* is in the form of money or cash, Indonesia's law regulates that the *mawquf* must be transferred by the *waqif* to an authorized or legally registered financial institution in the host country.<sup>74</sup> This could provide better protection and minimize the possibility of money laundering, which is known as one of the cash *waqf* risks.<sup>75</sup>

In supporting the acceptance of *mawquf* in the form of money or cash, Indonesia's law obliged the authorized financial institutions to create an online system. The system will record core information which includes at least the name of the *nazir* chosen by the *waqif*, currency, total amount, form of *waqif*'s declaration, and cash *waqf* payment approval. After filling up all the required information, a *waqf* certificate will be given to the *waqif*.<sup>76</sup>

Still in the effort to secure the *mawquf*, *force majeure* or unexpected event is a factor that needs to be counted. There is always a possibility of an unexpected event during the process of transporting or transferring the *mawquf*, which the parties are not expecting, not involved in, and not having any bad intention from such occurrence. Problems will come when the event affects the *mawquf*, and parties do not have any power to mitigate or control it.<sup>77</sup>

It is customary in an international contract to have a clause about this matter, and usually, both parties will be excused for their performance and cannot be burdened to bear

---

<sup>72</sup> Kofi Manso Essuman, "Packaging and Trade," *Position Paper. World Packaging Organization*, vol. 11, 2018, 1-4.

<sup>73</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>74</sup> As seen in article 1 of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 5(1) of Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board *Nazir*.

<sup>75</sup> Nur Aqidah Suhaili and Mohd Rizal Palil, "Crowdfunding: A Collaborative Waqf Based Internet Platform," *International Journal of Business, Economics and Law* 11, no. 5 (2016): 41–46.

<sup>76</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, articles 6(3) and 6(4).

<sup>77</sup> Regulation of the Supreme Court of the Republic of Indonesia No.2 of 2008 concerning Compilation of *Sharia* Economic Law, article 41.

the loss. The said risk could be mitigated by *takaful*,<sup>78</sup> which is a common practice in international contracts and will be further elaborated in the following chapter.

Based on all the information above, several findings from Indonesia's laws could facilitate the security aspect of the movement of cross-border *mawquf*. Details can be seen in the following figure:

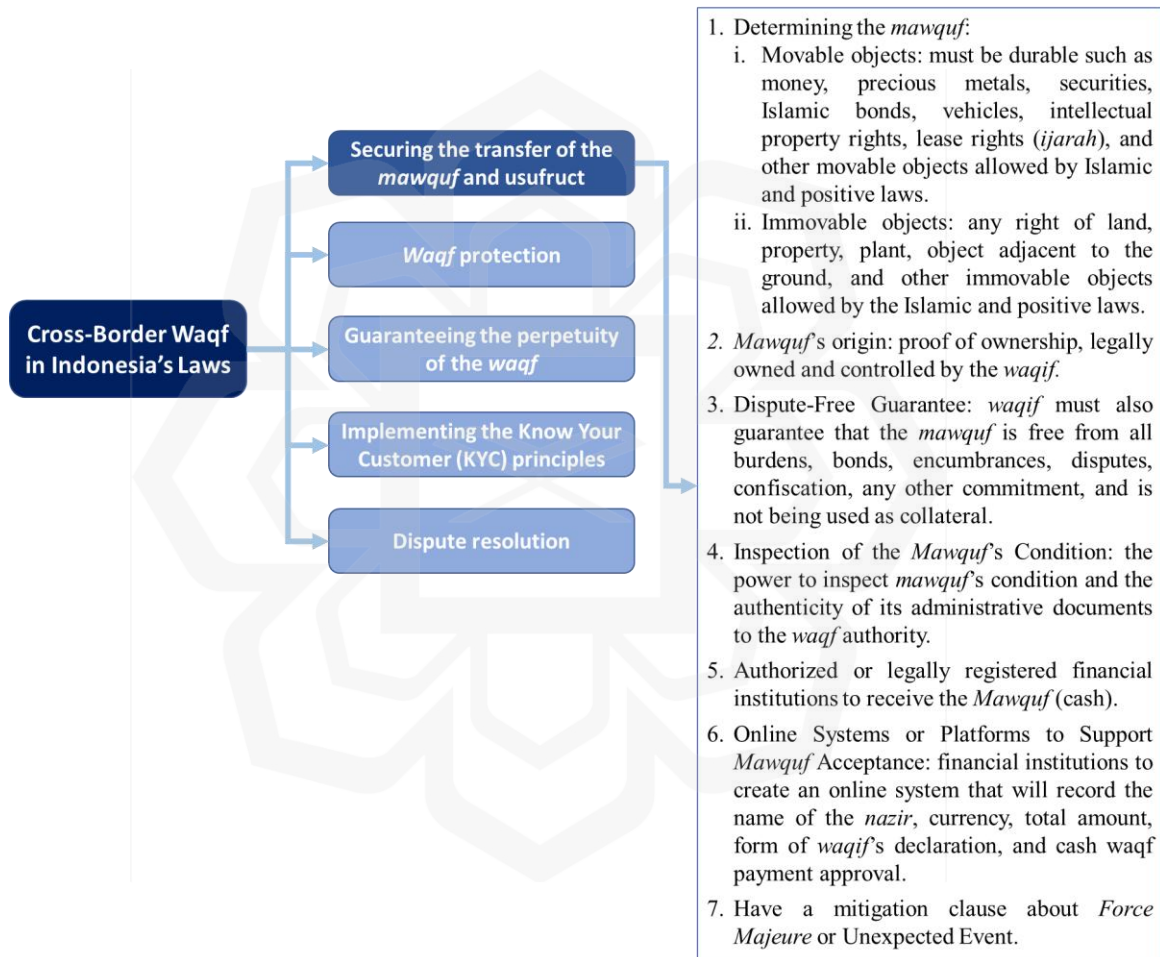


Figure 2.6. Securing the Movement of Cross-Border *Mawquf* and Usufruct in Indonesia's

Law<sup>79</sup>

<sup>78</sup> Aditya Padmo and Iwan Erar Joesoef, "COVID-19 as Force Majeure in Insurance Agreement," *Mulawarman Law Review*, 2020, 114–125.

<sup>79</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

### 2.5.2. Protecting the *Waqf* or *Waqif's* Purpose

Indonesia's laws regulate the protection of the *waqf* or *waqif's* purpose starting from the *waqf* creation. Several elements must be met in the creation of *waqf*, including the *waqif*, *nazir*, *mawquf*, *waqf* pledge, *waqf* objective, and *waqf* duration.<sup>80</sup> A *waqf* pledge must be done by the *waqif* to the *nazir* in the presence of the *waqf* authority's representative, two witnesses, and made in writing.<sup>81</sup> In a condition where the *waqif* cannot present at the *waqf* pledge creation, the *waqif* can appoint a representative with a power of attorney supported by two witnesses.<sup>82</sup> The witness must be a Muslim, has come of age, is of sound mind, and is not hindered from carrying out legal actions.<sup>83</sup> During the creation of the *waqf* pledge, the proof of ownership of the *mawquf*<sup>84</sup> and all related documents<sup>85</sup> must be submitted to the *waqf* authority's representative.

During the *waqf* creation, the *waqif* must declare his will clearly and firmly to the *nazir* in the presence of the official who is authorized to create a written *waqf* pledge deed. During the declaration, the *waqif* should surrender the proof of ownership of the *mawquf* and all related documents related to the ownership.<sup>86</sup> Most of the *waqf* disputes arise due to the absence of a *waqf* pledge as authentic evidence.<sup>87</sup>

Family approval may be considered in the *waqf* creation. This is because it is common to find a *waqf* legal suit filed by a family member of the *waqif* in the future. Based

---

<sup>80</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 6.

<sup>81</sup> As seen in article 17 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 30 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>82</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 18.

<sup>83</sup> Ibid, article 20.

<sup>84</sup> As seen in article 19 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 28 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>85</sup> Ibid.

<sup>86</sup> As seen in articles 218(1) and 223(4) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law. Similar to article 2(1) of Regulation of the Minister of Religion of the Republic of Indonesia No.1 of 1978 about the Implementation of Government Regulation of the Republic of Indonesia No.28 of 1977 concerning Waqf of Owned Land.

<sup>87</sup> Dewi Hendrawati and Islamiyati Islamiyati, "Penyelesaian Sengketa Tanah Wakaf Yang Tidak Tersertifikasi Di Wilayah Pesisir Utara Jawa Tengah," *Masalah-Masalah Hukum* 47, no. 1 (2018): 71–80.

on Indonesia's law, discussion for *waqf* approval between the *waqif* and the *waqif*'s family members is necessary to prevent such things from happening.<sup>88</sup>

A *waqf* deed or certificate issuance is the key to proving a *waqf*'s authenticity. The absence of a certificate and other administrative documents could trigger *waqf* disputes in the future. In *waqf* litigation, the judge will examine the *waqf* certificate to decide the consistency of *waqf* management with the *waqif*'s intention.<sup>89</sup>

Continuing explanation on the first part of this sub-chapter about the *waqf* creation, upon fulfilling all requirements needed for a *waqf* pledge, the *waqf* authority will continue the process by gathering the *waqif*, *nazir*, *mawquf'alaih*, and two witnesses, in a forum named the *Waqf* Pledge Meeting (*Majelis Ikrar Wakaf*). The presence of the *mawquf'alaih* is only required if the *waqf* has a specific benefit receiver, such as *waqf ahli* and *waqf khayri-am*.<sup>90</sup> If needed, a statement of approval letter from the *waqif*'s spouse can be added as a required document.<sup>91</sup>

Indonesian laws do not regulate the details of the implementation of the *Waqf* Pledge Meeting, whether it must be done physically or online. In cross-border *waqf*, the application of online meetings in *waqf* creation may be utilized with consideration of legal acknowledgment of the laws both in the home and host country.

The said meeting will result in a written and signed *waqf* deed, which is an authentic document created by a notary.<sup>92</sup> The *waqf* deed at least contains information about the date of the deed, *waqif*'s identity, *nazir*'s identity, witnesses' identity, data of the *mawquf*, *waqf*

---

<sup>88</sup> Government of Indonesia, "Instruksi Bersama Menteri Agama Dan Kepala Badan Pertanahan Nasional Republik Indonesia No.4 Tahun 1990 Tentang Sertifikat Tanah Wakaf (Joint Instruction of the Minister of Religion and Head of the National Land Agency No.4 of 1990 Regarding Waqf Land Certificate)" (1990).

<sup>89</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

<sup>90</sup> As seen in article 30 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar to article 12(1) of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>91</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 19(3).

<sup>92</sup> Ibid, article 27.

objective, and *waqf* duration.<sup>93</sup> It must be signed by the *waqif*, *nazir*, two witnesses, and *mawquf' alaih* (optional), then legalized by the *waqf* authority.<sup>94</sup>

*Waqif* must transfer the ownership of the *mawquf* to the *nazir* before or at least when they sign the *waqf* deed. All details of the *mawquf* must be recorded in the exhibit of the *waqf* deed.<sup>95</sup> The *waqf* deed must be issued no later than two weeks after the handover of the *mawquf*.<sup>96</sup> Copies of the deed must be distributed to the *waqif*, *nazir*, *mawquf' alaih*, and all related government agencies.<sup>97</sup> Every step elaborated above is crucial in preserving the perpetuity of the *waqf*.

Indonesia's law also protects any *waqf* that is created by a will. *Waqf* creation by a will is only possible if there are two witnesses. The maximum *waqf* property gained from a will is 1/3 (one-third) of the inherited assets after deducting it for debts, except if the heirs consent.<sup>98</sup> This provision is quite important considering the possibility of a will in creating a cross-border *waqf* transaction. One of the renowned examples is the *waqf* of Ahmad Dawjee Dadabhoy in Malaysia,<sup>99</sup> and in Indonesia, this practice is commonly found in a *takaful* based on the Indonesian Council of Ulama *fatwa*'s No.106/DSN-MUI/X/2016.<sup>100</sup>

---

<sup>93</sup> As seen in article 21 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 32 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in exhibit I of the Decision of Director General of Islamic Community Guidance No.800 of 2014 concerning the Implementation of the Regulation of the Minister of Religion No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects Other Than Money. And in article 19 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>94</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 20(1).

<sup>95</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 36.

<sup>96</sup> Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board *Nazir*, article 6(3).

<sup>97</sup> As seen in article 34 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar in exhibit I of the Decision of Director General of Islamic Community Guidance No.800 of 2014 concerning the Implementation of the Regulation of the Minister of Religion No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects Other Than Money. The same in article 12(2) and 20(2) of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>98</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 24 and 25.

<sup>99</sup> Mohamad Akram Laldin, Sharifah Zubaidah Syed Abdul-Kader, and Fares Djafri, "Waqf Development in Malaysia," in *Waqf Development and Innovation* (Routledge, 2021), 207–225.

<sup>100</sup> Siska Lis Sulistiani, "Analisis Implementasi Wakaf Wasiat Polis Asuransi Syariah Di Lembaga Wakaf Al-Azhar Jakarta (Analysis of the Implementation of Waqf Wills for *Sharia* Insurance Policies at the Al-Azhar



A fraud in a *waqf* and *mawquf* registration could result in a legal dispute in the future. In preventing such tragedy, Indonesia's laws regulate detailed steps of the *waqf* registration, which is crucial to shield the indefeasible ownership of the *mawquf*.<sup>101</sup> The *mawquf* must be registered in the relevant agencies or ministries within seven days from the deed's creation.<sup>102</sup> The *mawquf* must be registered under the name of the *nazir*,<sup>103</sup> different from Malaysian law which regulates the *mawquf* to be registered under the SIRC. All administrative documents must be well-kept by the *nazir*. As mentioned before, the absence of these documents is one of the major causes of *waqf* dispute.<sup>104</sup> After registering the *waqf*, the *nazir* needs to report the registration to the *waqf* authority and the Ministry of Religion.<sup>105</sup> All documents needed to register the *mawquf* must be submitted to the relevant agencies thirty days after the *waqf* creation.<sup>106</sup>

As part of transparency in *waqf* management, *waqf* declaration will affect the perception of trust and intention to donate.<sup>107</sup> In line with that, Indonesian law has obliged the *waqf* authority or related ministry to make public announcements upon the creation of a new *waqf*.<sup>108</sup> In Indonesia, the national *waqf* data can be accessed at the general register of *waqf* provided by the Ministry of Religion and the Indonesian Waqf Board.<sup>109</sup>

---

Waqf Institution in Jakarta),” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 2 (2017): 285–299.

<sup>101</sup> Noor Azimah Ghazali, Fauziah Raji, and Mohammad Tahir Sabit Haji Mohammad, “Issues on Waqf Land Registration Process in Malaysia and Improvement Proposals,” *UMRAN-International Journal of Islamic and Civilizational Studies* 6, no. 3 (2019): 57–71.

<sup>102</sup> As seen in article 30 and 32 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 24 and 26 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>103</sup> As seen in article 3 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar to article 6(1) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>104</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

<sup>105</sup> Keputusan Direktur Jenderal Bimbingan Masyarakat Islam No. DJ.II/420 of 2009 tentang Model, Bentuk dan Spesifikasi Formulir Wakaf Uang (Decree of the Director General of Islamic Community Guidance No.DJ.II/420 of 2009 concerning Model, Shape and Specification of Cash Waqf Form).

<sup>106</sup> Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land, article 2(2).

<sup>107</sup> Zulfikar Ali Ahmad and Rusdianto Rusdianto, “Impact of Transparency and Accountability on Trust and Intention to Donate Cash Waqf in Islamic Microfinance Institutions,” *Shirkah: Journal of Economics and Business* 5, no. 2 (2020): 197–227.

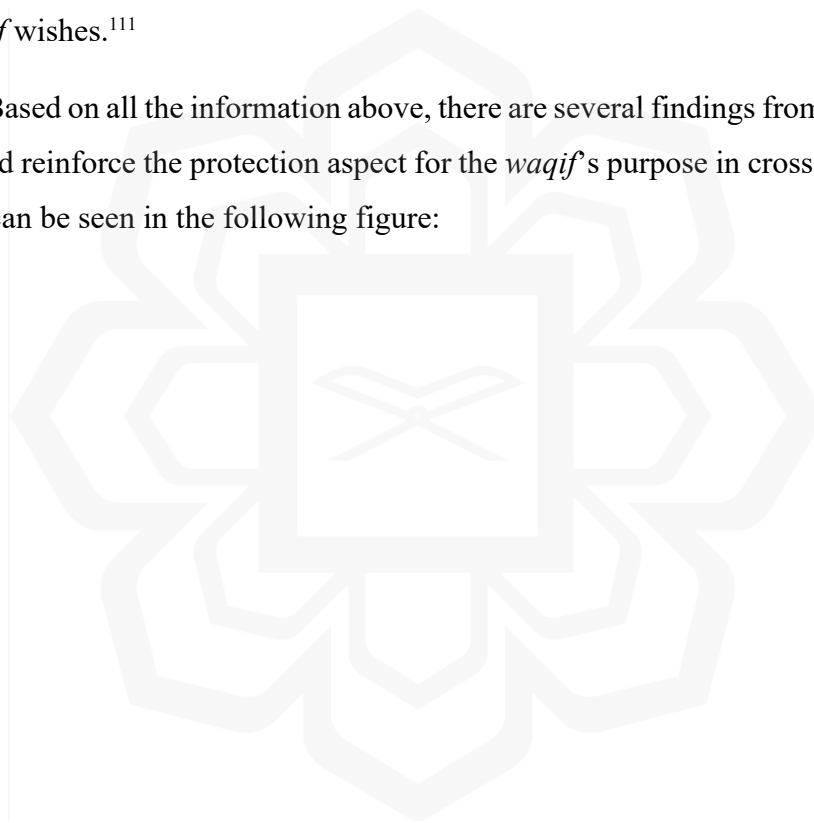
<sup>108</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 44.

<sup>109</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

Indonesia's regulation also governs the *nazir*'s obligation to manage the *mawquf* according to the wishes of the *waqif*.<sup>110</sup> This is a general yet essential provision in protecting the *waqf* that should be practiced in every *waqf* sector worldwide.

Even though there is an obligation, as stated in the above paragraph, to ensure the perpetuity of the *waqf*, especially in unfavorable conditions, Indonesia's law provides a limited way to change the *waqf*'s purpose. *Nazir* can only change the purpose and status of the *mawquf* under a written permission from the Ministry of Religion and the Indonesian *Waqf* Board. The permit will only be given if the *mawquf* cannot be utilized as the *waqif* wishes.<sup>111</sup>

Based on all the information above, there are several findings from Indonesia's laws that could reinforce the protection aspect for the *waqif*'s purpose in cross-border *waqf*. The resume can be seen in the following figure:



---

<sup>110</sup> Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets, article 2(1).

<sup>111</sup> As seen in article 44 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49 (1) of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 4 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

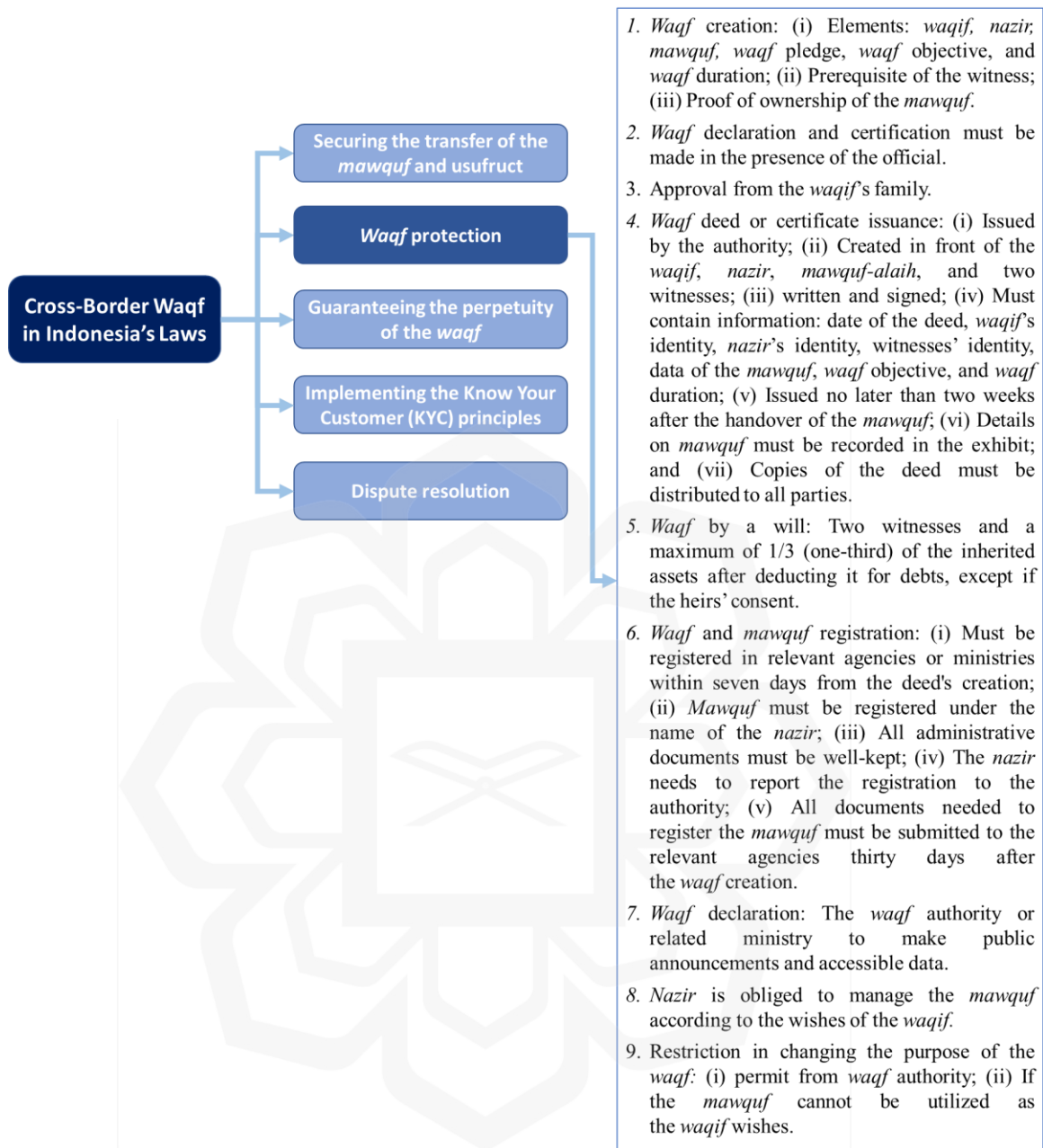


Figure 2.7. Cross-Border *Waqf* Protection in Indonesia's Law<sup>112</sup>

<sup>112</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

### 2.5.3. Guaranteeing the Perpetuity of the *Waqf*

Once a *waqf* is created, it must be maintained in eternity. Restriction in revoking a pledged *waqf* is a protection found in Indonesia's law.<sup>113</sup> In cross-border *waqf*, revoking a *waqf* could trigger more cost, especially when the *mawquf* needs a special transportation method and packaging. This provision should be vigorously applied.

Indonesia's law also restricts the transfer of the *mawquf*'s ownership status. The *mawquf* cannot be used as collateral, confiscated, donated, sold, inherited, exchanged, or transferred.<sup>114</sup> Violation of this restriction will be subject to five years imprisonment and a fine equal to USD35000.<sup>115</sup> The said penalties are only to show of how the law protects the *mawquf*. The critical point is that the cross-border *waqf* guidance should have similar provisions.

*Waqf* protection is also regulated in Indonesia's regulations, particularly protection from unlawful acts and for a *mawquf* in the form of land. Law in Indonesia obliges the government to protect the *waqf* by erasing any rights of land that have been donated from the date of the *waqf* pledge and change the land status as a *mawquf*.<sup>116</sup> The Indonesian government guarantees the right of land ownership by any religious and social institution.<sup>117</sup> The law also obliges all citizens to preserve the land and prevent destruction over it.<sup>118</sup> If a country has these double protections, it may encourage the inflow of cross-border *waqf* funds that can be invested in land *waqf* as well as guarantee the status of the *mawquf*.

Another *waqf* protection could be seen on the Indonesian code of civil law, if the *nazir* breaks his promise or commits an unlawful act, then the *waqif* can sue for compensation.<sup>119</sup> This provision will help to protect the perpetuity of cross-border *waqf*, considering that the *nazir* in the host country is the one who will manage it.

---

<sup>113</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 2.

<sup>114</sup> Ibid, article 40.

<sup>115</sup> Ibid, article 67.

<sup>116</sup> Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land, article 2.

<sup>117</sup> Law of the Republic of Indonesia No.5 of 1960 concerning Basic Agrarian Regulations, articles 49(1) and 15.

<sup>118</sup> Ibid, article 15.

<sup>119</sup> Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie), articles 1244, 1245 and 1246.

Before the *waqif* transfers the ownership of the *mawquf*, a guarantee of freedom from liability is essential, because it could prevent future conflict. In a cross-border *waqf* transaction and based on Indonesia's regulation, the *waqif* must guarantee that the *mawquf* is not in dispute, case, confiscation, not being burdened with encumbrances, and being used as collateral.<sup>120</sup> A certificate from the relevant authority can be used to prove those conditions,<sup>121</sup> but a statement letter from the *waqif* can also be an alternative. This provision is also essential to prevent future conflict in cross-border *waqf*.

Separation of permanent and temporary *waqf* management is also part of guaranteeing the perpetuity of the *waqf*. Indonesia's law rules that the *nazir* must divide the management between temporary (*muaqqat*) and permanent (*muabbad*) *waqf*. Because in temporary *waqf*, the *nazir* must guarantee the fulfilment of their obligation to return the *mawquf* when it is due.<sup>122</sup>

In managing the *waqf*, the *nazir* may conduct direct and non-direct investment. Direct investment aims to productive projects that benefit the Muslim community. Setting up several criteria before determining the project is necessary as part of good corporate governance.

Indonesia's laws govern the prerequisites before determining a direct investment project to be invested that include: (i) *sharia* and law compliance; (ii) comprehensive assessment of the character, condition, capital, capacity, collateral, people, purpose, and payment; and (iii) conducting the feasibility study. The *nazir* must prioritize productive projects, and if needed, a bank guarantee must be issued by an Islamic financial institution.<sup>123</sup>

---

<sup>120</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 38.

<sup>121</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 5.

<sup>122</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, article 10(1).

<sup>123</sup> As seen in article 9(2), 9(3), and 11(1) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 3 Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

Indonesia's laws also govern a high compliance standard for non-direct investment projects. The *nazir* must channel the *mawquf* to *sharia*-compliant financial products through Islamic financial institutions. The said institutions must be legally recognized, have been running for at least two years, and provide audit reports for the last two years.<sup>124</sup>

High compliance aspects could also be seen in usufructs distribution. Indonesia's laws provide that the *nazir* may conduct direct and indirect distribution to a program that complies with *Sharia* principles. Before the distribution, an assessment must be conducted that includes several elements as follows: (i) *Sharia* and law compliance; (ii) appropriateness of the *mawquf'alaih*; (iii) poverty reduction; (iv) job vacancy creation; (iv) benefits the community; (v) sustainable program; and (vi) encourage community self-sufficiency.<sup>125</sup>

If *nazir* chooses to use indirect distribution, the usufruct must be channeled to registered social institutions nationally or internationally. The said institutions must be legally recognized, *Sharia* compliant, at least have been running for two years, have prudent management members, provide independent audit reports for the last two years, and have a well-structured program that provides long-term benefits to the community.<sup>126</sup>

As a guarantee for *waqf* perpetuity, in managing the *waqf*, the *nazir* must allocate a sum of money as a guarantee equal to the total investment in a *waqf* project.<sup>127</sup> This is a way to buffer for unsuccessful investment and keep the perpetuity of the *mawquf* in cross-border *waqf*.

---

<sup>124</sup> As seen in article 12 of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 7 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>125</sup> As seen in article 14(1) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 9 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>126</sup> As seen in article 15 of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 10 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>127</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, article 11(3).

Limitation in investing is also applied under Indonesia's law, especially to a particular project run by a related party. Considering good corporate governance on the *waqf* management, if *nazir* wants to conduct a direct investment in a project run by a related party, the total investment must not exceed 10% of the total *mawquf*. Related parties consist of: (i) shareholder who owns 10% or more of the *waqf* foundation, their family, and related company; (ii) management and member of the *nazir*, their family, and related company; (iii) management and member of the financial institution where the *mawquf* is stored, their family, and related company; and (iv) *nazir*'s subsidiary.<sup>128</sup>

Indonesia's laws have a detailed provision about the *waqf* management report and supervision. In Indonesia, the *nazir* performance will be supervised by the Religious Affairs Office, Council of *Ulama*, and Religious Court based on the *nazir* location.<sup>129</sup> This provision shows the need for active participation of the government, Muslim organizations, and judicial sector in protecting the *waqf* sector, especially cross-border *waqf*.

As part of supervision, Indonesia's laws govern obligation of the *nazir* to provide management report and the *waqf* authority to evaluate *nazir*'s performance. The *nazir* needs to send their *waqf* management report every six months to the *waqf* authority and Ministry of Religion.<sup>130</sup> The report must include details in the following table:<sup>131</sup>

Table 2.1. Contents of *Waqf* Management Report<sup>132</sup>

| No. | Contents                                       | Full Description | Additional Information |
|-----|------------------------------------------------|------------------|------------------------|
| 1.  | Date or period of reporting                    | -                | -                      |
| 2.  | Data of <i>Waqif</i> and <i>Nazir</i>          | -                | -                      |
| 3.  | <i>Waqf</i> purpose                            | -                | -                      |
| 4.  | <i>Waqf</i> or <i>mawquf</i> registration data | -                | -                      |

<sup>128</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, article 11(5) and 11(6).

<sup>129</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 227.

<sup>130</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 28.

<sup>131</sup> Kementerian Agama Republik Indonesia, "Keputusan Direktur Jenderal Bimbingan Masyarakat Islam No. 800 Tahun 2014 Tentang Pelaksanaan Peraturan Menteri Agama No. 73 Tahun 2013 Tentang Tata Cara Perwakafan Benda Tidak Bergerak Dan Benda Bergerak Selain Uang" (2014).

<sup>132</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

|     |                                          |   |   |
|-----|------------------------------------------|---|---|
| 5.  | <i>Mawquf</i> management and development | - | - |
| 6.  | Cash flow                                | - | - |
| 7.  | <i>Mawquf</i> utilization result         | - | - |
| 8.  | Distribution of the usufruct             | - | - |
| 9.  | Changes in <i>waqf</i> status (if any)   | - | - |
| 10. | <i>Nazir</i> changes (if any)            | - | - |

Indonesian *waqf* authority and the Ministry of Religion use the *waqf* management report to evaluate *nazir*'s performance. Several aspects that must be examined during the evaluation include administration aspects, *waqf* management and development process including the result, and usufruct distribution. The evaluation result will then be used to determine appropriate coaching strategies for the *nazir*. If needed, the *waqf* authority can appoint a public accountant to examine *nazir*'s performance in managing the *waqf*. Public participation by actively reporting any misconduct conducted by the *nazir* to the *waqf* authority is also a tool to supervise the management of the *waqf*.<sup>133</sup> These evaluation systems could be adopted in supervising cross-border *waqf* management.

Based on the evaluation, if needed, the *waqf* authority can change the *nazir* under several circumstances. First, deceased or permanently disabled for individual *nazir*. Second, dissolution for organizations or legal entities *nazir*. Third, by the *nazir*'s request. Fourth, the *nazir* does not carry out his duties or violates the law, which must be proven by an independent auditor appointed by the *waqf* authority, and the *nazir* will be given a chance to defend their stance. Fifth, sentenced to a criminal sentence by the court. Sixth, change in *nazir*'s legal status, for example, individual to organizational *nazir* and vice versa. The process of *nazir*'s replacement can only be conducted after receiving approval from the *waqif* or their descendants if the *waqif* is deceased.<sup>134</sup>

<sup>133</sup> As seen in article 12 and 13 of Regulation of the Minister of Religion of the Republic of Indonesia No.4 of 2009 concerning the Administration of Cash Waqf. Similar in article 31, 32, and 33 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>134</sup> As seen in article 45 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 3 of Indonesian Waqf Board Regulation No.3 of 2008 concerning Procedures for Registration and Substitution of *Nazir* of Intangible Waqf Assets in the Form of Land. The same in article 5 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets. And in article 13 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the



In certain conditions where the *waqf* cannot be maintained, Indonesia's laws provide the implementation of *istibdal* as a solution. There are three main reasons which underlined *nazir*'s application of *istibdal* to the Ministry of Religion. First, if needed for social benefit as stipulated in the government spatial plan and does not conflict with positive and *Sharia* law. Second, the *mawquf* cannot be used as originally intended or the *waqf* purpose.<sup>135</sup> Third, there is an urgency for the benefit of the religion or public interest.<sup>136</sup>

The process of *istibdal* can only be implemented after receiving written permission from the Ministry of Religion after receiving considerations from the *waqf* authority<sup>137</sup> and the Council of *Ulama*.<sup>138</sup> The result of the *mawquf*'s exchange must be equal the previous *mawquf*'s value.<sup>139</sup> The exchange property must have valid legal proof of ownership and located in a strategic area that can be developed easily.<sup>140</sup>

The value of the exchange property will be based on the appraisal result from a private or public appraiser provided by the *istibdal* pleader. The Ministry of Religion, *waqf*

---

National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>135</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 225.

<sup>136</sup> As seen in article 41(1) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49(2) of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 4(2) of Indonesian Waqf Board Regulation No.1 of 2008 concerning Procedures for Formulating Recommendations on Applications for Exchange/Change of Waqf Assets Status. And in article 12(1) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>137</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 225.

<sup>138</sup> As seen in article 41(2) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49(1) of Government Regulation of the Republic of Indonesia No.25 of 2018 concerning Changes to Government Regulation No.42 of 2006 about the Implementation of Act No. 41 of 2004 concerning Waqf. The same in articles 2(1), 4(1), and 6 of Indonesian Waqf Board Regulation No.1 of 2008 concerning Procedures for Formulating Recommendations on Applications for Exchange/Change of Waqf Assets Status.

<sup>139</sup> As seen in article 41(3) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49(3) of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 49(5) of Government Regulation of the Republic of Indonesia No.25 of 2018 concerning Changes to Government Regulation No.42 of 2006 about the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>140</sup> As seen in article 4(3) and 5b of Indonesian Waqf Board Regulation No.1 of 2008 concerning Procedures for Formulating Recommendations on Applications for Exchange/Change of Waqf Assets Status. Also in article 12(3) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

authority, *nazir*, and related agencies must give written approval of the appraisal result by fifteen working days from the result release date.<sup>141</sup>

Indonesia's laws also regulate foreign currency conversion. This matter is closely related to cross-border *waqf*. Indonesia's laws require that every *waqf* in the form of cash or money from abroad must be converted to the local currency of the host country.<sup>142</sup> In international projects, it is also common to have a portion of the international investment fund converted to the local currency. Conversion will ease the process of domestic economic activity needed for the project, such as paying the local worker's salaries and purchasing materials. Local currency will also have a deposit *takaful* guarantee from the government. In Indonesia, the amount covered is around USD135,000.00 for each person in each bank.<sup>143</sup>

Based on all the information above, there are several findings from Indonesia's laws that could protect the *waqf*'s perpetuity in cross-border *waqf*. The resume can be seen in the following figure:

---

<sup>141</sup> Government Regulation of the Republic of Indonesia No.25 of 2018 concerning Changes to Government Regulation No.42 of 2006 about the Implementation of Act No. 41 of 2004 concerning Waqf, article 50 and 51.

<sup>142</sup> As seen in article 2(2) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar to article 2(2) of Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board *Nazir*.

<sup>143</sup> M. Mujibur Rohman, "Lembaga Penjamin Simpanan Syariah," *Jurnal Hukum Dan Ekonomi Islam Al-Mizan* 3, no. 2 (2011): 199.

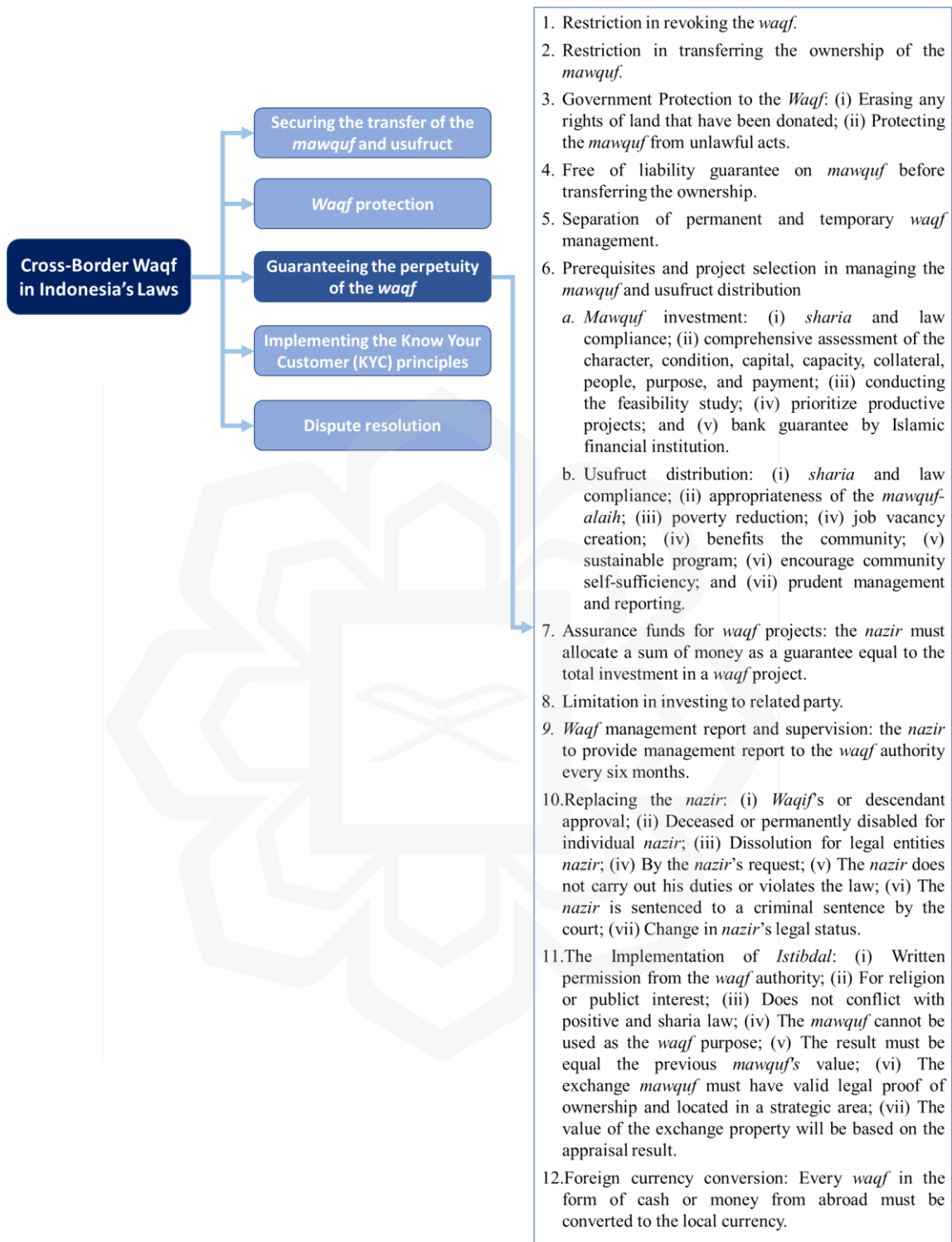


Figure 2.8. Guaranteeing the Perpetuity of Cross-Border *Waqf* in Indonesia's Law<sup>144</sup>

<sup>144</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

#### 2.5.4. Implementing the Know Your Customer Principles in Cross-Border *Waqf* Management

The KYC principles have been known to be part of the prudential process, mainly practiced by financial institutions.<sup>145</sup> It is also known as a measure to counter money laundering<sup>146</sup> and other fraudulent activities. The KYC is also important to understand the detail of the counterparty such as structure, legality, and bargaining position.<sup>147</sup>

Acquiring details of a stakeholder is the soul of the KYC implementation. In cross-border *waqf*, the first step could begin by determining the *waqif*. Based on Indonesian laws, a *waqif* must be a person or group of persons who have come of age or a legal entity,<sup>148</sup> has good sense, are not hindered from carrying out legal actions by their own will, and is the legal owner of the *mawquf*.<sup>149</sup> In Indonesia, a person is considered an adult at eighteen.<sup>150</sup> Remembering that every nation has a different regulation about a legal entity, it is better to provide the classification of *waqif* in the cross-border *waqf* guidance, which refers to the law of the host country.

*Nazir* is the leading actor in *waqf* management, the KYC must be applied to them even before the appointment by *waqif*. One of the most critical elements in determining a *nazir* for a cross-border *waqf* transaction is the ability of the *nazir* to manage and develop the *mawquf*.<sup>151</sup> We need to remember that each type of *mawquf* has always required specific maintenance. As an example, a ship requires routine maintenance at the dockyard. It will

---

<sup>145</sup> Romain Laborde et al., “Know Your Customer: Opening a New Bank Account Online Using UAAF,” in *2020 IEEE 17th Annual Consumer Communications & Networking Conference (CCNC)* (IEEE, 2020), 1–2.

<sup>146</sup> André Eduardo Demarco, “Analysing Blockchain/Distributed Ledger Technology in Capital Markets and Know Your Customer Process,” *Journal of Securities Operations & Custody* 12, no. 1 (2020): 58–71.

<sup>147</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), “Certificate in International Trade and Finance - Tutorial 2024.”

<sup>148</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 217(1).

<sup>149</sup> As seen in article 8 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar to article 217(1) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>150</sup> Regulation of the Supreme Court of the Republic of Indonesia No.2 of 2008 concerning Compilation of *Sharia* Economic Law, article 2.

<sup>151</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 8(3).

be unwise to choose a *nazir* with no knowledge about seafaring to manage the ship as the *mawquf*.

As for the general requirements, a *nazir* can be an individual, organization, or legal entity.<sup>152</sup> An individual *nazir* must be a Muslim, has come of age, trustworthy, competent, and is not hindered from carrying out legal actions. All members of a *nazir* in the form of organizations or legal entities must fulfil the same requirements as the individual *nazir*.<sup>153</sup> This is important in cross-border *waqf*, remembering that the matter of trust is the foundation of every international transaction. The *nazir*'s domicile must be in the same city as the *mawquf*.<sup>154</sup> Lastly, the *nazir* must be registered at the *waqf* authority or relevant ministries in their country.<sup>155</sup> In cross-border *waqf*, it is suggested to choose a *nazir* that is officially registered at the *waqf* authority of the host country.

Indonesia's laws also regulate the *nazir*'s obligations and authorities in detail. *Nazir* is obligated to administer *mawquf* and all related documents properly.<sup>156</sup> In ensuring the perpetuity of the *waqf*, the *nazir* must also manage, develop, supervise, and protect the *mawquf* effectively and efficiently. *Nazir* must report his activities every six months<sup>157</sup> to the *waqf* authority<sup>158</sup> and the Ministry of Religion.<sup>159</sup>

Compensation for the *nazir* must also be decided by the *waqif* before the appointment. Indonesia's laws provide that a *nazir* can obtain compensation from the net proceeds of *mawquf* management, which does not exceed 10%.<sup>160</sup> The number

---

<sup>152</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 9.

<sup>153</sup> As seen in article 10 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar to article 4 of Decree of the Director General of Islamic Community Guidance No.DJ.II/420 of 2009 concerning Model, Shape and Specification of Cash Waqf Form.

<sup>154</sup> Indonesian Waqf Board Regulation No.3 of 2008 concerning Procedures for Registration and Substitution of *Nazir* of Intangible Waqf Assets in the Form of Land, article 4(2).

<sup>155</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 219(3).

<sup>156</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.1 of 1978 about the Implementation of Government Regulation of the Republic of Indonesia No.28 of 1977 concerning Waqf of Owned Land, article 10.

<sup>157</sup> Decree of the Director General of Islamic Community Guidance No.DJ.II/420 of 2009 concerning Model, Shape and Specification of Cash Waqf Form.

<sup>158</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 11.

<sup>159</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 13.

<sup>160</sup> As seen in article 9(9) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 2(3) of

recommended by the Indonesian *waqf* law can be used as a reference, although it is more than *nazir*'s salary in several other Muslim countries such as Bangladesh, Egypt, and Sudan.<sup>161</sup>

Based on all the information above, there are several findings from Indonesia's laws that could support cross-border *waqf* management through the implementation of KYC principles. The following figure represents the implementation of the KYC principles for cross-border *waqf* based on Indonesian law:

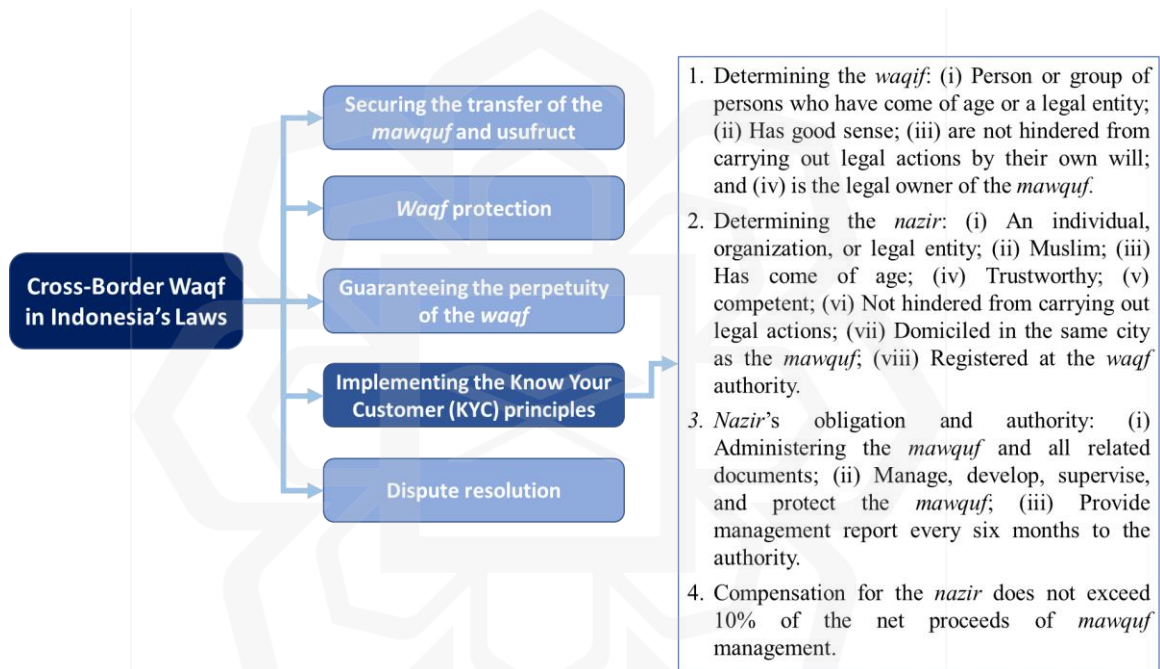


Figure 2.9. The Implementation of the Know Your Customer Principles for Cross-Border *Waqf* based on Indonesia's Law<sup>162</sup>

Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>161</sup> Faisal Faisal, "Nadzir's Responsibility for the Crime of Embezzlement of Waqf Assets by Other Parties Based on Indonesian Written Law," *International Journal Reglement & Society (IJRS)* 1, no. 2 (2020): 130–137.

<sup>162</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

### 2.5.5. Determining the Governing Law and Dispute Resolution in Cross-Border *Waqf*

Indonesia's laws prescribe the very first method that should be chosen to resolve a *waqf* dispute is through peaceful resolution, such as discussion or negotiation. If this method cannot resolve the issue, then it can be followed by mediation, arbitration (*hakam*), and litigation.<sup>163</sup>

In Indonesia, alternative dispute resolution (*sulh*) outside the court remains the most suggested method because it will generate a win-win solution. At the same time, litigation is more to the win-lose result. In alternative dispute resolution, both parties will be urged to find the best solution for both of their interest, thus these methods could also maintain the relationship between the conflicting parties, which is essential in the case of *waqf*.<sup>164</sup>

Arbitration, as one alternative dispute resolution method, can also mitigate risks that arise from different legal systems, which is the main obstacle in cross-border *waqf*. The process is less formal and generally cheaper than litigation. The secrecy guarantee of the parties is also another consideration. Decision formulation will be done with the non-precedent principle, which is important in cross-border *waqf*, considering each case has a different characteristic.

Indonesian judge must suggest to the parties to make peace on the first day of litigation.<sup>165</sup> If the parties agree, the court will issue the peace verdict, which will punish the parties to comply with the peace agreement.<sup>166</sup> If parties cannot reach an agreement, then they must continue the case through the religious court,<sup>167</sup> as litigation phase below:

---

<sup>163</sup> As seen in article 62 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar to article 3(5) and 3(6) of Government Regulation of the Republic of Indonesia No.10 of 1961 concerning Land Registration.

<sup>164</sup> Nur Fadhilah, "Sengketa Tanah Wakaf Dan Strategi Penyelesaiannya," *De Jure: Jurnal Hukum Dan Syar'iah* 3, no. 1 (2011): 83-84.

<sup>165</sup> As seen in article 130 of Herzien Inlandsch Reglement (Reglemen Indonesia Yang Diperbaharui). Similar to article 1831 Indonesian Code of Civil Law (Kitab Undang-Undang Hukum Perdata/Burgerlijk Wetboek voor Indonesie)

<sup>166</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

<sup>167</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.1 of 1978 about the Implementation of Government Regulation of the Republic of Indonesia No.28 of 1977 concerning Waqf of Owned Land, article 17.

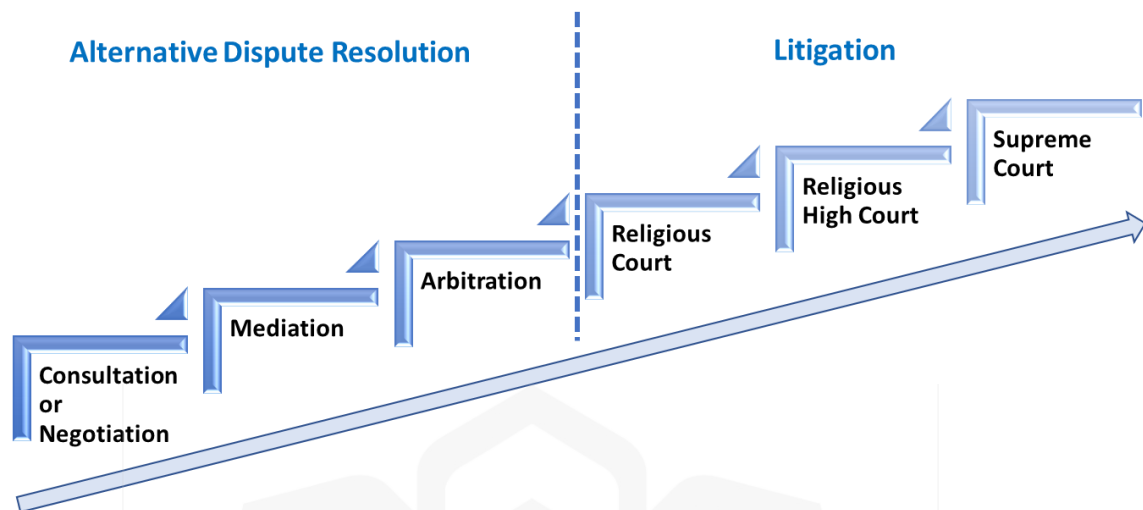


Figure 2.10. The Flow of *Waqf* Dispute Resolution in Indonesia<sup>168</sup>

Determining the party that will resolve the *waqf* dispute, whether through alternative dispute resolution or litigation, is crucial. Indonesia's law provides that the knowledge of *Sharia* law is the primary requirement in determining an independent party to resolve a *waqf* dispute. It is commonly known that the understanding and *ghirah* about *Sharia* and Islamic law are essential in handling any dispute related to Muslim matters. Only a true believer of Islam can understand the soul of the Qur'an and hadith as the main reference in deciding such matters. In correlation, Indonesian law regulates that only a Muslim with an Islamic Law educational background can become a judge of the Religious Court. This provision can be adopted for other functions, such as the mediator and arbitrator in resolving the cross-border *waqf* dispute.<sup>169</sup>

Considering various types of *mawquf*, it is also vital for a mediator, arbitrator, or judge to have decent knowledge about laws related to the type of *mawquf* in a *waqf* dispute. For example, if the *mawquf* is a land lot, then it is crucial to understand the land law in the

<sup>168</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

<sup>169</sup> Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts, article 13(1).



host country.<sup>170</sup> Specifically for a judge, *Sharia* court judges based on Indonesian law must be Muslim and understand Islamic law.<sup>171</sup>

Choosing a non-litigation dispute resolution, such as consultation, negotiation, mediation, and arbitration, is the priority in resolving a *waqf* dispute. It is recommendable that parties in cross-border *waqf* must create a written agreement to choose alternative dispute resolution in every cross-border *waqf* and related activities. It is better to create the agreement before the conflict, even though it is also allowed to create it after the conflict.<sup>172</sup> Parties that successfully resolve the case through alternative dispute resolution can apply to the court to issue the peace deed.<sup>173</sup>

Regarding arbitration, Indonesia has a *Sharia* Arbitration National Body (*Badan Arbitrase Syariah Nasional*) under the Indonesian Council of Ulama (*Majelis Ulama Indonesia*), which handles *waqf* matters.<sup>174</sup> Suppose in cross-border *waqf* there is a similar body in the host country, the parties should select it as the priority considering the location of the *mawquf*, which is highly influenced by the host country's law, and legal limitations in implementing the international arbitration result in the host country.

The arbitration process should be finished in 180 days, and a time extension can only be given by the party's consent. The arbitrator must have all documents related to the arbitration process translated into languages that the *waqif* and *nazir* can understand. The arbitration result will be final and binding, meaning no further legal effort can be made to change it.<sup>175</sup>

If the alternative dispute resolution cannot resolve the dispute, then it will go to the court. In Indonesia, judges must instruct parties to conduct mediation, and usually, it will be on the first day of the trial. If parties agree, then they will be obliged to attend the

---

<sup>170</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

<sup>171</sup> Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts, article 13(1).

<sup>172</sup> Law of the Republic of Indonesia No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, articles 7 and 9.

<sup>173</sup> Regulation of the Supreme Court of the Republic of Indonesia No.1 of 2016 concerning Mediation Procedures in Courts, article 36.

<sup>174</sup> Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts, article 56(2).

<sup>175</sup> Law of the Republic of Indonesia No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, articles 35, 48, and 60.

mediation, which will be led by a certified mediator within thirty days.<sup>176</sup> This fact shows special acknowledgment of alternative dispute resolution in the Indonesian legal system.

Determining the court to handle the *waqf* dispute is the next thing to do when the alternative dispute resolution cannot resolve the issue or the parties choose litigation as the only way to resolve the issue. In Indonesia, the jurisdiction to examine, decide, and resolve *waqf* matters lies in the Religious Court.<sup>177</sup> The court is obliged to examine the *waqf* dispute if it cannot be resolved by any alternative dispute resolution method.<sup>178</sup>

Litigation costs must also be carefully predicted to prevent the corpus and *waqf* funds from deteriorating. The Indonesian government will bear all litigation costs and provide free legal assistance to indigent applicants in the religious courts.<sup>179</sup> This provision could be utilized more in cross-border *waqf* litigation, especially when the *waqif*, *nazir*, or any party, as the applicant, has no financial capability.

Several findings from Indonesia's laws that relate to governing law and dispute resolution on cross-border *waqf* can be seen in the following figure:

---

<sup>176</sup> Regulation of the Supreme Court of the Republic of Indonesia No.1 of 2016 concerning Mediation Procedures in Courts, articles 3(3), 6, 13, and 24(2).

<sup>177</sup> As seen in article 49(1) of Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts. Similar to article 49 of Law of the Republic of Indonesia No.3 of 2006 concerning Amendments to Law No.7 of 1989 concerning Religious Courts; Article 226 Article 227 of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>178</sup> As seen in article 131 of *Herzien Inlandsch Reglement (Reglemen Indonesia Yang Diperbaharui)*. Similar to article 18(2) of Peraturan Mahkamah Agung Republik Indonesia No.1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan (Supreme Court Regulation of the Republic of Indonesia No. 1 of 2016 concerning Mediation Procedures in Courts).

<sup>179</sup> Law of the Republic of Indonesia No.50 of 2009 concerning the Second Amendment to Law No.7 of 1989 concerning Religious Courts, articles 60B and 60C.

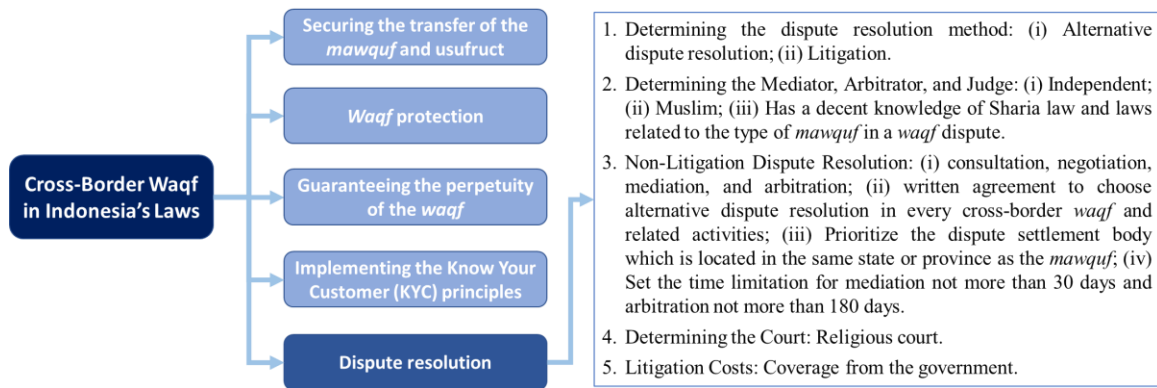


Figure 2.11. Determining the Governing Law and Dispute Resolution for Cross-Border *Waqf* based on Indonesia's Law<sup>180</sup>

## 2.6. CONCLUSION

As a country with the largest Muslim population in the world, Indonesia has a long history and adequate regulations in supporting *waqf* practices. In this chapter, we have found many findings that can be used in creating proper cross-border *waqf* guidance.

Provisions on transporting or transferring the *mawquf* to the host country can be learned from both the core and related Indonesian laws about *waqf*. Elements that are regulated include the type and origin of the *mawquf*. Indonesian laws can also enrich the formulation of international rule of cross-border *waqf* due to several unique provisions such as the inspection of *mawquf*'s condition pre-transport, secured financial institution involvement, supporting online system, and unexpected event or *force majeure* regulations.

Provisions about protecting the *waqf* or *waqif*'s purpose are also regulated clearly in Indonesian laws. Referring to and analyzed from the WCP clauses no.39 and 40 under the regulatory aspects of *waqf*, the stage of cross-border *waqf* starts from the *waqf* creation, *waqf* deed or certification issuance, *waqf* and *mawquf* registration, are found both from the core and related Indonesian laws about *waqf*. Special regulation about the *waqif*'s family approval of the *waqf*, honoring the wishes of the *waqif* in

<sup>180</sup> Source: Analyzed by the Author from Indonesian *waqf* laws and regulations.

managing the *mawquf*, including restriction of changing its purpose, could also be used in completing the cross-border *waqf* guidance.

Indonesian laws also have vast provisions to ensure the perpetuity of the *waqf*. Basics provisions such as protecting the *mawquf*, restriction in revoking the *waqf* and transferring ownership of the *mawquf*, reporting and supervising until the implementation of *istibdal* is well covered. The law also regulates specific provisions such as free liability guarantee, permanent and temporary *waqf* management separation, prerequisites in selecting *waqf* projects or investments and distributing the usufructs, and currency type conversion.

Core and related Indonesian laws about *waqf* also facilitate the application of KYC principles. This includes *nazir*'s obligation, authority, and compensation. Other coverage is not much different from Malaysian law.

Choosing governing law and dispute resolution mechanisms are also covered in Indonesian laws. The law emphasizes resolving *waqf* disputes through peaceful resolution such as discussion or negotiation. If this method cannot resolve the issue, it can be followed by mediation, arbitration (*hakam*), and litigation. Indonesia has a *Sharia* Arbitration National Body (*Badan Arbitrase Syariah Nasional*), and all *waqf* disputes shall go to the Religious Court.

All provisions discussed in this chapter are precious materials in creating cross-border *waqf* guidance. The combination of these essences will be more comprehensive if combined with issues and insight taken from the current cross-border *waqf* practices from Malaysia, Indonesia, and other countries in the following chapter.

## CHAPTER THREE

### ***SHARIA* LEGAL FRAMEWORK FOR CROSS-BORDER *WAQF***

#### **3.1. INTRODUCTION**

As mentioned in the first chapter, cross-border *waqf* is a complex activity involving all essential elements of *waqf* and international elements, such as different nationalities and the global movement of goods or funds. Due to its complexity, it is crucial to have a solid legal framework covering the rules, rights, and obligations of cross-border *waqf* activity on domestic and international levels.

The legal framework acts as the basis and guidance in conducting cross-border *waqf*. A complete legal framework that covers all aspects of cross-border *waqf* can be formulated by examining every step in cross-border *waqf*'s activities, starting from the creation process, cross-border movement of the corpus and usufruct, and management and development process.

#### **3.2. THE *SHARIA* LEGAL FRAMEWORK OF CROSS-BORDER *WAQF***

In formulating cross-border *waqf*'s legal framework, it is important to look deeper into several variables such as borderless characteristics of charity and humanity, Islamic legal maxims, the *maqasid al-Sharia*, *Sharia* economic values and principles, *Sharia* law and *fatwa*, local law, and international law and rule. These variables will be examined based on Indonesia, Malaysia, *Sharia*, and international laws and practices.

### 3.2.1. Charity and Humanity are Borderless

Nowadays, charity for the benefit of humanity activities can be seen all over the world. These activities could be related to religious and non-religious motives.<sup>1</sup> One of the leading organizations presenting the fact of borderless charity and humanity activities is the Charities Aid Foundation (CAF) through the World Giving Index, which has been issued regularly since 2010. The CAF is also acts as a foundation and has distributed more than EUR 1 billion to 119 countries until 2023.<sup>2</sup>

The World Giving Index 2023 informs that three-quarters of humanity did something to help others during and after the COVID-19 pandemic. One of the keywords from the report is charity can build a connection with others, whether across the street or on the other side of the world.<sup>3</sup> This is the first proof that shows charity and humanity are genuinely borderless.

Indonesia, as the primary sample country of this research, was ranked 1<sup>st</sup> among 142 countries in the World Giving Index 2023 report. This is the sixth time Indonesia has achieved the top position in a row since 2018. Several facts that show charity and humanity are borderless were also shown in the report. First, there was a total of 4.2 billion people, or 72% of the world's adult population, who gave their money and time to help someone they did not know. Second, cross-border charity is more likely done by the immigrants to help humanity in their home country. Third, private charity organizations tend to place their funds on a particular project overseas. Fourth, local charity organizations and local partners used to have deep networks and a better understanding of the needs of the community in the host country.<sup>4</sup>

International rule is an important pillar to support borderless charity and humanity activities. The WCP, as a rule in *waqf* sector, provides several provisions which show and support borderless charity and humanity activities. First is the core principles no.12 about

---

<sup>1</sup> Cassandra M Chapman, Barbara M Masser, and Winnifred R Louis, "Identity Motives in Charitable Giving: Explanations for Charity Preferences from a Global Donor Survey," *Psychology & Marketing* 37, no. 9 (2020): 1277–1291.

<sup>2</sup> Charities Aid Foundation, "CAF World Giving Index 2023" (London, England, 2023), 2-18.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

home–host relationships. Second is core principles no.20 about country and transfer risks in cross-border *waqf* activities. Third, the WCP’s Institutional foundations no.39 and 40 that regulate the importance of international networks of the *waqf* board and international *waqf* assets management.<sup>5</sup>

Borderless charity and humanity activities could also be found in Indonesia’s regulations. Article 6 of the Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of *Waqf* Assets (*Peraturan Badan Wakaf Indonesia No.4 Tahun 2010 tentang Pedoman Pengelolaan dan Pengembangan Harta Benda Wakaf*) states that the Indonesian Waqf Board manages and develops *waqf* assets from foreign individual, foreign organizations, and national or international legal entities.<sup>6</sup>

The second most important sample country in this research is Malaysia. Both Malaysia’s law and practice support the borderless charity and humanity activities. Malaysia’s *waqf* enactments allow the Majlis or *nazir* to become the *mawquf’alaih* for any *mawquf* situated outside their respective state jurisdiction.<sup>7</sup> In a broader range, the principle contained in this regulation could help set the basis for conducting cross-border *waqf* activities that involve different jurisdictions of *mawquf* and *mawquf’alaih*. The law in Malaysia also guarantees the right of the *mawquf’alaih* to get the *waqf* benefit by obliging the *nazir* to take all necessary steps to claim the usufruct when the *mawquf* is situated outside of the state.<sup>8</sup> This obligation shows connection between the Malaysia’s law and borderless charity and humanity activities in the form of cross-border *waqf*.

In Labuan, financial business is allowed to be carried out wholly outside Labuan or from a registered office within Labuan. Permission from authority is required to do so.<sup>9</sup> Labuan also allows foreign public funds to be managed or administered in Labuan.<sup>10</sup> The

---

<sup>5</sup> Bank Indonesia, Badan Wakaf Indonesia, and Islamic Development Bank, “Core Principles for Effective Waqf Operation and Supervision” (Jakarta, Indonesia: Islamic Economic and Finance Department, Bank Indonesia, 2018), 21-52.

<sup>6</sup> Badan Wakaf Indonesia, “Peraturan Badan Wakaf Indonesia No. 4 Tahun 2010 Tentang Pedoman Pengelolaan Dan Pengembangan Harta Benda Wakaf” (2010), article 6.

<sup>7</sup> As seen in s 27 of Wakaf (State of Selangor) Enactment 2015. Similar in s 14(2) of Wakaf (Negeri Sembilan) Enactment 2005. The same in s 28 of Wakaf (Terengganu) Enactment 2016. And in s 3(1) of Wakaf (State of Sabah) Enactment 2018.

<sup>8</sup> Wakaf (Negeri Sembilan) Enactment 2005, s 14.

<sup>9</sup> Labuan Financial Services and Securities Act 2010, s 5.

<sup>10</sup> Ibid, s39.

Labuan Companies Act 1990 regulates that foreign company may carry on their business in, from, or through Labuan upon receiving the permit from the authority.<sup>11</sup> On practice sample, there are several cross-border *waqf* projects such as *waqf* by Yayasan Waqaf Malaysia (YWM), Waqf Selangor Muamalat, and the *waqf* of Ahmad Dawjee Dadabhoy.

The YWM has several cross-border projects outside Malaysia. In 2018, from 25 *waqf* projects, there was one *waqf* sent to Indonesia under the project of *Program Projek 5K untuk Persatuan Pelajar-Pelajar Malaysia di Indonesia (PKPMI) – 50 unit Al-Quran*, dated 25 September 2018.<sup>12</sup> While in 2022, YWM distributed 139 *waqf* projects, and there was one *waqf* sent to Egypt under the project of *Sumbangan Tunai untuk Bantuan Kecemasan dan Sumbangan Tunai bagi Membiayai Kos Pengajian* at Al Azhar University, dated 23 September 2022.<sup>13</sup>

The Waqf Selangor Muamalat also has cross-border projects. In 2016, there was a charity for Palestinian children through MyCARE with a total value of RM50,000.<sup>14</sup> In 2017, the foundation purchased the building of Koperasi Pelaburan Kakitangan Bank Muamalat Malaysia Berhad (KOPUTRA) for Rohingya children.<sup>15</sup>

The *waqf* of Ahmad Dawjee Dadabhoy is a good example of cross-border *waqf* in Malaysia that shows charity and humanity activities are borderless. The *waqf* includes: (i) A land lot measuring 1.2 acres, which is located in lots 168 and 169 Perak Street, Kuala Lumpur;<sup>16</sup> (ii) A shop lot in the Pertama Complex; (iii) Two houses in Taman Melawati; and (iv) Shares in and outside Malaysia.<sup>17</sup> Several international elements in the *waqf* of Ahmad Dawjee Dadabhoy are the citizenship of the *waqif* or donor as an Indian-born

---

<sup>11</sup> Labuan Companies Act 1990, s 120.

<sup>12</sup> Yayasan Waqaf Malaysia, “Laporan Program Agihan 2018 Yayasan Waqaf Malaysia (Distribution Report 2018)” (Putrajaya, Malaysia, 2018), 1-21.

<sup>13</sup> Yayasan Waqaf Malaysia, “Laporan Program Agihan 2022 Yayasan Waqaf Malaysia (Distribution Report 2022)” (Putrajaya, Malaysia, 2022), 6-25.

<sup>14</sup> Bank Muamalat Malaysia Berhad, “Wakaf Negeri Sembilan Muamalat 3rd Quarter 2016 Report” (Kuala Lumpur, Malaysia, 2016), 1-3.

<sup>15</sup> Bank Muamalat Malaysia Berhad, “Wakaf Negeri Sembilan Muamalat 1st Quarter 2017 Report” (Kuala Lumpur, Malaysia, 2017), 1-3.

<sup>16</sup> Siti Mashitoh Mahamood, “Pembentukan Dana Wakaf Menurut Perspektif Syariah Dan Undang-Undang Serta Aplikasinya Di Malaysia,” *Jurnal Syariah* 15, no. 2 (2007): 61–83.

<sup>17</sup> “Pejabat Mufti Wilayah Persekutuan - Irsyad al-Fatwa Series 274 : Waqaf Ahmad Dawjee Dadabhoy” <muftiwp.gov.my> (accessed July 21, 2022).



Muslim, India a country that adopts the *jus soli* principle.<sup>18</sup> The second element is part of the *waqf* shares which are located in the London Stock Exchange.<sup>19</sup>

The above facts and explanations show that charity and humanity-related activities are genuinely borderless. Collaboration between governments, donors, and civil organizations is essential to conduct such activities efficiently and effectively. The government must regulate civil organizations prudently and transparently, ease charity creation, and reach out for suggestions to improve the social sector. The donors must actively support improving the foundation's accountability and provide funding, especially to productive projects that generate more income for public benefit. Lastly, the foundation needs to ensure good governance and transparency and establish cooperation on local and international scales.<sup>20</sup>

Barriers commonly found in international business activities are also found in cross-border social activities, such as due diligence, legal issues,<sup>21</sup> and international sanctions,<sup>22</sup> such as the United States (US) Office of Foreign Assets Control (OFAC) and European Union (EU) Sanctions. The role of local law, as well as international rules and laws, is vital in handling those barriers and supporting borderless charity and humanitarian activities. These obstacles need to be anticipated and accommodated in the legal framework.<sup>23</sup> The summary of the above facts about borderless charity and humanity activities can be seen in the following figure:

---

<sup>18</sup> Niraja Gopal Jayal, "Reconfiguring Citizenship in Contemporary India," *South Asia: Journal of South Asian Studies* 42, no. 1 (2019): 33–50.

<sup>19</sup> Suara Merdeka Newspaper Malaysia, "Ahmad Dawjee Jutawan Wakafkan Tanah 1.2 Ekar Di Jalan Tun Perak," November 25, 2021, <<https://suaramerdeka.com.my/ahmad-dawjee-jutawan-wakafkan-tanah-1-2-ekar-di-jalan-tun-perak/>> (accessed December 1, 2023).

<sup>20</sup> Charities Aid Foundation, "CAF World Giving Index 2023", 2-18.

<sup>21</sup> P J H Baily, "Buying Abroad," in *Purchasing and Supply Management* (Springer, 1987), 188–199.

<sup>22</sup> Charities Aid Foundation, "CAF World Giving Index 2023".

<sup>23</sup> Ibid.

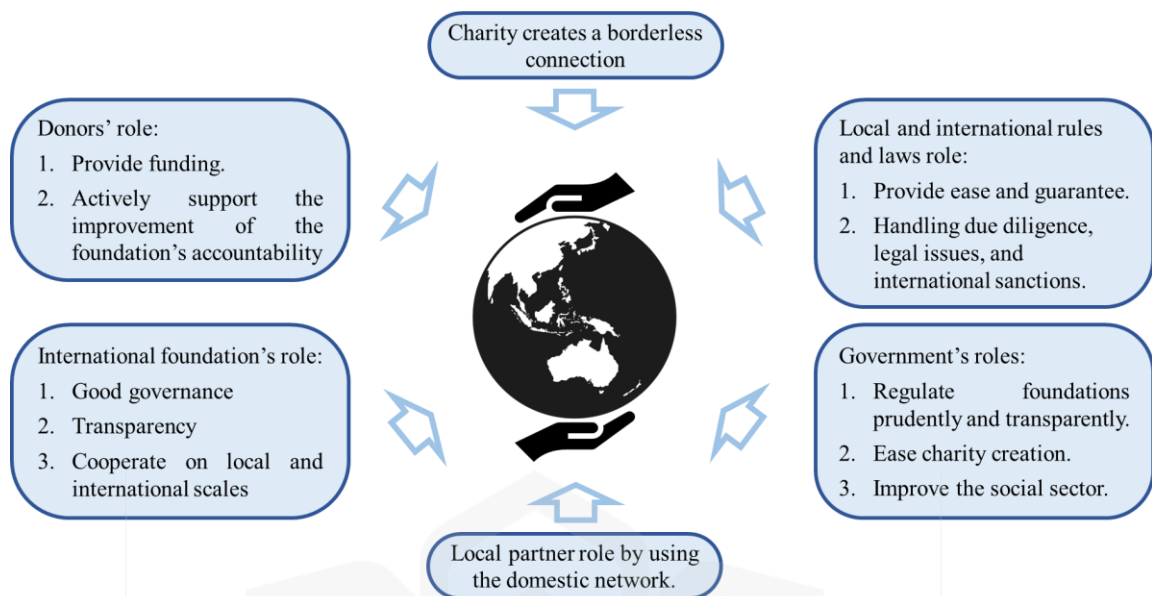


Figure 3.1. Borderless Charity and Humanity Activities Essential Elements<sup>24</sup>

### 3.2.2. Islamic Legal Maxims

As we may be aware, the matters of halal and haram, or allowed and prohibited, are always primary subjects in the *usul al-Fiqh*. One of the tools that shall be used in determining the said conditions is the Islamic law legal maxims or *Qawa'id Fiqhiyyah*.

The legal maxims are principles and the precepts of Islamic law, including its higher objectives, are meant, among others, to give the necessary scope for jurists to handle ethical issues, to fulfil the *maqashid al-Sharia* and most importantly, to revive the exercise of *ijtihad*, or independent legal reasoning, in the modern era. The ultimate goal of the *Sharia* is to obtain benefits and ward off injuries, and the legal maxims are meant to facilitate such processes.<sup>25</sup>

<sup>24</sup> Source: Analyzed by the Author from several sources about borderless charity and humanity activities (Citations in Chapter Three No.2-23).

<sup>25</sup> Sayyed Mohamed Muhsin, Muhammad Amanullah, and Luqman Zakariyah, "Framework for Harm Elimination in Light of the Islamic Legal Maxims," *Islamic Quarterly* 63, no. 2 (2019): 233–272.

In total, there are ninety-nine Islamic legal maxims,<sup>26</sup> and some of those legal maxims are related explicitly to the *maqasid al-Sharia*. In creating the legal framework, the correlation between selected Islamic legal maxims and cross-border *waqf* is examined as summarized in the following table, along with detailed explanations.

Table 3.1. Correlation between Islamic Legal Maxims and Cross-Border *Waqf*<sup>27</sup>

| No | Islamic Legal Maxims                                       | Correlation to Cross-Border <i>Waqf</i>                                                                                                                                                  |
|----|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Acts or matters are determined according to the intention. | Useful for the creation of cross-border <i>waqf</i> . Cross-border <i>waqf</i> 's purpose must comply with the <i>Sharia</i> .                                                           |
| 2  | Hardship begets facility.                                  | Useful for the creation of cross-border <i>waqf</i> . The purpose of cross-border <i>waqf</i> is to facilitate <i>mawquf'alaih</i> in different jurisdictions.                           |
| 3  | Harm must be eliminated.                                   | Useful for the whole process of cross-border <i>waqf</i> . Protection to all related parties and process in cross-border <i>waqf</i> , starting from the creation until the development. |
| 4  | Harm shall not be inflicted.                               | Useful for the creation of cross-border <i>waqf</i> . The purpose of cross-border <i>waqf</i> is to erase difficulties and benefit the <i>mawquf'alaih</i> in different jurisdictions.   |
| 5  | Means are treated as their targets.                        | Useful for the management and development of cross-border <i>waqf</i> . Cross-border <i>waqf</i> 's activities, cooperations, and contracts must comply with the <i>Sharia</i> .         |

<sup>26</sup> Burhan Uluyol and Adam Abdullah, "The Legal Maxims of Islamic Law (Excluding Five Leading Legal Maxims) and Their Applications in Islamic Finance," *Journal of King Abdulaziz University: Islamic Economics* 29, no. 2 (2016): 144.

<sup>27</sup> Source: Analyzed by the Author from several sources about Islamic legal maxims (Citations in Chapter Three No.12-26).

|   |                                                                |                                                                                                                                                                 |
|---|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 | Necessity renders prohibited things permissible.               | Useful for the whole process of cross-border <i>waqf</i> . Cross-border <i>waqf</i> 's purpose and attached programs must erase severe hardship or emergencies. |
| 7 | Repelling an evil is preferable to securing benefit.           | Cross-border <i>waqf</i> 's management and development program must prioritize eliminating evil or hardship over gaining benefit.                               |
| 8 | Injury is removed as far as possible.                          | Cross-border <i>waqf</i> purpose or project must be determined based on the critical needs and conditions of the <i>mawquf'alaih</i> .                          |
| 9 | Management of the citizen's affairs depends on public welfare. | Cross-border <i>waqf</i> projects must create welfare without causing any damage.                                                                               |

The first legal maxim is acts or matters are determined according to the intention. This legal maxim originated from the hadith of Prophet Muhammad (peace be upon him), who said, “*Deeds are judged by intentions, and every person is judged according to his intention.*” The core of this legal maxim is about the intention, which determines the *maqsad* of the person directed towards an action with a legal implication.<sup>28</sup> In an international framework, the cooperating party's purpose will determine the halal and haram of cross-border activity. For example, creating a cross-border *waqf* to assist people experiencing poverty in another country will have a different view based on Islamic law than a cross-border *waqf* intending to be used as a money laundering project.

The second legal maxim is hardship begets facility. This legal maxim is based on Surah Al-Hajj: 78.<sup>29</sup> This legal maxim is related to necessity. Accommodating unbearable

<sup>28</sup> Nurulhuda Abd Rahman et al., “Islamic Legal Maxim for Shari’ah Audit in Islamic Bank,” *Journal of Islamic Accounting and Business Research* 11, no. 2 (2020): 457–471.

<sup>29</sup> Necmettin Kızılkaya, “Sources of the Legal Maxims,” in *Legal Maxims in Islamic Law* (Brill Nijhoff, 2021), 49–62.

hardship and creating a way out is *Sharia*'s objective. Facilitating needed people or *mawquf'alaih* (beneficiaries) in different jurisdictions is a purpose of cross-border *waqf*, which aligns with this legal maxim.

The third legal maxim is harm must be eliminated.<sup>30</sup> This maxim represents one of the pillars of Islamic law and was derived from the hadith narrated by Ibn Majah: "*There must be neither harm nor the imposition of harm.*" Erasing harm is one of the cross-border *waqf*'s objectives. Aside from that, this maxim can be interpreted to give protection. In cross-border *waqf*, protection must be given to all related parties. Protection to the *waqif*'s will. Protection of the *nazir* in managing and developing the *waqf*. Protection of the beneficiary or *mawquf'alaih* in receiving the benefit of the *waqf*. Protection of all processes in cross-border *waqf*, such as in the transfer of *mawquf* and usufruct.

The fourth legal maxim is harm shall not be inflicted nor reciprocated. this legal maxim states that causing harm to others is not allowed by *Sharia* due to the creation of harm or damage. This maxim has its basis on *Al-Baqarah*: 231. Scholars have also added another purpose of this hadith, which is to create benefit as the opposite of harm. This legal maxim is in line with cross-border *waqf* because it is meant to erase difficulties and benefit the *ummah* in different jurisdictions.

The fifth legal maxim is means are treated as their targets, or the means take the same ruling as the goal. Based on this legal maxim, an objective should be acquired through permissible means under the *Sharia*.<sup>31</sup> In cross-border *waqf*, activities, cooperations, and contracts must comply with the *Sharia*.

The sixth legal maxim is necessity renders prohibited things permissible.<sup>32</sup> In the *Sharia*, there are circumstances where a person faces severe hardship that puts him under financial or physical pressure and may result in substantial damage to his life. *Sharia* recognizes this necessity by creating an exception and rendering the prohibited things

---

<sup>30</sup> Ron Shaham, "Legal Maxims (Qawā'id Fiqhiyya) in Yūsuf Al-Qaradāwī's Jurisprudence and *Fatwas*," *Journal of the American Oriental Society* 140, no. 2 (2020): 435–454.

<sup>31</sup> Ahcene Lahsasna, *Maqasid Al-Shari'ah in Islamic Finance* (Kuala Lumpur, Malaysia: IBFIM, 2013), 227–252.

<sup>32</sup> Muhammad Tahir Mansoori, "3 General Principles of Business Contracts in Islamic Law," in *Institutional Islamic Economics and Finance* (Routledge, 2022), 27–40.

permissible. This principle is well established in *Al-Baqarah*: 173. Even though this legal maxim creates an exception to prohibited things, it only applies under strict conditions, which is the emergency where the life of a Muslim is at stake. Cross-border *waqf* tries to hold severe hardship or emergencies globally so that Muslims can hold on to the naturally permissible things based on the *Sharia*.

The seventh legal maxim is repelling an evil is preferable to securing benefit.<sup>33</sup> When there is a trade-off between *Maslahah* and *Mafsadah*, the *Sharia* prioritizes repelling evil instead of acquiring the benefit. This legal maxim is based on An-Nisa: 31.<sup>34</sup> Cross-border *waqf*, by its nature, is a charity and humanitarian activity which primary purpose is to repel evil or hardship. Gaining benefits start to become a concern when maintaining the *mawquf* or corpus and developing the *waqf*, especially through a productive *waqf* scheme.

The eighth legal maxim is injury is removed as far as possible. Based on this legal maxim, a person should spend his maximum effort and capacity to remove the injury by using different ways and means available.<sup>35</sup> This is very useful in determining cross-border *waqf* project based on the critical needs and conditions of the *mawquf'alaih*. An example is clean water *waqf* for the Palestinians to prevent disease and death caused by unclean water polluted by the *zionism la'natullahi alaih*.

The ninth and last related legal maxim is that the management of the citizen's affairs depends on public welfare. This legal maxim obliged the government, management party, or any Islamic financial institution to serve the welfare of society without bringing any evil or damage.<sup>36</sup> This legal maxim is the pillar in selecting cross-border *waqf* projects. It must create welfare for society without causing any damage.

As described above, several Islamic legal maxims have a strong correlation and can be used in formulating the legal framework of the cross-border *waqf*. The Islamic legal

---

<sup>33</sup> Kamal Abu-Shamsieh, "The Application of Maqāsid Al-Sharīʿ Ah in Islamic Chaplaincy," *Islamic Law and Ethics*, 2020, 76.

<sup>34</sup> Mohammad Omar Farooq, *Toward Our Reformation: From Legalism to Value-Oriented Islamic Law and Jurisprudence* (Virginia, United States of America: International Institute of Islamic Thought (IIIT), 2012), 61.

<sup>35</sup> Lahsasna, *Maqasid Al-Shari'ah in Islamic Finance*.

<sup>36</sup> Ibid.

maxims also needed to achieve Islamic purposes, which were then formulated into the *maqasid al-Sharia*.<sup>37</sup>

### 3.2.3. *Maqasid al-Sharia: The Objectives*

The *maqasid al-Sharia* or higher objectives of the *Sharia* are one of several essential variables in formulating cross-border *waqf*'s legal framework. The *maqasid al-Sharia* is regarded as today's most effective intellectual means and methodology that can be applied by Muslim scholars in creating new proposals and the development in the Islamic conducts. In Islamic economics, *maqasid al-Sharia* acts as the main guideline for the Islamic social finance sector. It provides fair economic result distribution that will reduce social inequality.<sup>38</sup>

Muslim scholars have developed the theory of the *maqasid al-Sharia* from the third century after Hijrah or ninth century A.D.<sup>39</sup> The *maqasid al-Sharia* means the goals, purposes, and objectives upon which the *Sharia* is established and to which all the actions of humankind are directed.<sup>40</sup> *Maqasid al-Sharia* is the spirit and the core nature of the requisites of every command and prohibition in Islam. It is used as a spirit in the determination of the law that has been practiced since the lifetime of the Prophet Muhammad, the era of Companions, and the *tabi'in* period. Even so, its existence is an object of scientific study and an aspect of legal formulation considerations.<sup>41</sup>

---

<sup>37</sup> Fatahillah Abdul Syukur and Dale Margaret Bagshaw, "When Home Is No Longer 'Sweet': Family Violence and *Sharia* Court-Annexed Mediation in Indonesia," *Conflict Resolution Quarterly* 30, no. 3 (2013): 271–294.

<sup>38</sup> Dian Masyita, Muhammad Tasrif, and Abdi Suryadinata Telaga, "A Dynamic Model for Cash Waqf Management as One of the Alternative Instruments for the Poverty Alleviation in Indonesia," in *The 23rd International Conference of The System Dynamics Society Massachusetts Institute of Technology (MIT)*, 2005, 1–29.

<sup>39</sup> Muhammad Aziz, "Reconstruction of *Maqasid Shari'ah* Perspective Muhammad Thahir Ibn'Assyria: Efforts to Re-Discuss *Sharia* with Reality," *Jurnal Hukum Islam IAIN Pekalongan* 17, no. 2 (2019): 231–249.

<sup>40</sup> Mohamad Akram Laldin and Hafas Furqani, "Developing Islamic Finance in the Framework of *Maqasid Al-Shari'ah*: Understanding the Ends (*Maqasid*) and the Means (*Wasa'il*)," *International Journal of Islamic and Middle Eastern Finance and Management* 6, no. 4 (2013): 278–289.

<sup>41</sup> Aziz, "Reconstruction of *Maqasid Shari'ah*,".

Going by the various definitions, it goes without saying that *maqasid al-Sharia* is the sole objective behind applying the *Sharia* in the generality of authentic human life. The objectives of *Sharia* meant, among other things, to protect the affairs of humankind without any discrimination in terms of gender, religion, tribe, color, and sex.<sup>42</sup>

The fundamental elements of *maqasid al-Sharia* include *daruriyyat* (essentials), *hajiyyat* (complementary), and *tahsiniyyat* (embellishments).<sup>43</sup> The first element is *daruriyyat* (essentials), which stands for the fundamental rights of human being. The absence of *daruriyyat* will lead to the destruction of human life. The second element is *hajiyyat* (complementary). It refers to some acts that, when they are not done, create hardship to an individual or community, but they do not disrupt normal life. The third element under the *maqasid al-Sharia* is *tahsiniyyat* (embellishments), which is linked to the benefits of the desirable improvement. The observation of cleanliness in personal appearance and *ibadat* and avoiding extravagances are good examples of *tahsiniyyat*. Meanwhile, their absence may not affect normal life but can only create some discomfort.<sup>44</sup>

In order to make the classifications clear, a case study where a man needs a house can be a good example. The house is essential because it will be used for self-protection against crime, harsh weather, and other conditions that can destroy human life. The house is therefore considered as a matter of necessity falling under *daruriyyat*. Meanwhile, the man wants the house to have many rooms to follow the *sunnah* and not to inconvenience him and his family, such as the separation of bedrooms between parents and children's bathroom for boys and girls. The rooms are thus regarded as complementary requirements for a convenient stay in the house. If there are no rooms, they can all live in the house. This means the rooms are *hajiyyat*. If the man wants a complete house, he would like to get the

---

<sup>42</sup> T M Buba, "Role of Maqasid Al-Shari'ah as a Social Welfare Concept in the Interpretation of the Sources of Shari'ah," *Unilorin Shariah Journal* 2, no. 1 (2014): 61–86.

<sup>43</sup> Adeyemo Wale Lateef et al., "Maqasid Al-Shari'ah in Ijarah (Leasing) Contract of Islamic Banking System," *Journal of Islamic Finance* 6, no. 2 (2017): 38–44.

<sup>44</sup> Syahiza Arsad et al., "Islamic Corporate Social Responsibility Disclosure Index: The Application of Maqasid Shari'ah and Maslahah," *International Journal of Academic Research in Business and Social Sciences* 12, no. 7 (2022): 1039–1044.



whole house furnished and decorated. Therefore, the furniture and other materials for decorating the house are *tahsiniyat*.<sup>45</sup>

According to Imam Al-Ghazali, five objectives that serve as the nucleus of the *daruriyyat* (essentials) or also known as five pillars of the *maqasid al-Sharia*,<sup>46</sup> consisting of the protection of the religion/faith (*deen*), life (*nafs*), intellect (*aql*), lineage (*nasab*), and property (*mal*).<sup>47</sup> The protection of the religion (*deen*) is the first objective, meaning to guarantee the right of the people to practice their religion without inflicting any harm. In other words, the freedom of religion. Any Muslim, as a human being, should not feel any fear while praying in the mosque.

The second objective is to protect human life. The *Sharia* prohibits the termination of the life of an innocent human being, as mentioned in *Al-Isra*: 33. An example taken from Islamic business conduct is the prohibition of Islamic banks from financing weapons and armed activity. The third objective is the protection of the intellectual of humankind as stated in *Ar-Rum*: 21-24. An example could be seen in the narcotic drugs ban in Islam.<sup>48</sup> The fourth objective is to safeguard the lineage (*nasab*).<sup>49</sup> The *Sharia* recognizes marriage (*An-Nikah*) and condemns adultery in the most vital term. The fifth objective is the protection of property (*mal*).<sup>50</sup>

In cross-border *waqf*, the fundamental elements of *maqasid al-Sharia* can also be applied. The *daruriyyat*, or essential element, can trigger cross-border *waqf* creation, such as refugee area *waqf* in several countries that are experiencing war or under occupation by another country, which could eradicate life and religion. The construction of the Indonesian

---

<sup>45</sup> Lateef et al., "Maqasid Al-Shari'ah in Ijarah (Leasing),".

<sup>46</sup> H Dargahi, K Nasrollahzaedeh Abdochalli, and H Rahmani, "An Investigation of Relationship between Spiritual Leadership Style with Organizational Commitment among Tehran University of Medical Sciences Staffs," *International Journal of Asian Social Science* 7, no. 3 (2017): 234–241.

<sup>47</sup> Kabir Hassan and Michael Mahlke, *Islamic Capital Markets: Products and Strategies*, 1st ed. (Chicester, United Kingdom: John Wiley & Sons, 2011), 130.

<sup>48</sup> Lateef et al., "Maqasid Al-Shari'ah in Ijarah (Leasing),".

<sup>49</sup> Shabina Arfat, "Islamic Perspective of Children's Right: An Overview," *Asian Journal of Social Sciences and Humanities* 2, no. 1 (2013): 302.

<sup>50</sup> Buba, "Role of Maqasid Al-Shari'ah as a Social Welfare Concept,".

Hospital in Gaza-Palestine is an example of cross-border *waqf* projects triggered by the *daruriyyat*, to save the life (*nafs*) of Palestine civilians, including women and children.<sup>51</sup>

The *hajiyyat* or complementary element can be used in the management of the cross-border *waqf*. An example is where the cross-border *waqf* project has provided a refugee area, but the *nazir* wants to build a more proper housing complex that could give better protection and privacy. Based on Indonesia's experience, the installment of solar panels to provide more power at the Indonesian Mosque in Gaza-Palestine is a good example of *hajiyyat* usage in cross-border *waqf*.<sup>52</sup>

Lastly, *tahsiniyyat* or embellishments will be an addition to developing the cross-border *waqf*. Continuing the sample of refugee area, if the refugee housing complex has been built and the *nazir* wants to decorate it with a garden, playground, and furniture. Based on Indonesia's experience, *tahsiniyyat* for the development of the *waqf* can be seen in the construction of a VIP room at the Islamic Hospital in Malang-East Java, which is the decent example.<sup>53</sup>

Based on the above elaborations, cross-border *waqf* could complete all the five necessities or *dharuriyyat* of preserving faith, soul, mind, lineage, and wealth. At the same time, cross-border *waqf* is also maintaining the needs or *hajiyyat*, because it provides ease to the people's hardships and brings comfort to the people's necessities.<sup>54</sup> Lastly, cross-border *waqf* can also provide luxuries or *tahsiniyyat* when the *waqf* has perfectly developed.<sup>55</sup>

---

<sup>51</sup> Rian Rifki Eliandy et al., "Palestine Conflict with Israel: The Education Fate of Palestinian Children," *Jurnal Pendidikan Humaniora* 11, no. 1 (2023): 51–58.

<sup>52</sup> Kasih Palestina, "Donation of Solar Panels Lights up Indonesian Mosque in Gaza, Palestine," 2024, <<https://www.kasihpalestina.com/campaign/terangimasjidpalestina?lng=id>> (accessed January 25, 2024).

<sup>53</sup> Rachmawati Yulianingtyas, Putri Asmita Wigati, and Anneke Suparwati, "Analisis Pelaksanaan Manajemen Risiko Di Rumah Sakit Islam Sultan Agung Semarang (Analysis of the Implementation of Risk Management at the Sultan Agung Islamic Hospital Semarang)," *Jurnal Kesehatan Masyarakat* 4, no. 4 (2016): 121–128.

<sup>54</sup> Mek Wok Mahmud and Sayed Sikandar Shah, "Optimization of Philanthropic Waqf: The Need for Maqasid-Based Legislative Strategies," *Shariah Law Reports* 2 (2010): 29–45.

<sup>55</sup> Ahmad Shazrin Mohamed Azmi et al., "Synthesizing the Maqasid Al-Syariah for the Waqf Property Development," in *IOP Conference Series: Earth and Environmental Science*, vol. 385 (IOP Publishing, 2019), 3–4.

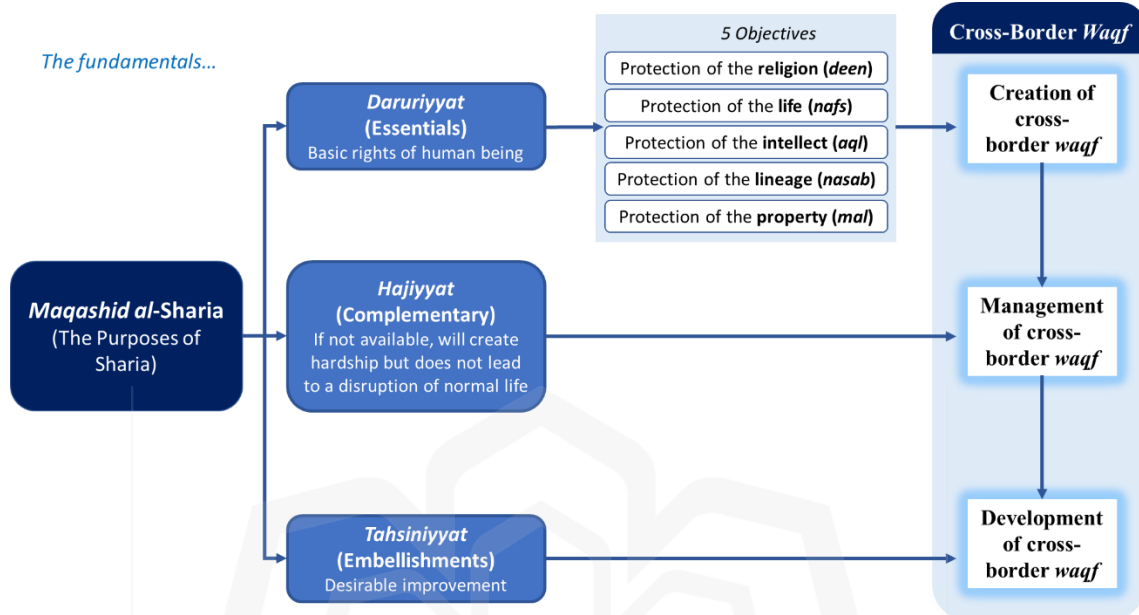


Figure 3.2. *Maqasid al-Sharia* and Cross-Border *Waqf*<sup>56</sup>

### 3.2.4. *Sharia* Economic Values and Principles

*Sharia* values and principles are the breath in the person of a Muslim, which is sourced from the holy *Qur'an*. It is essential to have extensive knowledge of *Sharia*'s values and principles to answer the challenges of *Sharia*'s economic development.<sup>57</sup> As an ethical guidance and precaution in handling issues on *Sharia* economic development in Indonesia, the Central Bank of Indonesia and the Indonesian Council of Ulama formulated the *Sharia* economic values and principles in 2017.

<sup>56</sup> Source: Analyzed by the Author from several sources about *maqasid al-Sharia* (Citations in Chapter Three No.38-55).

<sup>57</sup> Hisbullah Nurdin, "Problems and Crisis of Islamic Education Today and in The Future," *International Journal of Asian Education* 1, no. 1 (2020): 21–28.

The *Sharia* economic values consist of four principles which are the ownership, strive fairly, balanced growth, and working together for good.<sup>58</sup> These values are closely integrated to Islamic economic activities.<sup>59</sup>



Figure 3.3. *Sharia* Economic Values<sup>60</sup>

The first value, ownership, means that Islam respects the relative rights of private property ownership while maintaining a balance between the relative rights of the individual, the collective, and the state. Humans only act as caliphs, who are given the mandate and trust to manage it, with everything that Allah has provided. This value is based on the *Qur'an* surah *Yunus*: 55 and 66, *Ibrahim*: 2, *Al-Baqarah*: 29-30 and 195, and *Ali Imran*: 180.<sup>61</sup>

The second value is striving fairly. Humans are encouraged to try and utilize all resources. The human tendency to accumulate wealth must be controlled and directed to

<sup>58</sup> *Sharia* Economic and Financial Department of Bank Indonesia, "Blueprint of Indonesia's *Sharia* Economic and Financial Development," 2017, <<https://www.bi.go.id/id/fungsi-utama/moneter/pengembangan-ekonomi/cetak-biru/default.aspx>> (accessed January 27, 2024).

<sup>59</sup> *Sharia* Economic and Financial Department of Bank Indonesia, *Pengantar Ekonomi Islam (Introduction to Islamic Economic)*, ed. Rifki Ismal and Ali Sakti, 1st ed. (Jakarta, Indonesia: Departemen Ekonomi dan Keuangan Syariah Bank Indonesia, 2021), 269-275.

<sup>60</sup> Source: *Sharia* Economic and Financial Department of Bank Indonesia.

<sup>61</sup> *Sharia* Economic and Financial Department of Bank Indonesia, *Pengantar Ekonomi Islam*.

promote the development of commerce and social participation through *infaq*, *shadaqa*, and *waqf*. This value is based on the *Qur'an surah Al Jumuah*: 10, *Al Isra*: 12, *An Nahl*: 14, *Al Baqarah*: 29 and 267-268, *Ibrahim*: 34, *An Nisa*: 29, *Hadid*: 7, and *An Nur*: 33.<sup>62</sup>

The third value is working together for good. Under this value, collective economic activities that are carried out based on cooperation and a spirit of mutual help in goodness and justice are encouraged. Meanwhile, competition is carried out in a positive form, namely competition with the spirit of competing in goodness. This value is based on the *Qur'an surah Shaad*: 24, *Al Baqarah*:148, and *Al Maidah*: 48.<sup>63</sup>

The fourth value is balanced growth. This value means the purpose of human existence in the world is to provide as many benefits as possible to the universe, known as *rahmatan lil'alam*. In achieving this goal, economic growth must also maintain balance and preserve nature. This value is based on the *Qur'an surah Al Anbiya*:107, *Al Ankabut*: 51, and *Al Baqarah*:11-12.<sup>64</sup>

As mentioned above, *Sharia* economic values are the foundation of all Islamic economic activities. As part of the Islamic social finance sector, cross-border *waqf* must take these values as its guiding rules in the creation, management, and development process. Ownership as the first value is undoubtedly in line with *waqf*, which acknowledges Allah as the owner of the *mawquf* or corpus,<sup>65</sup> and human or *nazir* is obliged to manage it prudently based on the *Sharia*.<sup>66</sup> Striving fairly, as the second value, clearly states *waqf* as an instrument to utilize goods for social welfare.<sup>67</sup>

All related parties in *waqf* activities, including the donor, *nazir*, *mawquf'alaih*, and other third-party must work in harmony to create a successful *waqf*. In cross-border *waqf* management and development, it is crucial to cooperate strongly with other parties in

---

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Obaidullah Abid and Sarferaz Miakhil, "A Historical Overview of Waqf," *International Journal of Sukuk and Waqf Research* 5, no. 1 (2024): 1–8.

<sup>66</sup> Irfan Syauqi Beik Mutiara and Aslam Mei Nur Widigdo, "Nazir Management Improvement and Regulation Adjustments to Increase Waqf Land Productivity" (Jakarta, Indonesia: BWI Working Paper Series, 2021), 2–4.

<sup>67</sup> Md Mahmudul Alam et al., "Waqf as a Tool for Rendering Social Welfare Services in the Social Entrepreneurship Context," *Global Journal Al-Thaqafah* 2018 (2018): 87–98.

different jurisdictions.<sup>68</sup> Therefore, working together for good as the third value is also executable for cross-border *waqf*.

The last value, balanced growth, instructs human beings to maintain balance and preserve nature in running economic activities. This value can be found in several *waqf* projects which is also open to cross-border participation, such as the green *waqf*, where the use of *waqf* is intended to maintain land ecosystems for sustainable development,<sup>69</sup> the *waqf* forest project, which purpose to encourage forest conservation,<sup>70</sup> and *waqf* on renewable energy.<sup>71</sup>

Table 3.2. *Sharia* Economic Values and Cross-Border *Waqf*<sup>72</sup>

| No | <i>Sharia</i> Economic Values | Correlation to Cross-Border <i>Waqf</i>                                                                                                                                      |
|----|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Ownership                     | Useful for the creation and management of cross-border <i>waqf</i> . Allah is the <i>mawquf</i> 's owner, and <i>nazir</i> manages it prudently based on the <i>Sharia</i> . |
| 2  | Striving fairly               | Useful for the whole process of cross-border <i>waqf</i> . Positioning the <i>waqf</i> as an instrument to attain social welfare.                                            |
| 3  | Working together for good     | Useful for the whole process of cross-border <i>waqf</i> . All related parties in <i>waqf</i> activities must work harmoniously to create a successful <i>waqf</i> .         |

<sup>68</sup> Charities Aid Foundation, "CAF World Giving Index 2023".

<sup>69</sup> Mohammad Iqbal Irfany et al., "Proposing Green Waqf Development Strategy in Protecting Land Ecosystems in Indonesia: An Interpretive Structural Modeling Approach," *Ekonomi Islam Indonesia* 5, no. 1 (2023): 3.

<sup>70</sup> Khalifah Muhamad Ali and Salina Kassim, "Development of Waqf Forest in Indonesia: The SWOT-ANP Analysis of Bogor Waqf Forest Program by Bogor Waqf Forest Foundation," *Jurnal Manajemen Hutan Tropika* 27, no. 2 (2021): 89.

<sup>71</sup> S Anam and R A Fauzi, "Waqf and Renewable Energy: Analysis of the Potential of Energy Waqf in Reducing the Impact of Climate Change Syaiful," *Al-Waqf* 14, no. 2 (2021): 123–138.

<sup>72</sup> Source: Analyzed by the Author from several sources about *sharia* economic and principles (Citations in Chapter Three No.57-71)

|   |                 |                                                                                                                                                             |
|---|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | Balanced growth | Useful for the whole process of cross-border <i>waqf</i> . A <i>waqf</i> 's purpose, management, and development must maintain balance and preserve nature. |
|---|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|

The *Sharia* economic principles are a result of the academic process of the *Sharia* economic value's essence. It is the primary reference in all *Sharia* economic activities in Indonesia. In total, there are six *Sharia* economic principles, which consist of controlling individual assets, inclusive income distribution, productive transactions and risk sharing, transactions in the real sector, social participation for public interests, and transactions based on cooperation and fairness.<sup>73</sup>

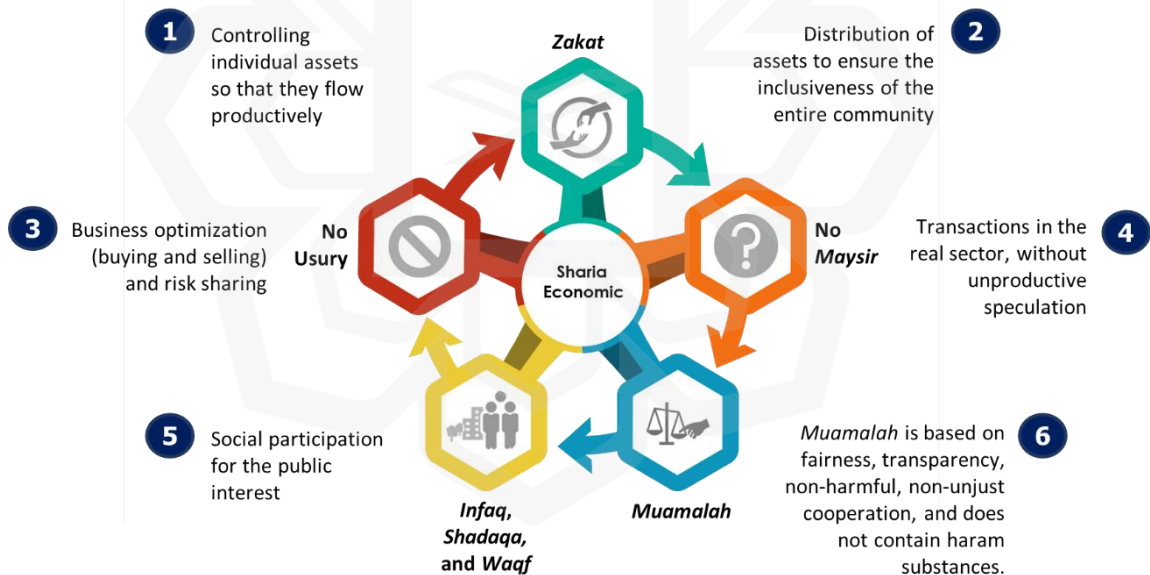


Figure 3.4. *Sharia* Economic Principles<sup>74</sup>

<sup>73</sup> *Sharia* Economic and Financial Department of Bank Indonesia, "Blueprint of Indonesia's *Sharia* Economic and Financial Development" <<https://www.bi.go.id/id/fungsi-utama/moneter/pengembangan-ekonomi/cetak-biru/default.aspx>> (accessed January 27, 2024).

<sup>74</sup> Source: *Sharia* Economic and Financial Department of Bank Indonesia.

Controlling individual assets is the first principle. Individual assets must be controlled so that they continue to flow productively. This is the economic function of zakat instruments, which is rarely described explicitly in Islamic studies. Assets will be encouraged to flow productively into economic activities, such as productive investments in the real sector, as well as *infaq*, *sadaqah*, and *waqf*. With this model, economic activities will roll continuously.<sup>75</sup> The first principle clearly states that the *waqf* is an instrument to control human wealth, which can be utilized to encourage the creation of cross-border *waqf*.

The second principle is inclusive income distribution. This principle is based on the role of zakat, which is not only an instrument that functions as an income distribution mechanism but also as a mechanism for distributing opportunities. By increasing the purchasing power of poor people, the opportunity to try and work productively will also be achieved. Additionally, increased demand by the recipients or beneficiaries (*mawquf'alaih*) will encourage the supply of goods and services.<sup>76</sup> The second principle can be the basis for inclusive and productive cross-border *waqf* creation and development, enabling the utilization of the corpus for economic activities that will generate sustainable income and involve society more broadly.<sup>77</sup>

Productive transactions and risk sharing is the third principle. *Sharia* economics upholds justice and emphasizes sharing results and risks, known as risk sharing. The prohibition on usury will eliminate additional capital determined at the beginning of a contract, so the capital owner will also bear the risks of business activities. Eliminating usury can also open new investment areas, encouraging economic activity and absorbing more workers. Business creativity and productivity will also increase fair business competition and investment opportunities in the real sector.<sup>78</sup> The third principle is related to the obligations and responsibilities of the *nazir* in managing the *waqf* and contracting

---

<sup>75</sup> *Sharia Economic and Financial Department of Bank Indonesia, "Blueprint of Indonesia's Sharia Economic and Financial Development"* <<https://www.bi.go.id/id/fungsi-utama/moneter/pengembangan-ekonomi/cetak-biru/default.aspx>> (accessed January 27, 2024).

<sup>76</sup> Ibid.

<sup>77</sup> Bayu Sudrajat and Ainul Imronah, "Productive Waqf: Concepts and Its Impact on Improving Community Economy," in *Proceeding of International Conference on Islamic Economics, Islamic Banking, Zakah and Waqf*, vol. 1, 2023, 127–140.

<sup>78</sup> *Sharia Economic and Financial Department of Bank Indonesia, "Blueprint of Indonesia's Sharia Economic and Financial Development"* <<https://www.bi.go.id/id/fungsi-utama/moneter/pengembangan-ekonomi/cetak-biru/default.aspx>> (accessed January 27, 2024).



third parties in developing the *waqf*, especially related to risk sharing and choosing the most beneficial productive economic activities in developing cross-border *waqf*.

The fourth principle is transactions in the real sector. *Sharia* economics requires that every financial transaction be based on real-sector transactions. According to this fundamental principle, financial transactions only occur if real sector transactions need to be facilitated by the financial sector. This principle will avoid financial bubbles that often occur in conventional economies and will encourage the development of the financial and real sectors.<sup>79</sup> The fourth principle encourages real-sector development, which will contribute to economic and social welfare.<sup>80</sup> This principle is closely related to the development of cross-border *waqf* that should prioritize real-sector inclusiveness. An example is the development of a cross-border *waqf* hospital. In the process, the *nazir* may conduct procurements that involve local real-sector goods and services providers, such as architects, technicians, and home equipment factories.

Social participation for public interests is the fifth principle. In Islamic economics, maximum efforts are made to achieve social goals by spending part of one's assets for the common good. Suppose the Islamic social finance sector is managed optimally and productively. In that case, it will increase economic activity, which can support the achievement of social welfare.<sup>81</sup> This principle is also a trigger in creating productive cross-border *waqf* that can improve the people's economy and persuade people to participate actively in developing the *waqf*.<sup>82</sup>

The last principle is transactions based on cooperation and fairness. Every transaction related to cross-border *waqf* must comply with the *Sharia*. It must be based on fairness, transparency, non-harmful, non-unjust cooperation, and does not contain haram substances. This principle is very fundamental for every activity in cross-border *waqf*. The

---

<sup>79</sup> Ibid.

<sup>80</sup> Fatih Günay and ECER Fatih, "A Comparative Analysis of the Real Sector in Turkey from the Economic and Financial Perspectives with the CRITIC-MAIRCA Method," *Ekonomi Politika ve Finans Araştırmaları Dergisi* 7, no. 1 (2022): 186–219.

<sup>81</sup> *Sharia* Economic and Financial Department of Bank Indonesia, "Blueprint of Indonesia's *Sharia* Economic and Financial Development" <<https://www.bi.go.id/id/fungsi-utama/moneter/pengembangan-ekonomi/cetak-biru/default.aspx>> (accessed January 27, 2024).

<sup>82</sup> Trisno Wardy Putra et al., "Productive Waqf Development Model: A Comparative Study between Indonesia and Malaysia," *Tazkia Islamic Finance and Business Review* 17, no. 1 (2023): 17-25.

creation of cross-border *waqf* must fulfil the element of *waqf* creation based on the *Sharia*, and every activity and contract in the management and development of cross-border *waqf* must also comply with the *Sharia*.

Correlations between the *Sharia* economic principles and cross-border *waqf*, can be witnessed in all stages of cross-border *waqf*, starting from the creation, management, and development. The summary can be seen in the following table:

Table 3.3. *Sharia* Economic Principles and Cross-Border *Waqf*<sup>83</sup>

| No | <i>Sharia</i> Economic Principles         | Correlation to Cross-Border <i>Waqf</i>                                                                                                                                                                                                     |
|----|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Controlling individual assets             | Useful for the creation of cross-border <i>waqf</i> . <i>Waqf</i> is an instrument to control human wealth.                                                                                                                                 |
| 2  | Inclusive income distribution             | Useful for the creation of cross-border <i>waqf</i> . It encourages the creation and development of inclusive and productive <i>waqf</i> that generates sustainable income and broadly involves society.                                    |
| 3  | Productive transactions and risk sharing  | Useful for the management and development of cross-border <i>waqf</i> . Rules the obligations and responsibilities of the <i>nazir</i> and contracting third parties, primarily related to risk sharing and productive economic activities. |
| 4  | Transactions in the real sector           | Useful for the development of cross-border <i>waqf</i> . It is prioritizing real-sector inclusiveness that will contribute to economic and social welfare.                                                                                  |
| 5  | Social participation for public interests | Useful for the management and development of cross-border <i>waqf</i> . It encourages the productive                                                                                                                                        |

<sup>83</sup> Source: Analyzed by the Author from several sources about *sharia* economic values and principles (Citations in Chapter Three No.57-82)

|   |                                                |                                                                                                                                                    |
|---|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                                | cross-border <i>waqf</i> creation and persuades people to participate actively in developing the <i>waqf</i> .                                     |
| 6 | Transactions based on cooperation and fairness | Useful for the whole process of cross-border <i>waqf</i> . Every transaction related cross-border <i>waqf</i> must comply with the <i>Sharia</i> . |

The above elaboration shows a firm bond between *Sharia*'s economic values and principles as the foundation of cross-border *waqf* activities. Thus, it is strongly recommended to use *Sharia*'s economic values and principles as a source for creating a cross-border *waqf* legal framework.

### 3.2.5. *Sharia* Law and *Fatwa*

Islam is a perfect religion that covers all aspects of human life. *Sharia* or Islamic law and *fatwa* are tools to rule human activities, whether permissible or forbidden. Basically, there are five categories of acts according to the *Sharia*, which are the obligatory (*wajib* or *fardh*), recommended (*mustahab*), permissible (*mubah*), abominable (*makruh*), and prohibited (*haram*). The obligatory will entail punishment if we fail to perform it. There is a reward for performing the recommended and leaving the abominable. Lastly, punishment must be given after committing a prohibited act.<sup>84</sup>

Classifying human acts into one of those categories is the role of the *Sharia* law and *fatwa*. Legal reasonings of the *Sharia* law and *fatwa* are based on the Qur'an and the *Sunnah*. These primary sources constitute the authentic and foundational religious and legal practice references.<sup>85</sup>

<sup>84</sup> Rafat Y Alwazna, "Islamic Law: Its Sources, Interpretation and the Translation of It Into Laws Written in English," *International Journal for the Semiotics of Law-Revue Internationale de Sémiotique Juridique* 29 (2016): 251–260.

<sup>85</sup> Ahmed Souaiaia, "On the Sources of Islamic Law and Practices," *Journal of Law and Religion* 20, no. 1 (2005): 123–147.

As mentioned in the first chapter, Malaysia's law is one of the primary sources of this research. In Malaysia, *Sharia* law is acknowledged as an element in the legal system, aside from the British Common Law and Customary Law. Based on Malaysia's Federal Constitution, *Sharia* law is the foundation of Malaysian law, which governs matters pertaining to Islamic principles, including *waqf*.

In Malaysia legal system, Islamic law or *Hukum Syarak* means laws according to *Mazhab* Syafie or to any one of the *Mazhab* Hanafi, Maliki, or Hanbali.<sup>86</sup> The *Sharia* law is positioned above the positive law, which means any provisions inconsistent with *Hukum Syarak* shall be void.<sup>87</sup>

Islamic law has been applied in Malaysia since before the British colonization.<sup>88</sup> After the independence, Islam was set as the religion of Malaysia based on Section 3(1) of the Federal Constitution, which means that Malaysia acknowledges *Sharia* law as the primary reference to rule many aspects of the Muslim community.<sup>89</sup> All states in Malaysia specifically provide for the use of four Islamic schools of thought, with *Syafii* as the primary one,<sup>90</sup> except the state of Perlis.<sup>91</sup>

---

<sup>86</sup> Nor Asiah Mohamad and Amer Hazim Haron, "Perpetuity of Waqf: Issues and Discussion," in *Global Waqf Conference: Waqf Past, Present and Future*, 2021, 61-75.

<sup>87</sup> As seen in section 47 of Wakaf (State of Selangor) Enactment 2015. Similar to section 46 of Wakaf (State of Malacca) Enactment 2005. Similar in section 16 of Wakaf (Negeri Sembilan) Enactment 2005. The same in section 45 of Wakaf (Perak) Enactment 2015. And in section 60 of Wakaf (Terengganu) Enactment 2016.

<sup>88</sup> Abdul Monir Yaacob, "Perlaksanaan Perundangan Islam Di Malaysia: Satu Penilaian," *Jurnal Fiqh* 6 (2009): 1–20.

<sup>89</sup> The Federal Constitution (Malaysia), s 3(1).

<sup>90</sup> Mohammad Azam Hussaina et al., "Keterikatan Kepada Mazhab: Analisa Undang-Undang Islam Dan Kes-Kes Mahkamah Di Malaysia," *PROCEEDINGS-ICLG 2018*, 2018, 333.

<sup>91</sup> Mohd Azhar Abdullah et al., "Malaysia Sebagai Negara Yang Bermazhab: Satu Diskusi Awal," *RABBANICA-Journal of Revealed Knowledge* 3, no. 1 (2022): 161–184.

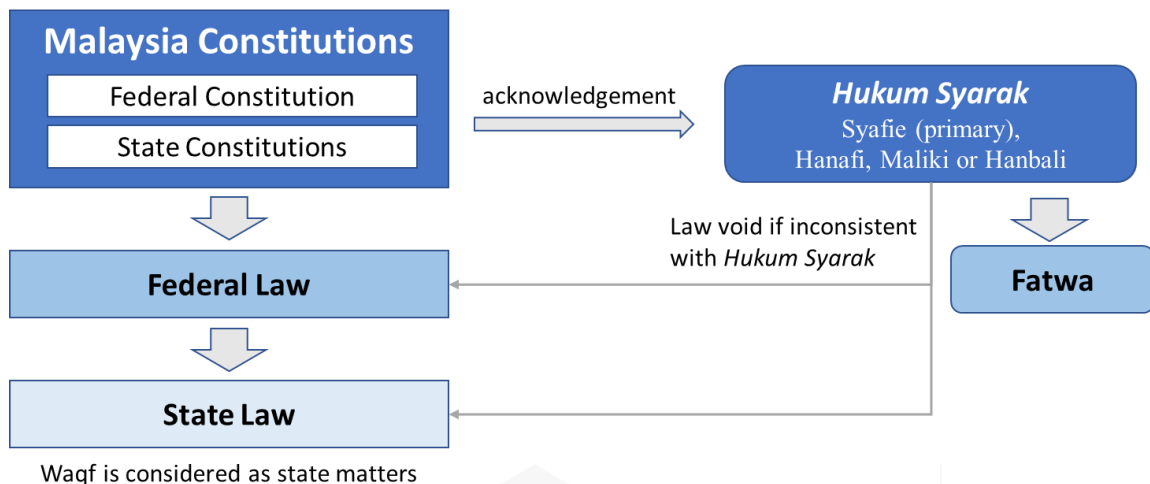


Figure 3.5. *Sharia* Law and *Fatwa* in Malaysia<sup>92</sup>

*Fatwa* is one of the fruits resulted from the application of *Sharia* law in Malaysia. *Fatwa* plays a vital role in deciding matters related to *Sharia*. *Fatwa* refers to an Islamic edict or verdict produced by experts or Muslim jurists. In Malaysia *fatwa* has been institutionalized and plays a significant role in clarifying, modifying, and harmonizing *Sharia* law. Since *fatwa* has been institutionalized, it requires publication in the Gazette before it becomes a binding legal rule or principle.<sup>93</sup>

In Malaysia, every ruling relating to Islam is under the State's authority. The problems and disputes arising in respect of *waqf* property involving Islamic law will be addressed to the *Fatwa* Committee.<sup>94</sup> Laws enacted in the states have delegated authority to the respective state governments to set up a committee to help the department to issue a *fatwa* of Mufti Council.<sup>95</sup>

<sup>92</sup> Source: Analyzed by the Author from several sources about *sharia* law and *fatwa* in Malaysia (Citations in Chapter Three No.84-91)

<sup>93</sup> Nor Asiah Mohamad, "Protection of Property Through Waqf Institution: Analysis of Court Decisions in Malaysia Pre and Post-Independence," in *Waqf in Selected Asian Countries*, ed. Nor Asiah Mohamad et al. (Kuala Lumpur, Malaysia: International Islamic University Malaysia, 2019), 40-54.

<sup>94</sup> Mahmood Zuhdi Ab Majid, "Fatwa Dan Isu Semasa: Masalah Dan Cabaran Di Malaysia," *Jurnal Syariah* 12, no. 2 (2004): 79–93.

<sup>95</sup> Suwaid Tapah, "Perundangan Dan Penguatkuasaan *Fatwa*," *Fatwa Di Malaysia, Kuala Lumpur: Jabatan Syariah Dan Undang-Undang Universiti Malaya*, 2004: 26.

In issuing any *fatwa*, the *Fatwa* Committee shall ordinarily follow *qaul muktamad* (the consensus or the majority opinions of the Muslim jurists) of the Shafie School of Law. Suppose the *Fatwa* Committee believes that following the accepted views of Shafie School of Law will lead to a situation repugnant to the public interest. The *Fatwa* Committee may follow the *qaul muktamad* of the *Mazhab* Hanafi, Maliki, or Hanbali. Moreover, suppose the *Fatwa* Committee believes that none of the *qaul muktamad* of the four *Mazhabs* or schools may be followed without leading to a situation repugnant to the public interest. In that case, the *Fatwa* Committee may make the *fatwa* according to *ijtihad* without being bound by the *qaul muktamad* of any of the four *Mazhabs*.<sup>96</sup>

The decision of the *Fatwa* Council in Malaysia is not binding on other parties except to the party seeking to find an authoritative opinion on any issue.<sup>97</sup> This could be seen in *Abdul Kahar Bin Ahmad v. Kerajaan Negeri Selangor Darul Ehsan* [2008] 8 MYFC 35(A). In this lawsuit, the fourth charge pointed to the defendant was defying and disobeying the lawful orders or directions of the Mufti, expressed or given by way of a *fatwa*.

As an example, several *fatwas* on *waqf* acquisition by state authorities can be found in the National Council for *fatwa* (Muzakarah Jawatankuasa *Fatwa* kali ke-46). The council had decided that: (i) *Waqf* land shall not be transferred, except in an emergency with certain conditions; (ii) The government must give adequate compensation according to the value of the acquisitioned *waqf* land or give a land replacement with equal or better value; (iii) *Waqf* land that will undergo development for public facilities, shall be exempt from giving up to the authorities; (iv) Special *waqf* land that have specific purposes as intended by *waqif*, such as mosques, schools and others, must be replaced with a substitute *waqf* land with similar or better value.<sup>98</sup>

The above facts show that there are more than enough reasons to include *Sharia* law and *fatwa* as elements in formulating cross-border *waqf*'s legal framework. *Sharia* law

---

<sup>96</sup> Siti Mashitoh Mahamood, "Law of Waqf in Malaysia: Recent Developments," in *Essential Readings in Contemporary Waqf Issues*, ed. Monzer Kahf and Siti Mashitoh Mahamood (Kuala Lumpur, Malaysia: CERT Publications Sdn. Bhd., 2011), 77–106.

<sup>97</sup> Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamed, "The Legal Position of Waqf Lands in Malaysia," in *Waqf Laws and Management*, 2017, 85–110.

<sup>98</sup> Nur Khalidah Dahlan et al., "Waqf (Endowment) Practice in Malaysian Society," *International Journal of Islamic Thought* 5 (2014): 56.

is useful for the whole process of cross-border *waqf*, while *fatwa* is more to handle special contemporary case of cross-border *waqf* through the role of the *Sharia* court and *fatwa* decisions.

### 3.2.6. Local Law: Civil Law and Case Law

Every international transaction, including cross-border *waqf*, must deal with local law. As mentioned in the first chapter, the WCP use local law to resolve international *waqf* conflicts.<sup>99</sup>

On the other hand, local law can also become a barrier in cross-border *waqf*. The law about customs or tariffs is a typical example of how local regulation can disrupt the international movement of goods and services.<sup>100</sup> In Malaysia, based on Article 74(1), Article 80, and the State List of the Federal Constitution, matters relating to the administrative affairs of Islam or Islamic law are placed under the jurisdiction of the State Government.<sup>101</sup> This means, Malaysia's local laws give the state government an exclusive power to legislate laws on *waqf* administration.<sup>102</sup> This policy implies that every cross-border *waqf* must get permission from the local government of the host state.

Another reason to include local law as an element of cross-border *waqf*'s legal framework is that local laws cover a wide area of *waqf* practice, including the creation, management, and development of the *waqf*. In Malaysia, these areas are covered under various core and related laws about *waqf*.

Malaysia's core laws about *waqf* consist of laws directly correlating with *waqf* matters. Currently, six states in Malaysia have constituted their *waqf* legislations with some administrative and substantive provisions: Selangor, Malacca, Negeri Sembilan, Perak, Terengganu, Sabah, and Johor. In Sabah, there is also the Majlis Ugama Islam

---

<sup>99</sup> Bank Indonesia, Badan Wakaf Indonesia, and Islamic Development Bank, "Core Principles for Effective Waqf Operation and Supervision", 4-6.

<sup>100</sup> Jan McDonald, "Domestic Regulation, International Standards, and Technical Barriers to Trade," *World Trade Review* 4, no. 2 (2005): 249-274.

<sup>101</sup> Mohd Afendi Mat Rani and Asmah Abdul Aziz, "Waqf Management and Administration in Malaysia: Its Implementation from the Perspective of Islamic Law," *Management & Accounting Review (MAR)* 9, no. 2 (2010): 1-7.

<sup>102</sup> Kader and Mohamed, "The Legal Position,".

Negeri Sabah Enactment 2004 that governs *waqf*. States that do not have specific laws about *waqf*, regulate *waqf* matters in their administration of the religion of Islam enactment, such as Kedah, Perlis, Penang, Pahang, Kelantan, Sarawak, and Federal Territories.

The involvement of multiple connected organizations, the land authority and court, as well as the *waqf* authority, *nazir*, *waqif*, and *mawquf'alaih*, demonstrates the complexity of *waqf* activities. Cross-border *waqf* is a more intricate process due to the presence of international components. The *waqf* core laws is insufficient to manage this complexity, so more *waqf*-related laws are anticipated to be necessary to support the cross-border *waqf* activities.<sup>103</sup> In Malaysia, these *waqf*-related regulations come from the federal laws, such as the Land Acquisition Act of 1960, Contracts Act of 1950, Specific Relief Act of 1950, Civil Law Act of 1956, National Land Code (Act 828) of 1965, Local Government Act of 1976, Control of Rent Act of 1966, Labuan Financial Services and Securities Act of 2010, and Labuan Companies Act of 1990.

All the above regulations contain key points to support the whole process of cross-border *waqf*, starting from the prerequisite of cross-border *waqf* creation until conflict management. Several key fundamental points including provisions on securing the movement of cross-border *waqf* assets, *waqif*'s purpose protection, *waqf* perpetuity guarantee, KYC implementation, determining the governing law, and dispute resolution.

Aside from local or civil law, case law is another vital element that should be examined. Case law or judicial decision is one of the unwritten sources of law in Malaysia that originates from the common law practice. Case law refers to the decisions of the superior courts, which are binding on the lower courts.<sup>104</sup> The case law originated from the common law. As a commonwealth country, Malaysia's legal system has several influences from the British.<sup>105</sup> Article 160 of the Federal Constitution includes the common law as one

---

<sup>103</sup> Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspectives* (Kuala Lumpur, Malaysia: University of Malaya Press, 2006), 34-93.

<sup>104</sup> Mazuan Lin, "Common Law and Rules of Equity in Malaysian Legal System in Relation to Law of Contract and Tort," 2015, <<https://www.linkedin.com/pulse/common-law-rules-equity-malaysian-legal-system-relation-mazuan-lin/>> (accessed November 5, 2023).

<sup>105</sup> Bahma Sivasubramaniam, "The Legal System of Malaysia," *Commercial Law in a Global Context* 1 (2012): 13.



of the definitions of law in Malaysia, which acts as the foundation of English law application in Malaysia, including the case law.<sup>106</sup>

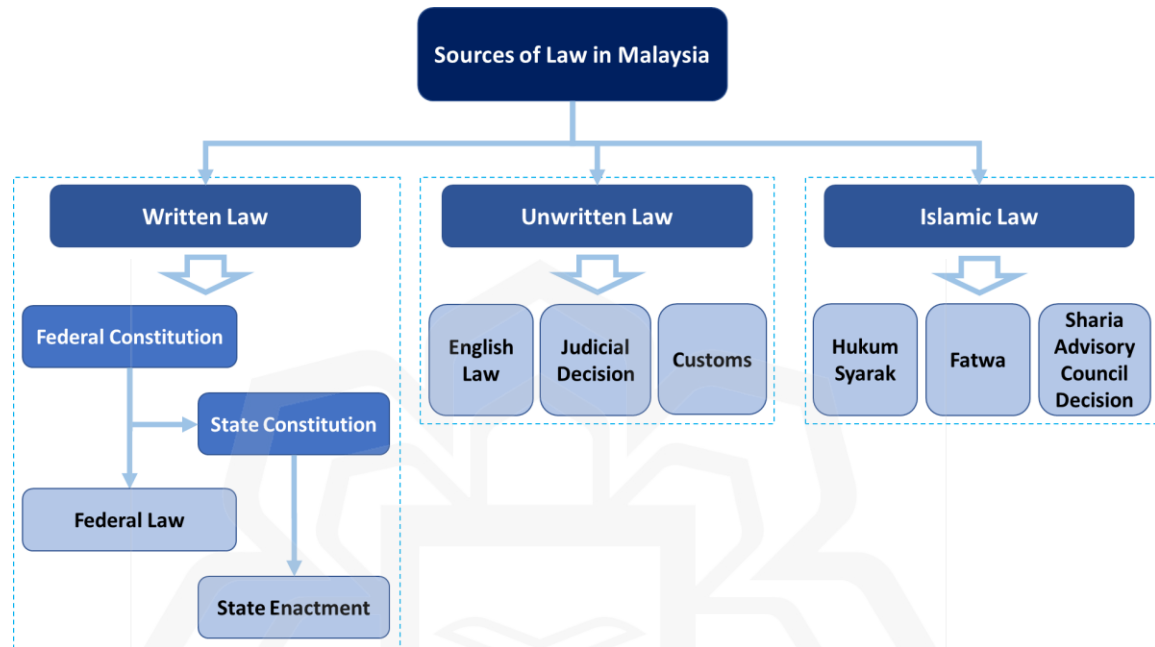


Figure 3.6. Case Law Position as Source of Law in Malaysia<sup>107</sup>

An example of case laws about *waqf* in Malaysia can be seen in *Tengku Zainul Akmal bin Tengku Besar Mahmud & Anor v. Majlis Agama Islam dan Adat Melayu Terengganu & Anor* [2012] 3 SHLR 39.<sup>108</sup> The Terengganu Shariah Court of Appeal decided that the Syariah Court will have no jurisdiction to hear and determine all actions and proceedings concerning *waqf* if the parties involved are non-Muslim.<sup>109</sup> Thus, all lower courts, such as the *Sharia* High Court and Subordinate Court, must honor this decision.

<sup>106</sup> Law Teacher, “English Law in Malaysia,” Free Law Essays, 2021, <<https://www.lawteacher.net/free-law-essays/constitutional-law/english-common-law-law-essays.php?vref=1>> (accessed November 5, 2023).

<sup>107</sup> Source: Analyzed by the Author from several sources about case law in Malaysia (Citations in Chapter Three No.104-106)

<sup>108</sup> Zati Ilham Abdul Manaf, Sharifah Zubaidah Syed Abdul Kader, and Nor Asiah Mohamad, “ADR as an Alternative Access to Justice in Resolving Waqf Land Disputes,” *CLJ Bulletin-Legal Network Series (LNS)*, *LNS (A) Ii* 1 (2018): 14.

<sup>109</sup> Dahlan et al., “Waqf (Endowment) Practice,”.

Given the binding or persuasive authority of case law in the *waqf* sector, it is essential to establish a legal framework for cross-border *waqf*. Case laws serve as a precautionary measure prior to the establishment of cross-border *waqf*. Case law serves as a reference in the administration, evolution, and resolution of disputes concerning cross-border *waqf*. An illustration, derived from *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2008] 6 MLJ 488, demonstrates that the Court of Appeal denied the Selangor State Islamic Religious Council's (SIRC) request to designate a piece of land, approved by the Shah Alam City Council as a cemetery, as *waqf* land, citing the absence of its gazettelement as *waqf* land.<sup>110</sup> This case law mandates that the *nazir* examine the land's legal status before submitting it for *mawquf*.

### 3.2.7. International Law and Rules

As mentioned in the first chapter, the international elements differentiate cross-border *waqf* from local *waqf*. International elements consist of two factors. First is the difference in nationalities of the subject or the contracting parties involved.<sup>111</sup> Second is the international movement of the object or *mawquf*, including the usufruct (goods, services, and funds). The addition of these international elements creates consequences in conducting cross-border *waqf* compared to local *waqf*. First, the end-to-end process is usually much longer due to shipping or transfer times of the *mawquf* and usufruct. Second, control of the *mawquf* and usufruct may be more difficult due to the distances and mode of transport. Third, problems resolution may take longer and more complex due to time zone, language, and local practice differences.<sup>112</sup>

Before further exploring international law and rules on cross-border *waqf*, it is essential to have a good look at the basic principle of international civil law and social justice theory. Based on article 38 of the Statute of the Permanent Court of International

---

<sup>110</sup> Nor Asiah Mohamad, SZSA Kader, and Zuraidah Ali, "Waqf Lands and Challenges from the Legal Perspectives in Malaysia," in *IUM-Toyo Symposium* (Citeseer, 2012): 1-9.

<sup>111</sup> Frank Gardner, "The International Economy and the National Interest," *International Affairs* 56, no. 4 (1980): 697.

<sup>112</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

Justice, there are two general principles of international law: (i) expressions of national legal system; and (ii) expressions of other unperfected sources including conventions, customs, scholars' writings, and international courts decisions. On the other hand, social justice theory concept focuses on fairness and equality for the society.<sup>113</sup> Elements contained both in general principles of international law and social justice theory are beneficial to the practice of cross-border *waqf* and must be included in the proposed legal framework of cross-border *waqf*.

International economic activities, including cross-border *waqf* as part of Islamic social finance, are constantly exposed to challenges and risks<sup>114</sup> that may lead to financial losses. There are at least five challenges in doing cross-border *waqf* transactions. The first challenge is cultural and language differences, which may cause delays or misunderstandings, resulting in additional costs. The second is documentation and other formal requirements, which differ from country to country. The third is transport and *takaful*, which can affect the *mawquf*'s or usufruct's condition. The fourth is political considerations such as limitation or quotas of certain goods and access restrictions due to illegal occupation. The fifth is economic considerations, which are more related to the taxation policy.<sup>115</sup>

Aside from the above challenges, there are also several types of risk related to cross-border economic activities. The first is transactional risk, consisting of barriers in the international movement of goods and fraud conducted by related parties such as the shipping company. The second is the exchange rate risk, which deals with the fluctuation of global currency value and unexpected financial gains or losses due to difference of currencies used.<sup>116</sup> The third is policy risks consisting of international sanctions such as OFAC from The United States Department of Treasury's Office<sup>117</sup> if the transaction is in

---

<sup>113</sup> Loretta Capeheart and Milovanovic Dragan, "Social justice: Theories, issues, and movements (Revised and expanded edition)". Rutgers University Press (2020): 2.

<sup>114</sup> Friederike Niepmann and Tim Schmidt-Eisenlohr, "International Trade, Risk and The Role of Banks," *Journal of International Economics* 107 (2017): 111–126.

<sup>115</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>116</sup> Peter B Clark, "Uncertainty, Exchange Risk, and The Level of International Trade," *Economic Inquiry* 11, no. 3 (1973): 302–313.

<sup>117</sup> Ben Scott, "OFAC Sanctions Compliance: Insights from Recent Enforcement Actions," *Journal of Financial Compliance* 3, no. 3 (2020): 247–254.

USD, and EU sanction from The Common Foreign and Security Policy (CFSP) of the EU<sup>118</sup> if the transaction is in EURO, and terrorist financing.<sup>119</sup> The fourth is counterparty risk, which is related to enforcing contractual rights against an economic activity in another country. The fifth is compliance risk that emanates from different laws, regulations, and sanctions imposed by various jurisdictions. The sixth is financial crime risks, which are related to money laundering. The seventh is a fraudulent act due to a lack of security or prudential aspects. The eighth is operational risk, which is related to human error.<sup>120</sup>

One practical solution to minimize the risk is through contractual means that are in line with international laws and rules.<sup>121</sup> Another alternative is through the creation of bilateral or multilateral *waqf* protection agreements could be made that at least cover asset protection, just compensation in case of expropriation, and dispute resolution methods.<sup>122</sup> Both of the above-mentioned solutions require parties to follow current international laws and rules.

Related international laws and rules must be accommodated due to the intense activities of cross-border fund transfers, goods transport, and business cooperation. On these matters, including related international laws and rules in creating the legal framework of cross-border *waqf* is a must, which consists of several products from UNCITRAL, UNIDROIT, and ICC.

Unquestionably, the UNCITRAL has been a significant contributor to the creation of regulations of cross-border economic activities, including international contracts, trade, and investment.<sup>123</sup> As of January 2024, there are sixty-four active member countries of

---

<sup>118</sup> Niklas Helwig, Juha Jokela, and Clara Porlela, "Sharpening EU Sanctions Policy for a Geopolitical Era" (Helsinki, Finland: Prime Minister's Office of Finland, 2020), 14.

<sup>119</sup> Robert E O'Leary, "Improving the Terrorist Finance Sanctions Process," *NYUJ Int'l L. & Pol.* 42 (2009): 549.

<sup>120</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>121</sup> Olena Sokhatska et al., "Modelling the Risks of International Trade Contracts," *International Journal of Innovative Technology and Exploring Engineering (IJITEE)* 8, no. 11 (2019): 2815–2820.

<sup>122</sup> Adeoye Akinsanya, "International Protection of Direct Foreign Investments in the Third World," *International & Comparative Law Quarterly* 36, no. 1 (1987): 58–75.

<sup>123</sup> Bruno Sousa Rodrigues, "UNCITRAL and the Governance of International Investments," *Transnational Actors in International Investment Law*, 2021, 1–18.

UNCITRAL, including Indonesia.<sup>124</sup> At least seven legal products of UNCITRAL can affect cross-border *waqf* activities which are CISG, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules), the Convention on the Use of Electronic Communications in International Contracts, the Model Law on Electronic Signatures (MLES), the Model Law on International Credit Transfers, the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, and the Case Law on UNCITRAL Texts (CLOUT).

The CISG or the Vienna Convention is a multilateral treaty that establishes a uniform framework for international commerce. As of December 2023, it has been ratified by 97 countries, representing two-thirds of world trade. The CISG is one of the core international trade laws.<sup>125</sup> There are several reasons to accommodate the CISG in formulating the legal framework of cross-border *waqf*. First, the CISG deals with the formation and standard terms of contract, including terms and applicable law,<sup>126</sup> which will be used in many stages of cross-border *waqf*'s management and development, including cross-border movement of the corpus and usufruct. The second reason is that the CISG deals with the obligations of the parties to the contract, which include delivering goods in conformity with the quantity and quality stipulated in the contract, documents related to shipping, transferring the property right of the goods, paying off all financial obligations related to the delivery, remedies for breach of the contract. The CISG allows the freedom of form of the contract but requires it to be in written form,<sup>127</sup> which is also in line with the

---

<sup>124</sup> United Nations Commission on International Trade Law (UNCITRAL), "UNCITRAL Member States History," <[https://uncitral.un.org/en/about/faq/mandate\\_composition/memberhistory](https://uncitral.un.org/en/about/faq/mandate_composition/memberhistory)> (accessed February 5, 2024).

<sup>125</sup> United Nations Commission on International Trade Law (UNCITRAL), "United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)," <[https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)> (accessed February 5, 2024).

<sup>126</sup> Nicola Brutti, "The Languages of Contract: A Comparative Law Perspective with a Focus on the CISG," *European Business Law Review* 33, no. 2 (2022): 1-2.

<sup>127</sup> United Nations Commission on International Trade Law (UNCITRAL), "United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)" <[https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)> (accessed February 5, 2024).

Indonesian Civil or Private Law Code (*Burgerlijk Wetboek*).<sup>128</sup> The CISG requires full details of the goods and obligations of the parties.<sup>129</sup>

The second legal product of UNCITRAL is the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, known as the Rotterdam Rules. This rule was created through a collaboration with the United Nations Conference on Trade and Development (UNCTAD), it is an update to the United Nations Convention on the Carriage of Goods by Sea or the Hamburg Rules. The Rotterdam Rules were adopted in December 2008. It provides mandatory standards of liability for loss or damage arising from the international carriage of goods by sea.<sup>130</sup> Aside from the title, in fact the Rotterdam Rules not only cover sea-based carriage but also multimodal carriage.<sup>131</sup>

Generally, the Rotterdam Rules contain most of the provisions found in the Hamburg Rules with more details and some improvements. It regulates the electronic records, obligation of the carrier, liability of the carrier, particular stages of carriage, the obligation of the carrier, the liability of the carrier, particular stages of carriage, obligations of the shipper, transport documents, delivery of the goods, rights of the controlling party, transfer of rights, limits of liability, time for a suit, jurisdiction, the choice of arbitration,<sup>132</sup> and contractual terms and clauses.<sup>133</sup> These provisions are essential to support international transport of cross-border *waqf*'s corpus (*mawquf*) and usufruct.

The third legal product is the UNCITRAL Convention on the Use of Electronic Communications in International Contracts. In cross-border *waqf*, electronic communications can be utilized to create a more efficient process in the creation,

---

<sup>128</sup> Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek voor Indonesie*), article 1338.

<sup>129</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>130</sup> United Nations Conference on Trade and Development (UNCTAD), "The Rotterdam Rules," <<https://unctad.org/topic/transport-and-trade-logistics/policy-and-legislation/international-maritime-transport-law/rotterdam-rules#:~:text=The UN Convention on Contracts,provide a modern successor to>> (accessed February 5, 2024).

<sup>131</sup> Ezinwanne Anastasia Nwaobi, "An Analysis of the Carrier's Liability Regime Under the Hague-Visby, Hamburg and Rotterdam Rules," *International Journal of Law* 8, no. 2 (2022): 115–121.

<sup>132</sup> Georgios I Zekos, "Arbitration as a Dispute Settlement Mechanism Under UNCLOS, the Hamburg Rules, and WTO," *Journal of International Arbitration* 19, no. 5 (2002): 497–504.

<sup>133</sup> United Nations Commission On International Trade Law (UNCITRAL), "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" (Vienna, Austria, 2009), <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>> (accessed February 5, 2024).

management, and development stages, especially when parties are domiciled in different countries. In line, the main purpose of this convention is to facilitate the use of electronic communications by assuring that every information exchange electronically, including the main contract, is as valid and enforceable as the traditional paper-based equivalents, or in other words by removing formal obstacles through establishment the equivalence between electronic and written form.<sup>134</sup>

The UNCITRAL Model Law on Electronic Signatures (MLES) is the fourth legal product. In cross-border *waqf*, signatures have been used since the first stage, the creation, which obliged the *waqif* and witnesses to put their signatures on the *waqf* deed. Another document in the creation of *waqf*, such as a family approval letter, also needs to be signed. In cross-border *waqf* management, the signature of the *nazir* is the key to releasing the *waqf* funds. Lastly, in cross-border *waqf* development, every contract must be signed by the *nazir* and contracting parties. These facts made the MLES relevant as a source of cross-border *waqf* legal framework, considering that it aims to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent by establishing criteria of technical reliability of electronic signatures. The MLES also contains provisions favoring the recognition of foreign certificates that could support the recognition of a cross-border *waqf* deed created in foreign countries.<sup>135</sup>

The fifth legal product is the UNCITRAL Model Law on International Credit Transfers. There are two methods for conducting international transfer of the corpus and usufruct in cross-border *waqf*. If the corpus or usufruct is in the form of funds, then transferring it through an international banking service is preferable. Another condition is if the corpus is in the form of physical goods, for example, huge machinery or materials that cannot be obtained in the host country, then it is preferable to transport it through land, sea, or air. The UNCITRAL Model Law on International Credit Transfers is closely related to the first transfer method. It deals with international banking transfer and covers the

---

<sup>134</sup> United Nations Commission on International Trade Law (UNCITRAL), “UNCITRAL Convention on the Use of Electronic Communications in International Contracts” <<https://uncitral.un.org/en/node/772/1000>> (accessed February 7, 2024).

<sup>135</sup> United Nations Commission on International Trade Law (UNCITRAL), “The UNCITRAL Model Law on Electronic Signatures” <[https://uncitral.un.org/en/texts/e-commerce/modellaw/electronic\\_signatures#:~:text=The Model Law on Electronic,electronic and hand-written signatures](https://uncitral.un.org/en/texts/e-commerce/modellaw/electronic_signatures#:~:text=The Model Law on Electronic,electronic and hand-written signatures)> (accessed February 7, 2024).

obligations of the bank that sends the fund's transfer instruction, obligations of a receiving bank, time of payment of a receiving bank, and liability of a bank to the originator or fund's owner when there is a delay or errors during the process.<sup>136</sup>

The sixth legal product is the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation. This law provides uniform rules of the mediation process and aims at encouraging the use of mediation.<sup>137</sup> Mediation is one of alternative dispute resolutions and is a recommendable next step after conflicting parties in cross-border transactions fail to resolve the dispute through negotiation. It involves a neutral third parties known as the mediator.<sup>138</sup> Based on Indonesia's *waqf* laws, the first step to resolve disputes in *waqf* is through peaceful resolution, including mediation.<sup>139</sup> In Malaysia, mediation has been practiced in the *Sharia* Court since the 1970s.<sup>140</sup> Both *waqf* authorities in Indonesia and Malaysia play an active role in *waqf* mediation.<sup>141</sup> In cross-border *waqf*, this law will provide benefit to the conflict resolution between parties in the management and development stages.

The seventh legal product is the UNCITRAL Model Law on International Commercial Arbitration. This law reflects worldwide consensus on critical aspects of international arbitration practice in different legal and economic systems. It covers all stages of the arbitral process.<sup>142</sup> Arbitration is also recognized as a dispute settlement method in Islamic law which can mitigate risks emanating from different legal systems,

---

<sup>136</sup> United Nations Commission on International Trade Law (UNCITRAL), "The UNCITRAL Model Law on International Credit Transfers" <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-credittrans.pdf>> (accessed February 7, 2024).

<sup>137</sup> United Nations Commission on International Trade Law (UNCITRAL), "The UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation" <[https://uncitral.un.org/en/texts/mediation/modellaw/commercial\\_conciliation](https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation)> (accessed February 7, 2024).

<sup>138</sup> Carrie J Menkel-Meadow, Lela Porter-Love, and Andrea Kupfer-Schneider, *Mediation: Practice, Policy, and Ethics* (Aspen Publishing, 2020), 61.

<sup>139</sup> As seen in Article 62 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar to Article 3(5) and 3(6) of Government Regulation of the Republic of Indonesia No.10 of 1961 concerning Land Registration.

<sup>140</sup> Nora Abdul Hak, Sa'odah Ahmad, and Umar A. Oseni, *Alternative Dispute Resolution (ADR) in Islam*, 2nd ed. (Kuala Lumpur, Malaysia: IIUM Press, 2013), 108.

<sup>141</sup> Shandy Primandasetio Freddy and Nor Asiah Mohamad, "Dispute in Cross-Border Waqf: Mitigation, Resolution, and the Role of Waqf Authority," *IIUM Law Journal* 32, no. 1 (2024): 261–308.

<sup>142</sup> United Nations Commission on International Trade Law (UNCITRAL), "The UNCITRAL Model Law on International Commercial Arbitration" <[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf)> (accessed February 7, 2024).



which is the main obstacle in cross-border *waqf*.<sup>143</sup> Indonesia<sup>144</sup> and Malaysia<sup>145</sup> have been using arbitration as an alternative dispute resolution in handling *waqf* disputes.

The eighth legal product is the case law of UNCITRAL, known as the Case Law on UNCITRAL Texts (CLOUT). Case law is a way to harmonize international law through judges' and arbitrators' roles in interpreting laws produced by the UNCITRAL. Based on the CLOUT database, until January 2024, there are one thousand and eighteen case laws about the CISG, seven cases about the UNCITRAL Convention on the Use of Electronic Communications in International Contracts, nine cases about the Hamburg Rules, three cases about the MLES, two cases about the UNCITRAL Model Law on International Credit Transfers, one case about mediation, and five hundred fifty-three cases about arbitration.<sup>146</sup> In total, there are one-thousand and forty-five case laws related to UNCITRAL laws related to cross-border *waqf* activities. This reflects the many challenges regarding cross-border activities, including cross-border *waqf*, and the importance of learning from previous mistakes in creating the legal framework of cross-border *waqf*. It will also help mitigate and resolve disputes at cross-border *waqf*'s management and development stages.

Correlations between international laws by the UNCITRAL and cross-border *waqf*, can be witnessed in all stages of cross-border *waqf* starting from the creation, management, and development, including conflict resolution. The summary can be seen in the following table:

Table 3.4. International Laws by the UNCITRAL and Cross-Border *Waqf*<sup>147</sup>

| No | International Laws by UNCITRAL                                                        | Correlation to Cross-Border <i>Waqf</i>                                                                       |
|----|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 1  | The United Nations Convention on Contracts for the International Sale of Goods (CISG) | Useful for cross-border <i>waqf</i> 's management and development. The CISG covers the formation and standard |

<sup>143</sup> Freddy and Mohamad, "Dispute in Cross-Border *Waqf*,".

<sup>144</sup> Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts, article 56(2).

<sup>145</sup> Manaf, Kader, and Mohamad, "ADR as an Alternative Access,".

<sup>146</sup> United Nations Commission on International Trade Law (UNCITRAL), "Case Law on UNCITRAL Texts (CLOUT)" (1988), <<https://www.uncitral.org/clout/index.aspx>> (accessed November 5, 2023).

<sup>147</sup> Source: Analyzed by the Author from several sources about international laws by UNCITRAL (Citations in Chapter Three No.111-144).

|   |                                                                                                                                  |                                                                                                                                                                                                                                                                            |
|---|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                                                                                                                  | terms of the contract and obligations of the contracting parties, including the cross-border movement of the corpus and usufruct.                                                                                                                                          |
| 2 | The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules) | Useful for cross-border <i>waqf</i> 's international transport of the corpus and usufruct. The Rotterdam Rules cover all sea-based and multimodal carriage aspects, including rights and obligations, transport phases, documents, choice of law, and conflict resolution. |
| 3 | The Convention on the Use of Electronic Communications in International Contracts                                                | Useful for cross-border <i>waqf</i> 's creation, management, and development. This law creates a more efficient process for parties in different countries by removing obstacles and establishing equivalence between electronic and written forms.                        |
| 4 | The Model Law on Electronic Signatures (MLES)                                                                                    | Useful for cross-border <i>waqf</i> 's creation, management, and development. This law aims to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent.                                  |
| 5 | The Model Law on International Credit Transfers                                                                                  | Useful for cross-border <i>waqf</i> 's creation, management, and development. The law deals with international banking transfers, which relate to the transfer of the corpus, usufruct, and funds for developing the <i>waqf</i> .                                         |

|   |                                                                                                                      |                                                                                                                                                                                                                                           |
|---|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 | The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation | Useful for cross-border <i>waqf</i> 's management, and development. This law provides uniform rules of the mediation process and aims at encouraging the use of mediation.                                                                |
| 7 | The Case Law on UNCITRAL Texts (CLOUT)                                                                               | Useful for cross-border <i>waqf</i> 's management and development. Case law is an important source for learning from previous mistakes. It can also be used as a reference in mitigating and resolving cross-border <i>waqf</i> disputes. |

Another source of international law that correlates with cross-border activities comes from UNIDROIT. The UNIDROIT is an independent intergovernmental organization based in Rome, which was established in 1926 and re-established in 1940 based on a multilateral agreement known as the UNIDROIT statute. There are sixty-five member countries in UNIDROIT up to January 2024, including Indonesia, which is one of the primary samples of this research.<sup>148</sup> At least there are three international laws created by UNIDROIT that can support cross-border *waqf* practices which include the UNIDROIT Principles of International Commercial Contracts 2016, the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts, and the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts.

The Principles of International Commercial contracts 2016 is the first legal product of UNIDROIT. This law establishes general rules of international contracts with a balanced set of rules designed to be used worldwide despite legal, economic, and political differences between countries.<sup>149</sup> Similar to international trade, cross-border *waqf* is a social finance

<sup>148</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Overview of The International Institute for the Unification of Private Law (UNIDROIT)," 2024, <<https://www.unidroit.org/about-unidroit/overview>> (accessed February 10, 2024).

<sup>149</sup> Subianta Mandala, "The UNIDROIT Principles of International Commercial Contracts as a Reference for Modern Indonesian Contracts," *Indonesian Law Journal* 2nd (2007): 13-22.

activity that deals with a counterparty in a different country. Based on most international trade cases, cross-border activities deal with different legal systems, and in contract formulation, this condition may result in differences in bargaining strengths. The stronger party usually insists on any contracts being made subject to its own law.<sup>150</sup> Such a condition does not align with the WCP, which puts its preference on local or domestic law as the law that should be applied in cross-border *waqf* activities, but no further explanation of whose domestic law to be chosen, remembering that each country of the parties has their domestic law, only depends on the parties point of views. One of the purposes of The Principles of International Commercial Contracts 2016 is to interpret or supplement domestic and international law,<sup>151</sup> hence this law is essential in formulating the legal framework of cross-border *waqf*, particularly in the management and development stages.

The second legal product of UNIDROIT is the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts. This law is the complete interpretation and practical samples on how to apply the first legal product of UNIDROIT, The Principles of International Commercial Contracts 2016. Both laws must be paired together to get full benefits in creating the legal framework of cross-border *waqf*.<sup>152</sup>

The third legal product of the UNIDROIT is the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts. This law was created in 2020 as a joint product of UNIDROIT, UNCITRAL, and the Hague Conference on Private International Law (HCCH). It aims to harmonize international laws on commercial contracts.<sup>153</sup> Same with previous legal sources from UNIDROIT, this law also useful in the management and development stages of cross-border *waqf*.

---

<sup>150</sup> Thomas Krebs, “The UNIDROIT Principles of International Commercial Contracts,” in *Research Handbook on International Commercial Contracts* (Edward Elgar Publishing, 2020), 132–157.

<sup>151</sup> The International Institute for the Unification of Private Law (UNIDROIT), “The UNIDROIT Principles of International Commercial Contracts 2016,” 2016, <<https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>> (accessed February 10, 2024).

<sup>152</sup> The International Institute for the Unification of Private Law (UNIDROIT), “The UNIDROIT Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts,” 2013, <<https://www.unidroit.org/english/principles/modelclauses2013/modelclauses-2013.pdf>> (accessed February 10, 2024).

<sup>153</sup> The International Institute for the Unification of Private Law (UNIDROIT), United Nations Commission On International Trade Law (UNCITRAL), and The Hague Conference on Private International Law (HCCH), “The UNIDROIT Tripartite Legal Guide to Uniform Legal Instruments in the Area of International

Correlations between international laws by UNIDROIT and cross-border *waqf*, can be witnessed mainly in the management and development stages of cross-border *waqf*. The summary can be seen in the following table:

Table 3.5. International Laws by the UNIDROIT and Cross-Border *Waqf*<sup>154</sup>

| No | International Laws by UNIDROIT                                                                        | Correlation to Cross-Border <i>Waqf</i>                                                                                                                                                                      |
|----|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Principles of International Commercial Contracts 2016                                                 | Useful for cross-border <i>waqf</i> 's management and development. This law establishes general rules of international contracts and can be used to interpret or supplement domestic and international laws. |
| 2  | Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts            | Useful for cross-border <i>waqf</i> 's management and development. This law contains technical aspects on how to implement the Principles of International Commercial Contracts 2016.                        |
| 3  | Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts | Useful for cross-border <i>waqf</i> 's management and development. This law aims to harmonize international laws on commercial contracts.                                                                    |

Commercial Contracts,” 2020, <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/tripartiteguide.pdf>> (accessed February 10, 2024).

<sup>154</sup> Source: Analyzed by the Author from several sources about international laws by UNIDROIT (Citations in Chapter Three No.146-151)

Aside from international laws, there are rules which are methods or techniques accepted globally, superior to any alternatives because of the ability to produce better results than other means. It is also the standard way of doing things and is an alternative to obligatory ones.<sup>155</sup> The ICC is the world's largest and most representative business organization. It was founded in Paris in 1920,<sup>156</sup> and currently has more than 45 million members from more than 100 countries.<sup>157</sup> The ICC also plays an active role in dispute resolution through mediation and arbitration. The ICC has resolved 2313 cases up to February 2024,<sup>158</sup> which shows the importance of including ICC's rules in formulating cross-border *waqf*'s legal framework. Based on a short interview with several experts at ICC, eight international rules of ICC could be utilized in supporting cross-border *waqf* activities, which include the INCOTERMS 2020, URBPO, URDG 758, ISDGP, ISP98,<sup>159</sup> ICC Model Contracts, Uniform Rules for Collections (URC) 522, and Uniform Customs and Practice for Documentary Credits (UCP) 600.<sup>160</sup>

The first rule is the INCOTERMS 2020, which was first enacted in 1936 and revised regularly every ten years. Generally, the INCOTERMS rules international physical distribution.<sup>161</sup> This rule is about the physical transport of goods. It clearly defines the roles and obligations of sellers and buyers as the goods move along the logistics chain, including transport methods, *takaful*, licenses, and customs clearances. Using INCOTERMS in cross-border transactions will reduce logistics costs, create a more efficient operation of logistics processes, and provide better risk management during the shipping process.<sup>162</sup> There are

---

<sup>155</sup> Ndubuisi Kalu Emegha, "Security Agents and Election Monitoring in Nigeria: Engaging International Best Practices," *South East Political Review (SEPSR)* 5, no. 1 (2020): 45.

<sup>156</sup> Thomas David and Pierre Eichenberger, "A World Parliament of Business'? The International Chamber of Commerce and Its Presidents in the Twentieth Century," *Business History* 65, no. 2 (2023): 260–283.

<sup>157</sup> International Chamber of Commerce, "International Chamber of Commerce," 2024, <<https://iccwbo.org/world-chambers-federation/>> (accessed February 8, 2024).

<sup>158</sup> International Chamber of Commerce, "ICC Case Information," 2024, <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/arbitrators/>> (accessed February 12, 2024).

<sup>159</sup> International Chamber of Commerce Indonesia, "International Banking and International Trade Program," in *International Banking and International Trade Program* (Jakarta, Indonesia: International Chamber of Commerce Indonesia, 2022), 26.

<sup>160</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>161</sup> Jin-Hwan Kim, "The Comparative Study of Incoterms 2020 and 2010 in International Physical Distribution," *Journal of Distribution Science* 20, no. 4 (2022): 101–110.

<sup>162</sup> Jung-Ho Yang, "A Study on the Reasonable Choice and Utilization of Incoterms 2020 Rules from the Perspective of Logistics and Supply Chain Management," *Journal of Korea Trade* 25, no. 1 (2021): 152–168.

eleven mechanisms of transportation, seven for any mode of transport and four for sea and inland waterway transport. These rules divide the obligation related to risk, cost, and documents between the seller and buyer.<sup>163</sup> Due to its coverage, the INCOTERMS 2020 is beneficial for the movement of the corpus and distribution of the usufruct, which are regular activities in the creation, management, and development of cross-border *waqf*.

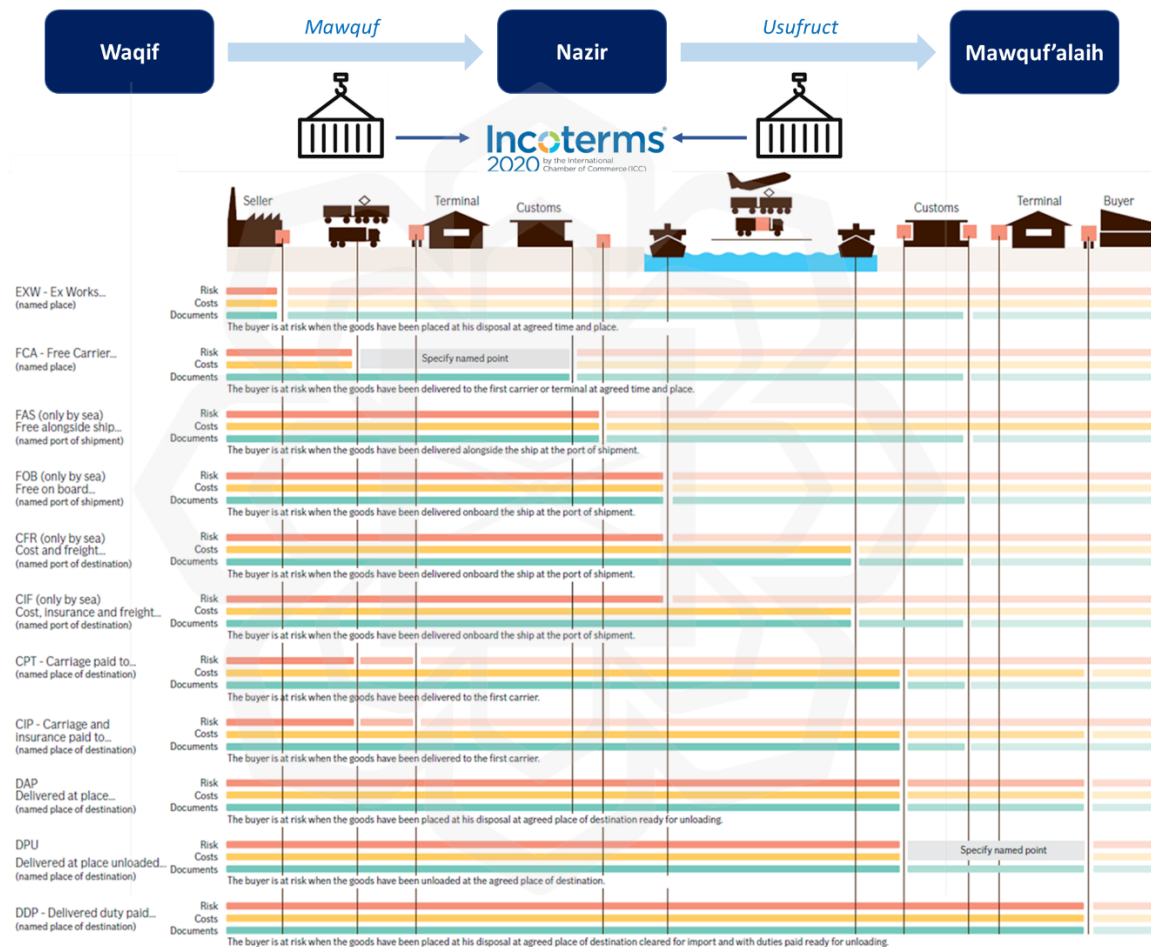


Figure 3.7. INCOTERMS in Cross-Border *Waqf*<sup>164</sup>

<sup>163</sup> International Chamber of Commerce, “Live Virtual Workshop INCOTERMS 2020” (Jakarta, Indonesia, 2022).

<sup>164</sup> Source: Analyzed by the Author from INCOTERMS by ICC.

The second to fifth rules guarantee cross-border fund transfer obligations in international transactions by mitigating risks such as delay in payment and non-payment from the international counterpart. These rules will benefit cross-border *waqf*'s management and development because, at these stages, the *nazir* will coordinate and cooperate with the other parties, such as the *mawquf'alaih* and local humanitarian organizations to distribute the usufruct, funds transfer to professionals such as accountants and lawyers, and services and goods providers.

The second rule is the URBPO. This rule is a product of the ICC Banking Commission, whose purpose is to govern the Bank Payment Obligation (BPO) practice in international transactions. The BPO is an irrevocable electronic payment guarantee from the buyer's or obligor bank to the seller's bank to pay at the maturity date<sup>165</sup> after a successful electronic matching of data according to the agreement.<sup>166</sup> The BPO is a common payment guarantee for cross-border transaction using open account payment method.<sup>167</sup> The BPO may be utilized in the management and development of cross-border *waqf*. It could provide a financial guarantee to the goods and services provider in a condition where *nazir*'s international reputation is not convincing enough for them. It is also an alternative method to settle *nazir*'s financial obligations to overseas parties.

---

<sup>165</sup> Society for Worldwide Interbank Financial Telecommunication (SWIFT), "Bank Payment Obligation A New Payment Method," 2016, <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj4gq6KkaaEAXUOoGMGHaztBdcQFnoECA8QAw&url=https%3A%2F%2Fwww.swift.com%2Fswift-resource%2F35051%2Fdownload%23%3A~%3Atext%3D%25E2%2580%259EA%2520Bank%2520Payment%2520Obl>> (accessed February 13, 2024).

<sup>166</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>167</sup> Ibid.



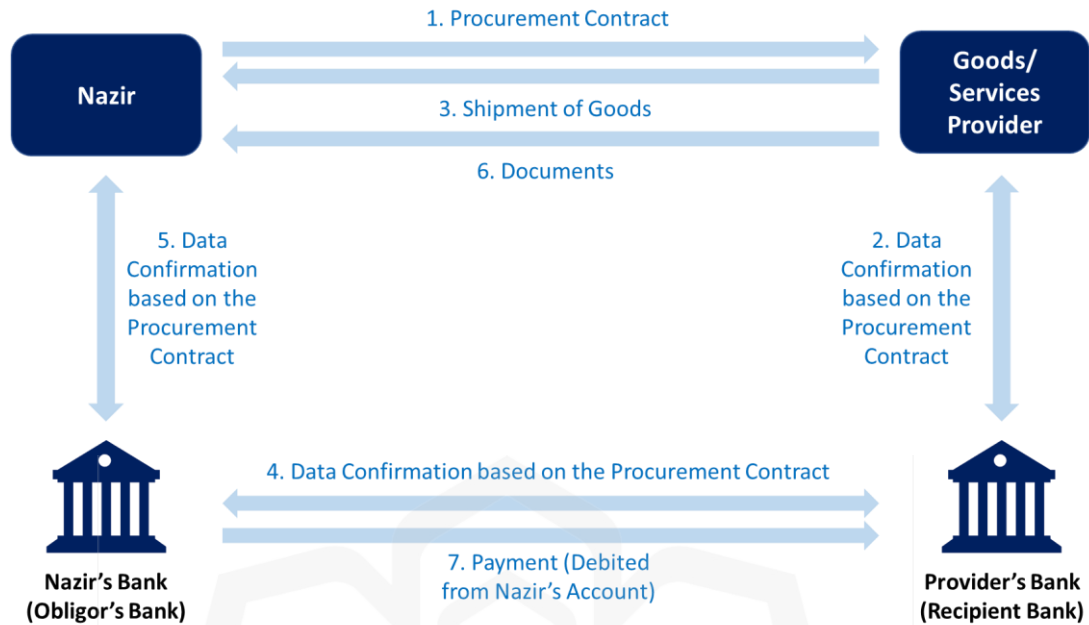


Figure 3.8. Bank Payment Obligation in Cross-Border *Waqf*<sup>168</sup>

The third and fourth rules are related to demand guarantees, which are the URDG 758 and ISDGP. The URDG was first adopted in 1991 and last updated on 1<sup>st</sup> July 2010. It is the international standard in the use of demand guarantees that balance the interests of all parties.<sup>169</sup> The ICC pronounced clearly that the URDG 758 is *Sharia*-compliant and can govern Islamic finance-related guarantees.<sup>170</sup> A demand guarantee is an irrevocable undertaking<sup>171</sup> between the applicant and the bank that provides financial security to the beneficiary should default occur, proven by document.<sup>172</sup> In cross-border *waqf* transactions, a demand guarantee can be used to ensure that the services and goods providers receive

<sup>168</sup> Source: Analyzed by the Author from URBPO by ICC.

<sup>169</sup> International Chamber of Commerce Indonesia, "Description of the Uniform Rules for Demand Guarantees URDG – 2010 Revision," 2015, <<https://iccindonesia.org/urdg-758/>> (accessed February 13, 2024).

<sup>170</sup> International Chamber of Commerce, "ICC Demand Guarantee Rules URDG 758 Celebrate Two Years of Rising Popularity," 2012, <<https://iccwbo.org/news-publications/news/icc-demand-guarantee-rules-urdg-758-celebrate-two-years-of-rising-popularity/#:~:text=The 35 articles in URDG, and exist in 21 languages>> (accessed February 13, 2024).

<sup>171</sup> Jonathan Clark, Alex Shattock, and Sayra Tekin, "Demand Guarantees: The Consideration Dilemma," *Butterworths Journal of International Banking and Financial Law*, 2015: 1-2.

<sup>172</sup> Georges Affaki and Royston Miles Goode, *Guide to ICC Uniform Rules for Demand Guarantees URDG 758* (International Chamber of Commerce, 2011), 5.

payment from the nazir, especially when both parties do not know each other and operate in different countries. After the bank fulfils the guarantee, the nazir must reimburse the fund to the bank. A demand guarantee will protect every contract between nazir and the business counterpart in different countries, which is usually part of *waqf* management and development.

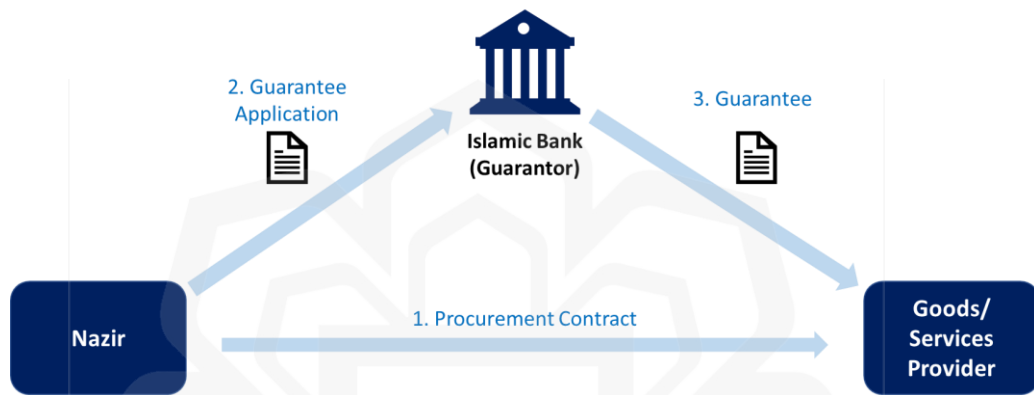


Figure 3.9. Demand Guarantee in Cross-Border *Waqf*<sup>173</sup>

The fifth rule is the ISP98. This rule is about Standby L/C, which is a payment guarantee from the buyer's bank to the seller. In a condition where the buyer cannot pay the seller, then the buyer's bank will take over that obligation and ask for a reimbursement from the buyer. This is a security measure in international contractual relations, particularly when a buyer and seller do not know each other.<sup>174</sup> Similar to L/C, a standby L/C will benefit the nazir to gain a strong reputation due to guarantee given to the goods and service provider in management and development stages of cross-border *waqf*. Strong reputation is the most valuable assets for international Institutions,<sup>175</sup> with a good reputation the nazir could open more access to better quality goods and services provider.

<sup>173</sup> Source: Analyzed by the Author from URDG and ISDGP by ICC.

<sup>174</sup> Dukić Mijatović Marijana and Dragan Đorđević, "Standby Letter of Credit as a Means of Security in International Contractual Relations," *Pravo-Teorija i Praksa* 40, no. 4 (2023): 1–16.

<sup>175</sup> Sophie Gaultier-Gaillard and Jean-Paul Louisot, "Risks to Reputation: A Global Approach," *The Geneva Papers on Risk and Insurance-Issues and Practice* 31 (2006): 425–445.

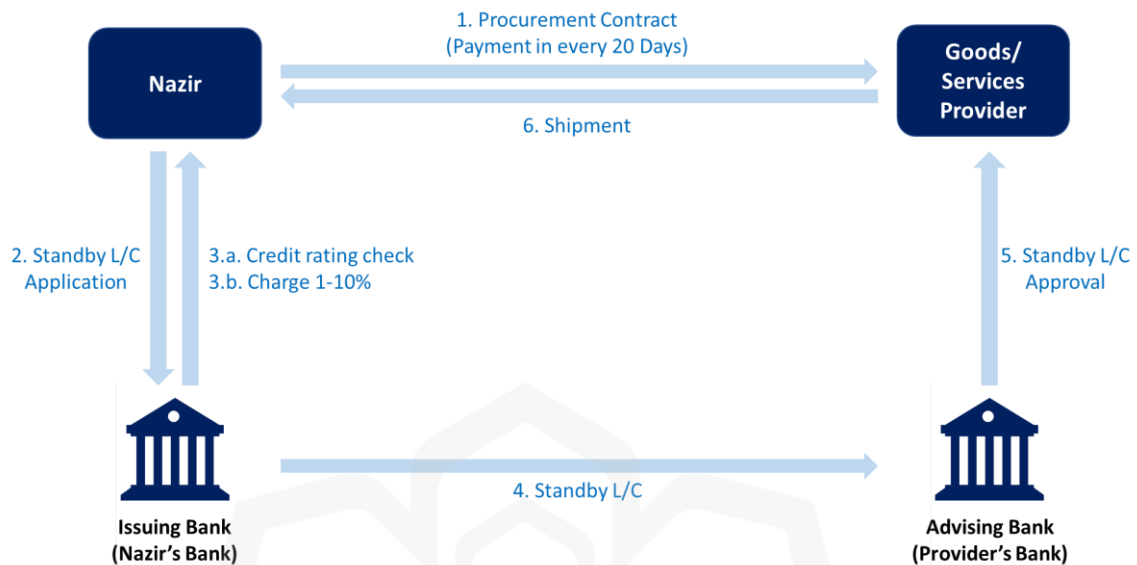


Figure 3.10. Standby Letter of Credit in Cross-Border *Waqf*<sup>176</sup>

Sixth, the ICC also has a set of rules for international contracts known as the ICC Model Contracts. There are several core points that can be used for cross-border *waqf*-related contract which include: (i) must be written; (ii) the parties must be in the capacity to contract; (iii) the purpose must be legal; (iv) consent must be given without duress or false information; (v) must state the currency for the transaction; (vi) must state the price; (vii) must describe the attributes of the goods or services; (viii) must state packing requirements; (ix) must state inspection and quality control requirements; (x) must state *takaful* requirements; (xi) must state shipping terms based on the Incoterms; (xii) must state the date by which goods must be dispatched or delivered; (xiii) must state the method and timing of payment based on international rules; (xiv) any amendments made after the contract has been signed must require consent of both parties; (xv) breach of the contract will entitle the other party to make legal claim or void the contract; (xvi) alternative dispute resolutions as the first step in conflict resolution; (xvii) must specify the applicable law;<sup>177</sup>

<sup>176</sup> Source: Analyzed by the Author from ISP by ICC.

<sup>177</sup> Budiutomo Kurniadi, ICC Advisor, Certificate on International Trade and Finance Program, 7 September 2024: “The stronger party in the contract usually determines the applicable law and the location of the court.

(xviii) must determine the location of the court to handle the dispute; and (xviii) must state force majeure conditions.<sup>178</sup>

Seventh the URC522 and eighth the UCP600, both international rules are related to cross-border payment settlement methods. The URC522 governs the documentary collection and the UCP600 governs the Letter of Credit (L/C). Both are considered as the safest cross-border payment method for both the buyer and seller, which could benefit cross-border *waqf* management and development stages. Aside from those two methods, there are also open account and payment in advance mechanisms, commonly found in international payment.<sup>179</sup>

Basically, the choice of payment settlement method to be utilized in an international transaction depends on the bargaining position of the parties, whether they have an equal position or not. The open account method starts with the shipment of the goods and shipping documents from the seller to the buyer, which favors the buyer's position. There is a risk of non-payment for the seller in an open account transaction if the buyer fails to fulfil their payment obligation, both intentionally and unintentionally.<sup>180</sup> In cross-border *waqf*, the open account method will benefit the *nazir*, as the buyer, because the goods shipping guarantee from the seller in a procurement contract with a third party to develop the *waqf*. The utilization of open account payment method for cross-border transactions can be seen in the following figure:

---

The buyer's law will apply if the agreement does not state the applicable law. If the power of both parties is equal, it is suggested that the law of a neutral country and a court located in a neutral country be chosen."

<sup>178</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.



Figure 3.11. Open Account Payment Method in Cross-Border *Waqf*<sup>181</sup>

The second method, payment in advance, is the opposite of the open account. The buyer must pay the seller in the first place, and the seller will only send the goods and documents after receiving the payment. The buyer will be in a precarious position because there is no guarantee of obtaining the goods from the seller after they complete the payment.<sup>182</sup> In cross-border *waqf*, the payment in advance method will benefit the *nazir*, as the seller, in selling products from a productive *waqf* to the third party to develop the *waqf*. The utilization of payment in advance method for cross-border transactions can be seen in the following figure:

<sup>181</sup> Source: Analyzed by the Author from the Certificate in International Trade and Finance - Tutorial 2024 by ICC.

<sup>182</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

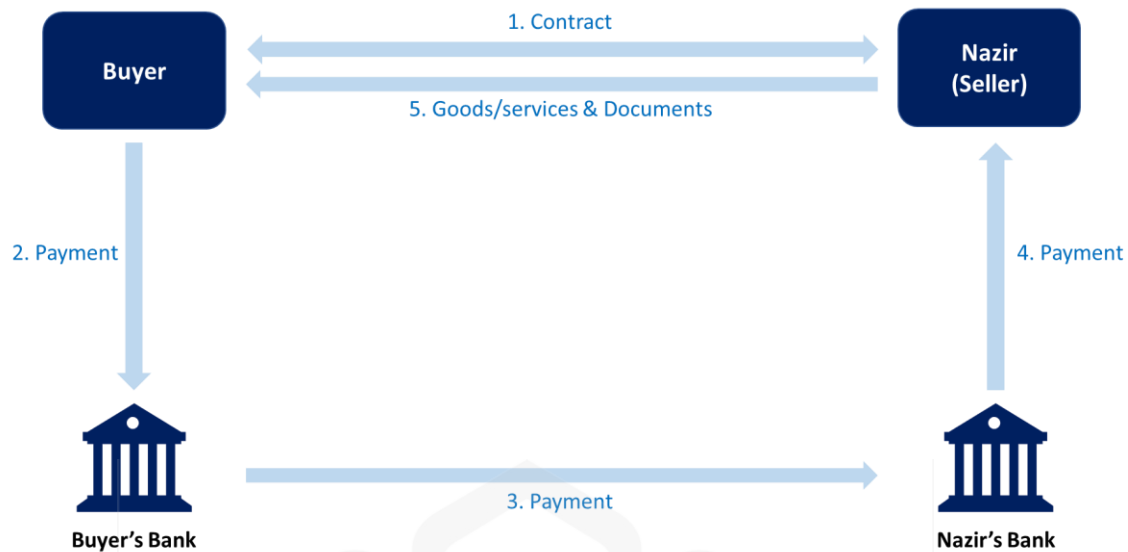


Figure 3.12. Payment in Advance Method in Cross-Border *Waqf*<sup>183</sup>

The last two cross-border payment methods, the documentary collection, and the L/C, have a more balanced risk for both buyer and seller. There are two main differences: the party who initiates the transaction and the use of financing facilities or payment guarantees by the bank.<sup>184</sup>

Documentary collection is regulated under the URC522, which must be mentioned in the collection instructions. The seller initiates documentary collection after the goods are dispatched from the seller to the buyer. However, the shipping documents, which will be used to claim the goods at the port, are sent to the seller's bank or remitting bank. After receiving the documents, the seller's bank will send the collection order to the buyer's bank or collecting bank, asking to deliver the document to the buyer against payment or acceptance from the buyer. The risk in this transaction is mild because of the banks' role in holding the document against payment. This means that the buyer will not be able to get the goods from the port before completing the payment, and there is a guarantee that the

<sup>183</sup> Source: Analyzed by the Author from the Certificate in International Trade and Finance - Tutorial 2024 by ICC.

<sup>184</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

seller has shipped the goods, proven by the shipping documents.<sup>185</sup> In developing the cross-border *waqf*, the nazir, as the seller, can initiate the use of the documentary collection in selling the productive *waqf* products internationally. In Islamic banking, the *murabahah* documentary collection is available to be used in cross-border *waqf* activities.<sup>186</sup> The utilization of documentary collection payment method for cross-border transactions can be seen in the following figure:

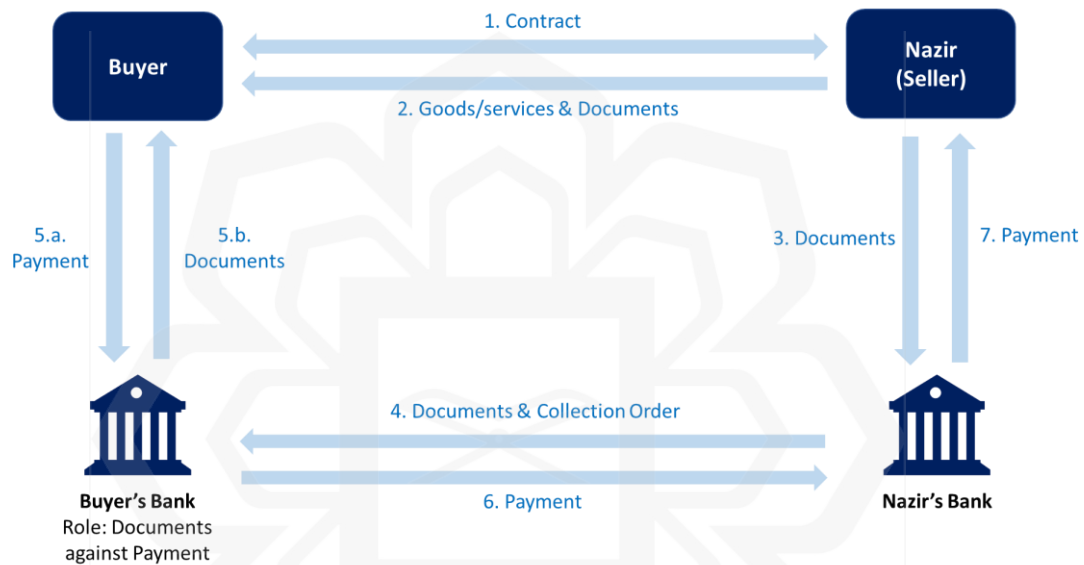


Figure 3.13. Documentary Collection in Cross-Border *Waqf*<sup>187</sup>

The last payment method in cross-border transactions is the documentary credits, also known as the L/C. The L/C is known as one of the oldest and most secure settlement methods in international trade. The international rules about L/C can be found in the UCP600. The nature of an L/C is irrevocable, meaning that the buyer's or nazir's bank agrees not to amend or cancel the payment promise or guarantee without the seller's consent. The buyer is the one who must initiate the L/C in a cross-border transaction. The

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Source: Analyzed by the Author from the Certificate in International Trade and Finance - Tutorial 2024 by ICC.

security aspects provided by the L/C payment method are: (i) A guarantee for the nazir (buyer) that the seller has shipped the goods with details and requirements as agreed in the contract; (ii) The seller is guaranteed to get the payment if the documents provided to the banks and buyer are comply with the contract; and (iii) The nazir (buyer) will not be able to obtain the goods from the port before making payment to the issuing bank to get the goods' ownership documents. In Islamic banking, the *murabahah* or *musyarakah* L/C is available to be used in cross-border *waqf* activities. The utilization of L/C payment method for cross-border transactions can be seen in the following figure:

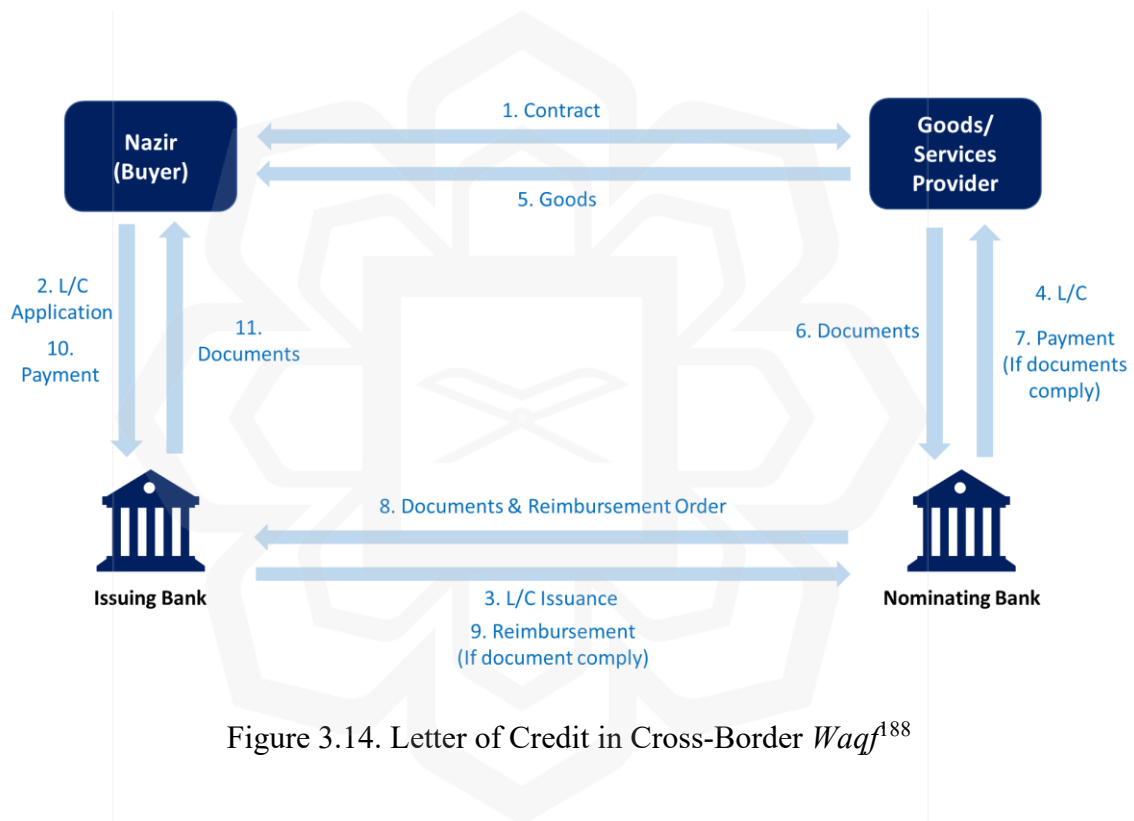


Figure 3.14. Letter of Credit in Cross-Border *Waqf*<sup>188</sup>

<sup>188</sup> Source: Analyzed by the Author from the UCP600 and the Certificate in International Trade and Finance - Tutorial 2024 by ICC.



Table 3.6. The International Payment Systems' Benefit for Cross-Border *Waqf*<sup>189</sup>

| No | Nazir's Position | International Payment Methods             | Benefits for Cross-Border <i>Waqf</i>                                                                                                                                                                                                                                                                                                       |
|----|------------------|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Buyer            | Open account                              | Benefit the nazir as buyer in procurement contract to manage and develop the <i>waqf</i> because the seller needs to ship goods and send the documents needed to release the goods from the port in nazir's country.                                                                                                                        |
| 2  | Seller           | Payment in advance                        | Benefit the nazir as seller because the seller will only send the goods and documents after receiving the payment from the buyer.                                                                                                                                                                                                           |
| 3  | Seller           | <i>Murabahah</i> documentary collection   | Benefit the nazir both as seller and buyer. However, this method must be initiated by the seller. As the seller, the nazir is favored because the buyer can only get the goods from the port after completing the payment. As the buyer, the nazir has a guarantee that the seller has shipped the goods, proven by the shipping documents. |
| 4  | Buyer            | <i>Murabahah</i> or <i>Musyarakah</i> L/C | Benefit the nazir both as buyer and seller. As buyer, the nazir has a guarantee for the nazir (buyer) that the seller has shipped the goods with details and requirements as agreed in the contract. On the other hand, as a seller, nazir is guaranteed to get the                                                                         |

<sup>189</sup> Source: Analyzed by the Author from the Certificate in International Trade and Finance - Tutorial 2024 by ICC.

|  |  |  |                                                                                                                                                         |
|--|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  |  | payment if the documents provided comply with the contract, and the buyer will not be able to obtain the goods from the port before making the payment. |
|--|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------|

Correlations between international rules by the ICC and cross-border *waqf*, can be seen in all stages of cross-border *waqf* starting from the creation, management, and development, including conflict resolution. The summary of findings can be seen in the following table:

Table 3.7. International Rules by the ICC and Cross-Border *Waqf*<sup>190</sup>

| No | International Rules by ICC                         | Correlation to Cross-Border <i>Waqf</i>                                                                                                                                                                                           |
|----|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | International Commercial Terms (INCOTERMS) 2020    | Useful for cross-border <i>waqf</i> 's creation, management, and development of cross-border <i>waqf</i> . This rule is beneficial for the movement of the corpus and distribution of the usufruct.                               |
| 2  | Uniform Rules for Bank Payment Obligations (URBPO) | Useful for cross-border <i>waqf</i> 's management and development stage of cross-border <i>waqf</i> . It provides a financial guarantee and is an alternative method to settle nazir's financial obligations to overseas parties. |
| 3  | Uniform Rules for Demand Guarantees (URDG 758)     | Useful for cross-border <i>waqf</i> 's management and development stage of                                                                                                                                                        |

<sup>190</sup> Source: Analyzed by the Author from International Rules by ICC (INCOTERMS, URBPO, URDG, ISDGP, ISP) and the Certificate in International Trade and Finance - Tutorial 2024 by ICC.

|   |                                                                |                                                                                                                                                                                                                                                                                         |
|---|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | International Standard Demand Guarantee Practice (ISDGP)       | cross-border <i>waqf</i> . This rule protects every contract between nazir and the business counterpart in different countries.                                                                                                                                                         |
| 5 | International Standby Practices (ISP98)                        | Useful for cross-border <i>waqf</i> 's management and development stage of cross-border <i>waqf</i> . This rule gives payment guarantees from Nazir to the provider of goods and services, which boosts Nazir's reputation and trustworthiness in the international business community. |
| 6 | ICC Model Contracts                                            | Useful as core guidance and contract principles in drafting any business contract related to cross-border <i>waqf</i> management and development.                                                                                                                                       |
| 7 | Uniform Rules for Collections (URC) 522                        | Governs the documentary collection as an international payment method that benefit the nazir both as seller and buyer in the management and development stage of cross-border <i>waqf</i> .                                                                                             |
| 8 | Uniform Customs and Practice for Documentary Credits (UCP) 600 | Governs the L/C as an international payment method that benefit the nazir both as buyer and seller in the management and development stage of cross-border <i>waqf</i> .                                                                                                                |

### 3.3. PROPOSED LEGAL FRAMEWORK FOR CROSS-BORDER *WAQF*

In the first chapter, this research has shown that there are legal gaps on cross-border *waqf* guidelines between the WCP and current practices of cross-border *waqf* and international economic and financial activities, considering that cross-border *waqf* is included in Islamic international social finance. To be precise, the WCP only contains very limited guidance for cross-border *waqf* activities.

As mentioned in the first chapter, several regulation gaps about cross-border *waqf* found in the WCP includes: (i) How should the movement of cross-border *mawquf*, whether in the form of cash or goods, be regulated and conducted; (ii) How should the movement of the usufruct between countries be regulated and conducted; (iii) Who should be engaged in cross border *waqf* and how to implement the Know Your Customer (KYC) principles to parties involved; (iv) How should the parties choose the governing law, and what is the definition of local law in cross-border *waqf*; (v) How should the parties choose the way to resolve the legal dispute in cross-border *waqf*; (vi) How should the perpetuity of cross-border *mawquf* be registered and protected in the host country; and (vii) How should the purpose of cross-border *waqf* or *waqif* be protected in the host country.

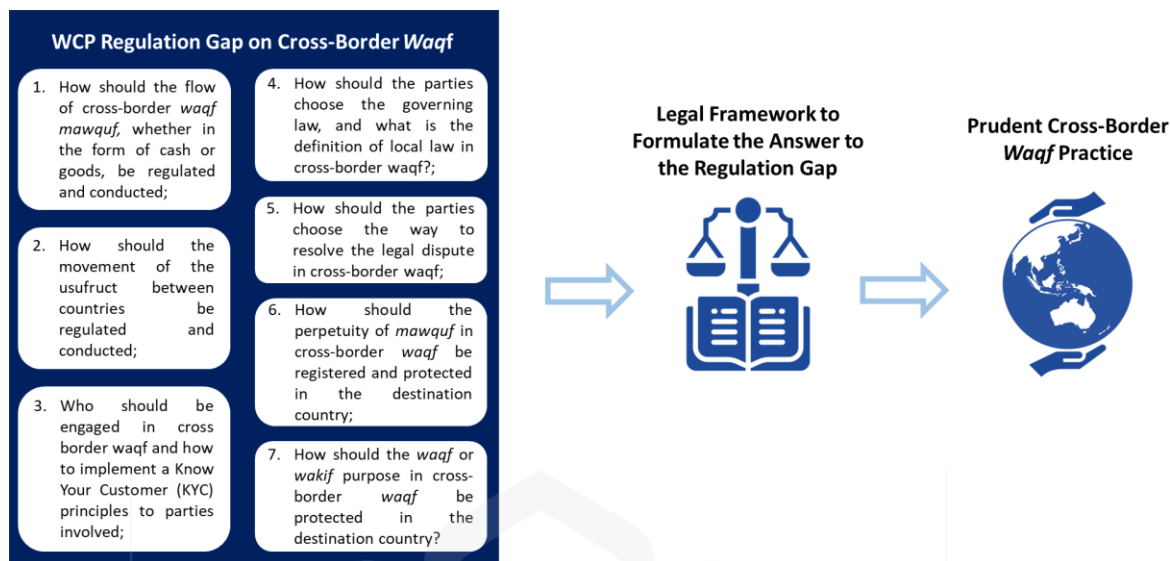


Figure 3.15. Regulation Gap and the Legal Framework<sup>191</sup>

A comprehensive legal framework is the key to filling those legal gaps. As explained in the previous sub-chapter, seven variables must be considered in creating the legal framework of cross-border *waqf* that includes borderless characteristics of charity and humanity, Islamic legal maxims, the *maqasid al-Sharia*, *Sharia* economic values and principles, *Sharia* law and *fatwa*, local law, and international law and rule. As explained in this chapter, these variables will have roles in each stage of cross-border *waqf* activities.

The principle of borderless charity and humanity will act as the foundation for the legal framework of cross-border *waqf*. Islamic legal maxims, *maqasid al-Sharia*, and the *Sharia* economic values and principles will contribute to the whole stage of cross-border *waqf*. *Sharia* law and *fatwa* are useful for the whole process, with a special function in handling particular contemporary cases of cross-border *waqf*.

Local sharia law has broader and detailed coverage, from the prerequisite of cross-border *waqf* creation to conflict resolution. However, due to their specific and local value, they may be used in cross-border *waqf* transactions with several considerations: (i) Considering the purpose of this study which is to create a new international rules on cross-border *waqf*, filtering a the local regulations before adopting its essence is crucial; (ii) the

<sup>191</sup> Source: Analyzed by the Author from WCP.

general provisions found in local regulation is more compatible to be applied internationally, for example, sharia and amicable dispute resolution; (iii) the local law will play most of its role in a part of cross-border *waqf* activities which conducted in domestic jurisdiction, for example, business activities in managing and developing the cross-border *waqf* in the host country.

International laws and rules will also contribute to the cross-border *waqf* transactions, particularly in the movement of the *mawquf* and usufruct, including the application of *takaful*. The role of elements in this sharia legal framework in cross-border *waqf* activities can be seen in the following figure:

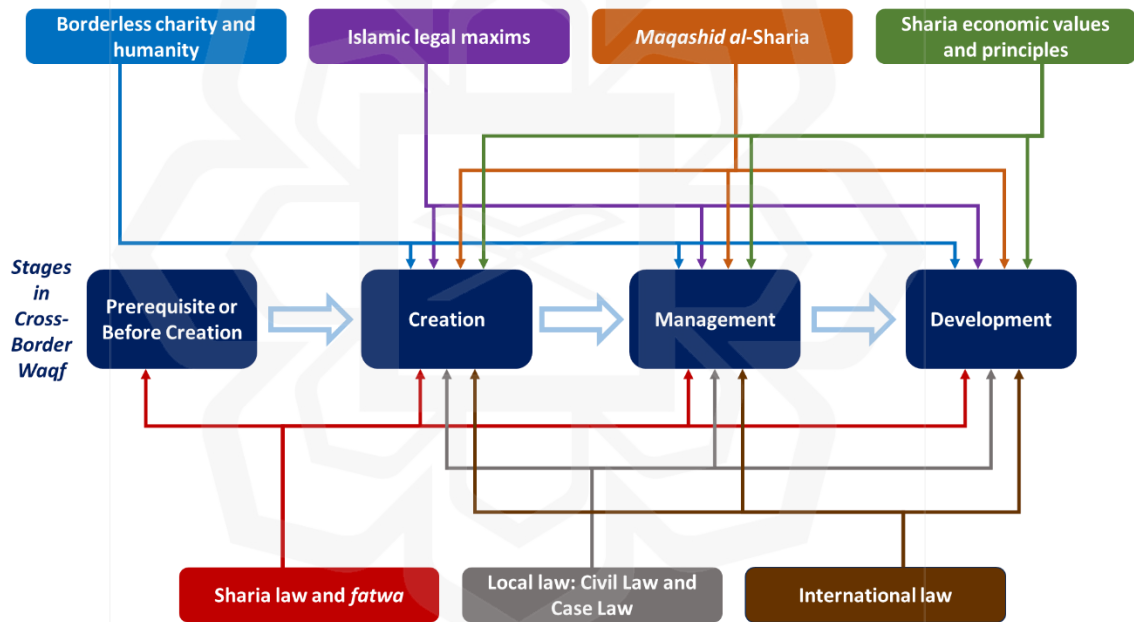


Figure 3.16. Proposed Legal Framework of Cross-Border *Waqf*<sup>192</sup>

<sup>192</sup> Source: Analyzed by the Author from all sources in Chapter Three.

### 3.4. CONCLUSION

It is believed that the standardization of mechanisms to create *waqf* will facilitate the administration and governance of *waqf*.<sup>193</sup> In creating standardization, especially for cross-border *waqf*, it is vital to create a legal framework that can fill the regulation gap of cross-border *waqf* found in the WCP. A comprehensive legal framework will also mitigate risks in cross-border *waqf* transactions.

In this chapter, we have examined several variables to form a comprehensive legal framework of cross-border *waqf*. Each variable has its legal contribution to stages in cross-border *waqf*, from before creation to the development stage. Based on these findings and considerations, it is recommended to use all examined variables as the source of the legal framework of cross-border *waqf*, which will later be utilized as the core to find answers to fill up the gap in the WCP.

---

<sup>193</sup> Nor Asiah Mohamad, Sharifah Zubaidah Syed Abdul Kader, and Zuraidah Ali, “Challenges in Management for Sustainability of Waqf Lands in Malaysia,” in *Waqf Laws and Management* (Kuala Lumpur, Malaysia: International Islamic University Malaysia, 2017), 111–131.

## CHAPTER FOUR

### CURRENT CROSS-BORDER *Waqf* PRACTICES AND ISSUES

#### 4.1. INTRODUCTION

*Waqf* activities have been practiced since the time of *Rasulullah* Muhammad *Sallallahu Alaihi Wasallam* in the 7th century. Later on, between the 7th and 21st centuries, the international world system constantly underwent dynamic changes and, at some point, affected the *waqf* sector worldwide. To better prepare and support cross-border *waqf* activities in the future, it is crucial to learn from the current and past experiences of cross-border *waqf*-related activities, both successful and failed ones.<sup>1</sup>

This chapter examines cross-border *waqf*-related practices in Indonesia, Malaysia, and other countries to grasp the essences that can fill the regulation gaps in the WCP and formulate risk mitigation of cross-border *waqf* activities. The sample are taken from several well-known sources that include the *waqf* of Habib Bugak Al Asyi, Wakaf Tunai by YWM, Waqf by Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA), Waqf Selangor Muamalat (WSM), Cash Waqf by Bank Muamalat Malaysia Berhad (BMMB), Waqf Negeri Sembilan Muamalat (WNSM), Wakaf Maik Muamalat (WMM), Wakaf Kedah Muamalat (WKM), Waqf by Aksi Cepat Tanggap (ACT), Waqf of Ahmad Dawjee Dadabhoy, Waqf by Dompot Dhuafa Foundation, Waqf of Masagus Abdul Hamid bin Mahmud bin Kanang in Saudi Arabia, Waqf by Perbadanan Wakaf Selangor, Muslims Around the World (MATW) Project Labuan Foundation, Muhammadiyah Indonesia, the Ministry of Agriculture of the Republic of Indonesia, *Diyanet Vakfi* (The Turkish Religious Foundation), Kuwait *Awqaf* Public Foundation (KAPF), Majelis Ugama Islam Singapore (MUIS), Ammana Fintek Syariah, LinkAja Syariah, Gopay, Wakaf Daarut Tauhiid (DT), and Sharing Happiness.

---

<sup>1</sup> Abraham Carmeli and John Schaubroeck, "Organisational Crisis-Preparedness: The Importance of Learning from Failures," *Long Range Planning* 41, no. 2 (2008): 177–196.



## 4.2. SELECTED PRACTICES IN INDONESIA AND SOME SELECTED COUNTRIES EXPERIENCE

The first chapter explained the regulation gaps on cross-border *waqf* found in the WCP, which are grouped into seven legal gaps. To fill those gaps, learning from cross-border *waqf-related* practices is essential to extracting and formulating the best legal model for better cross-border *waqf* practice. This sub-chapter examines both successful and unsuccessful cross-border *waqf* activities. Core and supporting factors of a successful cross-border *waqf* transaction are considered essential elements. On the other hand, barriers are regarded as issues and challenges of cross-border *waqf* that must be watched carefully and mitigated. Both findings on essential elements and issues will be proposed to be accommodated in the WCP's Technical Notes on Cross-Border *Waqf*.

### 4.2.1. Essential Elements from Current Cross-Border *Waqf* Practices

#### 4.2.1.1. Collaboration with Public and Private Sectors in The Host Country, Including the Islamic Financial Institutions

*Waqf* is a perpetual Islamic social finance activity. *Nazir*, as the manager of the *waqf*, must ensure its preservation amidst global and domestic challenges. Collaboration is one effort that must be made to overcome those challenges and create sustainable business management,<sup>2</sup> which is crucial in every *waqf* activity.

A solid bond with relevant public and private sectors could benefit the *nazir* in managing and developing the *waqf*, such as opening new economic accesses and benefits.<sup>3</sup> An example of how such collaboration benefits the *nazir* can be learned from Ahmad Dawjee Dadabhoy's *waqf*, which is one of the most successful *waqf* examples in Malaysia.

---

<sup>2</sup> Johan Larsson and Lisa Larsson, "Integration, Application and Importance of Collaboration in Sustainable Project Management," *Sustainability* 12, no. 2 (2020): 585.

<sup>3</sup> Mechthild Donner and Hugo de Vries, "How to Innovate Business Models for a Circular Bio-Economy?," *Business Strategy and the Environment* 30, no. 4 (2021): 1932–1947.

Ahmad Dawjee Dadabhoy or the *waqif* was born in 1907 in Gujarat, India. In the 1940s, he came to Malaya and chose to settle in Kuala Lumpur. He was a tycoon and businessman who was already successful at that time.<sup>4</sup> During his lifetime, he created a family *waqf*, which later became a *waqf* institution known as Al-Waqf Al-Islami Al-Aalamee in 1971. At the end of his life, he gave almost his entire property and *waqf* to the religious authority. He died on January 24, 1987, leaving no heirs.<sup>5</sup>

On 18 September 1991, the Kuala Lumpur High Court declared that the Islamic Religious Council of the Federal Territory or Majlis Agama Islam Wilayah Persekutuan (MAIWP) of Kuala Lumpur as the trustee of Ahmad Dawjee Dadabhoy since he had no heirs and to fulfil his will.<sup>6</sup> His *waqf* includes: (i) A land lot measuring 1.2 acres, which is located in lots 168 and 169 Perak Street, Kuala Lumpur;<sup>7</sup> (ii) A shop lot in the Pertama Complex; (iii) Two houses in Taman Melawati; and (iv) Shares in and outside Malaysia.<sup>8</sup>

Based on the above information, the *waqf* of Ahmad Dawjee Dadabhoy has several international elements which enables it to be categorized as a cross-border *waqf*. The first international element is his citizenship as an Indian-born Muslim, considering India has been adopting the *jus soli* principle.<sup>9</sup> The second element is part of his shares, which are placed on the London Stock Exchange.<sup>10</sup>

Critical lessons on *nazir*'s collaboration with public and private sectors could be learned from the progress of Ahmad Dawjee Dadabhoy's *waqf* land development in Perak Street, Kuala Lumpur.<sup>11</sup> The process was conducted with collaborations between the

---

<sup>4</sup> Surau Wakaf Ahmad Dawjee Dadabhoy, "Sejarah Surau Wakaf Ahmad Dawjee Dadabhoy," 2023, <<https://www.swadd.com.my/sejarah-surau-wakaf-ahmad-dawjee-dadabhoy>> (accessed February 23, 2024).

<sup>5</sup> Pejabat Mufti Wilayah Persekutuan, "Wakaf Ahmad Dawjee Dadabhoy," 2018, <<https://www.muftiwp.gov.my/ms/artikel/irsyad-fatwa/irsyad-fatwa-umum/2824-irsyad-al-fatwa-274-wakaf-ahmad-dawjee-dadabhoy>> (accessed February 23, 2024).

<sup>6</sup> Ibid.

<sup>7</sup> Siti Mashitoh Mahamood, "Pembentukan Dana Wakaf Menurut Perspektif Syariah Dan Undang-Undang Serta Aplikasinya Di Malaysia," *Jurnal Syariah* 15, no. 2 (2007): 61–83.

<sup>8</sup> Pejabat Mufti Wilayah Persekutuan, "Pejabat Mufti Wilayah Persekutuan - Irsyad Al-Fatwa Series 274 : Waqaf Ahmad Dawjee Dadabhoy" <[muftiwp.gov.my](https://muftiwp.gov.my)> (accessed July 21, 2022).

<sup>9</sup> Niraja Gopal Jayal, "Reconfiguring Citizenship in Contemporary India," *South Asia: Journal of South Asian Studies* 42, no. 1 (2019): 33–50.

<sup>10</sup> Suara Merdeka Newspaper Malaysia, "Ahmad Dawjee Jutawan Wakafkan Tanah 1.2 Ekar Di Jalan Tun Perak" <<https://suaramerdeka.com.my/ahmad-dawjee-jutawan-wakafkan-tanah-1-2-ekar-di-jalan-tun-perak/>> (accessed December 1, 2023).

<sup>11</sup> Mahamood, "Pembentukan Dana Wakaf,".

MAIWP and Lembaga Tabung Haji (TH) as public sector entities, and Bank Islam Malaysia Berhad as private sector entity.

On 19 October 2011, the MAIWP, with full-covered financing support from the TH amounting to RM151 million, built a 34-story building above the land. The construction uses Build, Operate, and Transfer (BOT) scheme.<sup>12</sup> Bank Islam Malaysia Berhad also gave its commitment as the primary tenant of the said building.<sup>13</sup> Bank Islam use thirty floors, three for MAIWP and one floor for TH.

In modern times, *nazir* collaboration with financial institutions is also important due to the variety of services offered and utilization of financial technology that could be useful in cross-border *waqf* activities. An example of *nazir* and bank collaboration can be seen in the WSM. It is a joint management committee that manages the *waqf* funds between BMMB and Selangor Waqf Corporation. The WSM focuses on *waqf* activities and projects in the health and education segments and is also responsible for investing the *waqf* funds in *Sharia*-based activities. Based on the data, from 2013 until 2022, WSM had around 181 *waqf* projects.<sup>14</sup>

There are several projects of WSM that related to cross-border *waqf*: (i) In 2016, there was a charity for Palestinian children through MyCARE. There are no details about this project, but the sum was RM50,000.00;<sup>15</sup> (ii) In 2017, the purchase of the Koperasi Pelaburan Kakitangan Bank Muamalat Malaysia Berhad (KOPUTRA) building for Rohingya children.<sup>16</sup> Even though the *mawquf'alaih* are from Rohingya, they are refugees who came to Malaysia, and the *waqf* asset is also located in Malaysia. This is one of the simplest examples of cross-border *waqf*.

---

<sup>12</sup> Azman bin Mohd Noor, "Application of the Build, Operate, Transfer (BOT) Contract as a Means of Financing Development of Waqf Land: Malaysian Experience," *Arab Law Quarterly* 28, no. 2 (2014): 136–157.

<sup>13</sup> Mohd Yusra Abdullah et al., "Tanggung Jawab Sosial Korporat (CSR): Penglibatan Institusi Perbankan Berasaskan Islam Terpilih Di Malaysia Dalam Industri Wakaf," *Journal of Islamic Philanthropy & Social Finance* 2, no. 1 (2019): 45–54.

<sup>14</sup> Bank Muamalat Malaysia Berhad, "Wakaf Muamalat Selangor Report 2013-2022" (Kuala Lumpur, Malaysia, 2023), 1-3.

<sup>15</sup> Bank Muamalat Malaysia Berhad, "Wakaf Negeri Sembilan Muamalat 3rd Quarter 2016 Report", 1-3.

<sup>16</sup> Bank Muamalat Malaysia Berhad, "Wakaf Negeri Sembilan Muamalat 1st Quarter 2017 Report", 1-3.

In Kuwait, cooperation and coordination between *waqf* funds activities, charitable institutions, governmental and non-governmental organizations are required by the KAPF. The KAPF is a body under the Ministry of *Awqaf* and Islamic Affairs of Kuwait, which is also acting as a bridge between potential domestic and international *waqifs* and prospective beneficiaries (*mawquf'alaih*).<sup>17</sup>

Collaboration with public and private sector in *waqf* management can also be found in Singapore. The MUIS, as a regulatory body, recruits professionals such as civil engineers, architects, and surveyors. In managing the *waqf* assets, MUIS formed a joint venture with Warees Pte. Ltd., as its subsidiary, which has successfully transformed a number of low-yielding assets into high-income-generating assets that give proper returns.<sup>18</sup>

Warees has been maintaining its professionalism and high integrity in *waqf* management. To develop the *waqf* properly, Warees has five subsidiaries distinguished by services such as property development, halal certification, and burial services. Warees provides a consolidated annual report under MUIS. The report separates three different funds under the MUIS, the general funds, *zakat al-fitr*, and *waqf*.<sup>19</sup>

In obtaining financing for developing the *waqf*, MUIS collaborates with *Baitulmal* as the financier and issues a *musyarakah* sukuk. Collaboration with *Baitulmal* can be seen in the development of Telok Indah properties *waqf* in 1991, which required a total financing of S\$28 million. At that time, MUIS and *Baitulmal* became joint venture partners, with the internal financing coming from *Baitulmal*.<sup>20</sup>

Access to Financial Technology (Fintech) is another reason for collaborating with the public and private sectors. Fintech is the integration of technology by financial services companies to improve usage and benefits for beneficiaries. At least four leading

---

<sup>17</sup> Norma MD Saad et al., *The Role of Corporate and Public Entities in Managing Waqf Institutions in Muslim Countries*, 1st ed. (Selangor, Malaysia: The International Institute of Islamic Thought East and South East Asia, 2018), 76-85.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

technologies are at Fintech's core: blockchain,<sup>21</sup> cryptocurrency, artificial intelligence, and mobile payment.<sup>22</sup> It is found that in financial sector these technologies are exerting fast transformation, better security and transparency. They also provide real-time data analysis, predictive analytics, machine learning, risk assessment, decision-making, automation of financial operations, integration between KYC data and Anti-Money Laundering (AML) procedure. In the end, Fintech usage will heighten efficiency and diminish frauds.<sup>23</sup> All of those positive aspects are important in *waqf* management.

In Indonesia, the use of Fintech in the Islamic social finance sector, including *waqf*, can be found in several foundations such as Ammana Fintek Syariah,<sup>24</sup> LinkAja Syariah,<sup>25</sup> Gopay, Wakaf Daarut Tauhiid (DT),<sup>26</sup> and Sharing Happiness<sup>27</sup>. Ammana Fintek Syariah uses Fintech to distribute the *waqf* to synergized *waqf* institutions. Gopay uses Fintech to utilize Quick Response (QR) code and payment through Gopay balance for charity purposes.<sup>28</sup> In general, Fintech is being used to develop and manage the website, application, and marketing activities to widen the scope and reach more potential donors.<sup>29</sup>

Based on the above successful public and private collaboration samples in cross-border *waqf*, we can point out several findings. First, cooperation and coordination with government institutions, quasi-government, and private sector is essential in developing the *waqf*.<sup>30</sup> Second, forming a joint management committee with an official party in the host

<sup>21</sup> Yudi and Daarut Taudiid, "Digitalisasi Wakaf Melalui Aplikasi Terobosan Penuh Manfaat (Digitizing Waqf Through a Breakthrough Application Full of Benefits)," *Berita (News)*, 2020, <<https://www.daaruttauhiid.org/digitalisasi-wakaf-melalui-aplikasi-terobosan-penuh-manfaat/>> (accessed June 7, 2024).

<sup>22</sup> Abdul Shakoor Dalvi, "Islamic Fintech and Cash Waqf," *IFHUB INCEIF*, 2021: 14.

<sup>23</sup> Nitin Rane, Saurabh Choudhary, and Jayesh Rane, "Blockchain and Artificial Intelligence (AI) Integration for Revolutionizing Security and Transparency in Finance," *Available at SSRN 4644253*, 2023: 1-13.

<sup>24</sup> Ammana Fintek Syariah, "About Ammana," About Ammana, 2024, <<https://ammana.id/about>> (accessed June 6, 2024).

<sup>25</sup> LinkAja Syariah, "LinkAja Syariah Berbagi," linkajasyariahberbagi, 2024, <<https://www.linkaja.id/linkajasyariahberbagi>> (accessed June 7, 2024).

<sup>26</sup> Faizati Natasya, "Strategi Penghimpunan Dana ZIS (Zakat, Infaq Dan Sedekah) Melalui Digital QRIS Di LAZNAS Daarut Tauhiid Peduli Lampung" (UIN RADEN INTAN LAMPUNG, 2023), 103-104.

<sup>27</sup> SharingHappiness, "SharingHappiness," SharingHappiness About Us, 2024, <<https://sharinghappiness.org/about-us>> (accessed June 7, 2024).

<sup>28</sup> Gojek, "Sedekah Langsung Pakai Gopay," Gopay, 2024, <<https://www.gojek.com/blog/gopay/sedekah-langsung-pakai-go-pay>> (accessed June 7, 2024).

<sup>29</sup> Farokhah Muzayinatun Niswah et al., "Do Indonesian Muslims Have Intention to Participate on Cash Waqf through Fintech?," *ICSGS 2019*, 2020, 97-114.

<sup>30</sup> Mustapahayuddin Bin Abdul Khalim, "Amalan Dalam Pengurusan Pentadbiran Tanah Wakaf Di Negeri Johor" (Universiti Tun Hussein Onn Malaysia, 2018), 72-99.

country to manage *waqf* funds is practicable. This could give benefits such as acquiring information related regulations and policies that can be useful in managing *waqf* in the host country, as well as minimizing barriers and difficulties. Third, Islamic financial institutions could open access to Fintech to help the *nazir* manage and develop the *waqf*. They can also assist the *nazir* in investing the *waqf* funds in *Sharia*-based activities, which can help maintain the perpetuity of the *mawquf*. These practices could be found in WNSM,<sup>31</sup> WMM,<sup>32</sup> and WKM.<sup>33</sup>

Considering the above findings, it is essential to have several clauses in the WCP technical notes on cross-border *waqf* that could encourage the active role of the *waqf* authority and related government agencies in supporting, facilitating, developing, and managing cross-border *waqf* transactions. Collaborating with related private sectors, including financial institutions, to develop cross-border *waqf* in the host country must also be accommodated.

#### 4.2.1.2. Nazir's Professionalism and Integrity

As the property manager or administrator of *awqaf*, *nazir*'s professionalism, integrity, and reputation play a significant role in public trust creation. In international transactions, including cross-border *waqf*, trust is the very fundamental foundation. A *nazir* must maintain its credibility and reputation as a professional religious institution in managing, developing, and utilizing the *waqf* property.<sup>34</sup>

Habib Bugak Al Asyi's *waqf* is a good example of *Nazir*'s professionalism in managing the *waqf*. This *waqf* is regarded as one of the prominent Indonesian cross-

---

<sup>31</sup> Bank Muamalat Malaysia Berhad, "Wakaf Negeri Sembilan Muamalat Report 2018-2021" (Kuala Lumpur, Malaysia, 2023), 1-3.

<sup>32</sup> Bank Muamalat Malaysia Berhad, "Wakaf MAIK Muamalat Report 2018-2021" (Kuala Lumpur, Malaysia, 2023), 1-3.

<sup>33</sup> Bank Muamalat Malaysia Berhad, "Wakaf Kedah Muamalat Report 2021" (Kuala Lumpur, Malaysia, 2023), 1-3.

<sup>34</sup> Hasyeilla Abd Mutalib and Selamah Maamor, "Utilization of Waqf Property: Analyzing an Institutional Mutawalli Challenges in Management Practices," *International Journal of Economics and Financial Issues* 6, no. 7 (2016): 36–41.

border *waqf* and the most significant cross-border *waqf* in Saudi Arabia.<sup>35</sup> In 2015, the *waqf* reached two hundred million Saudi Riyal,<sup>36</sup> or equivalent to 765 Kilograms of gold.<sup>37</sup>

The *waqif* of this *waqf* is Habib Abdurrahman bin Alwi al-Habsyi, which originated from Mecca. Bugak refers to a religious leader in Aceh during the eighteenth century, and Asyi means Aceh. The *waqif* came to Indonesia in 1760 AD, settled in Aceh, and became a confidant of Sultan Alauddin Mahmud Syah I of Aceh Sultanate.<sup>38</sup> After spending years in Aceh, he had dreamed of making a *waqf* in Mecca that could benefit the people of Aceh, who performed the Hajj and studied in the holy land.<sup>39</sup> He gathered the money from the people in Aceh province and his savings and then brought it to Mecca.<sup>40</sup>

In 1223 H (1808 AD), he came back to Mecca,<sup>41</sup> and on the date of 18 Rabiul Akhir 1224 H (1809 AD),<sup>42</sup> he used the money *waqf* to buy land and created the *waqf* in Qusyasyiah area, around Bab Al Fath, between Marwah and the al-Haram Grand Mosque.<sup>43</sup> This is a sample of the conventional model of money *waqf* transport due to the

---

<sup>35</sup> Republika Newspaper, "4.343 Jamaah Haji Aceh Nikmati Manfaat Wakaf Habib Bugak (4,343 Aceh Hajj Pilgrims Enjoy the Benefits of the Habib Bugak Waqf)," 2023, <<https://www.republika.id/posts/42352/4-343-jamaah-haji-aceh-nikmati-manfaat-wakaf-habib-bugak>> (accessed October 28, 2023).

<sup>36</sup> Ruslan Razali, "The Contribution of Waqaf Properties Toward Acehnese Dayah's Educational Empowerment," *At-Ta'fikir* 8, no. 1 (2015): 1–20.

<sup>37</sup> Based on Saudi Gold Price on 26 March 2024.

<sup>38</sup> Dompot Dhuafa, "Kisah Wakaf Habib Bugak Asyi Berusia 200 Tahun Untuk Masyarakat Aceh (The Story of the 200-Year-Old Habib Bugak Asyi Waqf for the People of Aceh)," 2022, <[https://tabungwakaf.com/kisah-habib-bugak-asyi-berwakaf-untuk-masyarakat-aceh/#:~:text=Hasil keuntungan wakaf dapat membiayai,wakaf yang dikelola Baitul Asyi](https://tabungwakaf.com/kisah-habib-bugak-asyi-berwakaf-untuk-masyarakat-aceh/#:~:text=Hasil%20keuntungan%20wakaf%20dapat%20membiayai,wakaf%20yang%20dikelola%20Baitul%20Asyi)> (accessed October 28, 2023).

<sup>39</sup> Indonesian Waqf Board, "Lima Aset Wakaf Megah Warisan Pedagang Aceh Di Arab Saudi (Five Magnificent Waqf Assets Inherited by Acehnese Traders in Saudi Arabia)," 2021, <<https://www.bwi.go.id/7625/2021/12/23/5-aset-wakaf-megah-warisan-pedagang-aceh-di-arab-saudi/>> (accessed October 25, 2023).

<sup>40</sup> Ministry of Religion of the Republic of Indonesia, "Kisah Habib Bugak Kumpulkan Dana Untuk Tanah Wakaf Di Makkah (The Story of Habib Bugak in Collecting Funds for Waqf Land in Makkah)," 2018, <<https://www.kemenag.go.id/nasional/kisah-habib-bugak-kumpulkan-dana-untuk-tanah-wakaf-di-makkah-vdnrjd>> (accessed October 25, 2023).

<sup>41</sup> Agus Triyanta and Mukmin Zakie, "Problematika Pengelolaan Tanah Wakaf: Konsep Klasik Dan Keterbatasan Inovasi Pemanfaatannya Di Indonesia (Problems of Waqf Land Management: Classical Concepts and Limitations of Innovation in Their Use in Indonesia)," *Jurnal Hukum Ius Quia Iustum* 21, no. 4 (2014): 583–606.

<sup>42</sup> Kamaruzzaman Bustamam-Ahmad, "Jak u Arab: Cara Orang Aceh Naik Haji (How Acehnese People Make the Hajj)," in *Penang Story Lecture and Conference: Penang and the Hajj* (IAIN Ar-Raniry, 2013).

<sup>43</sup> Khalida Mutia, Kholis Roisah, and Kabul Supriadhie, "Kapasitas Pemerintah Daerah Dalam Melakukan Hubungan Luar Negeri Menurut Hukum Internasional (Studi Kasus Tindakan Pemerintah Daerah Istimewa Aceh Mengambil Alih Baitul Asyi Di Arab Saudi Tanpa Melalui Hubungan Konsuler RI)," *Diponegoro Law Journal* 5, no. 3 (2016): 1–18.

unavailability of banking services at that time, even before the mass use of the telegraph in the mid-nineteenth century.<sup>44</sup>

In its journey, the Habib Bugak Al Asyi Waqf became a productive *waqf*. It comprises several hotels, various business units in Mecca and around the Grand Mosque, land, and housing for residents of Acehnese descendants in Saudi Arabia.<sup>45</sup> The *waqf* used to be a small *waqf*, but it continued to develop over time and became a large-scale *waqf*.

*Nazir*'s trustworthiness,<sup>46</sup> local regulatory compliance, and professionalism<sup>47</sup> are key factors behind this success. Some examples of the prudential practice in this *waqf* include: (i) The need for the signature of more than one *nazir* member to process the usufruct disbursement;<sup>48</sup> (ii) All activities undertaken by *Nazir*, starting from looking for investors, developers, and hotel management, must be carried out with permission from the Mecca Court of Law.<sup>49</sup>

Currently, the *waqf* consists of several assets, including: (i) Elaf Masyair Hotel, a five-star hotel with a capacity of six hundred and fifty rooms around the Ajiyad Mushafi area, located around two hundred and fifty meters from the Grand Mosque; (ii) Ramada Hotel, a five-star hotel with a capacity of one thousand and eight hundred rooms, around the Ajiyad Mushafi area, located at around three hundred meters from the Grand Mosque; (iii) Habib Bugak Asyi Waqf Hotel in Aziziah which can accommodate seven hundred and fifty Hajj pilgrims, was built on eight hundred square meters of land; (iv) Land and

---

<sup>44</sup> Gloria Calhoun, "Why Wire Mattered: Building US Networked Infrastructures, 1845–1910," *Technology and Culture* 62, no. 1 (2021): 156–184.

<sup>45</sup> Republika Newspaper, "4.343 Jamaah Haji Aceh Nikmati Manfaat Wakaf Habib Bugak (4,343 Aceh Hajj Pilgrims Enjoy the Benefits of the Habib Bugak Waqf)" <<https://www.republika.id/posts/42352/4-343-jamaah-haji-aceh-nikmati-manfaat-wakaf-habib-bugak>> (accessed October 28, 2023).

<sup>46</sup> Haniah Lubis, Nur Hasanah, and Madona Khairunisa, "Influence Wakif's Understanding and Income of Interest in Waqf in PW. Salimah Riau Province," *Al-Kharaj: Journal of Islamic Economic and Business* 5, no. 1 (2023): 85–88.

<sup>47</sup> Zahrul Fatahillah, "Hambatan Nazhir Dalam Mengelola Tanah Wakaf Secara Produktif (Nazir's Obstacles in Managing Waqf Land Productively)," *Al-Ahkam: Jurnal Syariah Dan Peradilan Islam* 3, no. 1 (2023): 13–23.

<sup>48</sup> Ministry of Religion of the Republic of Indonesia, "Belajar Amanah Mengelola Wakaf Dari Nadzir Baitul Asyi (Learning about the Trust in Managing Waqf from Nadzir Baitul Asyi)," 2022, <<https://kemenag.go.id/opini/belajar-amanah-mengelola-wakaf-dari-nadzir-baitul-asyi-yu229c#:~:text=nadzir dalam mengelolanya.,Syeikh Abdul Latief Baltou yang sudah menjadi nadzir wakaf selama,telah berusia 200 tahun lebih>> (accessed October 25, 2023).

<sup>49</sup> Muhammad Yasir Yusuf, Fitriady, and Fahmi M. Nasir, *Pengelolaan Wakaf Untuk Pembangunan Ekonomi Berkelanjutan (Waqf Management for Sustainable Economic Development)*, ed. Hafiizh Maulana (Banda Aceh, Indonesia: Ar-Raniry Press, 2022), 74–77.



buildings covering an area of nine hundred meters in Aziziah which are used as the Habib Bugak Asyi Waqf Office in Mecca; and (v) The building in the Syaikiyah area was purchased in 2017 for six million Saudi Riyal. This building is used as a residence for Saudi Arabian citizens of Acehnese descendants and Acehnese who live in Saudi Arabia for free, with no time limit on their stay.<sup>50</sup> The complete figure of the Habib Bugak Al Asyi Waqf is as follows:

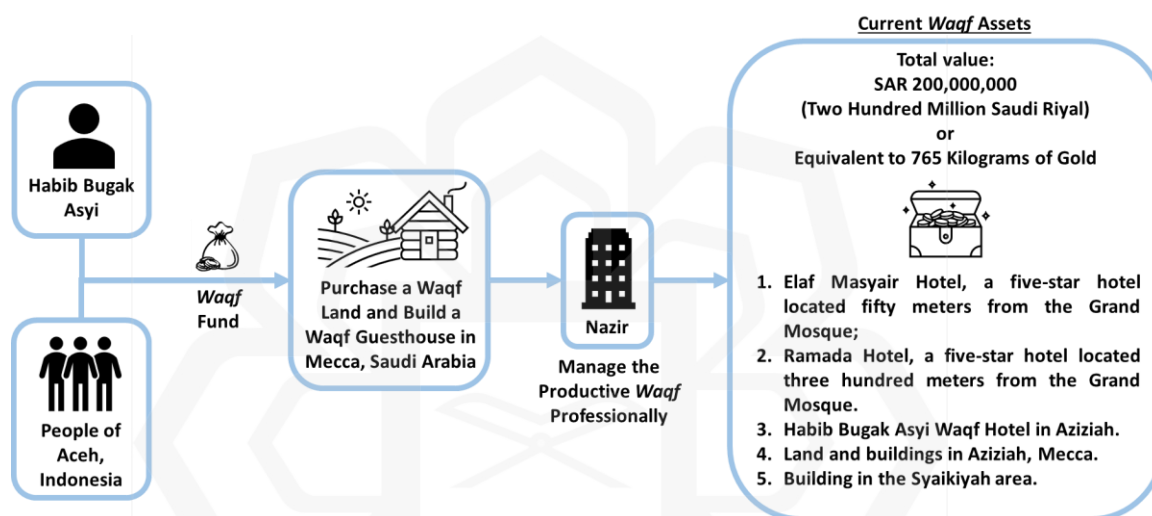


Figure 4.1. *Nazir's Professionalism and Integrity in Habib Bugak Al Asyi Cross-Border Waqf*<sup>51</sup>

The above sample shows how the right *nazir* could raise the quality and quantity of the cross-border *waqf* on a massive scale. Therefore, to fill the gap in the cross-border *waqf* rule in the WCP, it is suggested to add clauses about *nazir's* professionalism and integrity to the WCP's technical notes on cross-border *waqf*.

<sup>50</sup> Indonesian Waqf Board, "Lima Aset Wakaf Megah Warisan Pedagang Aceh Di Arab Saudi (Five Magnificent Waqf Assets Inherited by Acehnese Traders in Saudi Arabia)" <<https://www.bwi.go.id/7625/2021/12/23/5-aset-wakaf-megah-warisan-pedagang-aceh-di-arab-saudi/>> (accessed October 25, 2023)

<sup>51</sup> Analyzed by the Author from several sources about Habib Bugak Al Asyi Cross-Border *Waqf* (Citations in Chapter Four No.35-50).

#### 4.2.1.3. Formation of a Special Managerial Unit for Cross-Border *Waqf*

In the business world, creating a special managerial unit is a recommended option for improving managerial effectiveness. In *waqf* activities, this kind of business unit could focus on a specific type of *waqf* managed by the *nazir*. An example of this pattern could be seen in *waqf tunai* or BMMB. The collaboration program was created in 2012 with several State Islamic Religious Councils (SIRC). Currently, there are five SIRC that have collaborated under this programme, namely the SIRC of Selangor, Negeri Sembilan, Kelantan, Kedah, and Pahang.<sup>52</sup>

In managing the *waqf*, Waqf Muamalat has a specific management team consisting of the secretary of Waqf Muamalat, who is appointed by the BMMB's corporate secretary, and the Joint Secretariat.<sup>53</sup> The Waqf Muamalat management team collects cash *waqf* from the public and corporate,<sup>54</sup> and will be channeled to purchase or finance *waqf* projects under the education, health, and economic empowerment sectors. Some of the *waqf* funds are also invested in *Sharia-compliant* projects for the purpose of raising funds.

---

<sup>52</sup> Bank Muamalat Malaysia Berhad, "The Introduction of Waqf Muamalat," 2023, <<https://www.muamalat.com.my/wakafmuamalat/Pengenalan.html>> (accessed October 17, 2023).

<sup>53</sup> Bank Muamalat Malaysia Berhad, "Objectives and Organization of Waqf Muamalat," 2023, <<https://www.muamalat.com.my/wakafmuamalat/Organisasi.html>> (accessed October 19, 2023).

<sup>54</sup> Bank Muamalat Malaysia Berhad, "The Introduction of Waqf Muamalat" <<https://www.muamalat.com.my/wakafmuamalat/Pengenalan.html>> (accessed October 17, 2023).

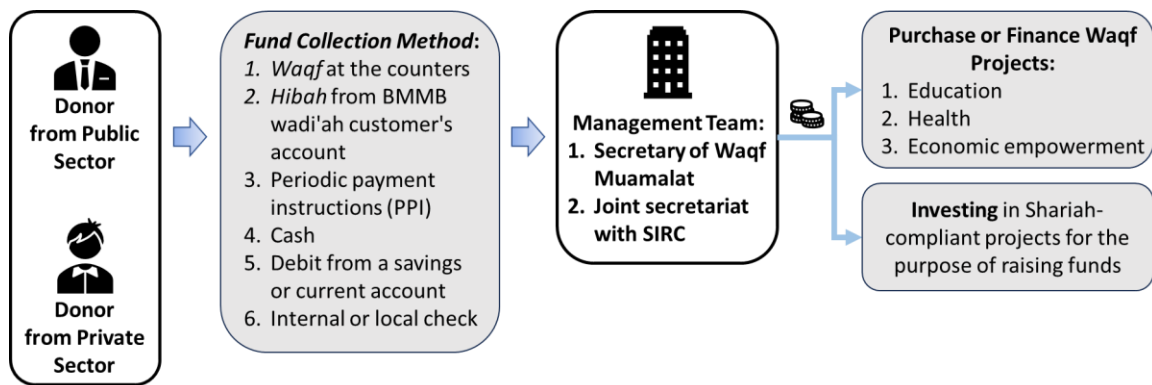


Figure 4.2. *Waqf Tunai* by Bank Muamalat Malaysia Berhad<sup>55</sup>

Another practice can be examined from cross-border *waqf* projects by ACT. The ACT Foundation was an Indonesian non-profit organization that focused on humanitarian work, disaster recovery assistance, community empowerment, as well as spiritual-based programs such as *qurban*, *zakat*, and *waqf*. It was founded as a foundation on 21 April 2005.

The ACT foundation opposed the oppression of minority groups in various countries,<sup>56</sup> and consistently gave support to the Palestinians, such as providing clean water and medical assistance, including the right of independence for the Palestinians, and promises that support from Indonesians will not subside.<sup>57</sup>

In 2018, the ACT foundation established Global *Waqf* as a flagship institution that manages *waqf* objects globally. On a technical level, Global Waqf appointed the Global Wakaf Corporation (GWC), a business entity, to manage all *waqf* assets collected by Global Wakaf productively. The *waqf* assets consisted of cash, fixed assets, and shares.<sup>58</sup>

<sup>55</sup> Source: Analyzed by the Author from Bank Muamalat Berhad Malaysia.

<sup>56</sup> Ruth Meliana Dwi Indriani, "ACT Jadi Trending Topic, Begini Sejarah Dan Visi Misi Aksi Cepat Tanggap (ACT Becomes a Trending Topic, Here's the History and Vision and Mission of Fast Act Response)" <<https://www.suara.com/news/2022/07/04/153927/act-jadi-trending-topic-begini-sejarah-dan-visi-misi-aksi-cepat-tanggap>> (accessed October 20, 2023).

<sup>57</sup> CNN Indonesia Team, "Dukung Palestina, ACT Suplai Bantuan Medis Dan Air Bersih (Supporting Palestine, ACT Supplies Medical Aid and Clean Water)" <<https://www.cnnindonesia.com/internasional/20190329121643-120-381781/dukung-palestina-act-suplai-bantuan-medis-dan-air-bersih>> (accessed October 20, 2023).

<sup>58</sup> Azhari Setiawan, Andhik Beni Saputra, and Herry Wahyudi, "Peran Global Qurban Aksi Cepat Tanggap Indonesia Dalam Menyalurkan Bantuan Kemanusiaan Transnasional (The Role of Global Qurban Aksi Cepat

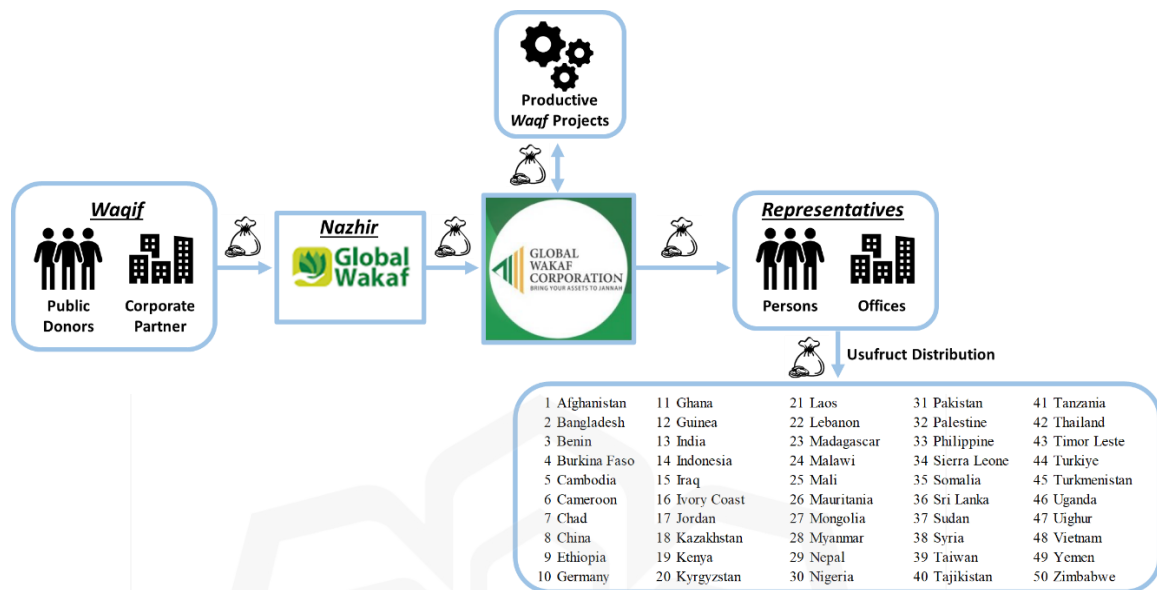


Figure 4.3. The Global *Waqf* by Aksi Cepat Tanggap<sup>59</sup>

Another example of a special management unit under the *nazir* can be seen in the Dompot Dhuafa foundation. Established on 2 July 1993, Dompot Dhuafa once became one of the most prominent foundations in Indonesia. On 14 July 2005, Dompot Dhuafa established a business unit named Tabung Wakaf Indonesia (TWI) to manage its *waqf* projects.<sup>60</sup> The TWI focuses on generating a surplus from the *waqf* assets, which will be submitted to Dompot Dhuafa and distributed to the educational, health, social programs, and economic empowerment sectors in twenty-three countries, including Indonesia.<sup>61</sup>

Tanggap Indonesia in Distributing Transnational Humanitarian Aid),” *JDP (Jurnal Dinamika Pemerintahan)* 3, no. 1 (2020): 42–64.

<sup>59</sup> Source: Analyzed by the Author from several sources related to Aksi Cepat Tanggap Foundation.

<sup>60</sup> Yusuf, Fitriady, and Nasir, *Pengelolaan Wakaf Untuk Pembangunan Ekonomi Berkelanjutan (Waqf Management for Sustainable Economic Development)*, 74–77.

<sup>61</sup> Saad et al., *The Role of Corporate and Public Entities*,.



Figure 4.4. Tabung Wakaf Indonesia by Dompét Dhuafa<sup>62</sup>

Special managerial unit for each *waqf* fund can also be found in *waqf* management practice by the KAPF. Each *waqf* fund is managed by a committee consisting of several well-known individuals who define policies, plans, and programs to achieve the *waqf*'s purpose.<sup>63</sup>

#### 4.2.1.4. Establishment of Representative Office or Strategic Partners Appointment in the Host Country or Surrounding Area

Several risks always associated to international transactions, including cross-border *waqf*. Having a representative office or collaborating with strategic partners in the host country could ease the *nazir*'s effort in managing and developing the *waqf*, given that they are more accustomed to the country's local regulatory and business practices. These benefits have also been confirmed by Badan Amil Zakat Nasional of the Republic of Indonesia, which

<sup>62</sup> Source: Analyzed by the Author from several sources related to Dompét Dhuafa Foundation.

<sup>63</sup> Saad et al., *The Role of Corporate and Public Entities*,.

also collaborates with strategic partners in several countries to distribute the charity, for example, with strategic partners in neighboring countries near Palestine.<sup>64</sup>

Other examples of the urgency of having representatives and strategic partners can be learned from cross-border *waqf* practices from the MATW Project Labuan Foundation, ACT, and Dompét Dhuafa Foundation.

Labuan is a federal territory of Malaysia that provides more conveniences for both domestic and international business activities than other territories in Malaysia. Residents and non-residents of Malaysia are allowed to establish Labuan companies. Companies in Labuan also have tax preferential rate, for example, companies carrying out only Labuan non-trading activity are not charged any tax. They also have access to 74 (seventy-four) Double Taxation Agreements (DTAs) which ensure the elimination of double taxation on income earned from the taxpayer's country of residence and Indonesia.<sup>65</sup>

Another attraction is the convenient location of Labuan within the Asia Pacific region. The ease of doing business is also another supporting factor found in Labuan, which includes: (i) The availability of banking and trade finance services; (ii) A highly developed legal system; (iii) An established business ecosystem including technology, skilled workforce, and resources; (iv) Plenty resource of English and Chinese speakers; (v) Competitive operating costs; (vi) No indirect taxes in Labuan, including sales and services tax, import duties and excise duties; (vii) No foreign exchange controls; and (viii) Labuan companies, including companies licensed under the laws relating to financial services in Labuan, may set up a marketing office anywhere in Malaysia.<sup>66</sup>

The above points are the leading reason for international charity foundations to open branches in Labuan, such as the MATW, a Global Islamic Charity founded by Ali Banat in 2015. Its working area covers thirty countries worldwide. The foundation collects funds

---

<sup>64</sup> Julita Nurmasari, "BAZNAS Cross-Border Charity Partners" (Secretary of the Head of Badan Amil Zakat Nasional, 2023), Interview by Author, Jakarta, 7 December 2023.

<sup>65</sup> Labuan International Financial and Business Centre, "A Guide to Labuan Companies," 2022, <[https://www.labuanibfc.com/clients/asset\\_52E835CC-1342-4701-B6FA-E2CD03AD74B4/contentms/img/publications/brochures/Labuan-IBFC\\_Labuan-Companies-Brochure\\_220418\\_RGB.pdf](https://www.labuanibfc.com/clients/asset_52E835CC-1342-4701-B6FA-E2CD03AD74B4/contentms/img/publications/brochures/Labuan-IBFC_Labuan-Companies-Brochure_220418_RGB.pdf)> (accessed June 2, 2024).

<sup>66</sup> Ibid.

from domestic and international donors and transfers them through representatives or strategic partners in the host countries.<sup>67</sup>

The MATW foundation manages charity projects, including *waqf*, located in the host country with the assistance of strategic partners and representatives. The foundation has several types of strategic partners, including a coordinator, volunteers, local partners, a humanitarian organization, and dedicated facilities. Having representatives or strategic partners helps to understand the host countries' geography, politics, economics, and dynamic circumstances.<sup>68</sup>

The MATW foundation has several cross-border *waqf* or *sadaqah jariyah* projects worldwide, including building mosques, water wells, healthcare facilities, planting trees, orphanages, education facilities, and other projects that provide long-term benefits to communities. Details can be seen in the following table.<sup>69</sup>

Table 4.1. The Muslims Around the World Foundation's Cross-Border *Waqf* Projects<sup>70</sup>

| No       | Project                            | Cost (USD) | Details                                                          |
|----------|------------------------------------|------------|------------------------------------------------------------------|
| <b>I</b> | <b>Water <i>Waqf</i></b>           |            |                                                                  |
| 1        | Africa Basic Water Well            | 735        | A hand pulled well that will provide clean water for 12-21 years |
| 2        | Bangladesh Basic Water Well        | 368        | A hand pulled well that will provide clean water for 12-21 years |
| 3        | Pakistan Basic Water Well          | 368        | A hand pulled well that will provide clean water for 12-21 years |
| 4        | India Basic Water Well             | 368        | A hand pulled well that will provide clean water for 12-21 years |
| 5        | Heavy Duty Africa Basic Water Well | 1,300      | A hand pulled well with depths of 40 meters (120 feet) or more   |

<sup>67</sup> The Muslims Around the World (MATW) Project, "The Muslims Around the World (MATW) Project," 2024, <<https://matwproject.org/>> (accessed April 9, 2024).

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Source: Analyzed by the Author from the MATW (<https://matwproject.org/>).

|                             |                                                                                     |               |                                                                                                                                                                                |
|-----------------------------|-------------------------------------------------------------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6                           | Heavy Duty Hand Pump Water Well in Uganda                                           | 3,675         | Provides clean water for more than 10 years                                                                                                                                    |
| 7                           | L1 Africa Water Well                                                                | 7,350         | Provides clean water for 30-40 years                                                                                                                                           |
| 8                           | L2 Africa Water Well                                                                | 11,025        | Provides clean water for over 40 years with solar/electric power and an above-ground tank                                                                                      |
| 9                           | Pakistan Solar Powered Water Well                                                   | 7,800         | Provides clean water for drinking and irrigating small-scale agricultural projects. The well depth varies by region, around 5 to 60 meters, and it has a lifespan of 30 years. |
| 10                          | Yemen Solar Powered Water Well                                                      | 26,000        | Provides clean water for drinking and irrigating small-scale agricultural projects. The well depth can be over 100 meters with a lifespan of 30 years.                         |
| 11                          | Yemen Water Plant                                                                   | 130,000       | Supply water with a daily production capacity of about 10,000 liters (or 2,642 gallons) with a reverse osmosis (RO) water purification system.                                 |
| <b>II Mosque Waqf</b>       |                                                                                     |               |                                                                                                                                                                                |
| 12                          | Indonesia Masjid <i>Waqf</i>                                                        | 22,050        | A main masjid block and a small mosque                                                                                                                                         |
| 13                          | Yemen Masjid <i>Waqf</i>                                                            | 22,050        | A main masjid block and a small mosque                                                                                                                                         |
| 14                          | Africa Small Masjid in the West African region                                      | 9,750         | A 100 sq. m. masjid with <i>wudu</i> facilities and two bathrooms                                                                                                              |
| 15                          | African Large Masjid in the West African region                                     | 13,000        | A 150 sq. m. masjid with two classrooms for teaching Quran; it also includes <i>wudu</i> facilities and two bathrooms                                                          |
| 16                          | Pakistan Masjid                                                                     | 16,900        | A 100 sq. m. village mosque in rural areas                                                                                                                                     |
| <b>III Educational Waqf</b> |                                                                                     |               |                                                                                                                                                                                |
| 17                          | Togo School Classroom Construction                                                  | 74            | A classroom that can accommodate 25 students                                                                                                                                   |
| <b>III Shelter Waqf</b>     |                                                                                     |               |                                                                                                                                                                                |
| 18                          | Tripoli Orphan Centre Lebanon                                                       | 325,000       | Orphanage                                                                                                                                                                      |
| 19                          | Orphanage Support Program in Togo, Bangladesh, Lebanon, Jordan, Palestine, or Yemen | No limitation | Orphanage houses, orphanage maintenance, and support programs for orphans                                                                                                      |



|           |                                 |               |                                                                                                                              |
|-----------|---------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------|
| 20        | Caravan Shelter                 | 4,045         | A safe, long-term shelter with a 5x3m living space, kitchen sink, and proper toilet, offering protection from the wilderness |
| 21        | Tent for Morocco                | 260           | An emergency shelter in natural disasters-affected areas                                                                     |
| 22        | Heater for Morocco              | 42            | A gas heater for refugees and people who have lost their homes due to natural disasters                                      |
| 23        | Emergency Support for Turkiye   | 74            | Shelter and health essentials                                                                                                |
| 24        | Afghanistan Earthquake Appeal   | No limitation | Shelter, food, water, and medical care                                                                                       |
| 25        | Palestine Appeal                | No limitation | Food, water, medical care, and shelter                                                                                       |
| 26        | Palestine Medical Relief        | No limitation | Urgent medical relief items and hospital support                                                                             |
| <b>IV</b> | <b>Agricultural <i>Waqf</i></b> |               |                                                                                                                              |
| 27        | Olive Farm in Palestine         | 23            | An olive tree, this is a productive <i>waqf</i> that gives a sustainable income                                              |

The ACT foundation, as the second sample, began its organizational expansion in 2012. As a result, it expanded its domestic coverage by establishing thirty provincial offices and one hundred district offices in Indonesia.<sup>71</sup> On a global scale, the ACT foundation developed networks in the form of representative persons and offices abroad. In total, there were representatives in 22 countries located in Southeast Asia, South Asia, Indochina, the Middle East, Africa, and Eastern Europe.<sup>72</sup> In 2018, the ACT foundation humanitarian programs already covered 64 (sixty-four) countries, including Indonesia and Palestine,<sup>73</sup> and had around 500,000 (five hundred thousand) volunteers worldwide.<sup>74</sup> The ACT

<sup>71</sup> Ignacio Geordi Oswaldo, “Sedang Jadi Sorotan, Begini Sejarah Singkat ACT (Currently in the Spotlight, Here’s a Brief History of ACT),” Detik.com Newspaper (Jakarta, Indonesia, July 2022), <<https://finance.detik.com/berita-ekonomi-bisnis/d-6163096/sedang-jadi-sorotan-begini-sejarah-singkat-act>> (accessed June 3, 2024).

<sup>72</sup> Yusuf, Fitriady, and Nasir, *Pengelolaan Wakaf Untuk Pembangunan Ekonomi Berkelanjutan (Waqf Management for Sustainable Economic Development)*, 74-77.

<sup>73</sup> Nurul Alfiatus Sholikhah, “Peran Lembaga Filantropi Untuk Kesejahteraan Masyarakat Global: Studi Kasus Pada Aksi Cepat Tanggap Madiun (The Role of Philanthropic Institutions for Global Community Welfare: Case Study of Madiun Rapid Response Action),” *Journal of Islamic Philanthropy and Disaster (JOIPAD)* 1, no. 1 (2021): 27–42.

<sup>74</sup> Robi Setiawan, “ACT Raih Penghargaan Peradaban Gerakan Indonesia Beradab (GIB) Awards 2018 (ACT Wins the 2018 Civilized Indonesian Movement (GIB) Awards),” Detik.com Newspaper (Jakarta, Indonesia,

foundation's programs for Palestine have the most significant number of external counterparts.<sup>75</sup>

During its operational period, the ACT foundation utilized its representative offices and partners in the host countries to conduct many direct cross-border *waqf* projects. Several well-known *waqf* projects include: (i) In 2012, supported the construction of Indonesia Hospital at Gaza Street, Palestine; (ii) In 2014, sent supplies and a generator to Palestine;<sup>76</sup> (iii) In 2016, constructed six schools in Reyhanle City at the Turkiye-Syria border, constructed a school at Alaiykha Camp to help educate Syrian children, and provided school facilities at Salahuddin Camp in Idlib Province;<sup>77</sup> (iv) In 2017, constructed a groundwater well in Somalia;<sup>78</sup> (v) In 2019, constructed a groundwater well *waqf* in Palestine;<sup>79</sup> (vi) In 2021, conducted an ambulance *waqf* for the Gaza Strip-Palestine, with the support from the city government of Padang, Indonesia;<sup>80</sup> (vii) In 2022, provided several humanity food trucks for Palestine, a vehicle with modern kitchen appliances.<sup>81</sup>

---

August 2018), <<https://news.detik.com/berita/d-4163413/act-raih-penghargaan-peradaban-gib-awards-2018>> (accessed June 3, 2024).

<sup>75</sup> Maulana Irfan, Binahayati Rusyidi, and Zulham Hamidan Lubis, "Analisis Strategi Kemitraan Aksi Cepat Tanggap Terhadap Keberhasilan Program (Analysis of Action Quick Response Partnership Strategy for Program Success)," *Jurnal Kolaborasi Resolusi Konflik* 3, no. 2 (2021): 199–209.

<sup>76</sup> Jatmiko Adhi Ramadhan, "Peggy Melati Sukma Dan Akhwat Bergerak Akan Berangkat Ke Gaza (Peggy Melati Sukma and Akhwat Movement Will Leave for Gaza)," *Merdeka.com* (Jakarta, Indonesia, 2014), <<https://www.merdeka.com/peristiwa/peggy-melati-sukma-dan-akhwat-bergerak-akan-berangkat-ke-gaza.html>> (accessed June 3, 2024).

<sup>77</sup> Rahmadi Rahmadi, Yon Mahmudi, and Muhammad Syauquillah, "The Humanitarian Assistance Role of Aksi Cepat Tanggap (ACT) Toward Victims of Syrian Conflict in Syria and Turkey From 2012 To 2018," in *Proceedings of the 2nd International Conference on Strategic and Global Studies, ICSGS 2018, October 24-26, 2018, Central Jakarta, Indonesia* (Jakarta, Indonesia: Universitas Indonesia, 2019), 6.

<sup>78</sup> Dwi Murdaningsih, "ACT Kirimkan Bantuan Beras Ke Somalia Hingga Palestina (ACT Sends Rice Aid to Somalia and Palestine)," *Republika Online* (Jakarta, Indonesia, 2018), <<https://khazanah.republika.co.id/berita/p2bzzt368/act-kirimkan-bantuan-beras-ke-somalia-hingga-palestina>> (accessed June 3, 2024).

<sup>79</sup> CNN Indonesia Team, "Dukung Palestina, ACT Suplai Bantuan Medis Dan Air Bersih (Supporting Palestine, ACT Supplies Medical Aid and Clean Water)" <<https://www.cnnindonesia.com/internasional/20190329121643-120-381781/dukung-palestina-act-suplai-bantuan-medis-dan-air-bersih>> (accessed October 20, 2023).

<sup>80</sup> Febrian Fachri and Andri Saubani, "Foto-Foto Ambulans Berlogo Kota Padang Di Palestina Viral (Photos of Ambulances Bearing the Logo of the City of Padang in Palestine Go Viral)," *Republika Online* (Jakarta, Indonesia, 2021), <<https://news.republika.co.id/berita/qtal6s409/fotofoto-ambulans-berlogo-kota-padang-di-palestina-viral>> (accessed June 3, 2024).

<sup>81</sup> Sholikhah, "Peran Lembaga Filantropi Untuk Kesejahteraan Masyarakat Global: Studi Kasus Pada Aksi Cepat Tanggap Madiun (The Role of Philanthropic Institutions for Global Community Welfare: Case Study of Madiun Rapid Response Action)": 27-42.



Figure 4.5. Cross-Border *Waqf* by Aksi Cepat Tanggap<sup>82</sup>

Another sample of a successful practice of international strategic partners in cross-border *waqf* can also be found on Dompot Dhuafa foundation as the third sample. In Indonesia, Dompot Dhuafa has 157 (one-hundred and fifty-seven) service zones spread across 31 (thirty-one) provinces. Globally, in conducting cross-border *waqf*, Dompot Dhuafa has 29 (twenty-nine) strategic partners in 22 (twenty-two) countries, including the United States of America (USA), Peru, Suriname, Bosnia, Kenya, Tanzania, Yemen, United Arab Emirates, Uzbekistan, Bangladesh, Myanmar, Thailand, Malaysia, Cambodia, Hong Kong, Taiwan, Timor Leste, Philippines, South Korea, Japan, Australia, and New Zealand. One of the recent cross-border *waqf* projects is the *Waqf* Ambulance Palestine during Israeli aggression in 2023, which was helped by its strategic partner's role located in the surrounding areas.<sup>83</sup> Amidst Israel's invasion of Palestine, Dompot Dhuafa launched an ambulance *waqf* program to replace the previous one that was destroyed by Israel's attack.<sup>84</sup>

<sup>82</sup> Source: Analyzed by the Author from Several Sources Related to Aksi Cepat Tanggap Foundation.

<sup>83</sup> Annisa Silvi Kusumastuti et al., "The Role of Dompot Dhuafa Shelter House in Realizing Sustainable Development Goals (SDGs) in Indonesia," in *Indonesian Conference of Zakat-Proceedings*, 2022, 250–254.

<sup>84</sup> Dompot Dhuafa, "Ambulance Waqf for Palestine by Dompot Dhuafa," Wakaf Dompot Dhuafa, 2023, <<https://digital.dompetdhuafa.org/wakaf/wakafambulanspalestina>> (accessed December 28, 2023).

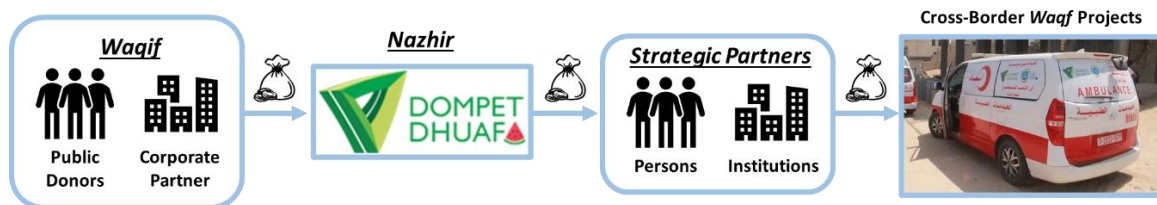


Figure 4.6. Cross-Border *Waqf* by Dompét Dhuafa<sup>85</sup>

In Türkiye, the *Diyanet Vakfı* (The Turkish Religious Foundation) also has domestic and international representatives. The *Diyanet Vakfı* is a prominent public institution in Türkiye that was established on 13 March 1975. The *Diyanet* Foundation has representatives in every province in Türkiye and employs more than one hundred thousand personnel. The main office is in Ankara, and the Directorate General of Foundations supervises its operations. The *Diyanet* Foundation conducts numerous activities domestically and internationally. It has branch offices inside and outside of Türkiye to support its activities. The international branches are not directly linked to the Foundation but are independent organizations established based on the country's regulations in which they are located.<sup>86</sup>

The *Diyanet Vakfı* has been actively conducting cross-border *waqf* activities with support from its branch offices. In 1988, they established the Centre for Islamic Research (ISAM) in Istanbul. Through this body, they began sending students abroad to various prestigious universities worldwide.<sup>87</sup> In 2010, they founded Istanbul 29 Mayıs University. It is a *waqf* university that provides scholarships and accommodation to hundreds of thousands of students, especially from Central Asia, the Caucasus, and the Balkans.<sup>88</sup> The foundation has also constructed mosques and educational buildings in countries outside Türkiye.<sup>89</sup>

<sup>85</sup> Source: Analyzed by the Author from Several Sources Related to Dompét Dhuafa Foundation.

<sup>86</sup> Ömer Turan, "The Turkish Diyanet Foundation," *The Muslim World* 98, no. 2/3 (2008): 370.

<sup>87</sup> Ibid.

<sup>88</sup> The Istanbul 29 Mayıs University, "The Istanbul 29 Mayıs University," Founding Foundation, 2024, <<https://www.29mayis.edu.tr/en/founding-foundation>> (accessed January 6, 2024).

<sup>89</sup> Yakup Çoştu and Feyza Ceyhan Çoştu, "An Investigation on the Turkish Religious Foundation of the UK (Diyanet)," *Turkish Migration, Identity and Integration*, Ed, 2015, 149–157.

The above samples show the supportive roles of representative offices and strategic partners in cross-border *waqf* activities in the host country or surrounding areas. Therefore, to fill the gap in the cross-border *waqf* rule in the WCP, it is suggested that a rule related to the creation of representative offices and strategic partners located in the host country or surrounding areas of the country be added.

#### 4.2.1.5. Implementation of International Rules in the Movement of Cross-Border *Waqf* Assets

The movement of *waqf* assets is considered an international element, which is the foundation of cross-border *waqf* activities. In modern times, the movement of goods between countries is regulated in the INCOTERMS 2020. The implementation of the INCOTERMS is closely related to the cross-border movement of goods. International experts from the ICC state that strict implementation of current international rules is a new and interesting area to be observed.<sup>90</sup>

One of the earliest *waqf* after the independence of the Republic of Indonesia is the *waqf* of the people of Aceh Province to the Government of Indonesia. On 16 June 1948, the Indonesian first president, Soekarno, visited Aceh to gain support for the Indonesian air force in fighting the Dutch. During his visit, he asked the people of Aceh (the donor/*waqif*) to donate their money as a *waqf* to purchase a logistical military airplane-type Dakota DC-3, this purpose was the basis of the *waqf* deed. The total number of donations collected was equal to 20 (twenty) kilograms of gold.<sup>91</sup> The Government of Indonesia (the *waqf* manager/*nazir*) used the *waqf* fund to purchase an airplane (the *waqf* asset/*mawquf*) from the USA. The airplane (the *waqf* asset/*mawquf*) arrived in Indonesia in October 1948 and was named Dakota RI-001 Seulawah.<sup>92</sup> From these facts, undoubtedly this *waqf* is classified

---

<sup>90</sup> International Chamber of Commerce Indonesia, Toto Sutopo, and Meydia, Interview by Author at “International Banking and International Trade Program” (International Chamber of Commerce Indonesia, 2022), 19 May 2022.

<sup>91</sup> Ria Fitri, Muhammad Yamin, and Ilyas Ismail, “The Influence of Post Tsunami Aceh Aid Agencies on the Participation of People in Banda Aceh Toward the Arrangement of Land Tenure and Its Use,” in *International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)* (Atlantis Press, 2020), 250–254.

<sup>92</sup> indonesiadefense.com, “Dakota RI-001 Seulawah Pesawat Angkut Persembahan Rakyat Aceh Untuk Indonesia (Dakota RI-001 Seulawah Airplane Transporting the Acehnese People’s Offerings for Indonesia),” History, 2023, <<https://indonesiadefense.com/dakota-ri-001-seulawah-pesawat-angkut-persembahan-rakyat>

as *waqf* through money because the money was used to buy immovable or movable property as intended by the *waqif* to be managed socially or productively.<sup>93</sup>

The plane's arrival in Indonesia clearly shows the cross-border movement of the *waqf* asset. At that time, the international movement of goods was ruled under the first official version of INCOTERMS 1936.<sup>94</sup> There are no details on how the plane was transported from the USA to Indonesia. However, based on the INCOTERMS 2020 and several rules of aircraft procurement with confidentiality and assembling technology,<sup>95</sup> at least 7 (seven) of 11 (eleven) delivery terms from the INCOTERMS 2020 are applicable to facilitate the cross-border *waqf* of Seulawah Aircraft.

The first possible term is the Ex Works (EXW). In this term, the Indonesian government (buyer/*nazir*) must get the goods or *mawquf* at a specific disposal place and time, which can be at the Seller's premises or another nearby location. The consequences are that the buyer must cover the cost, including *takaful*, and all risks during the transport, including all related documents such as shipping documents and export or import licenses.<sup>96</sup>

In the *waqf* of Seulawah aircraft case, the implementation of EXW term meaning that the Indonesian government (buyer/*nazir*) must send a team to take the aircraft at the seller's warehouse or nearby location in the USA, then fly it to Indonesia. The Indonesian government (buyer/*nazir*) must cover all risks and costs, including processing export licenses in the seller's country and import licenses in the *nazir*'s country.

Aside from the possibility, the Indonesian government (buyer/*nazir*) or their counterparts need a deep technical knowledge about customs process in the USA to apply the EXW term for this *waqf*. Related to this process, another element that needs to be considered is efficiency, which is related on how the Indonesian government gain that

---

aceh-untuk-indonesia/#:~:text=Jakarta%2C IDM – Pesawat Dakota RI,rakyat Aceh pada tahun 1948> (accessed March 8, 2024).

<sup>93</sup> Ika Kameswari, Irfan Syauqi Beik, and Yudha Heryawan Asnawi, "Factors That Influence Waqif Intention on Cash Waqf and Waqf through Money (Case Study Berkahwakaf.Id Indonesian Waqf Board)," *Al-Infah: Jurnal Ekonomi Islam* 14, no. 2 (2023): 231–251.

<sup>94</sup> Michaela Petrová, Martina Krügerová, and Michal Koziel, "INCOTERMS – History and Future Development," in *Proceedings of the 15th International Conference Liberec Economic Forum*, 2021, 589–98.

<sup>95</sup> Istanto Dwiyo Martoyo, "Letter of Credit in the Central Bank of Indonesia" (Department of Banking Services, Licensing and Treasury Operations, 2018).

<sup>96</sup> International Chamber of Commerce, "Live Virtual Workshop INCOTERMS 2020."

knowledge, either through their representatives or using professional services in the US. The figure below illustrates the application of the EXW-term in Seulawah aircraft cross-border *waqf*.

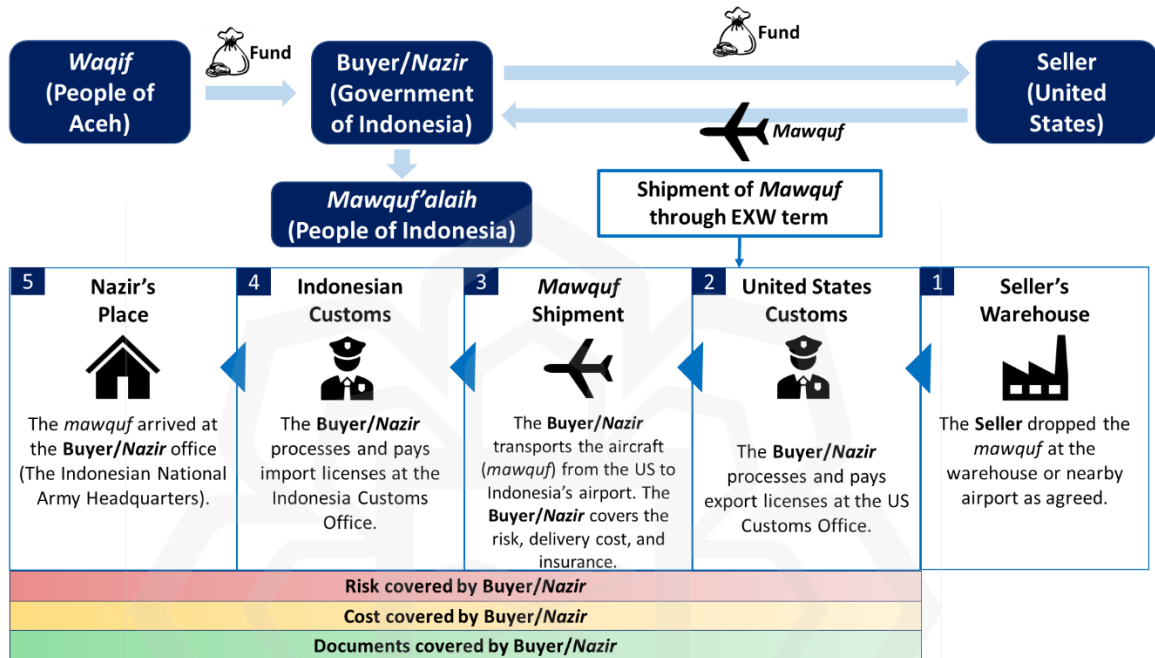


Figure 4.7. Implementation of Ex Works INCOTERMS in the *Waqf* of Seulawah Aircraft<sup>97</sup>

The second applicable term is the Free Carrier (FCA). In this term, the seller must deliver the goods to the first carrier or terminal at the agreed time and place in the seller's country. The seller is also responsible for processing export licenses and related documents, depending on the place of delivery. If the parties choose the first carrier as the place of delivery, the seller will only cover the cost and risks until the goods are loaded into the first carrier. On the other hand, if they choose a specific terminal located in the seller's country as the place of delivery, the seller needs to cover costs and risks until the goods are ready to be unloaded at a specific terminal. The seller will also be responsible for all cost and

<sup>97</sup> Source: Analyzed by the Author from International Chamber of Commerce, International Commercial Terms, and Several Sources Related to *Waqf* of Seulawah Aircraft.



documents up to customs clearance in the seller's country, and the Indonesian government (buyer/*nazir*) will be responsible for the rest until the *mawquf* reaches their place.<sup>98</sup>

In the case of Seulawah aircraft cross-border *waqf*, the most convenient FCA term option is to choose a USA (seller) airport as the place of delivery. In this term, the seller must process export licenses and cover all costs until the *mawquf* is ready to be unloaded at the USA (seller) airport. On the other hand, the Indonesian government (buyer/*nazir*) will need to process import licenses and *takaful* if needed and send a team to fly the aircraft to an Indonesian airport. The figure below illustrates the application of the FCA term in Seulawah aircraft cross-border *waqf*.

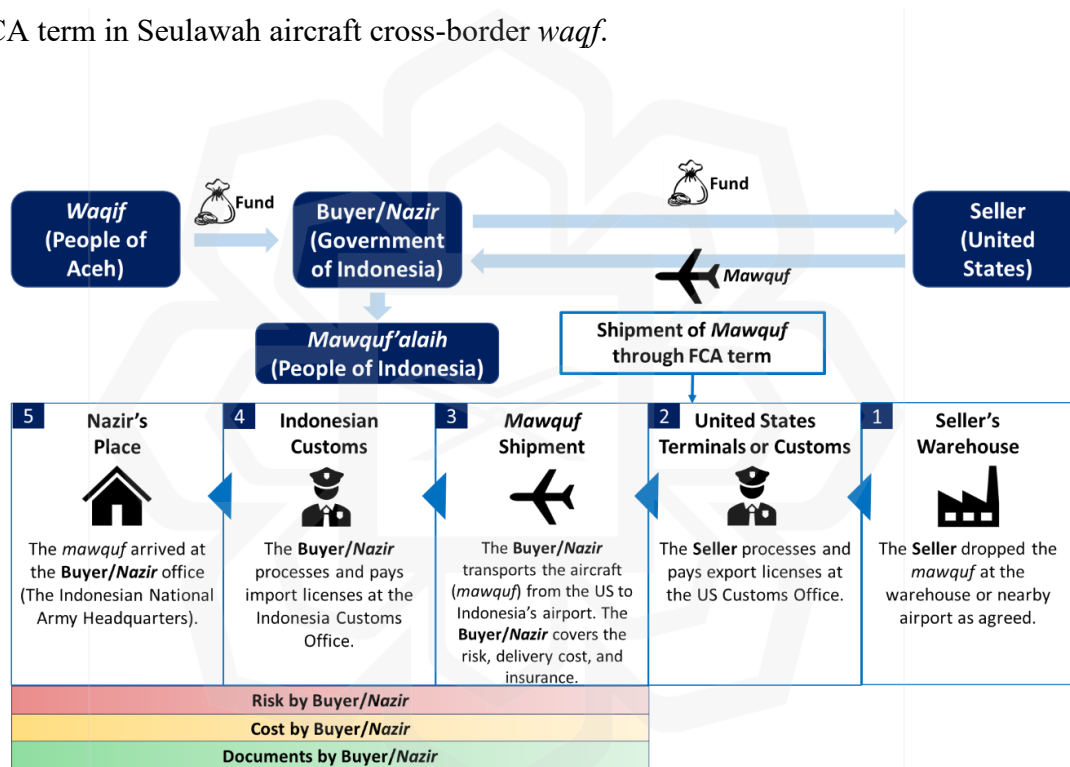


Figure 4.8. Implementation of Free Carrier INCOTERMS in the *Waqf* of Seulawah Aircraft<sup>99</sup>

The third possible term is the Delivered at Place (DAP) term. In this term, the seller must deliver the goods and ready to be unloaded at the place of destination in the buyer's

<sup>98</sup> International Chamber of Commerce, "Live Virtual Workshop INCOTERMS 2020."

<sup>99</sup> Source: Analyzed by the Author from International Chamber of Commerce, International Commercial Terms, and Several Sources Related to *Waqf* of Seulawah Aircraft.



country (Indonesia). Consequently, the seller must cover the risk, delivery, *takaful*, export licenses, and related documents to the place of destination in the buyer's country (Indonesia). The buyer will be responsible for unloading the goods, obtaining import licenses, and covering *takaful* for further transport if needed. The Indonesian government (buyer/*nazir*) is at risk when the goods have been placed at his disposal at agreed place of destination ready for unloading.<sup>100</sup>

In the Seulawah aircraft cross-border *waqf*, the DAP term can be implemented if the parties choose an Indonesian airport as the place of delivery. The seller must cover the risk, delivery, *takaful*, export licenses, and related documents until the aircraft is ready to be handed over at the agreed Indonesian airport. The Indonesian government (buyer/*nazir*), on the other hand, is responsible for the import permit. The figure below illustrates the application of the DAP term in Seulawah aircraft cross-border *waqf*.

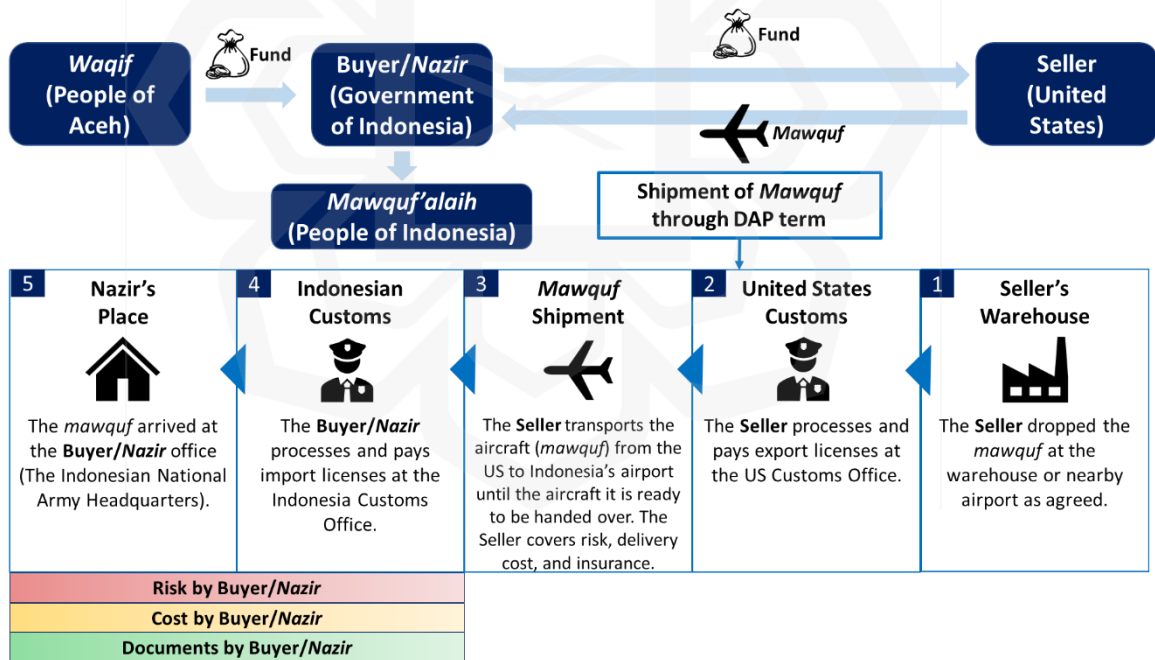


Figure 4.9. Implementation of Delivered at Place INCOTERMS in the *Waqf* of Seulawah Aircraft<sup>101</sup>

<sup>100</sup> International Chamber of Commerce, "Live Virtual Workshop INCOTERMS 2020."

<sup>101</sup> Source: Analyzed by the Author from International Chamber of Commerce, International Commercial Terms, and Several Sources Related to *Waqf* of Seulawah Aircraft.

The fourth possible term is the Delivered at Place Unloaded (DPU) term. In this term, the seller must deliver and unload the goods at the place of destination in the buyer's country (Indonesia). Consequently, the seller must cover the risk, delivery, *takaful* in both countries, export licenses, and related documents to the destination in the buyer's country (Indonesia). The buyer is at risk when the goods have been unloaded at the agreed place of destination.<sup>102</sup>

In the Seulawah aircraft cross-border *waqf*, the DPU term can be implemented if the parties choose an Indonesian airport but not *nazir*'s place as the place of delivery. The seller must cover the risk, delivery, *takaful*, export licenses, and related documents until the aircraft arrives at the Indonesian airport. The Indonesian government (buyer/*nazir*) will be responsible for import licenses and cover any risk, cost, and *takaful* for further aircraft transport from an Indonesian airport to the *nazir*'s place. The figure below illustrates the application of the DPU term in Seulawah aircraft cross-border *waqf*.

---

<sup>102</sup> International Chamber of Commerce, "Live Virtual Workshop INCOTERMS 2020."

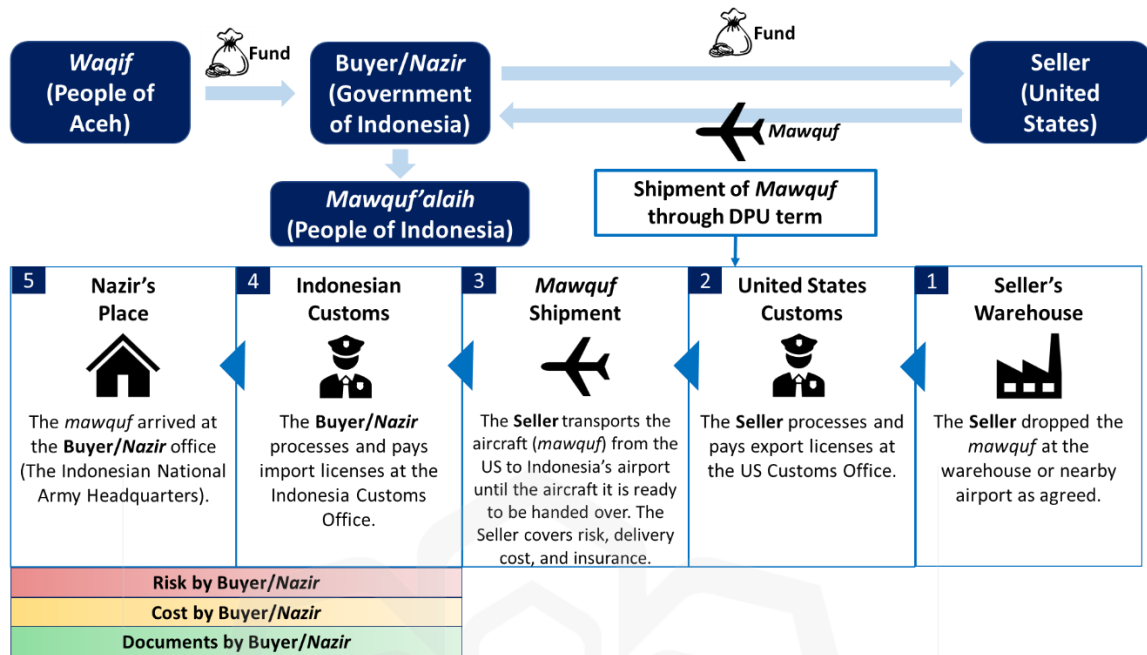


Figure 4.10. Implementation of Delivered at Place Unloaded INCOTERMS in the *Waqf* of Seulawah Aircraft<sup>103</sup>

The fifth and last possible term is the Delivered Duty Paid (DDP). In this term, the seller must conduct the whole transport process of delivering the goods to the Indonesian government (buyer/*nazir*) at the specific destination in the buyer's country (Indonesia). Consequently, the seller must cover all risks, delivery, related documents, *takaful* in both countries, export licenses, import licenses, and duties or taxes. The Indonesian government (buyer/*nazir*) is at risk when the goods have been placed at his disposal at the agreed place of destination and ready for unloading.<sup>104</sup>

In the Seulawah aircraft cross-border *waqf*, the DDP term can be implemented if the parties choose an Indonesian airport or *nazir*'s place as the place of delivery. The seller must cover the whole delivery process, including the risks, licenses, documents, and costs, until the aircraft arrives at the Indonesian airport or *nazir*'s place. The Indonesian government (buyer/*nazir*) will be at risk when the goods have been placed at their disposal,

<sup>103</sup> Source: Analyzed by the Author from International Chamber of Commerce, International Commercial Terms, and Several Sources Related to *Waqf* of Seulawah Aircraft.

<sup>104</sup> International Chamber of Commerce, "Live Virtual Workshop INCOTERMS 2020."

cleared for import, with duties paid, and ready for unloading. The figure below illustrates the application of the DDP term in Seulawah aircraft cross-border *waqf*.

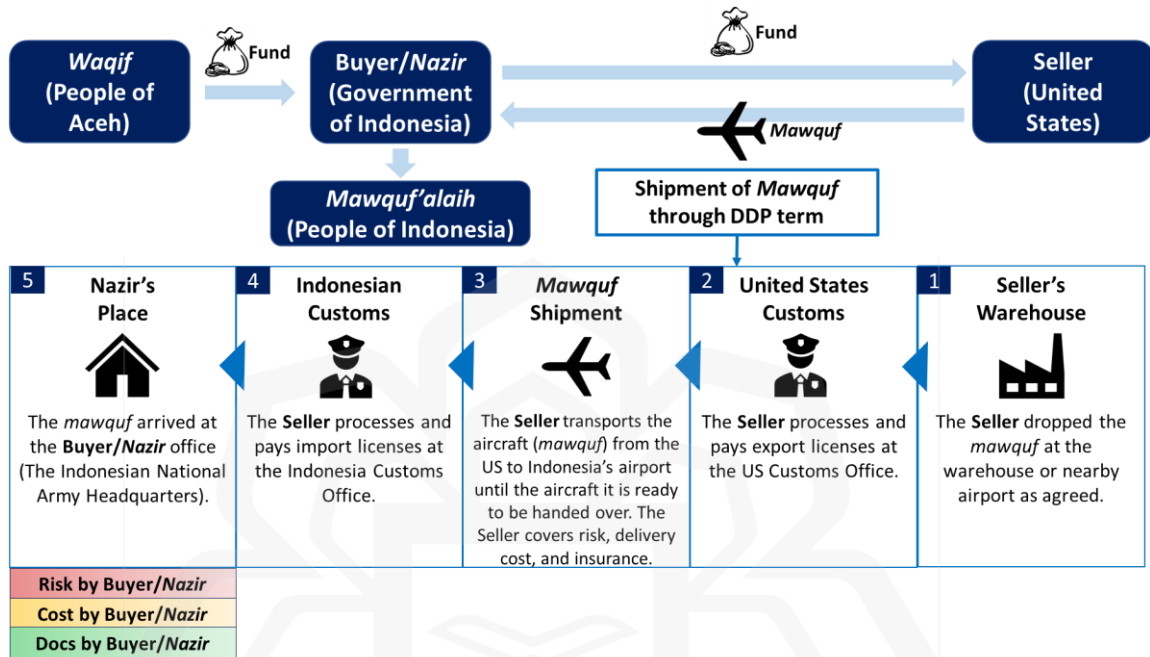


Figure 4.11. Implementation of Delivered Duty Paid INCOTERMS in the *Waqf* of Seulawah Aircraft<sup>105</sup>

Although it may seem simpler for the Indonesian government (*buyer/nazir*) to choose the DDP term, there are several consequences. First, the increase of transport and services costs due to seller's role in the whole delivery process of the *mawquf*. Second, normally the seller does not have adequate knowledge of regulations and procedures to process the import license at the *nazir's* country (Indonesia) which will create another risk. On the other hand, if parties apply the Ex Works-term, the Indonesian government (*buyer/nazir*) can better control the delivery budget, considering that they will handle the whole delivery process. Nevertheless, this option also has risks due to *nazir's* limited

<sup>105</sup> Source: Analyzed by the Author from International Chamber of Commerce, International Commercial Terms, and Several Sources Related to *Waqf* of Seulawah Aircraft.

knowledge of the regulations and procedures to process the export license in the seller's country.

The other three options, the Free Carrier, Delivered at Place, and Delivered at Place Unloaded, are more reasonable due to a fair segregation of duties and risks between the seller and the Indonesian government (buyer/*nazir*). Under these options, the seller will cover export formalities in the USA, and the Indonesian government (buyer/*nazir*) will cover import formalities in Indonesia. The above examination of the cross-border *waqf* of Seulawah aircraft shows the possibility of utilizing international rules as materials in completing the cross-border *waqf* guidance as a technical note of the WCP.

#### 4.2.1.6. Cross-Border *Waqf*'s Role in Creating Social Welfare through Monetary, Macprudential, and Payment System Sectors

Inflation, exchange rate, foreign exchange reserve,<sup>106</sup> and payment system are primary tasks under the central bank's authority that will affect the prosperity of the people.<sup>107</sup> Cross-border *waqf*, to some extent, can be used as a way of controlling the inflation and exchange rate, strengthening the foreign exchange reserve, and utilizing payment system.

First, inflation control. Cross-border *waqf* can be a tool to control the inflation rate by channeling the cross-border *waqf* funds to the productive agricultural sector. In Indonesia, the volatile food price is one of the core inflation sources, and having a productive *waqf* in the agricultural sector will directly impact the volatile food price stabilization.<sup>108</sup>

Investing in the agricultural sector is considered as a high-risk business activity due to price fluctuations and high uncertainty,<sup>109</sup> this condition makes less capital poured into the agricultural sector. The inflow of cross-border *waqf* funds to productive agricultural

---

<sup>106</sup> Richard D Erb, "The Role of Central Bank," *Finance and Development* 56, no. 4 (1989): 11–13.

<sup>107</sup> Omotunde E G Johnson et al., *Payment Systems, Monetary Policy and the Role of the Central Bank, Payment Systems, Monetary Policy and the Role of the Central Bank* (International Monetary Fund, 1998), 35-36.

<sup>108</sup> Alan Ray Farandy, "Analyzing Factors Affecting Indonesian Food Price Inflation," *Jurnal Ekonomi Dan Pembangunan* 28, no. 1 (2020): 65–76.

<sup>109</sup> Tamás Mizik, "Climate-Smart Agriculture on Small-Scale Farms: A Systematic Literature Review," *Agronomy* 11, no. 6 (2021): 1096.

*waqf* projects could be a way to develop the sector, absorb more workers, provide better earnings to the farmers, and, most importantly, with a well-planned commodities selection, could assist in controlling the inflation through price stabilization.<sup>110</sup>

Based on Indonesia's experience, channeling the cross-border *waqf* fund to the agricultural sector is safer if conducted through a government agency, registered institutions, and *nazir*. A simple scheme can be seen from a practice done by the Muhammadiyah branch in Penatarsewu, which channeled the *waqf* fund through a *mukhabarah* contract with farmers.<sup>111</sup> The Dompot Dhuafa Foundation also has a similar productive *waqf* scheme that introduces modern agriculture called the Agricultural Village. As of 9 November 2023, this scheme has successfully managed around ten hectares of land.<sup>112</sup> The flow of these schemes can be seen in the following figure.

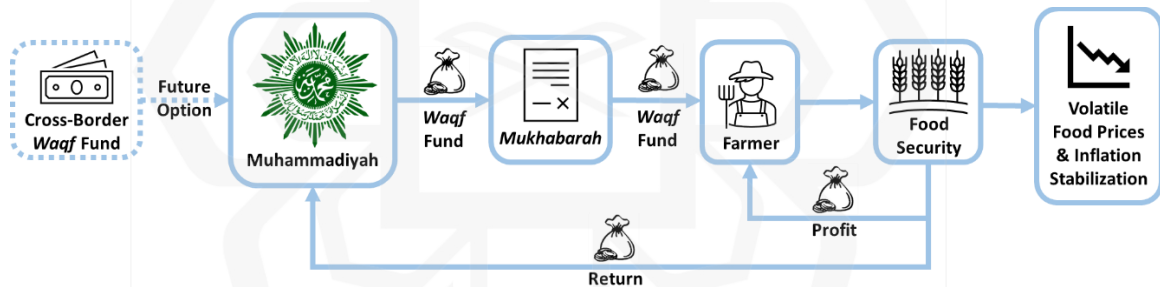


Figure 4.12. Muhammadiyah's Productive Agricultural *Waqf*<sup>113</sup>

<sup>110</sup> Johari Johari, "Empowerment of Cash Waqf in the Agricultural Sector," in *Proceeding of The International Conference on Economics and Business*, vol. 1, 2022, 330–348.

<sup>111</sup> Inayah Rahman and Tika Widiastuti, "Model Pengelolaan Wakaf Produktif Sektor Pertanian Untuk Meningkatkan Kesejahteraan Petani (Studi Kasus Pimpinan Ranting Muhammadiyah Penatarsewu Sidoarjo)," *Jurnal Ekonomi Syariah Teori Dan Terapan* 7, no. 3 (2020): 486–498.

<sup>112</sup> Dompot Dhuafa, "Dompot Dhuafa Invites Donors to Explore Agricultural Village, Introduces Modern Agriculture and Productive Waqf Implementation," 2023, <<https://www.dompetdhuafa.org/en/dompet-dhuafa-invites-donors-to-explore-agricultural-village-introduces-modern-agriculture-and-productive-waqf-implementation/>> (accessed April 16, 2024).

<sup>113</sup> Source: Processed by the Author from Journal "Model Pengelolaan Wakaf Produktif Sektor Pertanian Untuk Meningkatkan Kesejahteraan Petani" by Inayah Rahman and Tika Widiastuti.

A more complex scheme can be learned from the Ministry of Agriculture of the Republic of Indonesia's active participation in the agricultural productive *waqf* through Bank Wakaf Tani or Farmers' Waqf Bank. The Bank Wakaf Tani program uses *waqf* funds from the Ministry of Agriculture and channels them to farmer groups using *mudharabah* contracts.<sup>114</sup> The complete mechanism of Bank Wakaf Tani and its contribution to inflation rate stabilization can be seen in the following figure.

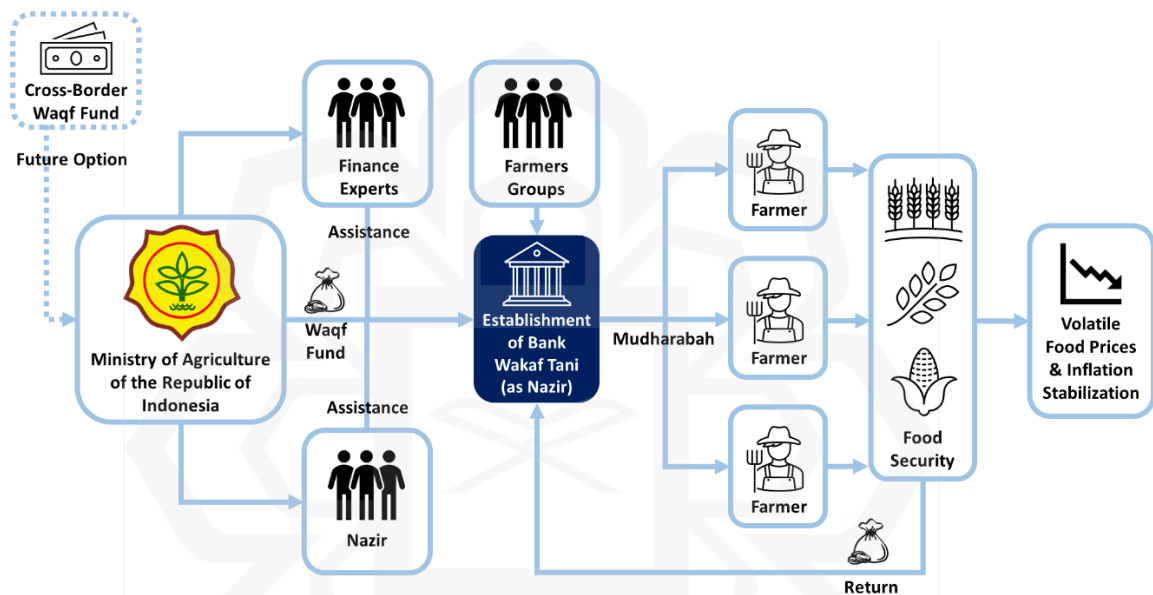


Figure 4.13. Bank Wakaf Tani and Inflation Rate Stabilization<sup>115</sup>

On the distribution part, using the concept of *sadaqah* or charity could enhance the effectiveness of inflation control. This model can be found in the Food Security-Waqf Model (FSWM), which divides produced crops to Baitul Mal and the market. Considering that the nature of crops is unsuitable for *waqf*, a portion of it will be given to the Baitul Mal as *sadaqah*. The Baitul Mal will store the food for stock and distribute it to the *asnaf*. On

<sup>114</sup> Istikomah Istikomah, "Penguatan Sektor Pertanian Melalui Bank Wakaf Tani Berbasis Mudharabah (Strengthening the Agricultural Sector Through Mudharabah-Based Farmers' Waqf Banks)," *TAWAZUN: Journal of Sharia Economic Law* 2, no. 2 (2019): 135–146.

<sup>115</sup> Source: Processed by the Author from Journal "Penguatan Sektor Pertanian Melalui Bank Wakaf Tani Berbasis Mudharabah" by Istikomah.

the other hand, selling crops at the market can be used to gain profit and maintain the *waqf*'s perpetuity.<sup>116</sup>

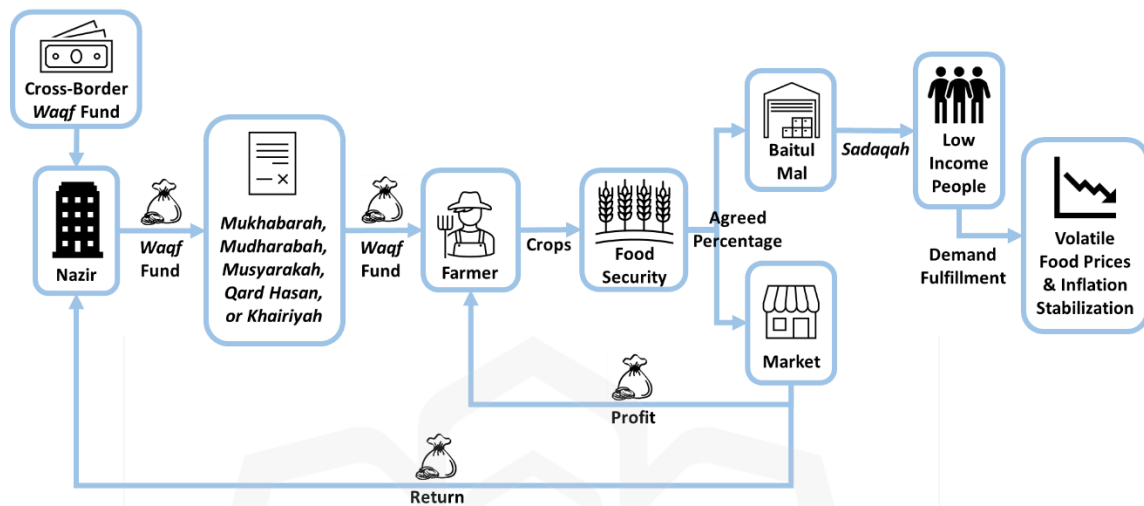


Figure 4.14. Effective Agriculture *Waqf* Distribution for Inflation Rate Stabilization<sup>117</sup>

The above mechanisms strengthen the view that *waqf* is one of the best solutions for food security issues.<sup>118</sup> Channeling cross-border *waqf* funds through government agencies, registered institutions, and *nazir* by utilizing the above mechanisms can be encouraged as a practicable inflation control solution. The type of schemes could also be widened by using not only *mukharabah* or *muzara'ah*<sup>119</sup> (percentage profit sharing from land utilization) and *mudharabah* (trust financing)<sup>120</sup> but also *qard hasan* (interest-free loan), *musyarakah* (business strengthening through partnership), and *khairiyah* (alms and

<sup>116</sup> Mohamad Isa Abd Jalil, "Empowering Food Security Through Waqf," *Labuan E-Journal of Muamalat and Society (LJMS)* 17, no. 1 (2023): 45–67.

<sup>117</sup> Source: Food Security-Waqf Model (FSWM) modified by the Author.

<sup>118</sup> Hdeel Abdelhady, "Islamic Finance as a Strategic Mechanism for Bolstering Food Security in the Middle East," Available at SSRN 2100447, 2011.

<sup>119</sup> Dr Mardani, *Hukum Sistem Ekonomi Islam*, (Jakarta: PT Raja Grafindo Persada, 2015), 223–227.

<sup>120</sup> Jaiyeoba Haruna Babatunde et al., "Financing and Developing the Agricultural Sector Through Cash Waqf: An Analysis of Cash Waqf Using the Mudarabah Approach," *South East Asia Journal of Contemporary Business, Economics and Law* 6, no. 1 (2014): 1560–2289.



grants).<sup>121</sup> The positive effect of volatile food price stabilization<sup>122</sup> will make this scheme a priority for the government, especially for the central bank, and valid to be prioritized to improve the WCP.

Second, strengthening the foreign exchange reserve and exchange rate. Bolstering the foreign exchange reserve and exchange rate are also benefits from cross-border *waqf* activities.<sup>123</sup> These monetary benefits can be achieved through foreign fund inflows in the form of *waqf* assets that will be used as foreign direct investment and exchanged for domestic currency. Another option is to channel the incoming cross-border *waqf* funds to productive *waqf* projects that could generate export-oriented commodities,<sup>124</sup> or domestic projects that generate foreign exchange in the destination country such as advanced healthcare facility,<sup>125</sup> and Muslim friendly or halal tourism.<sup>126</sup> Alternatively, cross-border *waqf* funds could also be invested in infrastructure projects to support export activities.<sup>127</sup> The mechanism of all of these possible options are shown in the figure below.

---

<sup>121</sup> Rifaldi Majid, "Rice Land Sustainability and Agricultural Financing Through Waqf," *Review of Islamic Social Finance and Entrepreneurship*, 2022, 17–35.

<sup>122</sup> Muhammad Dandy Alif Wildana and Syed Musa Syed Jafaar Alhabshi, "Proposed Waqf Framework for Food Security and Price Stabilization Policy of Rice in Indonesia," *Journal of Islamic Finance* 7, no. 2 (2018): 70–85.

<sup>123</sup> Suriani Layali Rahmatun, "Halal Tourism and Foreign Exchange Reserves in Indonesia: Error Correction Model," *Etikonomi* 21, no. 1 (2022): 177–189.

<sup>124</sup> Hendri Tanjung and Agus Windiarto, "Role of Cash Waqf Linked Sukuk in Economic Development and International Trade," *Signifikan: Jurnal Ilmu Ekonomi* 10, no. 2 (2021): 275–290.

<sup>125</sup> Vika Annisa Qurrata et al., "The Implementation and Development of Productive Waqf in Indonesia: Case at Malang Islamic Hospital," *Humanities & Social Sciences Reviews* 7, no. 4 (2019): 533–537.

<sup>126</sup> Layali Rahmatun, "Halal Tourism and Foreign Exchange Reserves in Indonesia: Error Correction Model": 177–189.

<sup>127</sup> Tanjung and Windiarto, "Role of Cash Waqf Linked Sukuk in Economic Development and International Trade": 275–290.

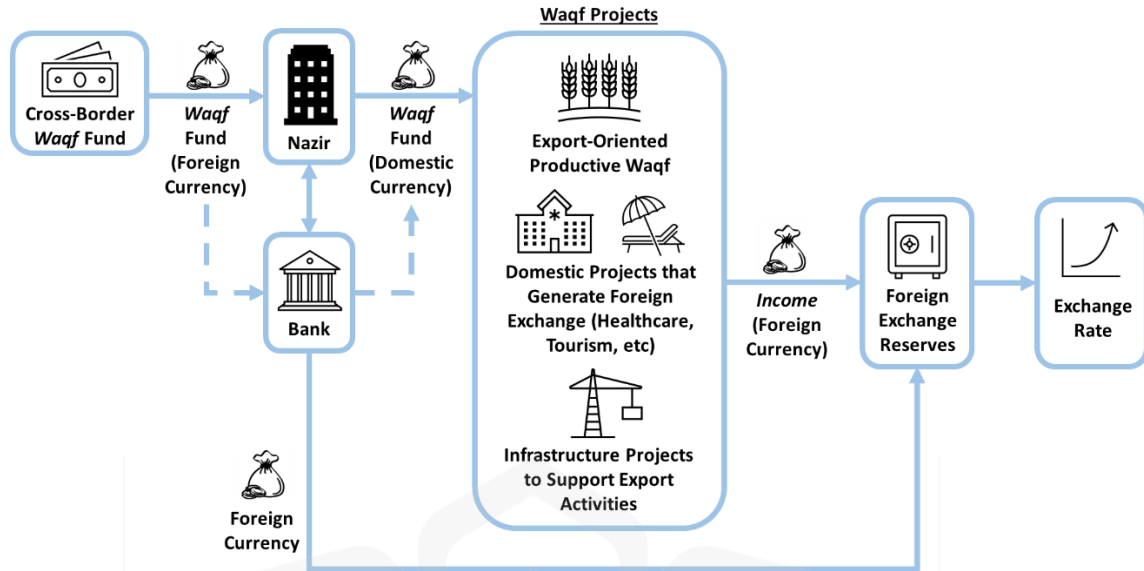


Figure 4.15. Strengthening Foreign Exchange Reserve and Exchange Rate Through Cross-Border *Waqf*<sup>128</sup>

Third, payment system utilization. Payment system is one of fundamental roles of a central bank that encompasses a set of instruments and means in making payments.<sup>129</sup> It is also a tool for cross-border payments.<sup>130</sup> Several payment systems methods practiced in the Islamic banking sector can be used to support *waqf* funds gathering and cross-border movement of *waqf* funds and usufructs.<sup>131</sup> Telegraphic transfers,<sup>132</sup> quick response code,<sup>133</sup> digital payment system,<sup>134</sup> and blockchain,<sup>135</sup> are common examples.

<sup>128</sup> Source: Analyzed by the Author from citations in Chapter Four no.124-126.

<sup>129</sup> Johnson et al., *Paym. Syst. Monet. Policy Role Cent. Bank*, 35-36.

<sup>130</sup> Morten L Bech and Jenny Hancock, "Innovations in Payments," *BIS Quarterly Review*, March, 2020, 21–34.

<sup>131</sup> Sherin Kunhibava et al., "Blockchain Use Case in Islamic Social Finance," *ISRA International Journal of Islamic Finance* 16, no. 1 (2024): 93–110.

<sup>132</sup> Mohammed Abu Hanifa, "Foreign Exchange Operations of Social Islami Bank Ltd." (Brac University, 2021), 33.

<sup>133</sup> Mariatul Qibtiyah, Hadri Hasan, and Muhammad Sibawaihi, "Quick Response Code (QR Code) Assistance In Realizing The Digitalization of Public Services at The Religious Affairs Office of The Pelayanan Sub-District of Jambi City," *AMALA Jurnal Pengabdian Kepada Masyarakat* 2, no. 1 (2023): 114–119.

<sup>134</sup> Nurul Huda, "Waqf Blockchain in Indonesia," *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam* 14, no. 1 (2021): 31–49.

<sup>135</sup> Cory Vidiati et al., "What Blockchain Technology Can Do to Contribute to Waqf," *Al-Afkar, Journal For Islamic Studies*, 2021, 53–71.

The experience in using payment system for Islamic social finance sector, including *waqf*, can be seen in several contemporary *waqf* practices such as *wakaf tunai* or cash *waqf* by YWM and ANGKASA or National Co-Operative Movement of Malaysia (NCOM).

Cash *waqf* by the YWM is carried out in Malaysian Ringgit currency using the *tabarru* principle, and the amount is based on each individual's ability. The funds collected will be invested in eternal assets such as land, buildings, and projects that benefit *mawquf'alah*.<sup>136</sup> In June 2013, YWM used *Sistem Wakaf Tunai Malaysia* (SWTM) since June 2013. The SWTM acts as the *waqf* payment facility through *e-payment*. It facilitates salary auto-deduction for *waqif* or donors who are working in the public and private sectors. The *waqif* or donor can access all *waqf* transactions online.<sup>137</sup> Thus, the payment system is not only for the ease of fund transfer, but also for better transparency.

By the end of 2021, the sum of YWM's *wakaf tunai* had reached RM 6.06 million.<sup>138</sup> In detail, YWM distributed 22 *waqf* projects in 2019,<sup>139</sup> 132 *waqf* projects in 2020,<sup>140</sup> and 57 *waqf* projects in 2021.<sup>141</sup> All of the *waqf* projects between 2019 and 2021 were located in Malaysia.

Cross-border *waqf* activities by YWM can be found in 2018 and 2022. In 2018, from 25 *waqf* projects, there was one *waqf* sent to Indonesia under the project of *Program Projek 5K untuk Persatuan Pelajar-Pelajar Malaysia di Indonesia (PKPMI) – 50 unit Al-Quran*, dated 25 September 2018.<sup>142</sup> While in 2022, YWM distributed 139 *waqf* projects. There was one *waqf* sent to Egypt under the project of *Sumbangan Tunai untuk Bantuan*

---

<sup>136</sup> Surita Hartini Mat Hassan and Dr Mohd Nasir Ayub, "Wakaf Tunai Instrumen Pembangunan Sosioekonomi Ummah Di Malaysia (Cash Waqf an Instrument for the Socioeconomic Development of the Ummah in Malaysia)," *Voice of Academia (VOA)* 11, no. 2 (2016): 22–40.

<sup>137</sup> Yayasan Waqaf Malaysia, "Wakaf Tunai by Yayasan Waqaf Malaysia", <<https://www.ywm.gov.my/kaedah-berwakaf>> (accessed September 20, 2023).

<sup>138</sup> Yayasan Waqaf Malaysia, "Laporan Tahunan 2021 Yayasan Waqaf Malaysia (Annual Report 2021)" (Putrajaya, Malaysia, 2021), 14-149.

<sup>139</sup> Yayasan Waqaf Malaysia, "Laporan Program Agihan 2019 Yayasan Waqaf Malaysia (Distribution Report 2019)" (Putrajaya, Malaysia, 2019), 1-7.

<sup>140</sup> Yayasan Waqaf Malaysia, "Laporan Program Agihan 2020 Yayasan Waqaf Malaysia (Distribution Report 2020)" (Putrajaya, Malaysia, 2020), 1-21.

<sup>141</sup> Yayasan Waqaf Malaysia, "Laporan Program Agihan 2021 Yayasan Waqaf Malaysia (Distribution Report 2021)", 14-17.

<sup>142</sup> Yayasan Waqaf Malaysia, "Laporan Program Agihan 2018 Yayasan Waqaf Malaysia (Distribution Report 2018)", 3-8.

*Kecemasan dan Sumbangan Tunai bagi Membiayai Kos Pengajian at Al Azhar University, dated 23 September 2022.*<sup>143</sup>

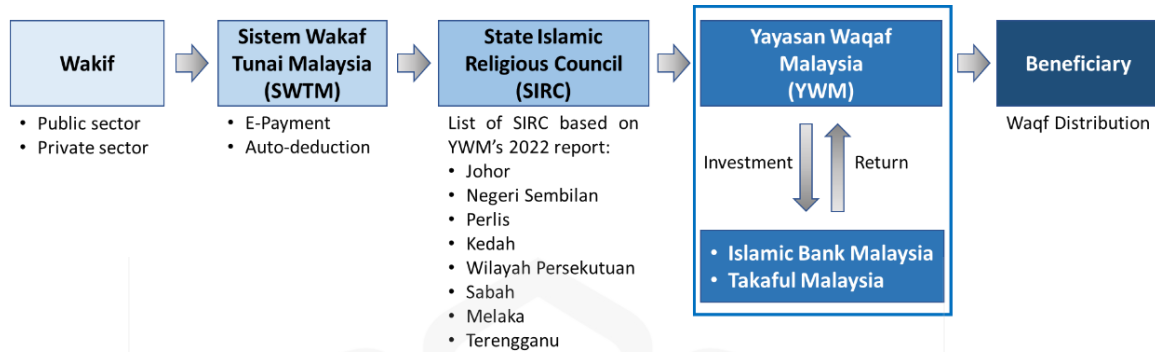


Figure 4.16. Complete Figure of *Sistem Wakaf Tunai Malaysia*<sup>144</sup>

There are several concerns related to the online cash *waqf* scheme. First, it must be supported by a decent online banking system, remembering that the payment method for the *waqf* online is using internet or mobile banking services,<sup>145</sup> including the utilization of QR code.<sup>146</sup> Second, online cash *waqf* will decrease human dependency on the process, but the *nazir* must consider the cost of developing and maintaining the online *waqf* system and banking transaction services, which can be managed through an agreement. Third, it will apply the online *akad* that requires the *waqif* to fill the checkbox as a sign of agreement. Fourth, it must generate a digital certificate for the *waqif*.<sup>147</sup>

<sup>143</sup> Yayasan Waqaf Malaysia, “Laporan Program Agihan 2022 Yayasan Waqaf Malaysia (Distribution Report 2022)”, 6-25.

<sup>144</sup> Source: Analyzed by the Author from Yayasan Waqaf Malaysia.

<sup>145</sup> Fathullah Al Haq Muhamad Asni and Jasni Sulong, “Wakaf Tunai Dan Aplikasinya Dalam Undang-Undang Di Negara ASEAN: Cash Waqf and Its Application in ASEAN Countries’ Laws,” *Jurnal Syariah* 25, no. 2 (2017): 217–246.

<sup>146</sup> Yayasan Waqaf Malaysia, “Laporan Program Agihan 2022 Yayasan Waqaf Malaysia (Distribution Report 2022)”, 6-25.

<sup>147</sup> Mohd Faisal Mohamed Yusof et al., “Cash Waqf and Infaq: A Proposed E-Philanthropy in Malaysia,” *Jurnal Kemanusiaan* 12, no. 1 (2014): 5-8.

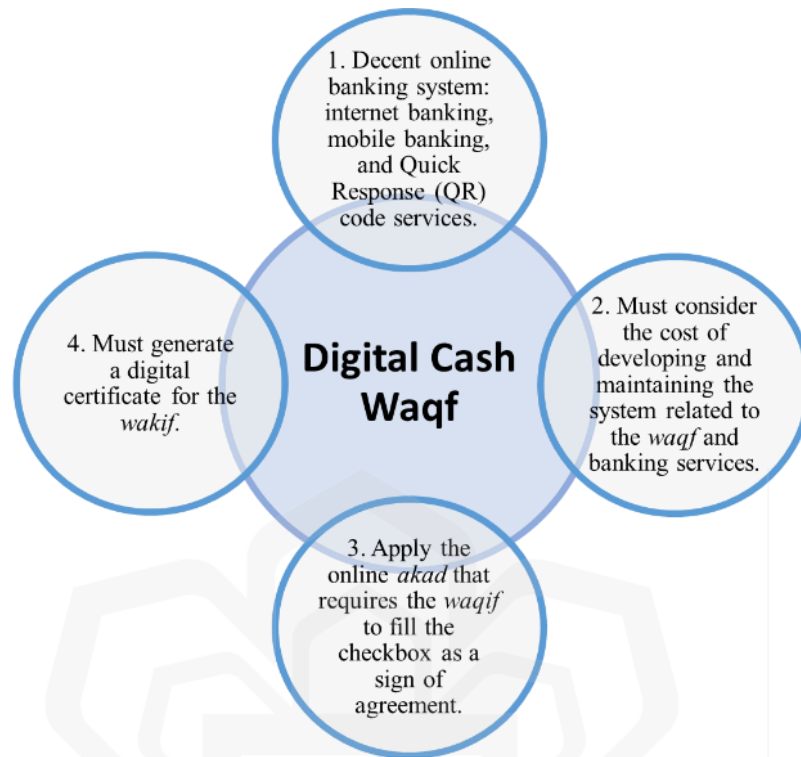


Figure 4.17. Things Need to Be Considered on Digital Cash *Waqf*<sup>148</sup>

Cash use on cross-border *waqf* is a possible option but with several concerns, as mentioned above. The scheme of SWTM, paired with a QR code used by YWM, could benefit the movement of *mawquf* from the *waqif* in the home country to the *nazir* located in the destination country. The use of international QR on cross-border *waqf* will require special cooperation between the payment system authorities of both countries. One example is the interconnected QR code agreement between Bank Indonesia and Bank Negara Malaysia.<sup>149</sup>

Another sample of payment system utilization on *waqf* sector could be taken from ANGKASA or NCOM. ANGKASA is a Malaysian national cooperative union established under the Second Cooperative Congress on 12 May 1971.<sup>150</sup> The main role of ANGKASA

<sup>148</sup> Source: Analyzed by the Author from citations in Chapter Four no.144-146.

<sup>149</sup> Bank Indonesia, "Bank Indonesia Expands International QR Cooperation with Malaysia," No.24/22/DKom, 2022, <[https://www.bi.go.id/id/publikasi/ruang-media/news-release/Pages/sp\\_242222.aspx](https://www.bi.go.id/id/publikasi/ruang-media/news-release/Pages/sp_242222.aspx)> (accessed October 4, 2023).

<sup>150</sup> Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA), "History of ANGKASA" <<https://eng.angkasa.coop/index.php/profile/history-of-angkasa>> (accessed October 13, 2023).

is to create a cooperative movement in developing Malaysia through the participation of both public and private sectors under a long-term program called The National Cooperative Policy.<sup>151</sup>

One of the mechanisms provided by ANGKASA to move *waqf* as an economic initiative strategy is the *Infaq Lil-Waqf*, which was launched on 15 August 2011.<sup>152</sup> It is an endowment plan in the form of cash *waqf* to facilitate the cooperative community and salary deduction customers to make monetary donations based on the *waqf* concept. Donors can donate in installments or lump sums via salary deduction, cheque, bank drafts, or cash.<sup>153</sup> The *Infaq Lil-Waqf* scheme has been providing opportunities for the members to contribute cash, which later will be transformed into the concept of *waqf*.<sup>154</sup>

In order to support the *Infaq Lil-Waqf* scheme, ANGKASA has developed a supporting payment system for salary deductions. However, there are other ways to deliver the cash *waqf*, such as through CIMB Clicks and Facebook donation accounts. Subscriptions through several magazines can also be used to gather the cash *waqf*. Donors will need to fill out a specified form and will get the *waqf* certificate afterward.<sup>155</sup>

Funds collected are channeled through *waqf* projects through conversion to a permanent property that does not conflict with Islamic law to help develop the livelihood of cooperative members and the whole community, such as creating business centers, rest houses, nursing or shelter houses, educational institutions, and dialysis centers.<sup>156</sup>

---

<sup>151</sup> Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA), "National Cooperative Policy by ANGKASA" <<https://eng.angkasa.coop/index.php/profile/national-co-operative-policy-2011-2020>> (accessed October 13, 2023).

<sup>152</sup> Nor Asiah Mohamad, "Promoting Community Based Waqf," *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam* 10, no. Special (2017): 176–185.

<sup>153</sup> Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA), "Infaq Lil-Waqf" <<https://eng.angkasa.coop/index.php/services/infaq-lil-waqf-endowment>> (accessed October 13, 2023).

<sup>154</sup> Anwar Allah Pitchay et al., "The Cost Saving Method: A Proposal of Awaqf Alternative Plan," *Labuan E-Journal of Muamalat and Society (LJMS)* 16 (2022): 49–60.

<sup>155</sup> Mohamad, "Promoting Community Based Waqf": 176-185.

<sup>156</sup> Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA), "Infaq Lil-Waqf" <<https://eng.angkasa.coop/index.php/services/infaq-lil-waqf-endowment>> (accessed October 13, 2023).

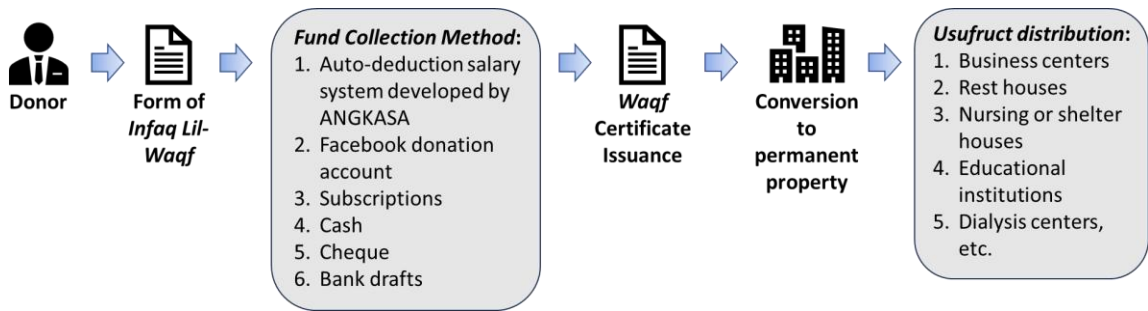


Figure 4.18. *Infaq Lil-Waqf* by Angkatan Kerjasama Kebangsaan Malaysia Flow Chart<sup>157</sup>

Fund collection by using a digital payment system, as practiced by ANGKASA, is very efficient in gathering cash as the *mawquf* in cross-border *waqf*. The digital-based auto-deduction method could also guarantee a sustainable cash *waqf* fund generation. On the other hand, the conversion of a *waqf* fund into a permanent property could also be practiced in cross-border *waqf*. As a *mawquf*, productive property may generate more usufruct for the *waqf* and, if managed professionally, can also expand the *waqf* itself, such as purchasing another productive asset by using the *waqf* income.

The above samples show that payment system utilization could support cross-border *waqf*, starting from the fund gathering, fund transfer, transparency, and usufruct disbursement. It is recommended that payment system utilization, as well as inflation, exchange rate, and foreign reserves control, can be accommodated as the WCP's technical notes on cross-border *waqf*.

#### 4.2.2. Issues and Challenges in Cross-Border *Waqf*

##### 4.2.2.1. Regulatory and Policy Issues

Local regulations can sometimes become a barrier to cross-border *waqf* activities. In Malaysia, regulations on the *waqf* sector are considered restrictive. All *waqf* activities must

<sup>157</sup> Source: Analyzed by the Author from Angkatan Kerjasama Kebangsaan Malaysia.

be conducted under each state's State Islamic Religious Council (SIRC), which limits the freedom to establish a private *waqf* foundation in Malaysia. The role of SIRC as the sole trustee of *waqf* in Malaysia has several consequences. First, all treasury assets must belong to SIRC. Second, all agreements relating to *waqf* must be kept in the SIRC. Third, all applications for *waqf* need to be registered under the name SIRC, including all property transfer procedures where the *waqf* assets are created.<sup>158</sup>

An actual sample related to the first consequences can be learned from Finterra Technologies Sdn Berhad's experience. Finterra is a financial technology company that provides a platform that could bring multiple parties in contact with *nazir* or *waqf* managers. Finterra Technologies Sdn Berhad once had regulatory issues collecting cross-border cash *waqf* due to *waqf* regulation in the source and destination countries. The first issue was that the source country wanted the cash *waqf* funds to remain in its country. The second issue was the SIRC's claim on the cash *waqf* funds as soon as they arrived in the destination country (Malaysia). For example, when Finterra received a cross-border cash *waqf* from other countries to Malaysia, the SIRC claimed it.<sup>159</sup>

Another regulatory issue in Malaysian *waqf* law is the conflict of jurisdiction between *Sharia* and Civil Courts.<sup>160</sup> The conflict is due to the lack of firmness in *waqf* regulations in Malaysia.<sup>161</sup> Malaysia does not have a uniform *waqf* law. Some states have enacted their own Waqf State Enactment while others only rely on their administration of the Islamic Religious Enactment. Even though *waqf* is one of the items on the Federal Constitution's State Lists, many *waqf* disputes have still been brought before the Civil Court, where they have been heard and decided by the Civil Court Judges.<sup>162</sup> This condition leads to the high dependability of the High Court to resolve the *waqf* dispute, not the *Sharia* Court. A further

---

<sup>158</sup> Muhamad Don, Mohd Ali, and Muhamad Rahimi Osman, "The Management of Waqf Universities in Selangor, Malaysia/Mohd. Ali Muhamad Don and Muhamad Rahimi Osman," *Journal of Contemporary Islamic Studies* 6, no. 1 (2020): 45–60.

<sup>159</sup> Hamid Rashid, "Waqf Regulatory Issues Faced by Finterra Technologies Sdn Berhad" (2022), Interviewed by the Author, Gombak, Selangor, 10 August 2022.

<sup>160</sup> Mohamad Isa Abd Jalil, "Issues and Challenges of Waqf Practice in Malaysia: A Review," *Labuan E-Journal of Muamalat And Society (LJMS)* 14 (2020): 80–86.

<sup>161</sup> Zati Ilham Abdul Manaf, "Resolution of Waqf Land Disputes: The Relevance of a Waqf Tribunal in Malaysia," in *Kertas Prosiding, International Conference on Dispute Resolution, Modern Trends in Effective Disputes Resolution, Universiti Islam Antarabangsa Malaysia (UIAM) Pada*, 2017, 9–10.

<sup>162</sup> Roshidah Osman, "Addressing Waqf Disputes In Malaysian Court: Towards A New Arbitration Model," *BiLD Law Journal* 7, no. 4s (2022): 255–258.



consequence is the application of civil law in resolving the *waqf* dispute, not the Islamic law.<sup>163</sup> Several evidence of the *Sharia* and Civil Courts conflict of jurisdiction can be seen in *waqf* disputes which filed to the High Court as follows:

Table 4.2. *Waqf* Lawsuits Resolved by Non-*Sharia* Court<sup>164</sup>

| No. | Name of the Lawsuit                                                                                         | Resolving Court         | Subject Matter   |
|-----|-------------------------------------------------------------------------------------------------------------|-------------------------|------------------|
| 1.  | Dalam Perkara Permohonan Ahmad Yahya; Majlis Agama Islam Negeri Pulau Pinang (intervener) [2016] 1 CLJ 1018 | High Court Pulau Pinang | <i>Waqf</i> Land |
| 2.  | Mohd Ridza bin Abdul Latiff (berniaga sebagai Rimbunan Niaga) v Majlis Agama [2016] MLJU 424                | High Court Johor Bahru  | <i>Waqf</i> Land |
| 3.  | Majlis Agama Islam Negeri Pulau Pinang v Abdul Latiff Bin Hassan & Anor [2015] MLJU 1115                    | High Court Pulau Pinang | <i>Waqf</i> Land |
| 4.  | Ajar Bt Taib & Ors v Majlis Agama Islam dan Adat Istiadat Melayu Perlis [2014] 3 SHLR 40                    | High Court Kangar       | <i>Waqf</i> Land |
| 5.  | Majlis Agama Islam Pulau Pinang v Katijah Yoan & Ors [2010] 4 CLJ 592                                       | High Court Pulau Pinang | <i>Waqf</i> Land |

All of the above *waqf* lawsuit samples filed to non-*Sharia* courts involve the status of the *waqf* land. This indicates two reasons: the need for a proper data gathering system of the *waqf* properties and the uniform and computerized method of *waqf* land registration from the *waqif* to the SIRC.<sup>165</sup>

The above facts show that there is a possibility of any regulation and policy issues that can disrupt a CBW transaction. The issue may be related to the home and host countries' regulations and policies regarding limitations on the *waqf* sector, conflict of

<sup>163</sup> Manaf, "Resolution of Waqf Land Disputes: The Relevance of a Waqf Tribunal in Malaysia", 9-10.

<sup>164</sup> Source: Analyzed by the Author from Zati Ilham Abdul Manaf "Resolution of Waqf Land Disputes: The Relevance of a Waqf Tribunal in Malaysia".

<sup>165</sup> Manaf, "Resolution of Waqf Land Disputes: The Relevance of a Waqf Tribunal in Malaysia", 9-10.

jurisdiction between *Sharia* and non-*Sharia* courts, *waqf* land regulation, and other *waqf*-related matters.

Tax regulation and policy are also another concern in CBW transactions. Given that the applicable tax regulations can impact the management of *waqf* assets.<sup>166</sup> In addition, the variety of tax types and systems in various countries, makes tax regulation and policy as one of the main concerns in CBW. In Indonesia, a property tax exemption is given to an asset if it is used to serve public interests such as a place of worship, social purpose, public healthcare, public education, or national culture and is not intended to gain profit.<sup>167</sup> An income tax exemption is also given to property transfers with underlying social purposes,<sup>168</sup> the same underlying goes for added-value tax.<sup>169</sup> The social purpose is the prerequisite to get property and income tax exemption for a *waqf* asset in Indonesia.<sup>170</sup> However, a provincial government can add another obligatory requirement, such as the *waqf* deed, to obtain tax incentives.<sup>171</sup> Another tax regulatory and policy issue in Indonesia is the lack of uniformity in the application of tax incentives, especially to *waqf* instruments such as Cash Waqf Linked Sukuk (CWLS), which are still subject to government taxation.<sup>172</sup>

In mitigating the regulatory issues, it is recommended that the *nazir* do a preliminary examination on *waqf* regulations in both countries that may become a barrier to cross-border *waqf* activities. On policy issues, mitigation can be done by coordinating with *waqf* authorities, *waqf* experts, and *waqf* practitioners in the host country to obtain essential

---

<sup>166</sup> Dya Wulandari, Arinka Puspita Sari, and Rima Fauziyyah, “Literatur Review: Penerapan Dan Pelaporan Akuntansi Wakaf Pada Badan Wakaf Indonesia (Literature Review: Implementation and Reporting of Waqf Accounting at the Indonesian Waqf Board),” *Journal of Management and Innovation Entrepreneurship (JMIE)* 1, no. 2 (2024): 113–132.

<sup>167</sup> Undang-Undang Republik Indonesia Nomor 12 Tahun 1994 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 1985 Tentang Pajak Bumi Dan Bangunan, article 3(1).

<sup>168</sup> Peraturan Pemerintah Republik Indonesia Nomor 71 Tahun 2008 Tentang Perubahan Ketiga Atas Peraturan Pemerintah Nomor 48 Tahun 1994 Tentang Pembayaran Pajak Penghasilan Atas Penghasilan Dari Pengalihan Hak Atas Tanah Dan/Atau Bangunan, article 5.

<sup>169</sup> Undang-Undang Republik Indonesia Nomor 7 Tahun 1983 Tentang Pajak Penghasilan, article 4(3).

<sup>170</sup> Salwa Alya Fitri et al., “Penghapusan Pajak Pada Aset Wakaf Di Indonesia Menurut Hukum Positif (Elimination of Tax on Waqf Assets in Indonesia According to Positive Law),” *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 6, no. 1 (2023): 53–70.

<sup>171</sup> Peraturan Daerah Provinsi Daerah Khusus Ibu Kota Jakarta Nomor 18 Tahun 2010 Tentang Bea Perolehan Hak Atas Tanah Dan Bangunan, article 3(4).

<sup>172</sup> Waqf Center for Indonesian Development and Studies, “Wakaf Dan Pajak: Potensi Dan Peluangnya Untuk Pengembangan Wakaf Di Indonesia (Waqf and Taxes: Potential and Opportunities for Waqf Development in Indonesia),” News, August 30, 2021, <<https://wacids.or.id/en/2021/08/30/wakaf-dan-pajak-potensi-dan-peluangnya-untuk-pengembangan-wakaf-di-indonesia/>> (accessed October 14, 2023).

information before carrying out the CBW project. The role of WCP in harmonizing domestic and international regulations, laws of the home and host countries, and *Sharia* and civil laws, can be utilized by using these findings as suggestions in WCP technical notes on CBW.

#### 4.2.2.2. Acquisition by Local Authority in the Host Country

Acquisition of a *waqf* by the government, especially a land *waqf*, is one possible challenge that *nazir* must anticipate.<sup>173</sup> The Habib Bugak Waqf, known as Baitul Asyi, one of the prominent *waqf* from Indonesia in Saudi Arabia, once experienced this challenge. Under King Malik Sa'ud bin Abdul Aziz's leadership of the Saudi Arabian government, Baitul Asyi was affected by the expansion of the *tawaf* track around the Grand Mosque. Because of this incident, the Saudi Arabian government provided compensation in cash. The *nazir* utilized the concept of *istibdal* by using the compensation to buy two plots of land 500 (five hundred) meters from the Grand Mosque.<sup>174</sup> On those lands, the hotel was built by entrepreneurs using a profit-sharing system.<sup>175</sup>

---

<sup>173</sup> Rofi Wahanisa, Suhadi Suhadi, and Aprilia Niravita, "Compensation System of Waqf Land Acquired For Developing Public Interest," *Diponegoro Law Review* 7, no. 1 (2022): 70–87.

<sup>174</sup> Dompot Dhuafa, "Kisah Wakaf Habib Bugak Asyi Berusia 200 Tahun Untuk Masyarakat Aceh (The Story of the 200-Year-Old Habib Bugak Asyi Waqf for the People of Aceh)" <[https://tabungwakaf.com/kisah-habib-bugak-asyi-berwakaf-untuk-masyarakat-aceh/#:~:text=Hasil keuntungan wakaf dapat membiayai,wakaf yang dikelola Baitul Asyi](https://tabungwakaf.com/kisah-habib-bugak-asyi-berwakaf-untuk-masyarakat-aceh/#:~:text=Hasil%20keuntungan%20wakaf%20dapat%20membiayai,wakaf%20yang%20dikelola%20Baitul%20Asyi)> (accessed October 28, 2023).

<sup>175</sup> Ministry of Religion of the Republic of Indonesia, "Kisah Habib Bugak Kumpulkan Dana Untuk Tanah Wakaf Di Makkah (The Story of Habib Bugak in Collecting Funds for Waqf Land in Makkah)" <<https://www.kemenag.go.id/nasional/kisah-habib-bugak-kumpulkan-dana-untuk-tanah-wakaf-di-makkah-vdnrjd>> (accessed October 28, 2023).

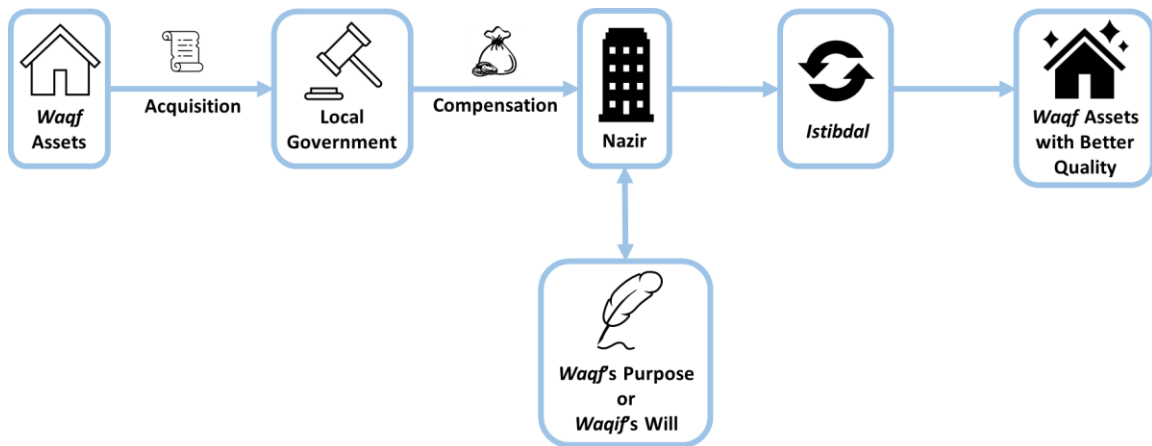


Figure 4.19. *Istibdal* as Countermeasures of Cross-Border *Waqf*'s Assets Acquisition by Local Authority<sup>176</sup>

The above case is a sample of cross-border *waqf* acquisition by a local authority or state in the host country. As explained, in cross-border *waqf*, if the *nazir* faces *waqf* acquisition by the local government in the host country, the *nazir* must seek the best compensation to protect the *waqif*'s will or *waqf*'s purpose. Under such circumstances, *istibdal* must be implemented to acquire equal or better *waqf* assets that can be developed to guarantee the perpetuity of the *waqf*.

#### 4.2.2.3. Terrorism Financing Issue

After the 9/11 tragedy in the USA, terrorism financing has been put into concern in the global financial sector, including in Islamic social finance.<sup>177</sup> An example can be seen from Al Waqf al Islamia Foundation in Albania, Qatari Charitable Foundation in Qatar, Al-Haramain Foundation in Kosovo, Global Relief Foundation in Belgium, The Kuwait Joint

<sup>176</sup> Source: Analyzed by the Author from Several Sources from the Ministry of Religion of the Republic of Indonesia, Dompot Dhuafa Foundation, and related journals.

<sup>177</sup> Suleiman Athuman Chembea, "Between Charity and Financing 'Terror': The Dilemma of Muslim Charitable Organizations in Kenya," *Muslim Faith-Based Organizations and Social Welfare in Africa*, 2020, 143–168.

Relief Committee for Charity in Kuwait, and The Islamic World Committee in Albania, which later proven to play an active role in supporting terrorism acts.<sup>178</sup>

In Indonesia, a precious experience can be learned from the case of ACT foundation ACT, one of Indonesia's most prominent charity organizations. Since its establishment in 2005, the ACT foundation has grown more robust over the years. In 2018, its programs already covered 64 (sixty-four) countries and had around 500,000 (five hundred thousand) volunteers worldwide.<sup>179</sup> In the following year, external parties addressed controversies and frauds against the foundation, which, in the author's opinion, can be countered by internal prudential measures.

In 2019, the ACT foundation was accused of funding the Islamic State of Iraq and Syria (ISIS) and Hiz but-Tahrir in Syria. The foundation denied this accusation, claiming that the funds given to Syria were only given to refugees and other victims. No funds were given to the Syrian government and terrorist organizations.<sup>180</sup> The foundation stated that they faced the same issue in 2017, but the audit result and the government of Indonesia's inclusion in the project countered it.<sup>181</sup>

In 2020, the ACT foundation was accused by Indian security agencies of helping the Falah-e-Insaniyat Foundation (FIF), a Pakistan-based Lashkar-e-Taiba (LeT) terrorist organization. The ACT foundation stated that they were only conducting humanitarian programs and, once more, countered the accusation.<sup>182</sup>

---

<sup>178</sup> Col PhD Eduart Bala, "Financing of Terrorism-Case Study, Albania," *TRAINING AND DOCTRINE COMMAND*, 2012, 122.

<sup>179</sup> Setiawan, "ACT Raih Penghargaan Peradaban Gerakan Indonesia Beradab (GIB) Awards 2018 (ACT Wins the 2018 Civilized Indonesian Movement (GIB) Awards)" <<https://news.detik.com/berita/d-4163413/act-raih-penghargaan-peradaban-gib-awards-2018>> (accessed June 3, 2024).

<sup>180</sup> Francisca Christy Rosana and Martha Warta Silaban, "Dituding Kirim Bantuan Untuk ISIS, ACT Jelaskan Posisi Kerja Sama Dengan Bukalapak (Accused of Sending Aid to ISIS, ACT Explains Its Position on Cooperation with Bukalapak)," *Tempo.co* (Jakarta, Indonesia, 2019), <<https://bisnis.tempo.co/read/1227715/dituding-kirim-bantuan-untuk-isis-act-jelaskan-posisi-kerja-sama-dengan-bukalapak>> (accessed October 14, 2023).

<sup>181</sup> CNN Indonesia Team, "ACT Bantah Terkait Radikalisme (ACT Denies Regarding Radicalism)," *CNN Indonesia*, 2019, <<https://www.cnnindonesia.com/nasional/20190723184459-25-414853/act-bantah-terkait-radikalisme>> (accessed October 4, 2023).

<sup>182</sup> Shishir Gupta, "Security Agencies Flag Indonesia Link to Delhi Riots," *Hindustantimes*, 2020, <<https://www.hindustantimes.com/india-news/security-agencies-flag-indonesia-link-to-delhi-riots/story-ysdToRBSLbjWqp2a0d6u6L.html>> (accessed October 4, 2023).

In 2022, the ACT foundation was accused of committing a massive misuse of donated funds.<sup>183</sup> The report alleged that the foundation leaders received very high salaries and luxury cars.<sup>184</sup> The foundation claimed that external auditors had found no wrongdoing in their organization.<sup>185</sup> Furthermore, the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC) stated that donations given to ACT foundation were not being used for charity purposes but instead being used for businesses owned by foundation leaders.<sup>186</sup> The INTRAC leveled a more serious accusation by stating that one of the recipients of the ACT foundation's fund was affiliated with Al-Qaeda, and the recipient had been arrested in Türkiye,<sup>187</sup> and they also found multiple transactions to countries that have a history of funding terrorism such as Türkiye, Bosnia, Albania, and India.<sup>188</sup> Based on those accusations and investigation conducted by the Indonesian National Police, the Ministry of Social Affairs of Indonesia finally revoked the permit of ACT foundation on 7 July 2022.<sup>189</sup>

Several proven accusations were related to the integrity and professionalism of the ACT foundation's leaders. They misused the *waqf* funds from the public and corporations

---

<sup>183</sup> Dewi Nurita and Febriyan, "Ini Temuan Majalah Tempo Dan Tanggapan ACT Soal Isu Penyelewengan Dana Donasi Hingga Konflik Di Internal (These Are Tempo Magazine's Findings and ACT's Response to the Issue of Misappropriation of Donated Funds and Internal Conflicts)," *Tempo.Co*, July 2022, <<https://nasional.tempo.co/read/1608805/ini-temuan-majalah-tempo-dan-tanggapan-act-soal-isu-penyelewengan-dana-donasi-hingga-konflik-di-internal>> (accessed October 4, 2023).

<sup>184</sup> Romys Binekasri, "Gaji ACT Sempat Rp 250 Juta, Ini Setara Petinggi BUMN (ACT's Salary Was IDR 250 Million, This Is Equivalent to a Top BUMN Official)," *CNBC Indonesia*, July 2022, <<https://www.cnbcindonesia.com/market/20220706092439-17-353305/gaji-act-sempat-rp-250-juta-ini-setara-petinggi-bumn>> (accessed October 4, 2023).

<sup>185</sup> CNN Indonesia Team, "Rincian Gaji Pimpinan Versi ACT (ACT Version Leadership Salary Details)," *CNN Indonesia*, <<https://www.cnnindonesia.com/nasional/20220705152009-20-817526/rincian-gaji-pimpinan-versi-act>> (accessed October 4, 2023).

<sup>186</sup> Anisa Indraini, "3 Fakta Perputaran Duit ACT: Donasi 'Diputar' Dulu Hingga Transfer Ke Luar Negeri (3 Facts about ACT Money Turnover: Donations Are First 'Turned Over' and Transferred Overseas)," *Detik.Com Newspaper*, <<https://finance.detik.com/berita-ekonomi-bisnis/d-6166055/3-fakta-perputaran-duit-act-donasi-diputar-dulu-hingga-transfer-ke-ln>> (accessed October 4, 2023).

<sup>187</sup> M Julnis Firmansyah and Juli Hantoro, "5 Fakta Seputar Pengelolaan Dana ACT Yang Diungkap PPAATK (5 Facts about ACT Fund Management Revealed by the Center for Financial Transaction Reports and Analysis)," *Tempo.Co*, <<https://nasional.tempo.co/read/1609483/5-fakta-seputar-pengelolaan-dana-act-yang-diungkap-ppatk>> (accessed October 4, 2023).

<sup>188</sup> Bachtiar Rojab, "PPATK Temukan Aliran Dana ACT Ke Negara Berisiko Tinggi Terorisme (The Center for Financial Transaction Reports and Analysis Finds Flow of ACT Funds to Countries at High Risk of Terrorism)," *Idxchannel.Com*, <<https://www.idxchannel.com/economics/ppatk-temukan-aliran-dana-act-ke-negara-berisiko-tinggi-terorisme>> (accessed October 4, 2023).

<sup>189</sup> Ilham Safutra, "Izin ACT Dicabut, 60 Rekening Dibekukan (ACT Permit Revoked, 60 Accounts Frozen)," *Jawapos.Com*, <<https://www.jawapos.com/kasuistika/01395584/izin-act-dicabut-60-rekening-dibekukan>> (accessed October 4, 2023).

to gain their own profit.<sup>190</sup> They also took around 30% (thirty percent) from the gathered funds to pay for the ACT foundation's expenses.<sup>191</sup> The Indonesian Center for Financial Transaction Reports and Analysis also confirmed that half of the funds gathered by ACT foundation, amounting to IDR 17 trillion or equal to MYR 5,3 billion, were transferred to a private account.<sup>192</sup>

Based on the above experiences, there are several things could be learned to prevent the same tragedy in cross-border *waqf* management. First, an external audit is important, and it would be better to oblige Nazir to use public accountant services. Second, continuous and active external supervision must be conducted by relevant authorities to supervise every nazir's activities. Third, every change in management structure must be reported to the *waqf* authority.<sup>193</sup> Fourth, a high standard of the KYC implementation to the representative or subsidiary and counterparts in the host countries whether they are involved with illegal activities or not.

#### 4.2.2.4. Changes in Cross-Border *Waqf* Management

Changes in *waqf* management are also a possible challenge that may occur in cross-border *waqf*.<sup>194</sup> This experience can be learned from the Habib Bugak Al Asyri Waqf as one of the renowned cross-border *waqf* in Saudi Arabia, funded by Indonesian

---

<sup>190</sup> Azhar Bagas Ramadhan, "Jadi Tersangka, Presiden-Eks Presiden ACT Terancam 20 Tahun Penjara (As a Suspect, the President and Former President of ACT Face Up to 20 Years in Prison)," *Detik.Com Newspaper*, <<https://news.detik.com/berita/d-6198309/jadi-tersangka-presiden-eks-presiden-act-terancam-20-tahun-penjara>> (accessed October 4, 2023).

<sup>191</sup> CNN Indonesia Team, "Polri: ACT Potong 30 Persen Donasi Untuk Operasional (Indonesian National Police: The ACT Cuts Donations for Operations by 30 Percent)," *CNN Indonesia*, <<https://www.cnnindonesia.com/nasional/20220725190219-12-825977/polri-act-potong-30-persen-donasi-untuk-operasional>> (accessed October 4, 2023).

<sup>192</sup> Diamanty Meiliana, "PPATK: Dana Rp 1,7 Triliun Masuk Ke ACT, 50 Persennya Mengalir Ke Kantong Pribadi (The Indonesian Center for Financial Transaction Reports and Analysis: IDR 1.7 Trillion Funds Go to ACT, 50 Percent Flows to Private Pockets)," *Kompas.Com*, <<https://nasional.kompas.com/read/2022/08/05/15315071/ppatk-dana-rp-17-triliun-masuk-ke-act-50-persennya-mengalir-ke-kantong>> (accessed October 4, 2023).

<sup>193</sup> Tiara Alfarissa et al., "Urgensi Penguatan Pengawasan Eksternal Yayasan Sebagai Bentuk Preventif Atas Penyalahgunaan Dana Yayasan: Studi Kasus Yayasan Aksi Cepat Tanggap (The Urgency of Strengthening External Monitoring as a Preventive of Foundation Funds Misuse: Case Study of Th)," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 5 (2023): 134.

<sup>194</sup> Hidayatul Ihsan, "Waqf Development in Indonesia: Current Landscape and Future Trends," in *Waqf Development and Innovation* (Routledge, 2021), 180–191.

people. Currently, the *waqf* is managed by Nazir Baitul Asyi, a *nazir* appointed by the Kingdom of Saudi Arabia. However, the *waqf* has undergone management transfers at least twice in the past.<sup>195</sup>

The first management transfer of the *waqf* happened during the shift from the Ottoman Empire to the Kingdom of Saudi Arabia. The second management transfer happened in 2006 from Saudi Arabia to the Aceh Provincial Government of Indonesia. In between, the Central Government of the Republic of Indonesia unsuccessfully attempted to retake the *waqf* in 1980. The main consideration behind the failed effort is the deed of Habib Bugak Al Asyi Waqf, which clearly states that the *waqf* is for the people of Aceh.<sup>196</sup>

In 2006, in the name of the people of Aceh, the Provincial Government of Aceh Province tried to retake the management of Habib Bugak Al Asyi *Waqf* through diplomatic means. The main reasons were that the *waqf* should be fully utilized for the people of Aceh as stated in the deed, and the law has given the Provincial Government of Aceh to manage its hajj-related matters.<sup>197</sup>

During the negotiation, Aceh was represented by the Grand Imam of the Baiturrahman Aceh Grand Mosque and the Head of Aceh Province Islamic *Sharia* Service. The result is sealed in a Memorandum of Understanding (MoU) between the Provincial Government of Aceh and the Nazir Baitul Asyi. There are two points of agreement in the MoU: (i) Due to the unavailability of the house of Asyi to accommodate Hajj pilgrims from Aceh, every Hajj pilgrim from Aceh will receive additional funds amounting to 2000 Saudi Riyal as compensation;<sup>198</sup> and (ii) The *waqf* will be managed by a *nazir* institution which members comprise of Acehnese who has a lineage from Habib Bugak.<sup>199</sup>

---

<sup>195</sup> Mutia, Roisah, and Supriadhie, "Kapasitas Pemerintah Daerah,".

<sup>196</sup> Ibid.

<sup>197</sup> Undang-Undang Republik Indonesia No.11 Tahun 2006 Tentang Pemerintah Aceh, article 16(2).

<sup>198</sup> Mutia, Roisah, and Supriadhie, "Kapasitas Pemerintah Daerah,".

<sup>199</sup> Ibid.



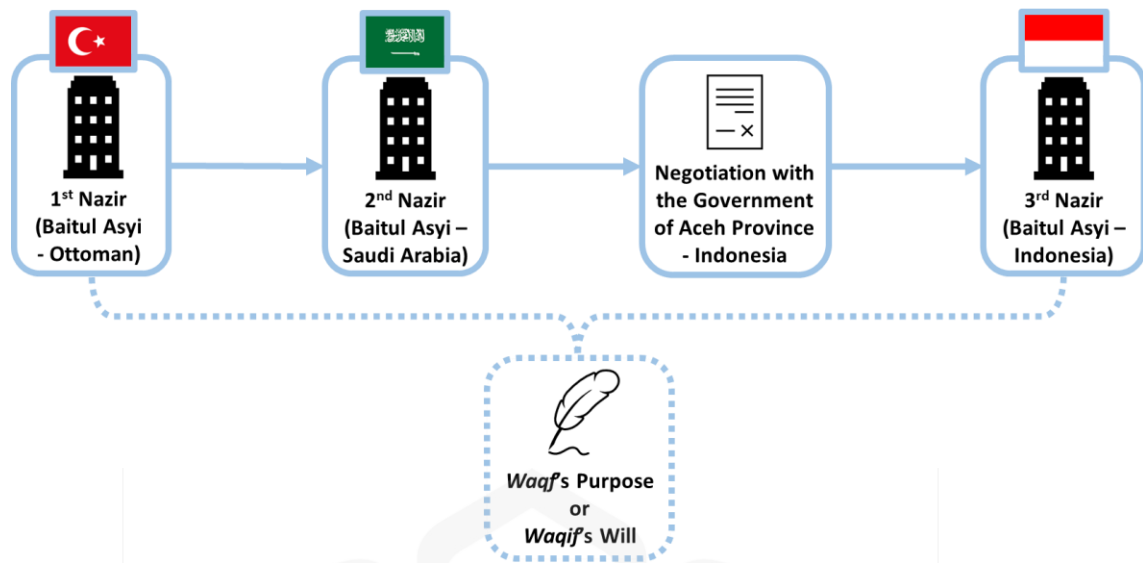


Figure 4.20. Management Changes in The Habib Bugak Al Asyi Cross-Border *Waqf*<sup>200</sup>

As pictured in the above figure, the long journey of Habib Bugak Al Asyi *Waqf* has given us several lessons that could benefit cross-border *waqf* practices. First, *waqf* management transfer to a new *nazir* is allowed in cross-border *waqf* as long as it does not violate the deed, the *waqf*'s purpose, and the *waqif*'s will. Second, the new *nazir* must be trustworthy, prudent, and professional because these are critical factors behind the success in maintaining the perpetuity of the cross-border *waqf*. An example of the prudential practice found in Habib Bugak Al Asyi *Waqf* is the need for the signature of more than one *nazir* member to process the usufruct disbursement. Third, the management transfers must be carried out properly, and if there are several conflicting matters, they must be resolved through negotiation.<sup>201</sup>

#### 4.2.2.5. Barrier on Cross-Border Movement of *Waqf* Assets

As mentioned in the first chapter, international business and financial activities are exposed to barriers. Cross-border *waqf*, as an activity in international Islamic social

<sup>200</sup> Source: Analyzed by the Author from Several Sources from the Ministry of Religion of the Republic of Indonesia, Dompot Dhuafa Foundation, and related journals.

<sup>201</sup> Ibid.

finance, also has similar challenges. The barriers can take various forms,<sup>202</sup> such as government policy<sup>203</sup> and regulation,<sup>204</sup> and natural barriers, such as language.<sup>205</sup>

The ACT foundation can teach us about international barriers to the cross-border movement of *waqf* assets. The foundation faced at least two kinds of obstacles. The first obstacle was related to the barriers created by the host country's government.<sup>206</sup> The second obstacle was related to the limitations of the goods' characteristics, such as size, volume, and endurance.<sup>207</sup>

In 2018, the ACT foundation faced barriers the host country's government created. A limitation placed by the Syrian government in 2018 on humanitarian aid disbursement.<sup>208</sup> The reason behind it was security concern.<sup>209</sup> To deal with this policy, at that time, the foundation had no option but to collaborate with local humanitarian volunteers working in Syria for years. In addition, the foundation has various cooperations with various international humanitarian Non-Governmental Organizations (NGOs) and governmental institutions, such as the Humanitarian Relief Foundation (IHH), the Disaster and Emergency Management Presidency of Turkey (AFAD), Al-barakah Foundation, and Dayanisma Foundation.<sup>210</sup>

The second obstacle the ACT foundation faced was a limitation on the characteristics of the goods, such as size, volume, and endurance. An example was taken from cross-border *waqf* projects and aids to Palestine, where the aggressor put a strict

---

<sup>202</sup> Sugandh Mittal, "International Trade Barriers," *International Journal of Research and Analytical Reviews (IJRAR)* 5, no. 4 (2018): 541–547.

<sup>203</sup> Alberto Osnago, Roberta Piermartini, and Nadia Rocha, "Trade Policy Uncertainty as Barrier to Trade" (WTO Staff Working Paper, 2015), 4-5.

<sup>204</sup> P Sarkar and M Patrick, "India's Trade Barriers: An Analysis with Reference to Tariffs and Customs Procedures," *Centre for Policy Research, New Delhi, India* (New Delhi, India, 2015), 21.

<sup>205</sup> Jing Ma and Yuduo Lu, "Free Trade or Protection: A Literature Review on Trade Barriers," *Research in World Economy* 2, no. 1 (2011): 69.

<sup>206</sup> Rahmadi, Mahmudi, and Syauqillah, "The Humanitarian Assistance Role of Aksi Cepat Tanggap (ACT) Toward Victims of Syrian Conflict in Syria and Turkey From 2012 To 2018", 6.

<sup>207</sup> Ibid.

<sup>208</sup> Ayman Aldassouky and Sinan Hatahet, "The Role of Philanthropy in the Syrian War: Regime-Sponsored NGOs and Armed Group Charities" (San Domenico di Fiesole, Italy: European University Institute, 2020), 2-4.

<sup>209</sup> José Ciro Martínez and Brent Eng, "The Unintended Consequences of Emergency Food Aid: Neutrality, Sovereignty and Politics in the Syrian Civil War, 2012–15," *International Affairs* 92, no. 1 (2016): 153–173.

<sup>210</sup> Rahmadi, Mahmudi, and Syauqillah, "The Humanitarian Assistance,".

screening on every good before entering Palestinian territory.<sup>211</sup> To overcome this condition and deliver the goods safely and in perfect condition, the foundation collaborated with a trusted sea freight company and established a logistic and warehousing centre close to the project location.<sup>212</sup>

Learning from the above experience, as the *nazir*, the ACT foundation has an obligation to deliver cross-border *waqf* assets and usufructs safely to the host country. Using a trusted sea freight company for cross-border shipping, establishing a logistic and warehousing centre near the project location, and collaborating with local partners in the host country have proven to ease the whole process.<sup>213</sup>

#### 4.4. CONCLUSION

Cross-border *waqf* is a complex activity that includes Islamic social finance aspects and international elements. As international *waqf* rules, the WCP have yet to fully protect cross-border *waqf* activities. This is shown by seven legal gaps formulated in the first chapter of this research.

In seeking the best solution to fill those regulation gaps, this chapter has examined cross-border *waqf*-related practices in Indonesia, Malaysia, and other countries. Samples and data were collected from at least fifteen prominent cross-border *waqf* practices worldwide. The findings are divided into two groups: the essential elements of cross-border *waqf* and issues in cross-border *waqf* activities.

The essential elements taken from current cross-border *waqf* practices have been proven to play a significant role in cross-border *waqf* activities and the prosperity of the people. First, collaboration with the public and private sectors in the host country is essential in developing the cross-border *waqf* volume, acquiring helpful information on regulations and policies, minimizing barriers, and gaining access to and benefits from

---

<sup>211</sup> Beverley Milton-Edwards, "Securitizing Charity: The Case of Palestinian Zakat Committees," *Global Change, Peace & Security* 29, no. 2 (2017): 161–177.

<sup>212</sup> Rahmadi, Mahmudi, and Syauqillah, "The Humanitarian Assistance,".

<sup>213</sup> Khori Ainul Yakin, "SINERGI Foundation 'Palestine Aid'", Interview by Author, Jakarta, 2 November 2024.

Fintech, such as better security, transparency, and efficiency to the overall process of *waqf* management and development.

The second essential element is *nazir*'s professionalism and integrity, because these could raise the quality and quantity of cross-border *waqf* assets and usufructs on a massive scale. Third, a special managerial unit for cross-border *waqf* is also recommended for better and prudent *waqf* management. Fourth, establishing a representative office or strategic partner appointment in the host country or surrounding area has proven to support cross-border *waqf* activities. Fifth, implementing international rules can smoothen the movement of cross-border *waqf* assets and usufructs. Sixth, cross-border *waqf* can also create social welfare through monetary, macroprudential, and payment system sectors.

The next findings are issues and challenges in cross-border *waqf* that the *nazir* must anticipate and mitigate. Regulatory and policy issues are the biggest concern because they cover various matters such as registration, acknowledgment, takeover, permits, conflict of jurisdiction in resolving *waqf* disputes, and taxes. In overcoming the regulatory issues, it is recommended that the *nazir* do a preliminary examination on *waqf* regulations that may become a barrier to cross-border *waqf* activities in the home and host countries. On policy issues, mitigation can be done by conducting initial coordination with *waqf* authorities, *waqf* experts, and *waqf* practitioners in the host country to obtain input on the cross-border *waqf* project to be carried out.

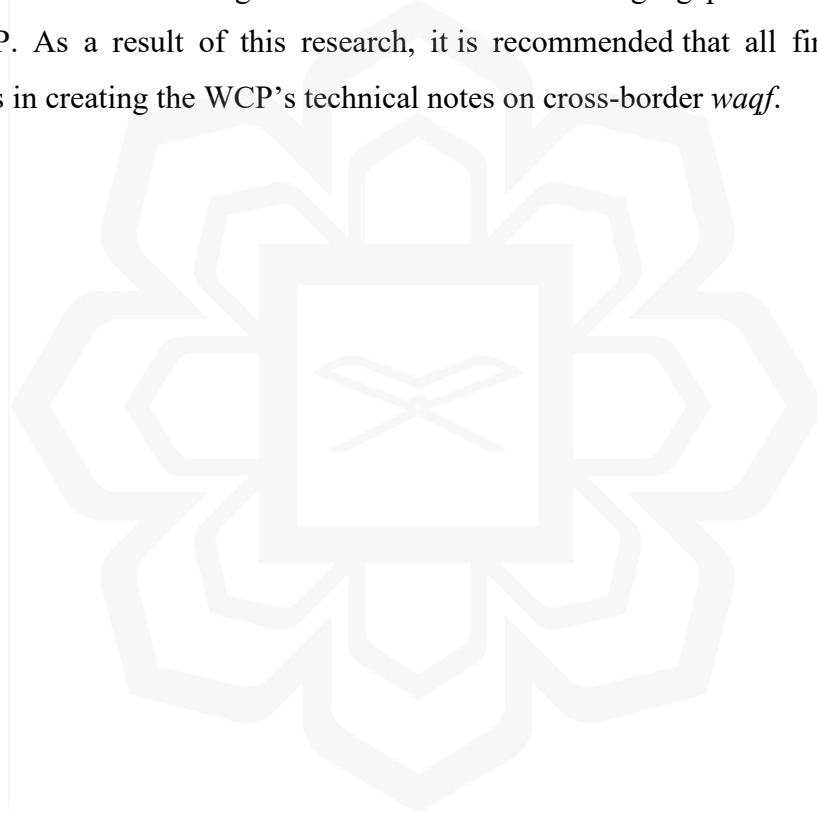
The risk of acquisition by the local authority in the host country must be followed by *nazir*'s action to seek the best compensation followed by *istibdal* implementation. Terrorism financing is also a serious matter which may lead to the dissolution or permit revocation of the *nazir*. This issue can be mitigated by strict internal management control, audits conducted by external auditors and relevant authorities, and implementing a high standard of KYC for the representative or subsidiary and counterparts in the host countries.

Another issue is changes in cross-border *waqf* management, which are permissible as long as they do not violate the deed, the *waqf*'s purpose, and the *waqif*'s will. In this situation, it must be guaranteed that the new *nazir* must be trustworthy, prudent, and

professional. The management transfers must be carried out properly, and if there are several conflicting matters, they must be resolved through negotiation.

Barriers to the cross-border movement of *waqf* assets were also found, such as barriers created by the host country's government and limitations of the goods' characteristics. These barriers can be overcome by using a trusted freight forwarders company for cross-border shipping,<sup>214</sup> establishing a logistic and warehousing center near the project location and collaborating with local partners in the host country.

All the above findings can be utilized to close the legal gaps on cross-border *waqf* in the WCP. As a result of this research, it is recommended that all findings be used as materials in creating the WCP's technical notes on cross-border *waqf*.



---

<sup>214</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

## CHAPTER FIVE

### ANALYZING AND DEVELOPING INTERNATIONAL RULES OF CROSS-BORDER *WAQF*

#### 5.1. INTRODUCTION

As mentioned in the first chapter of this research, the final objective of this research is to formulate a set of amendment points and detailed clauses regarding cross-border *waqf* to improve the quality of WCP. The amendment points and clauses will be structured as technical notes of the WCP and must answer the seven legal gaps formulated from the examination of the WCP, Indonesian *waqf* laws, and Indonesian *waqf* regulations.

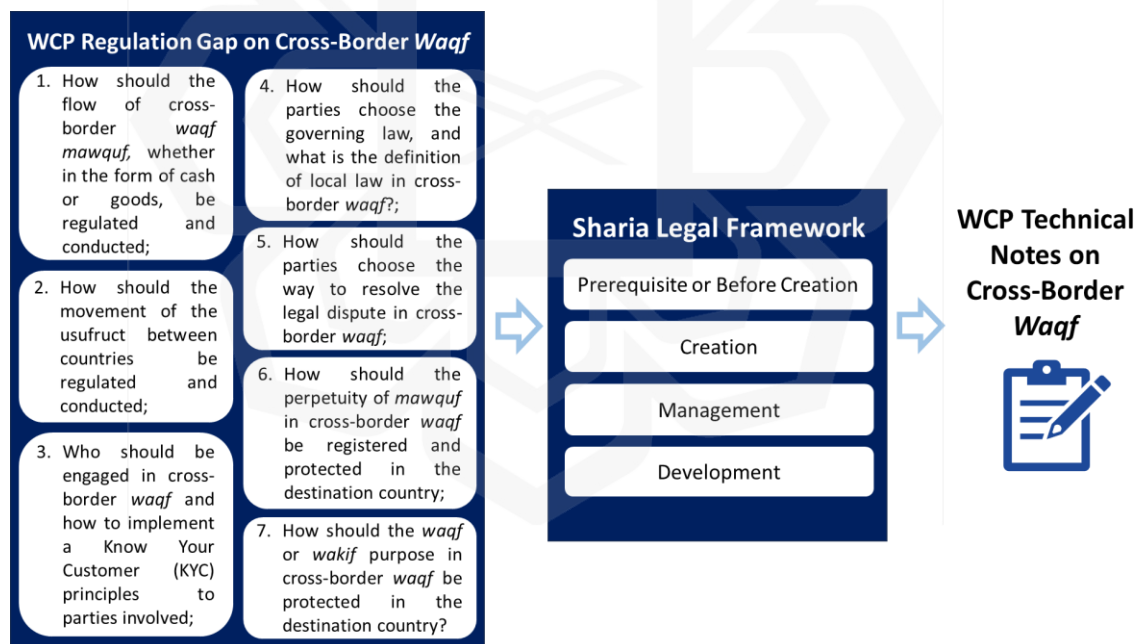


Figure 5.1. Legal Gaps and Legal Framework as the Foundation for the Development of the WCP Technical Notes on Cross-Border *Waqf*<sup>1</sup>

<sup>1</sup> Source: Analyzed by the Author from WCP, several sources related to cross-border *waqf*, and chapter 1-4 of this research.

The figure above illustrates the process of developing the WCP technical notes on cross-border *waqf*, which are the study's final outcome. Starting with an effort to find solutions for the seven legal gaps by examining 52 (fifty-two) Indonesian *waqf*-related regulations, 31 (thirty-one) Malaysian *waqf*-related regulations, 15 (fifteen) international laws, 8 (eight) international rules, and 36 (thirty-six) practices from various institutions around the world. The answers obtained from the aforementioned sources are then assessed and organized to address each of the seven legal gaps, as described in the first section of this chapter.

The second part of this chapter addresses the formulation of a practical international rule regarding cross-border *waqf*. The information collected and analyzed from the first part of this chapter is processed using the sharia legal framework discussed in the third chapter. The sharia legal framework classifies the activity chain of cross-border *waqf* into four distinct stages: the pre-creation stage, the creation stage, the management stage, and the development stage. It aligns the position of each element of the sharia legal framework with the corresponding stage of cross-border *waqf* activity. Current WCP technical notes template is also taken as reference in determining the structure and content of the second part of the fifth chapter. This leads to a strategically organized framework for the WCP technical notes on cross-border *waqf*.

## **5.2. ANALYZING COUNTERMEASURES FOR LEGAL GAPS ON CROSS-BORDER *WAQF* IN THE *WAQF* CORE PRINCIPLES**

### **5.2.1. Cross-Border Movement of *Mawquf***

Regulating and determining the best mechanism of transferring the *mawquf* or usufruct is the first legal gap that must be overcome. Classifying the type of *mawquf* is the first thing to be done, whether it is a movable, immovable, tangible, and intangible object.<sup>2</sup> Movable

---

<sup>2</sup> As seen in article 16(1) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 2 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning

object can be cash or money, precious metals, securities, shares, Islamic bonds, vehicles, intellectual property rights, lease rights (*ijarah*), and other movable objects allowed by Islamic and positive laws both in home and host country.<sup>3</sup> Immovable objects include any right of land, property, plant, object adjacent to the ground, and other immovable objects allowed by the Islamic and positive laws both in home and host country.<sup>4</sup> Tangible objects include agricultural products, and several objects included in movable and immovable objects. Intangible objects include intellectual property rights, other rights, interests, titles, claims, benefits, expertise, and services.<sup>5</sup>

The second thing to do is to determine the best mechanism of transferring tangible *mawquf* for example, manufacturing equipment, and intangible *mawquf* such as expertise, share, and intellectual property. This matter is vital to guarantee the delivery of the *mawquf* to the host country in the best condition. The reason is that each type of *mawquf* has a different transfer or shipping method and risks. If the *mawquf* is in the form of money or cash, it should be transferred to an authorized or legally registered financial institution in the host country.<sup>6</sup> But if the *mawquf* is in the form of tangible goods, the transferring

---

Procedures for Waqf of Immovable and Movable Objects other than Money. The same in article 215(4) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>3</sup> As seen in article 16(3) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 19 and 21 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 9 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money. The same in article 12, 15, and 16 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>4</sup> As seen in article 16(2) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 16 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>5</sup> As seen in article 16(1) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 2 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money. The same in article 215(4) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>6</sup> As seen in article 1 of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 5(1) of Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board *Nazir*.



process is highly emphasized to follow international rule related to international movement of goods or the INCOTERMS.<sup>7</sup>

The third crucial task is to verify the validity of the *mawquf*'s origin or ownership, which is necessary from both local and international legal frameworks, as well as from a Sharia standpoint. Local laws set ownership standards, such as defining land ownership according to local land law. International laws and standards closely monitor the legality and ownership of cross-border commodities, for instance, by imposing limitations on dual-use goods that can serve both civilian and military purposes.<sup>8</sup> Sharia law only permits the *waqif* to distribute items or services that they personally possess.<sup>9</sup> The *nazir* must make an attempt to investigate the *mawquf*'s ownership status<sup>10</sup> and ensure that it is free of all burdens and liabilities,<sup>11</sup> which can be demonstrated by a certificate from the competent authorities<sup>12</sup> or a dispute-free guarantee letter from the *waqif*.<sup>13</sup> The proof of ownership plays a crucial role in international trade, as per Indonesia's regulation requiring the *waqif* to provide proof of ownership when the *mawquf* originates from abroad.<sup>14</sup> During *waqf* declaration, the *waqif* must give evidence of *mawquf* ownership as well as all supporting documents.<sup>15</sup>

The fourth step, which comes after the legality of the *mawquf* has been established, is to examine the condition of the *mawquf* and verify the legitimacy of its administrative

---

<sup>7</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>8</sup> Ibid.

<sup>9</sup> Akhmad Hafandi and Puji Handayati, "Is Cash Waqf Linked Sukuk (CWLS) Less Than Ideal According to Islamic Laws?," *Studies of Applied Economics* 39, no. 12 (2021): 7.

<sup>10</sup> As seen in s 19(1)(a) and s 19(1)(b) of Wakaf (State of Selangor) Enactment 2015. Similar in s 20(1) of Wakaf (Terengganu) Enactment 2016.

<sup>11</sup> As seen in article 1 of Regulation of the Minister of Home Affairs of the Republic of Indonesia No.6 of 1977 concerning Procedures for Land Registration Regarding Waqf of Owned Land. Similar in article 38 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in s 81 of National Land Code 1965.

<sup>12</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 5.

<sup>13</sup> National Land Code 1965, s 420(1).

<sup>14</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 47.

<sup>15</sup> As seen in articles 218(1) and 223(4) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law. Similar in article 2(1) of Regulation of the Minister of Religion of the Republic of Indonesia No.1 of 1978 about the Implementation of Government Regulation of the Republic of Indonesia No.28 of 1977 concerning Waqf of Owned Land.

documentation. The *waqf* authority of the home country should ideally conduct this inspection.<sup>16</sup>

The fifth to-do list pertains to risks associated with cross-border movement of the *mawquf*. Given the perpetual nature of *waqf*, it is essential to effectively mitigate transport risks that could impact the condition of the *mawquf*. Both the *waqif* and *nazir* are responsible for safeguarding the *mawquf*, for example, through the implementation of *takaful*.<sup>17</sup>

The sixth to-do list is to determine the party responsible for delivering the *mawquf* to the *nazir* with the fastest and safest possible method. This obligation should be done by the person in possession of the *mawquf*,<sup>18</sup> and must be done in compliance with Islamic law.<sup>19</sup>

The seventh step is addressing barriers to the cross-border movement of the *mawquf*. Obstacles to the cross-border movement of *mawquf* can stem from various factors, including the policies of both the home and host countries, as well as influences from internal and external parties. These barriers may manifest as restrictions on the characteristics of goods, bans on distribution activities, and other forms of negligence. The *nazir* can navigate these challenges through various methods: (i) engaging a reliable sea freight company for cross-border shipping; (ii) setting up a representative office or appointing a strategic partner in the host country or nearby regions; (iii) creating a logistics and warehousing centre close to the project site; and (iv) partnering with local entities in the host country.<sup>20</sup>

The eighth step involves using international rules and laws as a guide. By implementing global rules, cross-border *mawquf* and usufruct movement can be made more seamless and compliant with current international best practices. The following are some

---

<sup>16</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 34.

<sup>17</sup> Aditya Padmo and Iwan Erar Joesoef, "COVID-19 as Force Majeure in Insurance Agreement," *Mulawarman Law Review*, 2020, 114–125.

<sup>18</sup> Specific Relief Act 1950, s 10.

<sup>19</sup> Hisham Yaacob and Hisham Yaacob, "Waqf History and Legislation in Malaysia: A Contemporary Perspective," *Journal of Islamic and Human Advanced Research* 3, no. 6 (2013): 387–402.

<sup>20</sup> See Chapter 4 – Current Cross-Border *Waqf* Practices and Issues. Under Heading 4.2.1.

beneficial international rules and laws for cross-border *waqf* transactions: (i) the INCOTERMS, for international shipping procedures; (ii) the URBPO, in utilizing the bank payment obligation to provide a financial or payment guarantee based on prerequisite in the business contract to an overseas third-party in a condition where *nazir*'s international reputation is not convincing enough; (iii) the URDG and the ISDGP, in utilizing the demand guarantee to ensure that the third parties receive payment from the *nazir* if a party cannot second their obligation, especially when both parties do not know each other and operate in different countries; (iv) the ISP98, in utilizing the standby letter of credit to benefit the *nazir* by providing a strong reputation due to payment guarantee for a long-term contractual relationship given by a bank with a good international reputation; (v) the ICC Model Contracts as guidance and contract principles in drafting any business contract related to cross-border *waqf* management and development; (vi) the URC522, in utilizing the *murabahah* documentary collection; (vii) the UCP600 in utilizing the *murabahah* and *musyarakah* L/C; (viii) the CISG, for the formation and standard terms of the international contract; (ix) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (x) the Convention on the Use of Electronic Communications in International Contracts, for removing obstacles and establishing equivalence between electronic and written forms contracts; (xi) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent; and (xii) the Model Law on International Credit Transfers, for international banking transfers.<sup>21</sup>

### 5.2.2. Cross-Border Movement of Usufruct

The second legal gap concerns regulating and determining the best mechanism to conduct cross-border movement of the usufruct. This matter is quite similar to the first legal gap about the movement of the *mawquf*. To address the second legal gap, the initial step is to

---

<sup>21</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border Waqf. Under Heading 3.2.7.

classify the type of usufruct, determining whether it is a movable or immovable object.<sup>22</sup> The second step is to identify the optimal movement or shipping method.<sup>23</sup>

Third, in the distribution of the usufruct, the *nazir* may engage in both direct and indirect distribution methods. Both distribution methods should be executed by conforming to several elements as outlined below: (i) *Waqif's* will;<sup>24</sup> (ii) *Sharia* and law compliance; (iii) appropriateness of the *mawquf'alaih*; (iv) poverty reduction; (v) job vacancy creation; (vi) benefits the community; (vii) sustainable program; (viii) encourage community self-sufficiency;<sup>25</sup> and (ix) especially for indirect distribution, the usufruct must be channeled to registered social institutions.<sup>26</sup>

### 5.2.3. Know Your Customer Principles for Cross-Border *Waqf*

The KYC principles in cross-border *waqf* can be applied to all parties in *waqf* transactions, such as the *waqif*, *nazir* and other related parties. These principles are useful for acquiring and verifying the details of related parties in a transaction as part of business security.<sup>27</sup>

The first thing to do is apply the KYC to determine the *waqif*. A *waqif* can be a person, group of persons, or a legal entity<sup>28</sup> such as a corporation, institution, organization,

---

<sup>22</sup> As seen in article 16(1) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 2 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money. The same in article 215(4) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>23</sup> As seen in article 1 of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 5(1) of Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board *Nazir*.

<sup>24</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 11.

<sup>25</sup> As seen in article 14(1) of the Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 9 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>26</sup> As seen in article 15 of the Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 10 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>27</sup> Nikolaos Kapsoulis, Antonis Litke, and John Soldatos, "Efficient and Accelerated KYC Using Blockchain Technologies," *Big Data and Artificial Intelligence in Digital Finance*, 2022, 115.

<sup>28</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 217(1).

government, or other bodies<sup>29</sup> acknowledged in both the home and host country. A *waqif* must have come of age,<sup>30</sup> has good sense, prudent, sober, free or not under pressure, not hindered from carrying out legal actions by their own will, not restrained by order of the court,<sup>31</sup> and is the legal owner of the subject property<sup>32</sup> or the *mawquf*.<sup>33</sup> The *nazir* must ensure the legal status of the *waqif*. The *waqif* must be clean from international sanctions such as OFAC if the *waqf* transaction is in USD,<sup>34</sup> EU Sanction if the *waqf* transaction is in EURO,<sup>35</sup> money laundering, and terrorist financing.<sup>36</sup>

Second, applying the KYC to the *nazir* before the appointment by *waqif*. There are several criteria that a *nazir* must have to conduct cross-border *waqf* transactions: (i) the ability to manage and develop the cross-border *mawquf*, including the way to maintain the *mawquf* condition, shipping, and seafaring procedures or experiences;<sup>37</sup> (ii) the *nazir* can be an individual, organization, or legal entity;<sup>38</sup> (iii) must be registered or have a written permission<sup>39</sup> from the *waqf* authority or relevant ministries in their country.<sup>40</sup> (iii) an individual *nazir* must be a Muslim, has come of age, trustworthy, have good integrity, competent, professional,<sup>41</sup> is not hindered from carrying out legal actions, and all members

<sup>29</sup> As seen in section 9(2) of Wakaf (State of Malacca) Enactment 2005. Similar in section 10(2) of Wakaf (Perak) Enactment 2015. The same in section 18(2) of Wakaf (Terengganu) Enactment 2016. And in section 17(2) of Wakaf (State of Sabah) Enactment 2018.

<sup>30</sup> As seen in section 11(1)(a) of Wakaf (State of Selangor) Enactment 2015. Similar in section 3(1) of Wakaf (State of Malacca) Enactment 2005).

<sup>31</sup> As seen in section 11(1)(c) of Wakaf (State of Selangor) Enactment 2015. Similar in section 3 of Wakaf (Perak) Enactment 2015. The same in section 13(1) of Wakaf (Terengganu) Enactment 2016. And in section 9(1) of Wakaf (State of Sabah) Enactment 2018.

<sup>32</sup> Mohamad Tahir Sabit, "A Proposal for a New Comprehensive Waqf Law in Malaysia," in *Waqf Laws and Management*, IIUM Press, Malaysia (Malaysia Waqf Academy, 2017), 3–12.

<sup>33</sup> As seen in article 8 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 217(1) of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>34</sup> Ben Scott, "OFAC Sanctions Compliance: Insights from Recent Enforcement Actions," *Journal of Financial Compliance* 3, no. 3 (2020): 247–254.

<sup>35</sup> Niklas Helwig, Juha Jokela, and Clara Porlela, "Sharpening EU Sanctions Policy for a Geopolitical Era" (Helsinki, Finland: Prime Minister's Office of Finland, 2020), 14.

<sup>36</sup> Robert E O'Leary, "Improving the Terrorist Finance Sanctions Process," *NYUJ Int'l L. & Pol.* 42 (2009): 549.

<sup>37</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 8(3).

<sup>38</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 9.

<sup>39</sup> Wakaf (State of Selangor) Enactment, s 45.

<sup>40</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 219(3).

<sup>41</sup> Sabit, "A Proposal for a New,".

of a *nazir* in the form of organizations or legal entities must comply the exact requirements as the individual *nazir*;<sup>42</sup> (iv) the *nazir*'s is highly recommended to be domiciled in the same city as the *mawquf*;<sup>43</sup> (v) *nazir* must have the ability to administer all *waqf*-related documents properly;<sup>44</sup> (vi) the sum of compensation for the *nazir* must comply with the law;<sup>45</sup> (vii) the *nazir* must be a party that can be held accountable to protect the *waqf*'s perpetuity and preserve the *waqif*'s will;<sup>46</sup> (viii) the *nazir* must be able to account for all his activities in managing the *waqf*, inside or outside the court; (ix) *nazir* may sue and be sued;<sup>47</sup> (x) the *nazir* must be clean from international sanctions such as OFAC if the *waqf* transaction is in USD,<sup>48</sup> EU Sanction if the *waqf* transaction is in EURO,<sup>49</sup> money laundering, and terrorist financing.<sup>50</sup>

Third, applying the KYC to the third-party in managing and developing the *waqf*. The *nazir* must act in good faith, without neglect, exercise due skill and care in the selection of any person or agent for the management and investment of the *waqf*, such as representative or subsidiary and counterparts.<sup>51</sup> The *nazir* must appoint competent and qualified third parties who can manage and develop the *waqf*. *Nazir* may hire professionals as an advisor, agents, and employees, including but not limited to lawyers, accountants, bankers, property managers, and financial advisors.<sup>52</sup> *Nazir* can also appoint and apply the KYC to any person that will become the administrator or manager and hold any *mawquf* on

---

<sup>42</sup> As seen in article 10 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 4 of Decree of the Director General of Islamic Community Guidance No.DJ.II/420 of 2009 concerning Model, Shape and Specification of Cash Waqf Form.

<sup>43</sup> Indonesian Waqf Board Regulation No.3 of 2008 concerning Procedures for Registration and Substitution of *Nazir* of Intangible Waqf Assets in the Form of Land, article 4(2).

<sup>44</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.1 of 1978 about the Implementation of Government Regulation of the Republic of Indonesia No.28 of 1977 concerning Waqf of Owned Land, article 10.

<sup>45</sup> As seen in article 9(9) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 2(3) of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>46</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 11.

<sup>47</sup> Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspectives* (Kuala Lumpur, Malaysia: University of Malaya Press, 2006), 34-93.

<sup>48</sup> Scott, "OFAC Sanctions,".

<sup>49</sup> Helwig, Jokela, and Porlela, "Sharpening EU Sanctions Policy,".

<sup>50</sup> O'Leary, "Improving the Terrorist Finance Sanctions,".

<sup>51</sup> Sabit, "A Proposal for a New,".

<sup>52</sup> Ibid.

his behalf.<sup>53</sup> In a case where the appointed person or the agent causes loss of *waqf* property due to his incompetence, which was overlooked during the appointment, the obligation to pay the compensation falls to the *nazir*, the appointment committee, or the person in charge of any such appointment.<sup>54</sup> The third-party must be clean from international sanctions such as OFAC if the *waqf* transaction is in USD,<sup>55</sup> EU Sanction if the *waqf* transaction is in EURO,<sup>56</sup> money laundering, and terrorist financing.<sup>57</sup> Applying the KYC to the business counterpart is also vital to understanding the business structure, legality, and bargaining position, which will affect possible clause selections in business or cooperation contracts.<sup>58</sup> The *nazir* can also examine the business counterparts through published accounts or reports and their reputation with their clients.<sup>59</sup>

Fourth, the KYC must be applied to the host country. Local regulations and policies can become a barrier to cross-border *waqf* activities, especially in host countries, because they cover various matters such as registration, acknowledgment, takeover, permits, conflict of jurisdiction in resolving *waqf* disputes, and taxes. In overcoming the regulatory and policy issues, it is recommended that the *nazir* conduct: (i) a KYC assessment as a preliminary examination of *waqf* regulations and policies in the host country; and (ii) initial coordination with *waqf* authorities, *waqf* experts, and *waqf* practitioners in the host country to obtain input on the cross-border *waqf* project to be carried out.

#### **5.2.4. Governing Law for Cross-Border *Waqf***

The next legal gap is defining the applicable law to govern all activities and resolve any disputes in cross-border *waqf* transactions. The WCP provides a vague answer to this gap by stating that local or domestic law should be used in cross-border *waqf* activity. However, this response requires further clarification regarding which domestic law to select, keeping

---

<sup>53</sup> Wakaf (State of Selangor) Enactment 2015, s 4(b).

<sup>54</sup> Wakaf (Negeri Sembilan) Enactment 2005, s 33(3).

<sup>55</sup> Scott, "OFAC Sanctions,".

<sup>56</sup> Helwig, Jokela, and Porlela, "Sharpening EU Sanctions Policy,".

<sup>57</sup> O'Leary, "Improving the Terrorist Finance Sanctions,".

<sup>58</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>59</sup> Ibid.

in mind that each of the parties' countries has its own domestic law. In determining the application of domestic law, the WCP offers additional guidance by mentioning the *waqf* programs, which can be interpreted as the local law of the region where the program is implemented.<sup>60</sup> This interpretation also in line with the *lex situs* principle in private international law which determines that the law applicable to a property is based on its geographical location.

The inclusion of Islamic law is mandatory since local law alone will not ensure adherence to sharia.<sup>61</sup> Another reason to support the application of local law in the host nation is the difficulty of implementing foreign laws and court rulings in another country, which may necessitate lengthy procedures and the judge's specific expertise.<sup>62</sup> Therefore, the initial laws chosen to regulate cross-border *waqf* transactions should be the Islamic local law or the sharia-compliant local law of the area where the cross-border *waqf* activities are taking place. The following table provides a detailed breakdown of local law applications:

Table 5.1. The Application of Local Law in Cross-Border *Waqf*

| No. | Cross-Border <i>Waqf</i> 's Stages | Applicable Local Law     |
|-----|------------------------------------|--------------------------|
| 1   | Pre-creation Stage                 | Home country's local law |
| 2   | Creation Stage                     | Home country's local law |
| 3   | Management Stage                   | Host country's local law |
| 4   | Development Stage                  | Host country's local law |

<sup>60</sup> As seen in point 24 and 34 Introduction Part of the Waqf Core Principles.

<sup>61</sup> As seen in section 2(1) of Wakaf (State of Selangor) Enactment 2015. Similar in section 2(1) Wakaf (State of Malacca) Enactment 2005. The same in section 2(1) of Wakaf (Negeri Sembilan) Enactment 2005. Found in section 2(1) Wakaf (Perak) Enactment 2015. Also in section 2(1) of Wakaf (Terengganu) Enactment 2016. And in section 2(1) Wakaf (State of Sabah) Enactment 2018.

<sup>62</sup> Afifah Kusumadara, "Pemakaian Hukum Asing Dalam Hukum Perdata Internasional: Kewajiban Dan Pelaksanaannya Di Pengadilan Indonesia (The Use of Foreign Law in International Private Law: Obligations and Their Implementation in Indonesian Courts)," *Arena Hukum* 15, no. 3 (2022): 443–470.



### 5.2.5. Dispute Resolution in Cross-Border *Waqf*

The next legal gap is determining the best applicable dispute resolution for cross-border *waqf* transactions, considering that there is always a risk of a dispute with every international transaction, including cross-border *waqf*. There are several general rules based on Indonesia's,<sup>63</sup> Malaysia's, and international laws to create better cross-border *waqf* conflict resolution. First, peaceful conflict resolution (*sulh*) always becomes the first choice over litigation because it will generate a win-win solution to maintain the relationship between *waqf-related* parties.<sup>64</sup> Second, the process must be held in the language that the *waqif* and *nazir* can understand.<sup>65</sup> Third, it is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a Muslim, to ensure the adherence to Islamic principles in the legal process.<sup>66</sup> Fourth, the neutral third parties or judges must have a decent knowledge of Islamic law including *waqf*.<sup>67</sup> Fifth, it is recommendable that the neutral third parties or judges have knowledge about laws related to the type of *mawquf* in a *waqf* dispute.<sup>68</sup>

Sixth, the *nazir* and *waqf-related* parties must agree to choose an alternative dispute resolution to resolve the conflict in cross-border *waqf* and related activities. It can be written in every cross-border *waqf-related* contract or in a separate agreement.<sup>69</sup> Sequentially, the alternative dispute resolution process consists of discussion or consultation,<sup>70</sup> good office,<sup>71</sup>

---

<sup>63</sup> As seen in article 62 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 3(5) and 3(6) of Government Regulation of the Republic of Indonesia No.10 of 1961 concerning Land Registration.

<sup>64</sup> Nur Fadhilah, "Sengketa Tanah Wakaf Dan Strategi Penyelesaiannya," *De Jure: Jurnal Hukum Dan Syar'iah* 3, no. 1 (2011): 83-84.

<sup>65</sup> Law of the Republic of Indonesia No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, articles 35, 48, and 60.

<sup>66</sup> Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts, article 13(1).

<sup>67</sup> Ibid.

<sup>68</sup> Ahmad Mujahidin, *Hukum Wakaf Di Indonesia Dan Proses Penanganan Sengketanya (Waqf Law in Indonesia and Its Dispute Resolution)*, 1st ed. (Jakarta, Indonesia: Kencana, 2021), 65-128.

<sup>69</sup> Law of the Republic of Indonesia No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, articles 7 and 9.

<sup>70</sup> Nora Abdul Hak, Sa'odah Ahmad, and Umar A. Oseni, *Alternative Dispute Resolution (ADR) in Islam*, 2nd ed. (Kuala Lumpur, Malaysia: IIUM Press, 2013), 108.

<sup>71</sup> The World Trade Organization, "World Trade Organization (WTO) Dispute Settlement Understanding (DSU)" (1994), <[https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm)> (accessed December 1, 2023).

negotiation,<sup>72</sup> mediation,<sup>73</sup> inquiry or fact-finding,<sup>74</sup> conciliation,<sup>75</sup> court-annexed mediation,<sup>76</sup> and arbitration.<sup>77</sup> The alternative dispute resolutions are the most efficient and effective method in handling international disputes. Negotiation and good offices are the best methods for resolving cross-border *waqf* disputes. The second layer includes mediation, inquiry, and conciliation. Arbitration is on the third layer, which gives binding results but less win-win solutions and control to both parties.<sup>78</sup>

Seventh, litigation is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border *waqf* issues.<sup>79</sup> It is strongly recommended to choose the Islamic<sup>80</sup> or Religious Court to handle cross-border *waqf* dispute.<sup>81</sup> If there is no Islamic or Religious Court, a District Court can be an option but only with judges that have decent knowledge about Islamic or *waqf* laws. On the first day of the trial, the judges must suggest to the parties to make peace<sup>82</sup> or to conduct mediation.<sup>83</sup> Parties must pay close attention to

---

<sup>72</sup> Zati Ilham Binti Abdul Manaf, "The Use of ADR in Cases of Illegal Occupation of Waqf Lands," in *5th Global Waqf Conference* (Pekanbaru, Indonesia: International Islamic University Malaysia, 2017), 2–15.

<sup>73</sup> United Nations, "Charter of the United Nations" (1945) <<https://www.un.org/en/about-us/un-charter>> (accessed December 1, 2023).

<sup>74</sup> International Committee of the Red Cross, "The Hague Convention" (Hague, Netherlands, 1907), <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>> (accessed December 1, 2023).

<sup>75</sup> Faisal Faisal, "Waqf Land Disputes and Alternative Settlements," *Randwick International of Social Science Journal* 2, no. 3 (2021): 259–268.

<sup>76</sup> Hak, Ahmad, and Oseni, *Alternative Dispute*,.

<sup>77</sup> Manaf, Kader, and Mohamad, "ADR as an Alternative Access to Justice in Resolving Waqf Land Disputes": 14.

<sup>78</sup> Shandy Primandasetio Freddy and Nor Asiah Mohamad, "Dispute in Cross-Border Waqf: Mitigation, Resolution, and the Role of Waqf Authority," *IJUM Law Journal* 32, no. 1 (2024): 261–308.

<sup>79</sup> As seen in article 62 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 3(5) and 3(6) of Government Regulation of the Republic of Indonesia No.10 of 1961 concerning Land Registration.

<sup>80</sup> As seen in section 61(3)(b) of the Administration of the Religion of Islam (State of Johor) Enactment 2003. Similar in sections 48(2)(b)(vii) and 49(2)(b) of the Penang Islamic Religious Affairs Enactment 1993. The same in sections 9(2)(b)(vii) and 10(2)(b) of the Kedah Syariah Court Enactment 1993. Found in section 46(2)(b)(vii) and 47(2)(b) of the Administration of Islamic Law (Federal Territories) Act 1993. Also in section 61(3)(vii) and 62(2)(b) of the Selangor Administration of the Religion of Islam 2003. Found also in part IV of the Administration of the Religion of Islam (Perak) Enactment 2004 (No.4 of 2004). Seen also in Sabah *Shariah* Courts Enactment 2004 (No.6 of 2004). And in Terengganu *Shariah* Court Enactment 2001 (No.3 of 2001).

<sup>81</sup> As seen in article 49(1) of Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts. Similar in article 49 of Law of the Republic of Indonesia No.3 of 2006 concerning Amendments to Law No.7 of 1989 concerning Religious Courts. The same in Article 226 Article 227 of Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law.

<sup>82</sup> As seen in article 130 of Herzien Inlandsch Reglement (Reglemen Indonesia Yang Diperbaharui). The same in article 1831 Indonesian Code of Civil Law (Kitab Undang-Undang Hukum Perdata/Burgerlijk Wetboek voor Indonesie).

<sup>83</sup> Regulation of the Supreme Court of the Republic of Indonesia No.1 of 2016 concerning Mediation Procedures in Courts, articles 3(3), 6, 13, and 24(2).

the litigation costs to prevent the corpus and *waqf* funds from deteriorating. It is recommended that the government of the region where the litigation process is being held give legal assistance with litigation costs and provide free legal aid to indigent applicants in cross-border *waqf* litigation.<sup>84</sup>

Eighth, taking references from international rules and laws in resolving disputes in cross-border *waqf* activities is important. There are several useful international rules and laws which are: (i) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (ii) The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, to provide uniform rules of the mediation process and encouraging the use of mediation; and (iii) the CLOUT, to be used as a reference in mitigating and resolving cross-border *waqf* disputes.

#### **5.2.6. Protection of the Perpetuity of Cross-Border *Waqf***

Maintaining the perpetuity of the *waqf* is one of the main duties of the *nazir*.<sup>85</sup> In cross-border *waqf*, *waqf* protection can be done through several efforts. First, restricting cross-border *waqf* revocation.<sup>86</sup> Second, restricting the transfer<sup>87</sup> of *mawquf*'s ownership status.<sup>88</sup> Third, *nazir* must avoid risky transactions and be in possession of the property.<sup>89</sup>

Fourth, the *nazir* must uphold the principles of good governance, protect, preserve, and develop the *mawquf*.<sup>90</sup> In restoring or redeveloping a damaged *mawquf*, the *nazir* can

---

<sup>84</sup> Law of the Republic of Indonesia No.50 of 2009 concerning the Second Amendment to Law No.7 of 1989 concerning Religious Courts, articles 60B and 60C.

<sup>85</sup> Mohammed Obaidullah, *Awqaf Development and Management* (Kuala Lumpur, Malaysia: Islamic Research and Training Institute, Islamic Development Bank, 2013), 31.

<sup>86</sup> As seen in article 2 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. The same in section 17 of Wakaf (State of Selangor) Enactment 2015. Similar in section 21 of Wakaf (Terengganu) Enactment 2016. Found in section 13(2) Wakaf (State of Selangor) Enactment 2015. And in section 4 of Wakaf (Perak) Enactment 2005.

<sup>87</sup> The *mawquf* cannot be used as collateral, confiscated, donated, sold, inherited, exchanged, or transferred.

<sup>88</sup> As seen in article 40 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in section 9(3) Wakaf (Negeri Sembilan) Enactment 2005.

<sup>89</sup> Sabit, "A Proposal for a New,".

<sup>90</sup> As seen in section 15(1)(2) of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 40 of the Wakaf (Malacca) Enactment 2005.

utilize a variety of significant sources such as the *waqf* fund, *baitulmal*, reserves, donations, state assistance, benevolent loan, and other permitted sources pursuant to Islamic law.<sup>91</sup>

Fifth, if the *mawquf* is in the form of land, it is suggested that the government enact a regulation to prevent any status change of the *waqf* land,<sup>92</sup> and to oblige citizens to preserve the land and prevent its destruction.<sup>93</sup> Sixth, it is recommended that both the government of home and host countries provide tax and administrative cost incentives for cross-border *waqf* activities.<sup>94</sup> Seventh, the government must protect the right of the *waqif* by giving them a chance to sue and get compensation from the *nazir* if they break the promise or commit an unlawful act.<sup>95</sup>

Eighth, the *nazir* must claim compensation for any destruction on the *waqf* caused by third party.<sup>96</sup> Ninth, the amount of compensation must at least cover the damage restoration, or it can be decided by the court by involving public and private appraisals and choose the most favorable one for the *waqf*.<sup>97</sup>

The tenth effort that can be done to protect the *waqf* perpetuity is by separating the management of each *waqf*, including permanent (*muabbad*) and temporary (*muaqqat*) *waqf*.<sup>98</sup> Eleventh is separating the account of each cross-border *waqf*, including the separation of the account of the *mawquf* or *istibdal* proceeds and the usufruct, *waqf*

---

<sup>91</sup> As seen in section 26 of Wakaf (State of Selangor) Enactment 2015. Similar in section 37 of Wakaf (State of Malacca) Enactment 2005. The same in section 32(1) of Wakaf (Negeri Sembilan) Enactment 2005. And in section 28 of Wakaf (State of Sabah) Enactment 2018.

<sup>92</sup> Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land, article 2.

<sup>93</sup> Law of the Republic of Indonesia No.5 of 1960 concerning Basic Agrarian Regulations, article 15.

<sup>94</sup> National Land Code 1965, section 215.

<sup>95</sup> Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie), articles 1244, 1245 and 1246.

<sup>96</sup> As seen in section 35 to 38 Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 44 of Wakaf (State of Selangor) Enactment 2015. The same in section 35, 37, and 38 of Wakaf (Negeri Sembilan) Enactment 2005. Found in Section 42 of Wakaf (Perak) Enactment 2015. Also in section 44 of Wakaf (Terengganu) Enactment 2016. And in section 41 of Wakaf (State of Sabah) Enactment 2018.

<sup>97</sup> Land Acquisition Act 1960, s 40D(2), 59, and 60.

<sup>98</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, article 10(1).

reserves,<sup>99</sup> *baitulmal*,<sup>100</sup> general endowment fund,<sup>101</sup> and general administration fund.<sup>102</sup> Twelfth, the *nazir* must keep *waqf* funds in an Islamic bank.<sup>103</sup> Thirteenth, all transactions on all *waqf* accounts must be recorded appropriately.<sup>104</sup> Fourteenth, *nazir* may form a special managerial unit for cross-border *waqf* for better and prudent *waqf* management.

Fifteenth, *nazir*'s role in protecting the condition of the *mawquf* in cross-border *waqf*. The *nazir* must do all matters necessary to support their duties and responsibilities.<sup>105</sup> The *nazir* may lease the *waqf* property with fixed rental rates according to the market, collect rentals, claim lost values and rentals. Any leasing on *waqf property* below market value shall be guilty of an offense punishable by an appropriate penalty or dismissal and, if proven guilty, shall be liable to pay compensation for the damage caused to the *waqf* property.<sup>106</sup> The *nazir* must have the power to evict errant tenants, remodel the property, provide value-enhancing utilities and facilities, and insure it against major and known risks by using *takaful*.<sup>107</sup>

Sixteenth, *nazir*'s authority to appoint substitutes and third parties in managing and developing cross-border *waqf*. The *nazir* can appoint substitutes and third parties with several conditions:<sup>108</sup> (i) the substitutes can have the same powers, authority, and discretions provided for in the instrument of *waqf* or the written document;<sup>109</sup> (ii) the *nazir* may delegate some of their powers or impose restrictions;<sup>110</sup> (iii) the third party must inform

---

<sup>99</sup> Sabit, "A Proposal for a New,".

<sup>100</sup> As seen in section 56(1) of Administration of Islamic Law (Kedah Darul Aman) Enactment 2008. Similar in section 93 of Administration of the Religion of Islam (Perlis) Enactment 2006. The same in section 93 of Administration of the Religion of Islam (State of Penang) Enactment 2004. Found in section 53(1) and 55 of Majlis Islam Sarawak Ordinance 2001. And in section 65(1) of Administration of Islamic Law (Federal Territories) Act 1993.

<sup>101</sup> Administration of Islamic Law (Pahang) Enactment 1991, s 72(1).

<sup>102</sup> Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994, section 65(1).

<sup>103</sup> As seen section 81 of Administration of Islamic Law (Pahang) Enactment 1991. Similar in section 71 of Administration of Islamic Law (Federal Territories) Act 1993.

<sup>104</sup> Wakaf (Negeri Sembilan) Enactment 2005, section 29(1)(a).

<sup>105</sup> Wakaf (State of Selangor) Enactment 2015, section 4(4).

<sup>106</sup> Sabit, "A Proposal for a New,".

<sup>107</sup> As seen in section 15(1)(2) of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 40 of the Wakaf (Malacca) Enactment 2005.

<sup>108</sup> As seen in section 16 and 33 of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 48 of Wakaf (Terengganu) Enactment 2016.

<sup>109</sup> Sabit, "A Proposal for a New,".

<sup>110</sup> Wakaf (State of Selangor) Enactment 2015, s 8.

the *nazir* about all their actions and matters in managing the *waqf*;<sup>111</sup> (iv) the *nazir* must have the power to monitor all activities of its administrators, managers, servants, agents and substitutes;<sup>112</sup> (v) the *nazir* can sue the third party for compensation if in conducting they fail to second their part of the bargain;<sup>113</sup> (vi) The *nazir* must accommodate these points in contractual documents between the *nazir* and their substitutes or business partners.<sup>114</sup>

Seventeenth, collaboration with the public and private sectors. In managing and developing the cross-border *waqf*, *nazir* may collaborate with public and private sectors in the host country. Through this cooperation, the *nazir* can acquire helpful information on local regulations and policies, minimizing barriers, and gaining more access to Fintech which will provide more benefits for cross-border *waqf* management such as better security, transparency, and efficiency.

Eighteenth, a prudent contract is essential to manage contractual relationships in managing and developing cross-border *waqf*. Several points must be considered on this matter: (i) any agreement between the *nazir* and a third party must be made in the form of a contract or another legally recognized form;<sup>115</sup> (ii) all parties involved in any contract must be competent and have a sound mind, which means of the age of majority according to the law, and not disqualified from contracting by related law;<sup>116</sup> (iii) selecting a legal entity in the form of institutions over individuals is preferable;<sup>117</sup> (iv) an agreement or contract must be made based on mutual and free consent;<sup>118</sup> (v) a contract must be made for a lawful consideration and with a lawful object; (vi) a contract must be made in writing, in the presence of witnesses, registered, and well-kept;<sup>119</sup> (vii) a contract must have clear and understandable provisions such as details of the goods and services, price, and information

---

<sup>111</sup> Wakaf (Negeri Sembilan) Enactment 2005, s 53.

<sup>112</sup> Sabit, "A Proposal for a New,".

<sup>113</sup> Wakaf (Negeri Sembilan) Enactment 2005, s 15(3).

<sup>114</sup> As seen in section 6(1) Wakaf (State of Selangor) Enactment 2015. Similar in section 33(1) Wakaf (State of Malacca) Enactment 2005.

<sup>115</sup> Contracts Act 1950, s 2(g), 2(h), and 2(i).

<sup>116</sup> Ibid, s 11, 12(1), 12(2), 12(3), 136, and 137.

<sup>117</sup> Ibid, s 38(1).

<sup>118</sup> Ibid, s 13, 14(a)-14(e), 19(1), 20, and 21.

<sup>119</sup> Ibid, s 10(1), 10(2), and 26.

about the parties;<sup>120</sup> (viii) must state the currency for the transaction; (ix) must state the price; (x) must describe the attributes of the goods or services; (xi) must state packing requirements; (xii) must state inspection and quality control requirements; (xiii) must state *takaful* requirements; (xiv) must state shipping terms based on the INCOTERMS; (xv) must state the date by which goods must be dispatched or delivered; (xvi) must state the method and timing of payment based on international rules; (xvii) must state the obligations of the parties;<sup>121</sup> (xviii) any amendments made after the contract has been signed must require consent of both parties; (xix) breach of the contract will entitle the other party to make legal claim or void the contract; (xx) alternative dispute resolutions as the first step in conflict resolution; (xxi) must specify the applicable law;<sup>122</sup> (xxii) must determine the location of the court to handle the dispute; and (xxiii) must state force majeure conditions.<sup>123</sup>

Nineteenth, taking references from international rules and laws in creating contracts related to cross-border *waqf* activities is essential. There are several useful international laws and rules which are: (i) the UNIDROIT Principles of International Commercial Contracts 2016, for general rules of international contracts; (ii) the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts, for technical aspects of international contracts; (iii) the UNIDROIT Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, to harmonize international laws on commercial contracts; (iv) the ICC Model Contracts as technical references in international contract drafting.

Twentieth, *nazir* to set criteria before conducting direct and non-direct investment in developing the cross-border *waqf*, which at least includes: (i) *Sharia* and law compliance; (ii) comprehensive assessment of the character, condition, capital, capacity, collateral, people, purpose, and payment; (iii) conducting the feasibility study; (iv)

---

<sup>120</sup> Ibid, s 30.

<sup>121</sup> United Nations Commission on International Trade Law (UNCITRAL), “United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)” <[https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)> (accessed February 5, 2024).

<sup>122</sup> Budiutomo Kurniadi, ICC Advisor, Certificate on International Trade and Finance Program, 7 September 2024: “The stronger party in the contract usually determines the applicable law and the location of the court. The buyer’s law will apply if the agreement does not state the applicable law. If the power of both parties is equal, it is suggested that the law of a neutral country and a court located in a neutral country be chosen.”

<sup>123</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), “Certificate in International Trade and Finance - Tutorial 2024.”

prioritizing productive projects; and (v) have a bank guarantee from an Islamic financial institution if deemed necessary.<sup>124</sup>

Twenty-first, as a precaution and buffer, the *nazir* must allocate a sum of money as a guarantee equal to the total investment in a *waqf* project.<sup>125</sup> Twenty-second, the *nazir* must limit their investment to projects run by related parties, it is suggested that the total investment must not exceed 10% of the total *mawquf*.<sup>126</sup>

Twenty-third, the *nazir* must be obliged to send the *waqf* management report every six months to the *waqf* authority and or Ministry of Religion.<sup>127</sup> The report must cover: (i) date or period of reporting; (ii) data of *waqif* and *nazir*; (iii) *waqf* purpose; (iv) *waqf* or *mawquf* registration data; (v) *mawquf* management and development;<sup>128</sup> (vi) cash flow including cost, expenses, and income;<sup>129</sup> (vii) *mawquf* utilization result; (viii) distribution of the usufruct; (ix) changes in *waqf* status (if any); and (x) *Nazir* changes (if any).

Twenty-fourth, the *waqf* authority must use the *waqf* management report to evaluate the *nazir*'s performance. If needed, the *waqf* authority can appoint a public accountant or auditor to examine the *nazir*'s performance.<sup>130</sup> The *waqf* authority may also oblige the *nazir* to submit financial reports occasionally.<sup>131</sup>

---

<sup>124</sup> As seen in article 9(2), 9(3), and 11(1) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 3 Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

<sup>125</sup> Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money, article 11(3).

<sup>126</sup> Ibid, article 11(5).

<sup>127</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 28.

<sup>128</sup> Nor Asiah Mohamad, Sharifah Zubaidah Syed Abdul Kader, and Zuraidah Ali, "Challenges in Management for Sustainability of Waqf Lands in Malaysia," in *Waqf Laws and Management* (Kuala Lumpur, Malaysia: International Islamic University Malaysia, 2017), 111–131.

<sup>129</sup> As seen in section 15(1)(2) of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 40 of the Wakaf (Malacca) Enactment 2005.

<sup>130</sup> As seen in article 12 and 13 of Regulation of the Minister of Religion of the Republic of Indonesia No.4 of 2009 concerning the Administration of Cash Waqf. Similar in article 31, 32, and 33 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>131</sup> As seen in section 39 of Wakaf (State of Selangor) Enactment 2015. Similar in section 29 of Wakaf (Negeri Sembilan) Enactment 2005. The same in section 37 of Wakaf (Perak) Enactment 2015. Found in section 40 of Wakaf (Terengganu) Enactment 2016. Also in the 2nd Schedule No.13 of Wakaf (Terengganu) Enactment 2016. Found also in section 40 of Wakaf (State of Sabah) Enactment 2018. As in section 72 and 73 of Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994.



Twenty-fifth, as part of transparency, the *nazir* must publish the list of all *mawquf* in the gazette or the *nazir*'s official media or the *waqf* authority's official media annually.<sup>132</sup> The publication must at least include the *waqf* scheme, the beneficiary, investments, the usufruct or proceeds, the profits, losses, the rate of income distribution to the beneficiaries, the reserves, and expenses spent on the repair or maintenance of *waqf* property.<sup>133</sup>

Twenty-sixth, implementation of *istibdal*, or the exchange of *mawquf*, as a solution for maintaining the *waqf*'s perpetuity. *Istibdal* can only be implemented by the *nazir* under certain conditions as follows: (i) permitted by the *waqf* authority;<sup>134</sup> (ii) needed for social benefit by the government; (iii) the *mawquf* cannot be used as originally intended or the *waqf* purpose;<sup>135</sup> (iv) there is an urgency for the benefit of the religion or public interest;<sup>136</sup> (v) if the *waqf* is inconsistent with any written law; (vi) the *mawquf* has been acquired by any authority under any written law;<sup>137</sup> and (vii) if there are other circumstances deemed necessary.<sup>138</sup>

Twenty-seventh, there are several key factors that need to be included in *istibdal* implementation. Those factors include: (i) *istibdal* is a way to replace a *mawquf*, wholly or partly, with another property or money with the same<sup>139</sup> or higher market-value<sup>140</sup> than the

---

<sup>132</sup> As seen in section 20 of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 20 of Wakaf (Terengganu) Enactment 2016.

<sup>133</sup> Sabit, "A Proposal for a New,".

<sup>134</sup> Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law, article 225.

<sup>135</sup> Ibid.

<sup>136</sup> As seen in article 41(1) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49(2) of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 4(2) of Indonesian Waqf Board Regulation No.1 of 2008 concerning Procedures for Formulating Recommendations on Applications for Exchange/Change of Waqf Assets Status. As in 12(1) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>137</sup> Wakaf (Terengganu) Enactment 2016, s 42.

<sup>138</sup> As seen in section 12(1) of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 19 of Wakaf (State of Malacca) Enactment 2005. The same in section 41 of Wakaf (State of Selangor) Enactment 2015. As in section 42(1) of Wakaf (State of Terengganu) Enactment 2016. Found in section 22 of Wakaf (Perak) Enactment 2015. And in section 25(1) of Wakaf (State of Sabah) Enactment 2018.

<sup>139</sup> As seen in article 41(3) of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49(3) of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 49(5) of Government Regulation of the Republic of Indonesia No.25 of 2018 concerning Changes to Government Regulation No.42 of 2006 about the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>140</sup> First Schedule of Land Acquisition Act 1960, article 1.

previous *mawquf*; (ii) must be done by following the local *waqf* law;<sup>141</sup> (iii) several methods to conduct *istibdal* are exchanging, purchasing, selling, or any other manner following Islamic law;<sup>142</sup> (iv) the exchange property must have valid legal proof of ownership and easily developed;<sup>143</sup> (v) in assessing the market value, any suitable method may be used by considering the price of *mawquf* with similar characteristics;<sup>144</sup> (vi) if the exchanged *mawquf* is a land lot, the value of any building on it shall be disregarded if that building is not permitted;<sup>145</sup> and (vii) the sale proceeds by *istibdal* may be used to develop the remaining *waqf* property.<sup>146</sup>

Twenty-eighth, it is of utmost importance that the *nazir* pays close attention to the regulation about foreign to domestic currency conversion,<sup>147</sup> and to the coverage guarantee limit by the local government.<sup>148</sup> These regulations and limits are crucial for the proper management and development of *mawquf*.

Twenty-ninth, replacing, removing, and prosecuting *nazir* in court for compensation. The *nazir* can be replaced, removed, and prosecuted for several reasons: (i) natural and legal incapacity; (ii) embezzlement and misappropriation of the funds; (iii) negligence or mismanagement of *waqf* properties; (iv) lack of good performance; (v) not putting the *waqf* properties to the best and highest use as demanded by the established standards of the business community; (vi) causing financial loss to the *waqf*; and (vii) If

---

<sup>141</sup> Norhaliza B M Nor and Mustafa O Mohammed, "Categorization of Waqf Lands and Their Management Using Islamic Investment Models: The Case of the State of Selangor, Malaysia," in *International Conference on Waqf Laws & Management: Reality and Prospects*, IIUM, 2009, 20–22.

<sup>142</sup> As seen in section 2(1) of Wakaf (State of Selangor) Enactment 2015. Similar in section 2(1) of Wakaf (Negeri Sembilan) Enactment 2005. The same in section 2(1) of Wakaf (Perlis) Enactment 2005. Similar in section 2(1) of Wakaf (Terengganu) Enactment 2015. And in section 2(1) of Wakaf (State of Sabah) Enactment 2018.

<sup>143</sup> As seen in article 4(3) and 5b of Indonesian Waqf Board Regulation No.1 of 2008 concerning Procedures for Formulating Recommendations on Applications for Exchange/Change of Waqf Assets Status. Similar in article 12(3) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>144</sup> Land Acquisition Act 1960, article 1(1A).

<sup>145</sup> Ibid, Article 1(3A).

<sup>146</sup> Sabit, "A Proposal for a New,".

<sup>147</sup> As seen in article 2(2) of Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money. Similar in article 2(2) of Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board *Nazir*.

<sup>148</sup> M. Mujibur Rohman, "Lembaga Penjamin Simpanan Syariah," *Jurnal Hukum Dan Ekonomi Islam Al-Mizan* 3, no. 2 (2011): 199.

can be proven any breach of duties, the *nazir* not only can be dismissed but should also be sued in a court of law for wilful or negligent mismanagement of *waqf* properties.<sup>149</sup>

### 5.2.7. Protection of the *Waqif's* Purpose in Cross-Border *Waqf*

The process of creating a *waqf* is a crucial step in protecting the *waqif's* purpose. First, several elements need to be fulfilled during the cross-border *waqf* creation, which includes the *waqif*, *nazir*, *mawquf*, *waqf* pledge, *waqf* objective, and *waqf* duration.<sup>150</sup> Second, a *waqf* pledge must be done by the *waqif*, or a representative under a power of attorney,<sup>151</sup> to the *nazir* in the presence of the *waqf* authority's representative or official, two witnesses, and made in writing.<sup>152</sup> Third, is obtaining *waqf* approval from the *waqif's* family members to prevent a *waqf* legal suit filed by a family member of the *waqif* in the future.<sup>153</sup>

The cross-border *waqf* deed or certificate issuance is the fourth to-do list to protect the *waqif's* purpose. The cross-border *waqf* deed creation must include several elements as follow: (i) the deed must be issued<sup>154</sup> by, registered<sup>155</sup> in, and maintained by the authority,<sup>156</sup> including all related documents.<sup>157</sup>; (ii) created in front of the *waqif*, *nazir*, *mawquf'alaih*,

---

<sup>149</sup> Sabit, "A Proposal for a New,".

<sup>150</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, article 6.

<sup>151</sup> Ibid, article 18.

<sup>152</sup> As seen in article 17 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 30 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf.

<sup>153</sup> Government of Indonesia, Instruksi Bersama Menteri Agama dan Kepala Badan Pertanahan Nasional Republik Indonesia No.4 Tahun 1990 tentang Sertifikat Tanah Wakaf (Joint Instruction of the Minister of Religion and Head of the National Land Agency No.4 of 1990 regarding Waqf Land Cer.

<sup>154</sup> As seen in article 30 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar in article 12(1) of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>155</sup> As seen in section 53 of Administration of Islamic Law (Kedah Darul Aman) Enactment 2008. Similar in section 90 of Administration of the Religion of Islam (Perlis) Enactment 2006. The same in section 90 of Administration of the Religion of Islam (State of Penang) Enactment 2004. As in section 7 and 33 of Wakaf (Negeri Sembilan) Enactment 2005. And in section 3(2) of Wakaf (State of Sabah) Enactment 2018.

<sup>156</sup> As seen in article 30 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar in article 12(1) of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>157</sup> As seen in section 34(1) of Wakaf (State of Malacca) Enactment 2005. Similar in section 19 of Wakaf (Negeri Sembilan) Enactment 2005. And in section 8 of Wakaf (State of Sabah) Enactment 2018.

and two witnesses;<sup>158</sup> (iii) written and signed;<sup>159</sup> (iv) the cross-border *waqf* registration form<sup>160</sup> must contain information: date of the deed, *waqif*'s identity, *nazir*'s identity, witnesses' identity, data of the *mawquf*, *waqf* objective, and *waqf* duration;<sup>161</sup> (v) details on *mawquf* must be recorded in the exhibit;<sup>162</sup> (vi) the *mawquf* must be registered under the name of the *nazir*<sup>163</sup> or the *waqf* authority,<sup>164</sup> depending on the local law where the performance occurs; (vii) the ownership of the *mawquf*,<sup>165</sup> including related documents,<sup>166</sup> must be transferred to the *nazir* immediately; (viii) the *nazir* is prohibited from using the *mawquf* before it is registered;<sup>167</sup> (ix) the cross-border *waqf* deed or certificate can only be issued up to thirty days after *waqf* registration and publication;<sup>168</sup> (x) copies of the deed

---

<sup>158</sup> As seen in article 30 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar in article 12(1) of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>159</sup> Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money, article 27.

<sup>160</sup> As seen in section 15(1) of Wakaf (State of Selangor) Enactment 2015. Similar in section 12(1) of Wakaf (State of Sabah) Enactment 2018.

<sup>161</sup> As seen in article 21 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 32 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in exhibit I of the Decision of Director General of Islamic Community Guidance No.800 of 2014 concerning the Implementation of the Regulation of the Minister of Religion No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects Other Than Money. And in article 19 of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>162</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 36.

<sup>163</sup> As seen in article 3 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar in article 6(1) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>164</sup> Mohamad, Kader, and Ali, "Challenges in Management,".

<sup>165</sup> National Land Code 1965, s 204.

<sup>166</sup> Specific Relief Act 1950, s 9.

<sup>167</sup> Labuan Financial Services and Securities Act 2010, s 31.

<sup>168</sup> Wakaf (Negeri Sembilan) Enactment 2005, s 8(1).

must be distributed to all parties;<sup>169</sup> and (xi) *waqf* by a will must not exceed 1/3 (one-third) of the inherited assets after deducting it for debts, except if the heirs consent.<sup>170</sup>

Fifth is the cross-border *waqf* declaration and publication.<sup>171</sup> The *waqf* authority or *nazir* must make public announcements upon creating a new cross-border *waqf*<sup>172</sup>, this can be done through Government Gazette,<sup>173</sup> local newspaper,<sup>174</sup> regular publication<sup>175</sup>, and press releases on the registered *nazir* or government *waqf* authority official media. As part of publication, all data must be maintained<sup>176</sup> and made accessible to the public.<sup>177</sup>

Sixth is obligating the *nazir*'s to manage the *mawquf* according to the wishes of the *waqif*.<sup>178</sup> This can be done by: (i) limiting the *nazir*'s power in changing the *waqf*'s status and purpose by requiring a written permission from the *waqf* authority in the host country; (ii) changes can only be done if the *mawquf* cannot be utilized as the *waqif* wishes;<sup>179</sup> and

---

<sup>169</sup> As seen in article 34 of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. Similar in exhibit I of the Decision of Director General of Islamic Community Guidance No.800 of 2014 concerning the Implementation of the Regulation of the Minister of Religion No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects Other Than Money. The same in articles 12(2) and 20(2) of Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money.

<sup>170</sup> Law of the Republic of Indonesia No.41 of 2004 concerning Waqf, articles 24 and 25.

<sup>171</sup> As seen in section 16 of Wakaf (State of Selangor) Enactment 2015. Similar in section 33(2) of Wakaf (State of Malacca) Enactment 2005. The same in sections 20 and 50 of Wakaf (Negeri Sembilan) Enactment 2005. And in section 54(1) of Wakaf (State of Sabah) Enactment 2018.

<sup>172</sup> Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf, article 44.

<sup>173</sup> National Land Code 1965, s 62.

<sup>174</sup> Wakaf (Terengganu) Enactment 2016, s 58.

<sup>175</sup> As seen in section 13 of Wakaf (State of Sabah) Enactment 2018. Similar in section 58 of Administration of Islamic Law (Kedah Darul Aman) Enactment 2008. The same in section 95 of Administration of the Religion of Islam (Perlis) Enactment 2006. Found in section 95 of Administration of the Religion of Islam (State of Penang) Enactment 2004. As in section 78 of Administration of Islamic Law (Pahang) Enactment 1991. Also in section 74 of Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994. As in Section 68 of Administration of Islamic Law (Federal Territories) Act 1993. And in section 57 of Majlis Ugama Islam Negeri Sabah Enactment 2004.

<sup>176</sup> As seen in section 6 of Wakaf (State of Malacca) Enactment 2005. Similar in section 6 of Wakaf (Negeri Sembilan) Enactment 2005. The same in section 7(1) of Wakaf (Perak) Enactment 2015. And in section 32 of Wakaf (Perak) Enactment 2015.

<sup>177</sup> Mujahidin, *Hukum Wakaf Di Indonesia*,.

<sup>178</sup> Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets, article 2(1).

<sup>179</sup> As seen in article 44 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 49 (1) of Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning Waqf. The same in article 4 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets.

(iii) obligating the *nazir* to ensure that the *mawquf'alaih* enjoy the usufruct generated from the *mawquf*.<sup>180</sup>

Seventh, the host country's government must guarantee the ease of usufruct distribution from the *nazir* to the *mawquf'alaih*.<sup>181</sup> Eighth, in a condition where the *mawquf'alaih* cannot be traced, deceased, or ceases to exist,<sup>182</sup> the *nazir* may distribute the usufruct as closely as possible to the original purpose or add it to the general *waqf* fund. The *waqf* authority's approval is needed before conducting this matter.<sup>183</sup>

Ninth, any decision from the *fatwa* council shall be final.<sup>184</sup> Tenth, the *nazir* must refer to the *fatwa* in force in the host country or the location of the cross-border *waqf* project for any determination of matters which is not expressly provided in the statutes,<sup>185</sup> and unsettled or controversial question related to Islamic law in managing and developing the cross-border *waqf*.<sup>186</sup> Several conditions that required *fatwa* are undecided and unreachable *mawquf'alaih*,<sup>187</sup> the death of *mawquf'alaih* or ceased to exist,<sup>188</sup> *istibdal*, transaction of *mawquf*, stipulation of *waqif*, *waqf* in a state of *marad al-maut*, or any other issues requiring necessary solutions from the authority.<sup>189</sup>

Eleventh, changes in cross-border *waqf* management. Changes are permissible as long as they do not violate the deed, the *waqf*'s purpose or the *waqif*'s will.<sup>190</sup> The

---

<sup>180</sup> Sabit, "A Proposal for a New,".

<sup>181</sup> As seen in sections 13(1), 33(1)(a)-(c), 33(5), 40, and 45 of Wakaf (Negeri Sembilan) Enactment 2005. Similar in section 46 of Wakaf (Terengganu) Enactment 2016. The same in section 43 of Wakaf (State of Sabah) Enactment 2018.

<sup>182</sup> Sabit, "A Proposal for a New,".

<sup>183</sup> Ibid.

<sup>184</sup> Wakaf (State of Sabah) Enactment 2018, s 52.

<sup>185</sup> Siti Mashitoh Mahamood, "Law of Waqf in Malaysia: Recent Developments," in *Essential Readings in Contemporary Waqf Issues*, ed. Monzer Kahf and Siti Mashitoh Mahamood (Kuala Lumpur, Malaysia: CERT Publications Sdn. Bhd., 2011), 77–106.

<sup>186</sup> As seen in sections 40 and 47 of Wakaf (State of Selangor) Enactment 2015. Similar in section 51 of Wakaf (State of Malacca) Enactment 2005. The same in section 3(2) of Wakaf (Negeri Sembilan) Enactment 2005. Found in section 46 of Wakaf (Perak) Enactment 2015. As in section 41 of Wakaf (Terengganu) Enactment 2016. And in section 54 of Majlis Islam Sarawak Ordinance 2001.

<sup>187</sup> After one year.

<sup>188</sup> As seen in section 30 of Wakaf (State of Selangor) Enactment. Similar in section 59 of Wakaf (Negeri Sembilan) Enactment 2005. And in section 31 of Wakaf (Terengganu) Enactment 2016.

<sup>189</sup> Mahamood, "Law of Waqf in Malaysia,".

<sup>190</sup> As seen in article 45 of the Law of the Republic of Indonesia No.41 of 2004 concerning Waqf. Similar in article 3 of Indonesian Waqf Board Regulation No.3 of 2008 concerning Procedures for Registration and Substitution of *Nazir* of Intangible Waqf Assets in the Form of Land. The same in article 5 of Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf

new *nazir* must be trustworthy, prudent, and professional. The management transfers must be carried out properly. Conflicting matters must be resolved through negotiation.<sup>191</sup>

### **5.3. DEVELOPING INTERNATIONAL RULES FOR CROSS-BORDER *WAQF* AS A TECHNICAL NOTES OF THE *WAQF* CORE PRINCIPLES**

This sub-chapter is written by following the shape of current WCP's technical notes,<sup>192</sup> and the legal framework explained in this study's third chapter. By definition, a technical note is a brief description of a specific development, technique, procedure, or modification applicable to *waqf* which has practical value and contribution to the *waqf* management.<sup>193</sup> Therefore, a technical note on cross-border *waqf* can be referred as technical innovations or technical developments for conducting cross-border *waqf*. In general, technical notes comprise of a detailed guidance and an assessment arranged in a table or regulation structure.<sup>194</sup> The technical note on cross-border *waqf* uses the same structure and is arranged based on the legal framework formulated in the third chapter, which grouped the details into four stages of cross-border *waqf* activities: (i) pre-creation stage; (ii) creation stage; (iii) management stage; and (iv) development stage.

#### **5.3.1. Pre-creation Stage of Cross-Border *Waqf***

The general guidelines for the pre-creation stage of cross-border *waqf*:

---

Assets. Found in article 13 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land.

<sup>191</sup> Source: Analyzed by the Author from Several Sources from the Ministry of Religion of the Republic of Indonesia, Dompot Dhuafa Foundation, and related journals.

<sup>192</sup> The World Zakat and Waqf Forum International Working Group, "Technical Notes on Good Nazir Governance," Technical Note Core Principles for Effective Waqf Operation and Supervision, 2022, <<https://www.bwi.go.id/8460/2022/11/22/technical-notes-on-good-nazir-governance-september-2022/>> (accessed June 30, 2024).

<sup>193</sup> Ibid.

<sup>194</sup> Badan Amil Zakat Nasional Republik Indonesia, Bank Indonesia, and Islamic Development Bank, "Technical Notes on Risk Management on Zakat Institution," Technical Note Core Principles for Effective Zakat Operation and Supervision, 2017, <<https://publikasi.dompethuafa.org/download/03-technical-notes-on-risk-management-in-zakat-institution/>> (accessed July 23, 2024).

Table 5.2. The General Guidance: Pre-creation Stage of Cross-Border *Waqf*

| No. | The General Guidance for the Pre-creation Stage of a Cross-Border <i>Waqf</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | All processes conducted before creating a cross-border <i>waqf</i> must comply with the local Islamic law and <i>fatwa</i> of the country where the performance occurs. <sup>195</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2   | All processes conducted before creating a cross-border <i>waqf</i> must comply with the local law that complies with the <i>Sharia</i> of the country where the performance occurs. <sup>196</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 3   | <p>Applying the KYC to the <i>waqif</i>.<sup>197</sup></p> <ul style="list-style-type: none"> <li>a. A <i>waqif</i> can be a person, group of persons, or a legal entity acknowledged in the home and host country.</li> <li>b. Have come of age</li> <li>c. Has good sense</li> <li>d. Prudent</li> <li>e. Sober</li> <li>f. Free or not under pressure</li> <li>g. Not hindered from carrying out legal actions by their own will</li> <li>h. Not restrained by order of the court</li> <li>i. The legal owner of the <i>mawquf</i>.</li> <li>j. Clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.</li> <li>k. Clean from international unlawful activities, such as money laundering and terrorist financing.</li> </ul> |
| 4   | Applying the KYC to the <i>nazir</i> . <sup>198</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

<sup>195</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.4.

<sup>196</sup> Ibid.

<sup>197</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.3.

<sup>198</sup> Ibid.



|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <ul style="list-style-type: none"> <li>a. The <i>nazir</i> can be an individual, organization, or legal entity acknowledged in the home and host country.</li> <li>b. An individual <i>nazir</i> must be: (i) a Muslim; (ii) has come of age; (iii) trustworthy; (iv) has good integrity; (v) competent; (vi) professional; and (vii) is not hindered from carrying out legal actions.</li> <li>c. All members of a <i>nazir</i> in the form of organizations or legal entities must fulfil the exact requirements as the individual <i>nazir</i>.</li> <li>d. Must be registered or have written permission from the <i>waqf</i> authority or relevant ministries in their country.</li> <li>e. Has the ability to manage and develop the cross-border <i>mawquf</i>, including the way to maintain the <i>mawquf</i> condition, shipping, and seafaring procedures or experiences.</li> <li>f. Has the ability to administer all <i>waqf</i>-related documents properly.</li> <li>g. Must be a party that can be held accountable to protect the <i>waqf</i>'s perpetuity and preserve the <i>waqif</i>'s will.</li> <li>h. Must be able to account for all his activities in managing the <i>waqf</i>, inside or outside the court.</li> <li>i. May sue and be sued.</li> <li>j. Clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.</li> <li>k. Clean from international unlawful activities, such as money laundering and terrorist financing.</li> <li>l. Must agree that the sum of compensation for the <i>nazir</i> complies with the local law.</li> <li>m. Highly recommended to be domiciled in the same city as the <i>mawquf</i>'s location.</li> </ul> |
| 5 | <p>Applying the KYC to the host country:<sup>199</sup></p> <ul style="list-style-type: none"> <li>a. The <i>nazir</i> must conduct a KYC assessment as a preliminary examination of <i>waqf</i> regulations and policies in the host country, especially those related</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

<sup>199</sup> Ibid.

|  |                                                                                                                                                                                                                                                              |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | to <i>waqf</i> registration, acknowledgment, takeover, permits, conflict of jurisdiction in resolving <i>waqf</i> disputes, and taxes.                                                                                                                       |
|  | b. The <i>nazir</i> must conduct an initial coordination and KYC assessment to the <i>waqf</i> authorities, <i>waqf</i> experts, and <i>waqf</i> practitioners in the host county to obtain input on the cross-border <i>waqf</i> project to be carried out. |

### 5.3.2. The Creation Stage of Cross-Border *Waqf*

The general guidelines for the creation stages of cross-border *waqf*:

Table 5.3. The General Guidance: The Creation Stage of Cross-Border *Waqf*

| No. | The General Guidance for the Creation Stage of Cross-Border <i>Waqf</i>                                                                                                                                                                                                                 |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | All processes in a cross-border <i>waqf</i> creation stage must comply with the local Islamic law and <i>fatwa</i> of the country where the performance occurs. <sup>200</sup>                                                                                                          |
| 2   | All processes in a cross-border <i>waqf</i> creation stage must comply with the local law that complies with the <i>Sharia</i> of the country where the performance occurs. <sup>201</sup>                                                                                              |
| 3   | All processes in a cross-border <i>waqf</i> creation stage must comply with international rules and laws, especially related to the status of all parties and the cross-border movement of the <i>mawquf</i> . <sup>202</sup>                                                           |
| 4   | All processes in a cross-border <i>waqf</i> creation stage must consider the <i>maqasid al-Sharia</i> , <i>Sharia</i> economic principles, and <i>Sharia</i> economic values as the guideline, especially when determining the type of cross-border <i>waqf</i> project. <sup>203</sup> |
| 5   | The cross-border <i>waqf</i> creation must fulfil several elements as follows: <sup>204</sup>                                                                                                                                                                                           |

<sup>200</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.4.

<sup>201</sup> Ibid.

<sup>202</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.1.

<sup>203</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under Heading 3.3.

<sup>204</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.7.

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <ul style="list-style-type: none"> <li>a. The <i>waqf</i> pledge or commitment must be done by the <i>waqif</i>, or a representative under a power of attorney.</li> <li>b. The deed creation must be done in the presence of the <i>waqf</i> authority's representative or official.</li> <li>c. The deed must be issued by, registered in, and maintained by the <i>waqf</i> authority.</li> <li>d. All related documents must be maintained by the <i>waqf</i> authority.</li> <li>e. The deed must be created in front of the <i>waqif</i>, <i>nazir</i>, <i>mawquf'alaih</i>, and two witnesses.</li> <li>f. The deed must be written and signed.</li> <li>g. The cross-border <i>waqf</i> registration form must contain information: (i) date of the deed; (ii) <i>waqif</i>'s identity; (iii) <i>nazir</i>'s identity; (iv) witnesses' identity; (v) data of the <i>mawquf</i>; (vi) <i>waqf</i> objective; and (vii) <i>waqf</i> duration.</li> <li>h. Details on <i>mawquf</i> must be recorded in the exhibit.</li> <li>i. The <i>mawquf</i> must be registered under the name of the <i>nazir</i> or the <i>waqf</i> authority, depending on the local law where the performance occurs.</li> <li>j. The ownership of the <i>mawquf</i>, including related documents, must be transferred to the <i>nazir</i> immediately.</li> <li>k. The <i>nazir</i> is prohibited from using the <i>mawquf</i> before it is registered.</li> <li>l. The deed or certificate can only be issued up to thirty days after <i>waqf</i> registration and publication.</li> <li>m. Copies of the deed must be distributed to all parties.</li> <li>n. <i>Waqf</i> by a will must not exceed 1/3 (one-third) of the inherited assets after deducting it for debts, except if the heirs consent.</li> </ul> |
| 6 | <p>Several elements must be considered when carrying out the movement of cross-border <i>mawquf</i>:<sup>205</sup></p> <ul style="list-style-type: none"> <li>a. Classify the type of <i>mawquf</i>, whether it is a movable, immovable, tangible, and intangible object.</li> <li>b. Determine the best transfer or shipping and packing methods.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

<sup>205</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.1.

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <ul style="list-style-type: none"> <li>c. Check the legality of <i>mawquf</i>'s origin, ownership status, proof of ownership, and guarantee of being free from all burdens and liabilities.</li> <li>d. Check the <i>mawquf</i>'s condition and authenticity of its administrative documents.</li> <li>e. Ensure the protection of the <i>mawquf</i> during cross-border shipment by having <i>takaful</i>.</li> <li>f. Determine the party responsible for delivering the <i>mawquf</i> to the <i>nazir</i> in the host country.</li> <li>g. Mitigate barriers by: (i) using a trusted sea freight company, (ii) establishing a representative office or appointing a strategic partner in the host country or surrounding areas; (iii) establishing a logistic and warehousing center near the project location; and (iv) collaborate with local partners in the host country.</li> <li>h. Taking references from international rules to smoothen the cross-border movement of <i>mawquf</i> known as the INCOTERMS, for international shipping procedures.</li> <li>i. Taking references from international laws to smoothen the cross-border movement of <i>mawquf</i> with specific usage as follows: (i) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent; and (ii) the Model Law on International Credit Transfers, for international banking transfers.</li> </ul> |
| 7 | The <i>nazir</i> must obtain <i>waqf</i> approval from the <i>waqif</i> 's family members to prevent a <i>waqf</i> legal suit filed by the <i>waqif</i> 's family member in the future. <sup>206</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 8 | The <i>waqf</i> authority or <i>nazir</i> must make public announcements upon creating a new cross-border <i>waqf</i> through Government Gazette, local newspaper, regular publication, and press releases on the registered <i>nazir</i> or government <i>waqf</i> authority official media. <sup>207</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 9 | The <i>waqf</i> authority or <i>nazir</i> must maintain the data of cross-border <i>waqf</i> and made it accessible to the public. <sup>208</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

<sup>206</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.7.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

### 5.3.3. Management Stage of Cross-Border *Waqf*

The general guidelines for the management stage of cross-border *waqf*:

Table 5.4. The General Guidance: Management of Cross-Border *Waqf*

| No. | The General Guidance for the Management of Cross-Border <i>Waqf</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | All processes in a cross-border <i>waqf</i> management stage must comply with the local Islamic law and <i>fatwa</i> that apply in the country where the performance occurs. <sup>209</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2   | All processes in a cross-border <i>waqf</i> management stage must comply with the local law that complies with the <i>Sharia</i> of the country where the performance occurs. <sup>210</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3   | All processes in a cross-border <i>waqf</i> management stage must comply with international rules and laws, especially related to the status of all parties and the cross-border movement of the <i>mawquf</i> and usufructs. <sup>211</sup>                                                                                                                                                                                                                                                                                                                                                                                                              |
| 4   | All processes in a cross-border <i>waqf</i> management stage must consider the <i>maqasid al-Sharia</i> , <i>Sharia</i> economic principles, and <i>Sharia</i> economic values as the guideline, especially when determining the type of cross-border <i>waqf</i> project. <sup>212</sup>                                                                                                                                                                                                                                                                                                                                                                 |
| 5   | The role of <i>fatwa</i> in cross-border <i>waqf</i> management: <sup>213</sup> <ol style="list-style-type: none"> <li>Any decision from the <i>fatwa</i> council shall be final.</li> <li>The <i>nazir</i> must refer to the <i>fatwa</i> in force in the host country or the location of the <i>waqf</i> or <i>waqf</i> projects for any matters involving: (i) the determination of any matter which is not expressly provided in the statutes and unsettled; (ii) controversial question related to Islamic law in managing the <i>waqf</i>; (iii) undecided and unreachable <i>mawquf'alaih</i>; (iv) the death of <i>mawquf'alaih</i> or</li> </ol> |

<sup>209</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.4.

<sup>210</sup> Ibid.

<sup>211</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.1.

<sup>212</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under Heading 3.3.

<sup>213</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.7.

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <p>ceased to exist; (v) <i>istibdal</i>; (vi) transaction of <i>mawquf</i>; (vii) stipulation of <i>waqf</i>; (viii) <i>waqf</i> in a state of <i>marad al-maut</i>; and (ix) any other issues requiring necessary solutions from the authority.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 6 | <p>Applying the KYC to the third party:<sup>214</sup></p> <ul style="list-style-type: none"> <li>a. The <i>nazir</i> must act in good faith, without neglect, exercise due skill and care in the selection of any person or agent for the management of the <i>waqf</i>, such as representative or subsidiary and counterparts.</li> <li>b. The <i>nazir</i> can apply the KYC in the process of hiring professionals as advisors, agents, and employees, including but not limited to lawyers, accountants, bankers, property managers, and financial advisors.</li> <li>c. The <i>nazir</i> can apply the KYC in the process of appointing any party that will become the administrator or manager and hold any <i>mawquf</i> on his behalf.</li> <li>d. The <i>nazir</i> can apply the KYC to the business counterparts, by examining their published accounts or reports and their reputation with their clients, to learn the business structure, legality, and bargaining position, which will affect possible clause selections in business or cooperation contracts.</li> <li>e. The third party must be competent and qualified to manage cross-border <i>waqf</i>.</li> <li>f. If fail to apply a proper KYC and the appointed party causes loss to the <i>waqf</i> property due to his incompetence, which was overlooked during the appointment, the obligation to pay the compensation falls to the <i>nazir</i>, the appointment committee, or the person in charge of any such appointment.</li> <li>g. Clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.</li> <li>h. Clean from international unlawful activities, such as money laundering and terrorist financing.</li> </ul> |
| 7 | <p>The government's role to protect the <i>waqf</i> perpetuity in cross-border <i>waqf</i> management:</p> <ul style="list-style-type: none"> <li>a. Restrict cross-border <i>waqf</i> revocation.<sup>215</sup></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

<sup>214</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.3.

<sup>215</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <ul style="list-style-type: none"> <li>b. Restrict the transfer of <i>mawquf</i>'s ownership status.<sup>216</sup></li> <li>c. Restrict the change of <i>waqf</i>'s status and purpose by requiring a written permission from the <i>waqf</i> authority in the host country and can only be done if the <i>mawquf</i> cannot be utilized as the <i>waqif</i> wishes.<sup>217</sup></li> <li>d. Guarantee the ease of usufruct distribution from the <i>nazir</i> to the <i>mawquf'alaih</i>.<sup>218</sup></li> <li>e. The government of the host country should enact a regulation to prevent any status change of the <i>waqf</i> land.<sup>219</sup></li> <li>f. The government of the host country should oblige citizens to preserve the land and prevent destruction over it.<sup>220</sup></li> <li>g. The government of home and host countries should provide tax and administrative cost incentives for cross-border <i>waqf</i> activities.<sup>221</sup></li> <li>h. The government of home and host must protect the right of the <i>waqif</i> by giving them a chance to sue and get compensation from the <i>nazir</i> if they break the promise or commit an unlawful act.<sup>222</sup></li> </ul> |
| 8 | <p>The <i>nazir</i>'s role to protect the <i>waqf</i> perpetuity in cross-border <i>waqf</i> management:</p> <ul style="list-style-type: none"> <li>a. Avoid risky transactions.<sup>223</sup></li> <li>b. Always be in possession of the property.<sup>224</sup></li> <li>c. Uphold the principles of good governance, protect, preserve, and develop the <i>mawquf</i>.<sup>225</sup></li> <li>d. Ensure that the <i>mawquf'alaih</i> enjoy the usufruct generated from the <i>mawquf</i>.<sup>226</sup></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

<sup>216</sup> Ibid.

<sup>217</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.7.

<sup>218</sup> Ibid.

<sup>219</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.7.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>e. In a condition where the <i>mawquf'alaih</i> cannot be traced, deceased, or ceases to exist, under the approval of the <i>waqf</i> authority, the <i>nazir</i> may distribute the usufruct as closely as possible to the original purpose or add it to the general <i>waqf</i> fund.<sup>227</sup></p> <p>f. Utilize sources in restoring or redeveloping a damaged <i>mawquf</i>, such as the <i>waqf</i> fund, <i>baitulmal</i>, reserves, donations, state assistance, benevolent loan, and other permitted sources pursuant to Islamic law.<sup>228</sup></p> <p>g. Claim compensation for any destruction on the <i>waqf</i> caused by third party. The amount of compensation must at least cover the damage restoration, or it can be decided by the court by involving public and private appraisals and choose the most favorable one for the <i>waqf</i>.<sup>229</sup></p> <p>h. Must have the power to evict errant tenants, remodel the property, provide value-enhancing utilities and facilities.<sup>230</sup></p> <p>i. May form a special managerial unit for cross-border <i>waqf</i> for better and prudent <i>waqf</i> management.<sup>231</sup></p> <p>j. May lease the <i>waqf</i> property with fixed rental rates according to the market, collect rentals, claim lost values and rentals. Any leasing on <i>waqf</i> property below market value shall be guilty of an offense punishable by an appropriate penalty or dismissal and, if proven guilty, shall be liable to pay compensation for the damage caused to the <i>waqf</i> property.<sup>232</sup></p> <p>k. May insure the <i>mawquf</i> and all cross-border <i>waqf</i> management activities against major and known risks by using <i>takaful</i>.<sup>233</sup></p> <p>l. Must do all matters necessary to support their duties and responsibilities.<sup>234</sup></p> |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<sup>227</sup> Ibid.

<sup>228</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

<sup>229</sup> Ibid.

<sup>230</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.



|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9  | <p>Account management to protect the <i>waqf</i> perpetuity in managing the cross-border <i>waqf</i>:<sup>235</sup></p> <ol style="list-style-type: none"> <li>The <i>nazir</i> must separate the management of each cross-border <i>waqf</i>.</li> <li>The <i>nazir</i> must separate the account of each cross-border <i>waqf</i>.</li> <li>The <i>nazir</i> must separate the account between the <i>mawquf</i>, <i>istibdal</i> proceeds, usufruct, <i>waqf</i> reserves, <i>baitulmal</i>, general endowment fund, and general administration fund.</li> <li>The <i>nazir</i> must keep <i>waqf</i> funds in an Islamic bank.</li> <li>The <i>nazir</i> must record all transactions on all <i>waqf</i> accounts appropriately.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 10 | <p>Coordination and collaboration in managing the cross-border <i>waqf</i>:<sup>236</sup></p> <ol style="list-style-type: none"> <li>The <i>nazir</i>'s can appoint substitutes and third parties in managing the cross-border <i>waqf</i>.</li> <li>The <i>nazir</i> can appoint substitutes and third parties under a written contractual document with several conditions: (i) the substitutes can have the same powers, authority, and discretions as the <i>nazir</i>; (ii) the <i>nazir</i> may delegate some of their powers or impose restrictions; (iii) the third party must inform the <i>nazir</i> about all their actions and matters in managing the <i>waqf</i>; (iv) the <i>nazir</i> must have the power to monitor all activities of its administrators, managers, servants, agents and substitutes; and (v) the <i>nazir</i> can sue the third party for compensation if in conducting they fail to fulfil their part of the bargain.</li> <li>The <i>nazir</i> may collaborate with public and private sectors in the host country to get more benefits for cross-border <i>waqf</i> management, such as: (i) acquiring information on local regulations and policies; (ii) minimizing barriers; and (iii) gaining access to Fintech which will provide better security, transparency, and efficiency.</li> </ol> |
| 11 | <p>Contractual relationship in managing the cross-border <i>waqf</i>:<sup>237</sup></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>a. The <i>nazir</i> must consider several points in creating the contractual relationship with the third party: (i) any agreement between the <i>nazir</i> and a third party must be made in the form of a contract or another legally recognized form; (ii) all parties involved in any contract must be competent and have a sound mind, which means of the age of majority according to the law, and not disqualified from contracting by related law; (iii) selecting a legal entity in the form of institutions over individuals is preferable; (iv) an agreement or contract must be made based on mutual and free consent; (v) a contract must be made for a lawful consideration and with a lawful object; (vi) a contract must be made in writing, in the presence of witnesses, registered, and well-kept; (vii) a contract must have clear and understandable provisions such as details of the goods and services, price, and information about the parties; (viii) must state the currency for the transaction; (ix) must state the price; (x) must describe the attributes of the goods or services; (xi) must state packing requirements; (xii) must state inspection and quality control requirements; (xiii) must state <i>takaful</i> requirements; (xiv) must state shipping terms based on the INCOTERMS; (xv) must state the date by which goods must be dispatched or delivered; (xvi) must state the method and timing of payment based on international rules; (xvii) must state the obligations of the parties; (xviii) any amendments made after the contract has been signed must require consent of both parties; (xix) breach of the contract will entitle the other party to make legal claim or void the contract; (xx) alternative dispute resolutions as the first step in conflict resolution; (xxi) must specify the applicable law, for cross-border <i>waqf</i>, it is suggested to choose the law of the <i>nazir</i>'s country as the top priority, but if not possible, the law of a neutral country can be an alternative; (xxii) must determine the location of the court to handle the dispute, it is suggested to choose a court located in <i>nazir</i>'s country as the top priority, but if cannot, a court located in an easy-to-access neutral country can be an option; and (xxiii) must state force majeure conditions.</p> <p>b. Taking reference from international rules and laws in creating a business contract with third-party: (i) the ICC Model Contracts as guidance and</p> |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p>contract principles in drafting any business contract related to cross-border <i>waqf</i> management and development; (ii) the URC522, in utilizing the <i>murabahah</i> documentary collection; (iii) the UCP600 in utilizing the <i>murabahah</i> and <i>musyarakah</i> L/C; (iv) setting the priority of international payment method utilization based on the position of the <i>nazir</i>, open account and documentary collection methods if the <i>nazir</i> act as the buyer, and payment in advance and L/C if the <i>nazir</i> act as the seller; (v) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (vi) the Convention on the Use of Electronic Communications in International Contracts, for removing obstacles and establishing equivalence between electronic and written forms contracts; (vii) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent; and (viii) the Model Law on International Credit Transfers, for international banking transfers.<sup>238</sup></p> <p>c. The <i>nazir</i> or experts hired by the <i>nazir</i> may utilize several international laws as a reference in creating contracts related to cross-border <i>waqf</i> activities: (i) the UNIDROIT Principles of International Commercial Contracts 2016, for general rules of international contracts; (ii) the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts, for technical aspects of international contracts; and (iii) the UNIDROIT Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, to harmonize international laws on commercial contracts.<sup>239</sup></p> |
| 12 | <p>Several elements must be considered when carrying out usufruct movement for cross-border <i>waqf</i> distribution:</p> <p>a. The <i>nazir</i> can conduct direct and indirect distribution with several considerations: (i) <i>waqif</i>'s will; (ii) appropriateness of the <i>mawquf'alaih</i>; (iii) poverty reduction; (iv) job vacancy creation; (v) benefits the community; (vi) sustainable program; (vii) encourage community self-sufficiency; and (viii)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

<sup>238</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border Waqf. Under Heading 3.2.7.

<sup>239</sup> Ibid.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p>for indirect distribution, the usufruct must be channeled to registered social institutions.<sup>240</sup></p> <ul style="list-style-type: none"> <li>b. Classify the type of usufruct, whether it is a movable, immovable, tangible, and intangible object.<sup>241</sup></li> <li>c. Determine the best transfer or shipping and packing methods.<sup>242</sup></li> <li>d. Check the usufruct's condition and authenticity of its administrative documents.<sup>243</sup></li> <li>e. Ensure the protection of the usufruct during cross-border shipment by having <i>takaful</i>.<sup>244</sup></li> <li>f. Determine the party responsible for delivering the usufruct to the <i>mawquf'alaih</i> in the host country.<sup>245</sup></li> <li>g. Mitigate barriers by: (i) using a trusted sea freight company, (ii) establishing a representative office or appointing a strategic partner in the host country or surrounding areas; (iii) establishing a logistic and warehousing center near the project location; and (iv) collaborate with local partners in the host country.<sup>246</sup></li> <li>h. Taking references from the INCOTERMS to smoothen the cross-border movement of the usufruct.<sup>247</sup></li> </ul> |
| 13 | <p>Implementation of <i>istibdal</i>:<sup>248</sup></p> <ul style="list-style-type: none"> <li>a. <i>Istibdal</i> or the exchange of <i>mawquf</i> can be implemented as a solution for maintaining the <i>waqf</i>'s perpetuity.</li> <li>b. <i>Istibdal</i> can only be implemented by the <i>nazir</i> under certain conditions as follows: (i) permitted by the <i>waqf</i> authority; (ii) needed for social benefit by the government; (iii) the <i>mawquf</i> cannot be used as originally intended or the</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

<sup>240</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.2.

<sup>241</sup> Ibid.

<sup>242</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.1.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p><i>waqf</i> purpose; (iv) there is an urgency for the benefit of the religion or public interest; (v) if the <i>waqf</i> is inconsistent with any written law; (vi) the <i>mawquf</i> has been acquired by any authority under any written law; and (vii) if there are other circumstances deemed necessary.</p> <p>c. Several key factors that need to be included in <i>istibdal</i> implementation: (i) <i>istibdal</i> is a way to replace a <i>mawquf</i>, wholly or partly; (ii) several methods to conduct <i>istibdal</i> are exchanging, purchasing, selling, or any other manner following Islamic law; (iii) the exchange property must have valid legal proof of ownership; (iv) the exchange property must be easily developed; (v) the exchanged <i>mawquf</i> must have same or higher market-value than the previous one; (vi) In assessing the market value, any suitable method may be used by considering the price of <i>mawquf</i> with similar characteristics; (vii) If the exchanged <i>mawquf</i> is a land lot, the value of any building on it shall be disregarded if that building is not permitted; (viii) the sale proceeds by <i>istibdal</i> may be used to develop the remaining <i>waqf</i> property; (ix) all processes must follow the local <i>waqf</i> law.</p> |
| 14 | <p><i>Nazir</i> replacement, removal, and prosecution in cross-border <i>waqf</i> management:</p> <p>a. Changes in cross-border <i>waqf</i>'s <i>nazir</i> or management are permissible as long as they do not violate the deed, the <i>waqf</i>'s purpose or the <i>waqif</i>'s will. The new <i>nazir</i> must be trustworthy, prudent, and professional. The management transfers must be carried out properly. Conflicting matters must be resolved through negotiation.<sup>249</sup></p> <p>b. The <i>nazir</i> can be replaced, removed, and prosecuted for several reasons: (i) natural and legal incapacity; (ii) embezzlement and misappropriation of the funds; (iii) negligence or mismanagement of <i>waqf</i> properties; (iv) lack of good performance; (v) not putting the <i>waqf</i> properties to the best and highest use as demanded by the established standards of the business community; (vi) causing financial loss to the <i>waqf</i>; and (vii) if can be proven any breach of</p>                                                                                                                                                                                                                                                                                           |

<sup>249</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.7.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | duties, the <i>nazir</i> not only can be dismissed but should also be sued in a court of law for willful or negligent mismanagement of <i>waqf</i> properties. <sup>250</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 15 | <p>Foreign currency risk in cross-border <i>waqf</i> management:<sup>251</sup></p> <p>The <i>nazir</i> must pay close attention to the regulation about foreign to domestic currency conversion, and to the regulation about coverage guarantee limit by the local government.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 16 | <p>Report, evaluation, and publication in managing the cross-border <i>waqf</i>:<sup>252</sup></p> <ol style="list-style-type: none"> <li>a. The <i>nazir</i> must be obliged to send the <i>waqf</i> management report every six months to the <i>waqf</i> authority and or Ministry of Religion.</li> <li>b. The report must cover: (i) date or period of reporting; (ii) data of <i>waqif</i> and <i>nazir</i>; (iii) <i>waqf</i> purpose; (iv) <i>waqf</i> or <i>mawquf</i> registration data; (v) <i>mawquf</i> management and development; (vi) cash flow including cost, expenses, and income; (vii) <i>mawquf</i> utilization result; (viii) distribution of the usufruct; (ix) changes in <i>waqf</i> status (if any); and (x) <i>Nazir</i> changes (if any).</li> <li>c. The <i>waqf</i> authority must use the <i>waqf</i> management report to evaluate the <i>nazir</i>'s performance.</li> <li>d. If needed, the <i>waqf</i> authority can appoint a public accountant or auditor to examine the <i>nazir</i>'s performance. The <i>waqf</i> authority may also oblige the <i>nazir</i> to submit financial reports occasionally.</li> <li>e. As part of transparency, the <i>nazir</i> must publish the list of all <i>mawquf</i> in the gazette or the <i>nazir</i>'s official media or the <i>waqf</i> authority's official media annually.</li> <li>f. The publication must include: (i) the <i>waqf</i> scheme; (ii) the <i>mawquf'alaih</i>; (iii) investments; (iv) the usufruct or proceeds; (v) the profits; (vi) losses; (vii) the rate of income distribution to the <i>mawquf'alaih</i>; (viii) the reserves; and (ix) expenses spent on the repair or maintenance of <i>waqf</i> property.</li> </ol> |

<sup>250</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17 | <p>Dispute resolution in cross-border <i>waqf</i> management:<sup>253</sup></p> <ol style="list-style-type: none"> <li>a. Peaceful conflict resolution (<i>sulh</i>) always becomes the first choice over litigation because it will generate a win-win solution to maintain the relationship between <i>waqf-related</i> parties.</li> <li>b. <i>Nazir</i> and <i>waqf</i>-related parties must agree to choose an alternative dispute resolution to resolve the conflict in cross-border <i>waqf</i> and related activities. It can be written in every cross-border <i>waqf</i>-related contract or in a separate agreement.</li> <li>c. Sequentially, the alternative dispute resolution process consists of discussion or consultation, good office, negotiation, mediation, inquiry or fact-finding, conciliation, court-annexed mediation, and arbitration.</li> <li>d. Litigation is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border <i>waqf</i> issues. It is strongly recommended to choose the Islamic or Religious Court to handle cross-border <i>waqf</i> dispute.</li> <li>e. A District Court can be an option if no Islamic or Religious Court is available, but only with judges with decent knowledge about Islamic or <i>waqf</i> laws.</li> <li>f. The dispute resolution process must be held in the language that the <i>waqif</i> and <i>nazir</i> can understand.</li> <li>g. It is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a Muslim, to ensure the adherence to Islamic principles in the legal process.</li> <li>h. The neutral third parties or judges must have a decent knowledge of Islamic law including <i>waqf</i>.</li> <li>i. It is recommendable that neutral third parties or judges have knowledge about laws related to the type of <i>mawquf</i>.</li> <li>j. On the first day of the trial, the judges must suggest to the parties to make peace or to conduct mediation.</li> <li>k. Parties must pay close attention to the litigation costs to prevent the corpus and <i>waqf</i> funds from deteriorating.</li> </ol> |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<sup>253</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.5.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <ol style="list-style-type: none"> <li>l. It is recommended that the government of the region where the litigation process is being held assist with litigation costs and legal aid to indigent applicants.</li> <li>m. Several international rules and laws to be used in a dispute resolution of cross-border <i>waqf</i> include: (i) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (ii) The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, to provide uniform rules of the mediation process and encouraging the use of mediation; and (iii) the CLOUT, to be used as a reference in mitigating and resolving cross-border <i>waqf</i> disputes.</li> </ol> |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### 5.3.4. Development Stage of Cross-Border *Waqf*

The general guidelines for the development stage of cross-border *waqf*:

Table 5.5. The General Guidance: Development of Cross-Border *Waqf*

| No. | The General Guidance for the Development of Cross-Border <i>Waqf</i>                                                                                                                                                                          |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | All processes in a cross-border <i>waqf</i> development stage must comply with the local Islamic law and <i>fatwa</i> that apply in the country where the performance occurs. <sup>254</sup>                                                  |
| 2   | All processes in a cross-border <i>waqf</i> development stage must comply with the local law that complies with the <i>Sharia</i> of the country where the performance occurs. <sup>255</sup>                                                 |
| 3   | All processes in a cross-border <i>waqf</i> development stage must comply with international rules and laws, especially related to the status of all parties and the cross-border movement of the <i>mawquf</i> and usufructs. <sup>256</sup> |

<sup>254</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.4.

<sup>255</sup> Ibid.

<sup>256</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border *Waqf* in the *Waqf* Core Principles. Under heading 5.2.1.



|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | All processes in a cross-border <i>waqf</i> development stage must consider the <i>maqasid al-Sharia</i> , <i>Sharia</i> economic principles, and <i>Sharia</i> economic values as the guideline, especially when determining the type of cross-border <i>waqf</i> project. <sup>257</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5 | The role of <i>fatwa</i> in cross-border <i>waqf</i> development stage: <sup>258</sup> <ol style="list-style-type: none"> <li>Any decision from the <i>fatwa</i> council shall be final.</li> <li>The <i>nazir</i> must refer to the <i>fatwa</i> in force in the host country or the location of the <i>waqf</i> or <i>waqf</i> projects for any controversial question related to Islamic law in developing the <i>waqf</i>.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 6 | Applying the KYC to the third-party: <sup>259</sup> <ol style="list-style-type: none"> <li>The <i>nazir</i> must act in good faith, without neglect, exercise due skill and care in the selection of any person or agent for the investment of the <i>waqf</i>, such as representative or subsidiary and counterparts</li> <li>The <i>nazir</i> can apply the KYC in the process of hiring professionals as advisors, agents, and employees, including but not limited to lawyers, accountants, bankers, property managers, and financial advisors.</li> <li>The <i>nazir</i> can apply the KYC in the process of appointing any party that will become the administrator or manager and hold any <i>mawquf</i> on his behalf.</li> <li>The <i>nazir</i> can apply the KYC to the business counterparts, by examining their published accounts or reports and their reputation with their clients, to learn the business structure, legality, and bargaining position, which will affect possible clause selections in business or cooperation contracts.</li> <li>The third party must be competent and qualified to develop cross-border <i>waqf</i>.</li> <li>If fail to apply a proper KYC and the appointed party causes loss to the <i>waqf</i> property due to his incompetence, which was overlooked during the appointment, the obligation to pay the compensation falls to the <i>nazir</i>, the appointment committee, or the person in charge of any such appointment.</li> </ol> |

<sup>257</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border Waqf. Under Heading 3.3.

<sup>258</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.7.

<sup>259</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.3.

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <p>g. Clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.</p> <p>h. Clean from international unlawful activities, such as money laundering and terrorist financing.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7 | <p>Investment in developing the cross-border <i>waqf</i>.<sup>260</sup></p> <p>a. The <i>nazir</i> must set criteria before conducting direct and non-direct investment in managing the <i>waqf</i>, which at least includes: (i) <i>Sharia</i> and law compliance; (ii) comprehensive assessment of the character, condition, capital, capacity, collateral, people, purpose, and payment; (iii) conducting the feasibility study; (iv) prioritizing productive projects; and (v) have a bank guarantee from an Islamic financial institution if deemed necessary.</p> <p>b. The <i>nazir</i> must allocate a sum of money as a guarantee or buffer equal to the total investment in a <i>waqf</i> project.</p> <p>c. The <i>nazir</i> must limit their investment to projects run by related parties, it is suggested that the total investment must not exceed 10% of the total <i>mawquf</i>.</p>                    |
| 8 | <p>Coordination and collaboration in developing the cross-border <i>waqf</i>.<sup>261</sup></p> <p>a. The <i>nazir</i>'s can appoint substitutes and third parties in developing the cross-border <i>waqf</i>.</p> <p>b. The <i>nazir</i> can appoint third parties under a written contractual document with several conditions: (i) the <i>nazir</i> may delegate some of their powers or impose restrictions; (ii) the third party must inform the <i>nazir</i> about all their actions and matters in managing the <i>waqf</i>; (iii) the <i>nazir</i> must have the power to monitor all activities of the third party; and (iv) the <i>nazir</i> can sue the third party for compensation if they fail to 242econd their part of the bargain.</p> <p>c. The <i>nazir</i> may collaborate with public and private sectors in the host country to get more benefits for developing the cross-border <i>waqf</i>.</p> |
| 9 | <p>Contractual relationship in developing the cross-border <i>waqf</i>.<sup>262</sup></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

<sup>260</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>a. The <i>nazir</i> must consider several points in creating the contractual relationship with the third party: (i) any agreement between the <i>nazir</i> and a third party must be made in the form of a contract or another legally recognized form; (ii) all parties involved in any contract must be competent and have a sound mind, which means of the age of majority according to the law, and not disqualified from contracting by related law; (iii) selecting a legal entity in the form of institutions over individuals is preferable; (iv) an agreement or contract must be made based on mutual and free consent; (v) a contract must be made for a lawful consideration and with a lawful object; (vi) a contract must be made in writing, in the presence of witnesses, registered, and well-kept; (vii) a contract must have clear and understandable provisions such as details of the goods and services, price, and information about the parties; (viii) must state the currency for the transaction; (ix) must state the price; (x) must describe the attributes of the goods or services; (xi) must state packing requirements; (xii) must state inspection and quality control requirements; (xiii) must state <i>takaful</i> requirements; (xiv) must state shipping terms based on the INCOTERMS; (xv) must state the date by which goods must be dispatched or delivered; (xvi) must state the method and timing of payment based on international rules; (xvii) must state the obligations of the parties; (xviii) any amendments made after the contract has been signed must require consent of both parties; (xix) breach of the contract will entitle the other party to make legal claim or void the contract; (xx) alternative dispute resolutions as the first step in conflict resolution; (xxi) must specify the applicable law, for cross-border <i>waqf</i>, it is suggested to choose the law of the <i>nazir</i>'s country as the top priority, but if not possible, the law of a neutral country can be an alternative; (xxii) must determine the location of the court to handle the dispute, it is suggested to choose a court located in <i>nazir</i>'s country as the top priority, but if cannot, a court located in an easy-to-access neutral country can be an option; and (xxiii) must state force majeure conditions.</p> <p>b. Taking reference from international rules and laws in creating a business contract with third-party: (i) the ICC Model Contracts as guidance and</p> |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p>contract principles in drafting any business contract related to cross-border <i>waqf</i> management and development; (ii) the URC522, in utilizing the <i>murabahah</i> documentary collection; (iii) the UCP600 in utilizing the <i>murabahah</i> and <i>musyarakah</i> L/C; (iv) setting the priority of international payment method utilization based on the position of the nazir, open account and documentary collection methods if the nazir act as the buyer, and payment in advance and L/C if the nazir act as the seller;<sup>263</sup> (v) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (vi) the Convention on the Use of Electronic Communications in International Contracts, for removing obstacles and establishing equivalence between electronic and written forms contracts; (vii) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent; and (viii) the Model Law on International Credit Transfers, for international banking transfers.<sup>264</sup></p> <p>c. The <i>nazir</i> or experts hired by the <i>nazir</i> may utilize several international laws as a reference in creating contracts related to cross-border <i>waqf</i> activities: (i) the UNIDROIT Principles of International Commercial Contracts 2016, for general rules of international contracts; (ii) the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts, for technical aspects of international contracts; and (iii) the UNIDROIT Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, to harmonize international laws on commercial contracts.<sup>265</sup></p> |
| 10 | <p>Several elements must be considered when carrying out usufruct movement for cross-border <i>waqf</i> investment:</p> <p>a. Classify the type of usufruct to be invested, whether it is a movable, immovable, tangible, and intangible object.<sup>266</sup></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

<sup>263</sup> The London Institute of Banking and Finance (LIBF) and International Chamber of Commerce (ICC), "Certificate in International Trade and Finance - Tutorial 2024."

<sup>264</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border Waqf. Under Heading 3.2.7.

<sup>265</sup> Ibid.

<sup>266</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.2.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>b. Determine the best transfer or shipping and packing methods.<sup>267</sup></p> <p>c. Check the usufruct's condition and authenticity of its administrative documents.<sup>268</sup></p> <p>d. Ensure the protection of the usufruct during cross-border shipment by having <i>takaful</i>.<sup>269</sup></p> <p>e. Determine the party responsible for delivering the usufruct to be invested.<sup>270</sup></p> <p>f. Mitigate barriers by: (i) using a trusted sea freight company, (ii) establishing a representative office or appointing a strategic partner in the host country or surrounding areas; (iii) establishing a logistic and warehousing center near the project location; and (iv) collaborate with local partners in the host country.<sup>271</sup></p> <p>g. Taking references from international rules to smoothen the cross-border movement of <i>usufruct</i> with specific usage as follows: (i) the INCOTERMS, for international shipping procedures; (ii) the URBPO, in utilizing the bank payment obligation to provide a financial or payment guarantee based on prerequisite in the business contract to an overseas third-party in a condition where <i>nazir</i>'s international reputation is not convincing enough; (iii) the URDG and the ISDGP, in utilizing the demand guarantee to ensure that the third parties receive payment from the <i>nazir</i> if a party cannot second their obligation, especially when both parties do not know each other and operate in different countries; (iv) the ISP98, in utilizing the standby letter of credit to benefit the <i>nazir</i> by providing a strong reputation due to payment guarantee for a long-term contractual relationship given by a bank with a good international reputation; (v) the ICC Model Contracts as guidance and contract principles in drafting any business contract related to cross-border <i>waqf</i> management and development; (vi) the URC522, in utilizing the</p> |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<sup>267</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.1.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p><i>murabahah</i> documentary collection; (vii) the UCP600 in utilizing the <i>murabahah</i> and <i>musyarakah</i> L/C.<sup>272</sup></p> <p>h. Taking references from international laws to smoothen the cross-border movement of <i>mawquf</i> with specific usage as follows: (i) the CISG, for the formation and standard terms of the international contract; (ii) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (iii) the Convention on the Use of Electronic Communications in International Contracts, for removing obstacles and establishing equivalence between electronic and written forms contracts; (iv) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent; and (v) the Model Law on International Credit Transfers, for international banking transfers.<sup>273</sup></p> |
| 11 | <p>Foreign currency risk in cross-border <i>waqf</i> development:<sup>274</sup></p> <p>The <i>nazir</i> must pay close attention to the regulation about foreign to domestic currency conversion, and to the regulation about coverage guarantee limit by the local government.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 12 | <p>Dispute resolution in cross-border <i>waqf</i> development:<sup>275</sup></p> <p>a. Peaceful conflict resolution (<i>sulh</i>) always becomes the first choice over litigation because it will generate a win-win solution to maintain the relationship between <i>waqf-related</i> parties.</p> <p>b. <i>Nazir</i> and <i>waqf-related</i> parties must agree to choose an alternative dispute resolution to resolve the conflict in cross-border <i>waqf</i> and related activities. It can be written in every cross-border <i>waqf-related</i> contract or in a separate agreement.</p>                                                                                                                                                                                                                                                                                                                                              |

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

<sup>274</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.6.

<sup>275</sup> See Chapter 5 – Analyzing Countermeasures for Legal Gaps on Cross-Border Waqf in the Waqf Core Principles. Under heading 5.2.5.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <ul style="list-style-type: none"> <li>c. Sequentially, the alternative dispute resolution process consists of discussion or consultation, good office, negotiation, mediation, inquiry or fact-finding, conciliation, court-annexed mediation, and arbitration.</li> <li>d. Litigation is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border <i>waqf</i> issues. It is strongly recommended to choose the Islamic or Religious Court to handle cross-border <i>waqf</i> dispute.</li> <li>e. A District Court can be an option if no Islamic or Religious Court is available, but only with judges with decent knowledge about Islamic or <i>waqf</i> laws.</li> <li>f. The dispute resolution process must be held in the language that the <i>waqif</i> and <i>nazir</i> can understand.</li> <li>g. It is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a Muslim, to ensure the adherence to Islamic principles in the legal process.</li> <li>h. The neutral third parties or judges must have a decent knowledge of Islamic law including <i>waqf</i>.</li> <li>i. It is recommendable that neutral third parties or judges have knowledge about laws related to the type of <i>mawquf</i>.</li> <li>j. On the first day of the trial, the judges must suggest to the parties to make peace or to conduct mediation.</li> <li>k. Parties must pay close attention to the litigation costs to prevent the corpus and <i>waqf</i> funds from deteriorating.</li> <li>l. It is recommended that the government of the region where the litigation process is being held assist with litigation costs and legal aid to indigent applicants.</li> <li>m. Several international rules and laws to be used in a dispute resolution of cross-border <i>waqf</i> include: (i) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution; (ii) The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, to provide uniform rules of the mediation process and encouraging the use of mediation; and (iii) the CLOUT, to be used as a reference in mitigating and resolving cross-border <i>waqf</i> disputes.</li> </ul> |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## 5.4. CONCLUSION

The first part of this chapter has formulated answers to seven legal gaps found in the WCP about cross-border *waqf*. Answers were adopted at least from 52 (fifty-two) Indonesia's *waqf*-related regulations, 31 (thirty-one) Malaysia's *waqf*-related regulations, 15 (fifteen) international laws, 8 (eight) international rules, and 36 (thirty-six) practices from various institutions.

Answers to the first legal gap about the cross-border movement of the *mawquf* have been answered by eight core points which are: (i) classifying the type of *mawquf*; (ii) determining the best shipping method; (iii) checking the legality of *mawquf*'s origin or ownership; (iv) checking the *mawquf*'s condition and authenticity of its administrative documents; (v) mitigating risk during cross-border shipment; (vi) determining the party responsible for delivering the *mawquf*; (vii) mitigating barriers on cross-border movement of the *mawquf*; and (viii) taking references from international rules and laws that can smoothen the movement of cross-border *mawquf* and usufructs.

The second legal gap about cross-border movement of the usufruct has been answered by third core points, which are: (i) starting with regulating and determining the best cross-border movement method; (ii) determining the best shipping method; and (iii) selecting the best usufruct distribution method.

The third legal gap about KYC principles in cross-border *waqf* has been answered by third core points, which are: (i) applying the KYC to determine the *waqif*; (ii) applying the KYC to the *nazir* before the appointment by *waqif*; and (iii) applying the KYC to the third-party in managing and developing the *waqf*.

The fourth legal gap is about governing law for cross-border *waqf*. This concern has been answered by selecting the Islamic local law or local law of the region where the *waqf* program is being implemented that complies with the *Sharia* as the priority law governing cross-border *waqf* transactions.

The fifth legal gap about dispute resolution in cross-border *waqf* has been answered by eight core points, which are: (i) peaceful conflict resolution (*sulh*) always becomes the



first choice over litigation because it will generate a win-win solution to maintain the relationship between *waqf-related* parties; (ii) the process must be held in the language that the *waqif* and *nazir* can understand; (iii) it is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a Muslim, to ensure the adherence to Islamic principles in the legal process; (iv) the neutral third parties or judges must have a decent knowledge of Islamic law including *waqf*; (v) it is recommendable that the neutral third parties or judges to have knowledge about laws related to the type of *mawquf* in a *waqf* dispute; (vi) the *nazir* and *waqf-related* parties, under a written document, must agree to choose an alternative dispute resolution to resolve the conflict in cross-border *waqf* and related activities; (vii) litigation, with several conditions considering the Islamic law compliance, is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border *waqf* issues; and (viii) taking references from international rules and laws related to dispute resolution.

Sixth, legal gap about protecting the perpetuity of cross-border *waqf* has been answered by twenty-nine core points, which are: (i) restricting cross-border *waqf* revocation; (ii) restricting the transfer of *mawquf*'s ownership status; (iii) *nazir* must avoid risky transactions and be in possession of the property; (iv) the *nazir* must uphold the principles of good governance, protect, preserve, and develop the *mawquf*; (v) if the *mawquf* is in the form of land, it is suggested that the government should enact a regulation to prevent any status change of the *waqf* land and to oblige citizens to preserve the land and prevent destruction over it; (vi) it is recommended that both the government of home and host countries provide tax and administrative cost incentives for cross-border *waqf* activities; (vii) the government must protect the right of the *waqif* by giving them a chance to sue and get compensation from the *nazir* if they break the promise or commit an unlawful act; (viii) the *nazir* must claim compensation for any destruction on the *waqf* caused by third party; (ix) the amount of compensation must at least cover the damage restoration, or it can be decided by the court by involving public and private appraisals and choose the most favorable one for the *waqf*; (x) the *nazir* must separate the management of each *waqf*; (xi) the *nazir* must is separate the account of each cross-border *waqf*, including their sub-accounts; (xii) the *nazir* must keep the *waqf* funds in an Islamic bank; (xiii) all transactions on all *waqf* accounts must be recorded appropriately; (xiv) the *nazir* may form a special

managerial unit in managing the cross-border *waqf* management; (xv) the *nazir* must do all matters necessary to protect the condition of the *mawquf*; (xvi) the *nazir* can appoint substitutes and third parties in managing and developing cross-border *waqf*; (xvii) *nazir* may collaborate with public and private sectors in managing and developing cross-border *waqf*; (xviii) a prudent contract is essential to manage contractual relationships in managing and developing cross-border *waqf*; (xix) taking references from international rules and laws in creating contracts related to cross-border *waqf* activities is essential; (xx) *nazir* to set criteria before conducting direct and non-direct investment in developing the cross-border *waqf*; (xxi) the *nazir* must allocate a sum of money as a buffer equal to the total investment in a *waqf* project; (xxii) the *nazir* must limit their investment to projects run by related parties; (xxiii) the *nazir* must send the *waqf* management report every six months to the authority; (xxiv) the *waqf* authority must use the management report to evaluate the *nazir*'s performance; (xxv) the *nazir* must publish the list of all *mawquf* annually; (xxvi) *istibdal* can be implemented as a solution to maintain the *waqf*'s perpetuity; (xxvii) there are several key factors that need to be included in implementing the *istibdal*; (xxviii) the *nazir* must pay attention to the regulation about foreign to domestic currency conversion and the coverage guarantee limit by the local government; and (xxix) the *nazir* can be replaced, removed, and prosecuted for several reasons.

Seventh, legal gap about protecting the *waqif*'s purpose in cross-border *waqf* has been answered by eleventh core points, which are: (i) several elements need to be fulfilled during the cross-border *waqf* creation; (ii) the *waqf* pledge must be done under several conditions; (iii) *waqf* approval from the *waqif*'s family members is crucial to prevent legal suit in the future; (iv) the *waqf* deed must be issued under several conditions; (v) cross-border *waqf* declaration and publication; (vi) *nazir*'s obligation to manage the *mawquf* according to the wishes of the *waqif*; (vii) the host country's government must guarantee the ease of usufruct distribution from the *nazir* to the *mawquf'alaih*; (viii) in a condition where the *mawquf'alaih* cannot be reached, the *nazir* may distribute the usufruct as closely as possible to the original purpose or add it to the general *waqf* fund; (ix) any decision from the *fatwa* council shall be final; (x) the *nazir* must refer to the *fatwa* in force in the host country or the location of the cross-border *waqf* project for any determination of matters which is not expressly provided in the statutes and unsettled or controversial question

related to Islamic law; and (xi) changes in cross-border *waqf* management are permissible as long as they do not violate the deed, the *waqf*'s purpose or the *waqif*'s will.

All the above answers were then developed to become ready-to-use international rules on cross-border *waqf*, which were formed by using the legal framework explained in this study's third chapter and following the technical notes template of the WCP. As the final result, there are four main sections on the proposed technical notes on cross-border *waqf*. Each contains an easy-to-implement guideline and assessment form to support technical aspects of conducting cross-border *waqf* transactions.

Generally, the first section of the proposed technical notes covers essential elements for the pre-creation stage of cross-border *waqf*, such as regulatory compliance and KYC application. The second section covers activities on creating cross-border *waqf*, which are important elements in cross-border *waqf* creation, determining the type of cross-border *waqf* projects, movement of *mawquf*, and publication. The third section covers the management stage of cross-border *waqf*, including the government's role, nazir's role, account management, coordination, collaboration, contractual relationship, usufruct distribution, *istibdal*, *nazir* replacement, currency risk, report, evaluation, and dispute resolution. As the last section, the fourth section of technical notes on cross-border *waqf* covers the development stage, which includes investment and its supporting factors. The assessment forms of these four sections can be seen in appendix IV to VII of this study.

## CHAPTER SIX

### FINDINGS, RECOMMENDATIONS, AND CONCLUSION

#### 6.1. INTRODUCTION

This final chapter aims to conclude the thesis by summarizing the findings and presenting them as practical recommendations to fulfil the primary objectives of this study, which include the exploration and analysis of *waqf*-related laws and practices in selected countries, as well as current international rules and laws. These initiatives will result in the creation of amendment points or comprehensive provisions to address the legal gaps identified in the WCP concerning cross-border *waqf*.<sup>1</sup>

As stated in the first chapter, there are three main reasons that triggered this study. First, the Indonesian, Kuwaiti, and Qatar governments urgently require a comprehensive guidance to cross-border *waqf*, as they are prepared to implement it imminently. Second, the WCP encompasses numerous aspects of *waqf* management but has not addressed the components relating to cross-border *waqf* transactions. Third, the need for compliance with the current global order necessitates extensive guidelines to ensure the good governance aspect of cross-border *waqf* activities. This is due to the complex nature of cross-border *waqf*, which involves multiple jurisdictions and the international movement of *mawquf* and usufruct.<sup>2</sup>

Three research objectives and corresponding questions were established to direct the focus of the study. This is important for the development of the WCP technical notes on cross-border *waqf*, serving as the final output of this study. The connections between the research objectives, research questions, and chapters of the study are summarized in the table below.

---

<sup>1</sup> See Chapter 1 - Background of the Study. Under heading 1.1.

<sup>2</sup> See Chapter 1 - Background of the Study. Under heading 1.2.

Table 6.1. Chapters Connections with the Research Objectives and Research Questions

| Research Objectives                                                                                                                                                                                                                                                                                                                                      | Research Questions                                                                                                                                                                                                                                                  | Discussed in Chapter               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 1. To explore and analyze the framework of <i>waqf-related</i> laws in Indonesia and Malaysia and determine its advantages to cross-border <i>waqf</i> practice. The study on the legal framework covers the legislation, regulations on various levels, courts' decisions, <i>fatwas</i> , statements about the law, articles and papers about the law. | How does the <i>waqf-related</i> laws in Malaysia and Indonesia regulate the cross-border <i>waqf</i> ?                                                                                                                                                             | Chapter One, Two, and Three.       |
| 2. To identify the legal gap in the WCP compared to Indonesian and Malaysian regulations and <i>waqf</i> practice, as well as the current international laws and rules related to cross-border <i>waqf</i> transactions.                                                                                                                                 | What are the legal gaps between the WCP compared to regulations and practices from Indonesia, Malaysia, and selected countries such as Singapore and Saudi Arabia, as well as the current international law rules related to cross-border <i>waqf</i> transactions? | Chapter One, Two, Three, and Four. |
| 3. To formulate a set of amendment points and detailed clauses regarding cross-border <i>waqf</i> to improve the quality of WCP.                                                                                                                                                                                                                         | What clauses must be added to the WCP to cover the cross-border <i>waqf</i> transactions?                                                                                                                                                                           | Chapter Five.                      |

## 6.2. FINDINGS

A brief explanation on key findings, facts, and solutions based on the research objectives and research questions, which have been elaborated in the previous chapters, are provided below.

### 6.2.1. The Outcome of Indonesian and Malaysian Cross-Border *Waqf* Regulations Assessment

The first research objective is to explore and analyze the framework of *waqf*-related laws in Indonesia and Malaysia and determine its advantages to cross-border *waqf* practice. While the corresponding research question is to examine how the *waqf-related* laws in Indonesia and Malaysia regulate the cross-border *waqf*. Malaysian laws mean all *waqf* and *waqf*-related enactments from all state and federal territories in Malaysia.

After examining Indonesian *waqf* laws, comprising nineteen core regulations about *waqf* and twenty-seven *waqf*-related regulations, it is found that Indonesia already has a legal base to conduct cross-border *waqf* activities. This provision is clearly stated in Article 40 of Act 41 of 2004 concerning Waqf, which states that one of the Indonesian Waqf Board's roles is to manage and develop international *waqf* treasuries and improve *waqf* assets internationally. Nevertheless, there are no additional technical regulations pertaining to cross-border *waqf* operations.<sup>3</sup>

A similar finding emerges from the investigation of at least thirty-one Malaysian *waqf* laws. In general, Malaysian laws support cross-border *waqf* activity.<sup>4</sup> Malaysian laws allow the Majlis or *nazir* to become the *mawquf-alaih* for any *mawquf* located beyond their respective state jurisdiction<sup>5</sup> and require the *nazir* to take all necessary procedures to claim

---

<sup>3</sup> See Chapter 1 – Background of the Study. Under heading 1.8.2.

<sup>4</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under heading 3.2.1.

<sup>5</sup> As seen in section 27 of Wakaf (State of Selangor) Enactment 2015. Similar in section 14(2) of Wakaf (Negeri Sembilan) Enactment 2005. The same in section 28 of Wakaf (Terengganu) Enactment 2016. And in section 3(1) of Wakaf (State of Sabah) Enactment 2018.

the usufruct when the *mawquf* is located outside of the state.<sup>6</sup> However, there are no further specific and comprehensive regulations governing cross-border *waqf* activity.

Despite the fact that neither Indonesian nor Malaysian laws and regulations provide explicit guidelines for cross-border *waqf*, many provisions of local *waqf* regulations can be adopted to strengthen the prudential aspect of cross-border *waqf* activities. These findings have been recommended to be added as in the proposed WCP technical notes on cross-border *waqf*, the final product of this study. The outcomes encompass: (i) securing the movement of cross-border *mawquf*; (ii) securing the movement of cross-border usufruct; (iii) guaranteeing the perpetuity of the *waqf*; (iv) the implementation of KYC principles; and (v) determining the governing law and dispute resolution.<sup>7</sup>

#### 6.2.1.1. Securing the Movement of Cross-Border *Mawquf*

The first finding is securing the movement of cross-border *mawquf*. It is found that there are several provisions that could be adopted from Indonesian and Malaysian *waqf*-related laws. Summary of the findings can be seen in the following table:

Table 6.2. Findings Pertaining to Securing the Movement of *Mawquf* Based on Indonesian and Malaysian Regulations<sup>8</sup>

| Indonesian Regulations                                                                                                                                                                                                                         | Malaysian Regulations                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Classifying the type of <i>mawquf</i>.</li> <li>2. Determining the best movement mechanism.</li> <li>3. Ensuring that the <i>mawquf</i> is free of all burdens and liabilities, proven by</li> </ol> | <ol style="list-style-type: none"> <li>1. Investigate the <i>mawquf</i>'s ownership status.</li> <li>2. Ensuring that the <i>mawquf</i> is free of all burdens and liabilities, proven by</li> </ol> |

<sup>6</sup> Wakaf (Negeri Sembilan) Enactment 2005, s 14.

<sup>7</sup> See Chapter 2 – Indonesia's Laws and Regulations Related to Cross-Border *Waqf*. Under heading 2.5. And Chapter 5 – Analyzing and Developing International Rules of Cross-Border *Waqf*. Under heading 5.2.

<sup>8</sup> Analyzed from Chapter 2 – Indonesia's Laws and Regulations Related to Cross-Border *Waqf*, under heading 2.5. And Chapter 5 – Analyzing and Developing International Rules of Cross-Border *Waqf*, under heading 5.2.

|                                                                                                                                                                                                                    |                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| certificate competent authorities, proof of ownership, and related documents.<br>4. Examine the condition of the <i>mawquf</i> .<br>5. Verify the legitimacy of the <i>mawquf</i> 's administrative documentation. | dispute-free guarantee letter from the <i>waqif</i> .<br>3. Determining the party responsible for delivering the <i>mawquf</i> to the <i>nazir</i> . |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|

#### 6.2.1.2. Securing the Movement of Cross-Border Usufruct

The second finding is securing the movement of cross-border usufruct. Several detailed provisions can only be taken from Indonesian *waqf*-related laws to address this legal gap due to limited details about the usufruct's movement in Malaysian laws. Summary of the findings can be seen in the following table:

Table 6.3. Findings Pertaining to Securing the Movement of Usufruct Based on Indonesian Regulations<sup>9</sup>

| Findings from Indonesian Regulations about Securing the Usufruct Movement                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Classifying the type of usufruct.<br>2. Determining the best movement or shipping method.<br>3. Two ways of usufruct distribution, direct and indirect.<br>4. Distribution should be executed by conforming to several elements: <ol style="list-style-type: none"> <li><i>Waqif's</i> will.</li> <li><i>Sharia</i> and law compliance.</li> <li>Appropriateness of the <i>mawquf'alaih</i>.</li> <li>Poverty reduction.</li> <li>Job vacancy creation.</li> <li>Benefits the community.</li> <li>Sustainable program.</li> </ol> |

<sup>9</sup> Ibid.



- h. Encourage community self-sufficiency.
- i. Especially for indirect distribution, the usufruct must be channeled to registered social institutions.

#### 6.2.1.3. Guaranteeing the Perpetuity of the *Waqf*

The third finding is guaranteeing the perpetuity of the *waqf*, which also include protecting the *waqif*'s will. It is found that both countries *waqf*-related laws have adequate regulation about guaranteeing the *waqf*'s perpetuity, although Malaysian laws have more details that can be adopted to support cross-border *waqf* transactions. Summary of the findings can be seen in the following table:

Table 6.4. Findings About Guaranteeing the Perpetuity of the *Waqf* Based on Indonesian and Malaysian Regulations<sup>10</sup>

| Indonesian Regulations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Malaysian Regulations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Prerequisites and procedures for <i>waqf</i> creation.</li> <li>2. <i>Waqf</i> registration and administration.</li> <li>3. <i>Waqf</i> declaration and publication.</li> <li>4. Compliance to the <i>waqif</i>'s will on <i>waqf</i> changes.</li> <li>5. Restricting <i>waqf</i> revocation.</li> <li>6. Restricting the transfer of <i>mawquf</i>'s ownership status.</li> <li>7. Enacting regulation to prevent any status change of the <i>waqf</i> land.</li> <li>8. Obliging citizens to preserve the <i>waqf</i> land and prevent destruction.</li> </ol> | <ol style="list-style-type: none"> <li>1. <i>Waqf</i> registration and administration.</li> <li>2. <i>Waqf</i> declaration and publication.</li> <li>3. Compliance to the <i>waqif</i>'s will on usufruct distribution.</li> <li>4. The role of <i>fatwa</i>.</li> <li>5. Restricting <i>waqf</i> revocation.</li> <li>6. Restricting the transfer of <i>mawquf</i>'s ownership status.</li> <li>7. Uphold the principles of good governance, protect, preserve, and develop the <i>mawquf</i>.</li> <li>8. Utilizing variety of sources in restoring or redeveloping a damaged <i>mawquf</i> pursuant to Islamic law.</li> </ol> |

<sup>10</sup> Ibid.

|                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>9. The <i>nazir</i> can be sued for breaking the promise or commit an unlawful act.</p> <p>10. Separating the management of each <i>waqf</i>.</p> <p>11. Setting criteria, buffer, and limitation before investing the <i>waqf</i> funds.</p> <p>12. <i>Waqf</i> management report.</p> <p>13. Implementation of <i>istibdal</i>.</p> <p>14. Exchange rate risk.</p> <p>15. Utilizing negotiation as alternative dispute resolution.</p> | <p>9. Providing tax and administrative cost incentives.</p> <p>10. Claiming adequate compensation to fully restore the <i>mawquf</i> damage from the third party.</p> <p>11. Separating the account of each <i>waqf</i>.</p> <p>12. Keeping the <i>waqf</i> funds in an Islamic bank.</p> <p>13. Record all transactions on <i>waqf</i> accounts appropriately.</p> <p>14. Conduct all matters necessary to support duties and responsibilities in protecting the condition of the <i>mawquf</i>.</p> <p>15. Utilizing the <i>mawquf</i> to gain income.</p> <p>16. Insure the <i>mawquf</i> against major and known risks by using <i>takaful</i>.</p> <p>17. Appointing substitutes and third parties in managing and developing the <i>waqf</i>.</p> <p>18. Creating a prudent contract with counterpart in managing and developing cross-border <i>waqf</i>.</p> <p>19. <i>Waqf</i> management report.</p> <p>20. <i>Waqf</i> transparency and publication.</p> <p>21. Implementation of <i>istibdal</i>.</p> <p>22. <i>Nazir</i> replacement.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### 6.2.1.4. The Implementation of Know Your Customer Principles

The fourth finding is the implementation of KYC principles. It is found that there are several provisions that could be adopted from Indonesian and Malaysian *waqf*-related laws. Summary of the findings can be seen in the following table:

Table 6.5. Findings Pertaining to the Application of KYC principles Based on Indonesian and Malaysian Regulations<sup>11</sup>

| Indonesian Regulations                                                                                                                                                                                                                     | Malaysian Regulations                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"><li>1. Determining the <i>waqif</i>.</li><li>2. Legal status of the <i>nazir</i>.</li><li>3. <i>Nazir</i>'s ability to manage and develop the <i>waqf</i>.</li><li>4. <i>Nazir</i>'s domicile.</li></ol> | <ol style="list-style-type: none"><li>1. Setting up prerequisite to become the <i>waqif</i>.</li><li>2. Legal status of the <i>nazir</i>.</li><li>3. <i>Nazir</i>'s ability to manage and develop the <i>waqf</i>.</li><li>4. <i>Nazir</i> must apply KYC to the third party in managing and developing the <i>waqf</i>.</li></ol> |

#### 6.2.1.5. Determining the Governing Law and Dispute Resolution Mechanism

The fifth finding is about determining the governing law and dispute resolution mechanism. It is found that both Indonesian and Malaysian *waqf*-related laws have provision on the selection of laws and dispute resolution mechanisms that can benefit cross-border *waqf* activities. Summary of the findings can be seen in the following table:

---

<sup>11</sup> Ibid.

Table 6.6. Findings Pertaining to the Governing Law and Dispute Resolution Mechanism  
Based on Indonesian and Malaysian Regulations<sup>12</sup>

| Indonesian Regulations                                                                                                                                                                                                                                                                                                                                                                                                                                  | Malaysian Regulations                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Prioritizing peaceful conflict resolution (<i>sulh</i>).</li> <li>2. Dispute resolution process must be held in the language that the <i>waqif</i> and <i>nazir</i> can understand.</li> <li>3. Emphasizing to have a Muslim as neutral third parties or judges with decent knowledge of Islamic and related laws.</li> <li>4. Utilizing religious court as the last method in dispute resolution.</li> </ol> | <ol style="list-style-type: none"> <li>1. The inclusion of Islamic law is mandatory.</li> <li>2. Prioritizing peaceful conflict resolution (<i>sulh</i>).</li> <li>3. Utilizing Islamic court as the last method in dispute resolution.</li> </ol> |

### 6.2.2. Legal Gaps on Cross-Border *Waqf* in The *Waqf* Core Principles

The second research objective is to identify the legal gap in the WCP compared to Indonesian and Malaysian regulations and *waqf* practice, as well as the current international laws and rules related to cross-border *waqf* transactions. The research question for this objective is to explore the legal gaps between the WCP compared to regulations and practices from Indonesia, Malaysia, and selected countries, as well as the current international laws and rules related to cross-border *waqf* transactions.

Comprehending the distinctiveness of cross-border *waqf* transactions is essential for this study, as it is vital for pinpointing the legal gaps between the WCP versus laws and regulations. Cross-border *waqf*, characterized by its transnational elements, is a complex and unique field of study. Cross-border *waqf* refers to a *waqf* transaction involving parties and/or *waqf* objects from different countries, namely the *waqif*, *nazir*, *mawquf'alaih*,

<sup>12</sup> Ibid.

*mawquf* and the usufruct. If a *waqf* transaction includes any international element, such as the *waqif* or the *mawquf* from a different nation, it can be classified as a cross-border *waqf*.<sup>13</sup>

The involvement of international elements in cross-border *waqf* leads to numerous implications. First, the end-to-end process typically takes longer due to the movement durations of the *mawquf* and usufruct. Second, managing the *mawquf* and usufruct might become challenging due to the distances and movement methods involved. Third, dispute resolution may be lengthy and complex due to disparities in time zones, language, and local practices, including laws and regulations.<sup>14</sup>

Despite its objective to provide clear and standardized guidance for the global *waqf* system, the WCP still lacks technical details on cross-border *waqf*. From the total twenty-nine core principles in the WCP, only two core principles and two clauses relate to cross-border *waqf*. The first principle is core principle no.12 that governs the obligation of home and host *waqf* supervisors of cross-border *waqf* institutions to share information, cooperate, and use the same standard for effective supervision of the group and the group entities. The second is core principle no.16 which obliges the *waqf* supervisor to ensure that *waqf* institutions have policies and processes to monitor foreign exchange risk. The other two clauses related to cross-border *waqf* are clauses no.39 and 40 under the regulatory aspects of *waqf* which govern the need to increase the competency, collection, management, and development on national and international scale.<sup>15</sup>

The combination of the WCP's limited coverage about cross-border *waqf* and the complex nature of cross-border *waqf* activities, along with the stipulations found in Indonesian and Malaysian *waqf*-related laws, has led to a number of legal gaps. In total, there are seven legal gaps that must be addressed to enhance the quality of the WCP. List of the legal gaps can be seen in the following table:<sup>16</sup>

---

<sup>13</sup> See Chapter 1 - Background of the Study. Under heading 1.8.1.

<sup>14</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under heading 3.2.7.

<sup>15</sup> See Chapter 1 – Background of the Study. Under heading 1.8.3.

<sup>16</sup> See Chapter 1 - Background of the Study. Under heading 1.2.

Table 6.7. Legal Gaps on Cross-Border *Waqf* Regulations in The *Waqf* Core Principles<sup>17</sup>

| Legal Gaps on Cross-Border <i>Waqf</i> Regulations in The <i>Waqf</i> Core Principles                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. How should the movement of cross-border <i>mawquf</i>, whether in the form of cash or goods, be regulated and conducted.</li> <li>2. How should the movement of the usufruct between countries be regulated and conducted.</li> <li>3. Who should be engaged in cross border <i>waqf</i> and how to implement the KYC principles to parties involved.</li> <li>4. How should the parties choose the governing law, and what is the definition of local law in cross-border <i>waqf</i>.</li> <li>5. How should the parties choose the way to resolve the legal dispute in cross-border <i>waqf</i>.</li> <li>6. How should the perpetuity of cross-border <i>mawquf</i> be registered and protected in the host country.</li> <li>7. How should the purpose of cross-border <i>waqf</i> or <i>waqif</i> be protected in the host country.</li> </ol> |

### 6.2.3. Recommendations to Improve the *Waqf* Core Principles

The third research objective is to formulate a set of amendment points and detailed clauses regarding cross-border *waqf* to improve the quality of WCP. The research question is to determine clauses that must be added in the WCP, as a technical note, to cover the cross-border *waqf* transactions.

The seven legal gaps listed above, as well as the sharia legal framework described in the third chapter, serve as a guideline for developing a technical note on cross-border *waqf* for the WCP.<sup>18</sup> Details about *waqf* regulations found during the examination of Indonesian and Malaysian *waqf*-related laws were taken as main source in addressing the legal gaps. In addition, correlating to the international elements in cross-border *waqf*, several

<sup>17</sup> Analyzed from Chapter 1 - Background of the Study. Under heading 1.2.

<sup>18</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under heading 3.3.

findings from international laws, rules, and global *waqf* practices were also taken in formulating answers to the legal gaps.

The scope of international laws in this study includes international laws created by UNCITRAL<sup>19</sup> and international laws by UNIDROIT.<sup>20</sup> While international rules include international rules published by the ICC.<sup>21</sup>

Global *waqf* practices were taken from Indonesia, Malaysia, and other selected countries such as Saudi Arabia, Turkiye, and Kuwait. These practices encompass the *waqf* of Habib Bugak Al Asyi, Wakaf Tunai by YWM, Waqf by ANGKASA, WSM, BMMB, WNSM, WMM, WKM, Waqf by ACT, Waqf of Ahmad Dawjee Dadabhoy, Waqf by Dompot Dhuafa Foundation, Waqf of Masagus Abdul Hamid bin Mahmud bin Kanang in Saudi Arabia, Waqf by Perbadanan Wakaf Selangor, MATW Project Labuan Foundation, Muhammadiyah Indonesia, the Ministry of Agriculture of the Republic of Indonesia, *Diyanet Vakfi* (The Turkish Religious Foundation), KAPF, MUIS, Ammana Fintek Syariah, LinkAja Syariah, Gopay, Wakaf DT, and Sharing Happiness.<sup>22</sup> The following table summarizes the findings from international laws, rules, and global *waqf* practices that could benefit cross-border *waqf* activities.

Table 6.8. Findings from International Laws, Rules, and Global *Waqf* Practices<sup>23</sup>

| Findings from International Laws, Rules, and Global <i>Waqf</i> Practices                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Barriers in cross-border <i>waqf</i> may manifest as restrictions on the characteristics of goods, bans on distribution activities, and other forms of negligence.</li> <li>2. The <i>nazir</i> can navigate cross-border <i>waqf</i> barriers through various methods: <ol style="list-style-type: none"> <li>a. Engaging a reliable sea freight company for cross-border shipping.</li> </ol> </li> </ol> |

<sup>19</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under Heading 3.2.7. and Table 3.4.

<sup>20</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under Heading 3.2.7. and Table 3.5.

<sup>21</sup> See Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*. Under Heading 3.2.7. and Table 3.6.

<sup>22</sup> See Chapter 4 – Current Cross-Border *Waqf* Practices and Issues. Under Heading 4.1. and 4.2.

<sup>23</sup> Analyzed from Chapter 3 – *Sharia* Legal Framework for Cross-Border *Waqf*, under heading 3.2.7. And Chapter 4 – Current Cross-Border *Waqf* Practices and Issues, under Heading 4.2.1. and 4.2.2.

- b. Setting up a representative office or appointing a strategic partner in the host country or nearby regions.
  - c. Creating a logistics and warehousing centre close to the project site.
  - d. Partnering with local entities in the host country.
- 3. The benefit for a *nazir* from collaborating with public and private sectors in the host country:
  - a. Acquiring helpful information on local regulations and policies
  - b. Minimizing barriers.
  - c. Gaining more access to Fintech for better security, transparency, and efficiency.
- 4. By implementing global rules, cross-border *mawquf* and usufruct movement can be made more seamless and compliant with current international best practices. The benefits are as follows:
  - a. INCOTERMS: as guidance for international shipping procedures.
  - b. URBPO: utilizing the bank payment obligation as payment guarantee based on prerequisite in the business contract in a condition where *nazir*'s international reputation is not convincing.
  - c. URDG and ISDGP: utilizing demand guarantee to ensure that the third parties receive payment from the *nazir*.
  - d. ISP98: utilizing the standby letter of credit to benefit the *nazir* by providing a strong reputation due to payment guarantee for a long-term contractual relationship.
  - e. ICC Model Contracts: as guidance and contract principles in drafting any business contract related to cross-border *waqf* management and development.
  - f. URC522: utilizing the *murabahah* documentary collection.
  - g. UCP600: utilizing the *murabahah* and *musyarakah* L/C for *waqf* management and development.
- 5. International laws could be utilized as reference, remembering the application of an international law requires specific performance, such as membership as contracting states and ratification. The benefits of referring to international laws are as follows:
  - a. CISG: as reference for the formation and standard terms of the international contract.



- b. Rotterdam Rules: as reference about rights and obligations of the parties and conflict resolution.
  - c. Convention on the Use of Electronic Communications in International Contracts: as reference for establishing equivalence between electronic and written forms contracts.
  - d. MLES: as reference for enabling the use of electronic signatures
  - e. Model Law on International Credit Transfers: as reference for international banking transfers.
  - f. Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation: as reference of uniform rules of the mediation process and encouraging the use of mediation.
  - g. CLOUT: as reference in mitigating and resolving cross-border *waqf* disputes.
6. Regarding the KYC, the ICC suggest that *nazir* to examine the business counterparts through published accounts or reports and their reputation with their clients.
  7. Parties in cross-border *waqf* must clean from international sanctions such as OFAC if the *waqf* transaction is in USD, EU Sanction if the *waqf* transaction is in EURO, money laundering, and terrorist financing.
  8. The application of local laws will differ based on the stage of the cross-border *waqf*.<sup>24</sup>
  9. Practices of alternative dispute resolution from various international institutions: discussion or consultation, good office, negotiation, mediation, inquiry or fact-finding, conciliation, court-annexed mediation, and arbitration.

All of the findings were then formulated to answer the seven legal gaps. The comprehensive answers sourced from 52 (fifty-two) Indonesia's *waqf*-related regulations, 31 (thirty-one) Malaysia's *waqf*-related regulations, 15 (fifteen) international laws, 8

---

<sup>24</sup> Refer to Table 5.1.

(eight) international rules, and 36 (thirty-six) practices from various *waqf* institutions globally. In general, each of the legal gaps has been addressed as follows:<sup>25</sup>

Table 6.9. Answers to the *Waqf* Core Principles' Legal Gaps on Cross-Border *Waqf*

| Legal Gaps                                                                                                                   | Core Points Analyzed and Adopted from the Research's Sources                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Reference                             |
|------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 1. How should the movement of cross-border <i>mawquf</i> , whether in the form of cash or goods, be regulated and conducted? | <ol style="list-style-type: none"> <li>1) Classifying the type of <i>mawquf</i>.</li> <li>2) Determining the best shipping method.</li> <li>3) Checking the legality of <i>mawquf</i>'s origin or ownership.</li> <li>4) Checking the <i>mawquf</i>'s condition and authenticity of its administrative documents.</li> <li>5) Mitigating risk during cross-border shipment.</li> <li>6) Determining the party responsible for delivering the <i>mawquf</i>.</li> <li>7) Mitigating barriers on cross-border movement of the <i>mawquf</i>.</li> <li>8) Taking references from international rules and laws that can smoothen the movement of cross-border <i>mawquf</i> and usufructs</li> </ol> | Details in Chapter 5 – Heading 5.2.1. |
| 2. How should the movement of the usufruct between countries be regulated and conducted?                                     | <ol style="list-style-type: none"> <li>1) Regulating and determining the best cross-border movement method.</li> <li>2) Determining the best shipping method.</li> <li>3) Selecting the best usufruct distribution method.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Details in Chapter 5 – Heading 5.2.2. |

<sup>25</sup> See Chapter 5 – Analyzing and Developing International Best Practices of Cross-Border *Waqf*. Under heading 5.2.

|                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| <p>3. Who should be engaged in cross border <i>waqf</i> and how to implement the Know Your Customer (KYC) principles to parties involved?</p> | <ol style="list-style-type: none"> <li>1) Applying the KYC to determine the <i>waqif</i>.</li> <li>2) Applying the KYC to the <i>nazir</i> before the appointment by <i>waqif</i>.</li> <li>3) Applying the KYC to the third-party in managing and developing the <i>waqf</i>.</li> </ol>                                                                                                                                                                                                                                            | <p>Details in Chapter 5 – Heading 5.2.3.</p> |
| <p>4. How should the parties choose the governing law, and what is the definition of local law in cross-border <i>waqf</i>?</p>               | <p>Selecting the Islamic local law or local law of the region where the <i>waqf</i> program is being implemented that complies with the <i>Sharia</i> as the priority law governing cross-border <i>waqf</i> transactions.</p>                                                                                                                                                                                                                                                                                                       | <p>Details in Chapter 5 – Heading 5.2.4.</p> |
| <p>5. How should the parties choose the way to resolve the legal dispute in cross-border <i>waqf</i>?</p>                                     | <ol style="list-style-type: none"> <li>1) Peaceful conflict resolution (<i>sulh</i>) always becomes the first choice over litigation because it will generate a win-win solution to maintain the relationship between <i>waqf-related</i> parties.</li> <li>2) The process must be held in the language that the <i>waqif</i> and <i>nazir</i> can understand.</li> <li>3) It is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a</li> </ol> | <p>Details in Chapter 5 – Heading 5.2.5.</p> |

|                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                              |
|--------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
|                                                                                                                    | <p>Muslim, to ensure the adherence to Islamic principles in the legal process.</p> <ol style="list-style-type: none"> <li>4) The neutral third parties or judges must have a decent knowledge of Islamic law including <i>waqf</i>.</li> <li>5) It is recommendable that the neutral third parties or judges have knowledge about laws related to the type of <i>mawquf</i> in a <i>waqf</i> dispute.</li> <li>6) The <i>nazir</i> and <i>waqf</i>-related parties, under a written document, must agree to choose an alternative dispute resolution to resolve the conflict in cross-border <i>waqf</i> and related activities.</li> <li>7) Litigation, with several conditions considering the Islamic law compliance, is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border <i>waqf</i> issues.</li> <li>8) Taking references from international rules and laws related to dispute resolution</li> </ol> |                                              |
| <p>6. How should the perpetuity of cross-border <i>mawquf</i> be registered and protected in the host country?</p> | <ol style="list-style-type: none"> <li>1) Restricting cross-border <i>waqf</i> revocation.</li> <li>2) Restricting the transfer of <i>mawquf</i>'s ownership status.</li> <li>3) <i>Nazir</i> must avoid risky transactions and be in possession of the property.</li> <li>4) The <i>nazir</i> must uphold the principles of good governance, protect, preserve, and develop the <i>mawquf</i>.</li> <li>5) If the <i>mawquf</i> is in the form of land, it is suggested that the government enact a regulation to prevent any status change of the <i>waqf</i> land and oblige citizens to preserve the land and prevent destruction over it.</li> </ol>                                                                                                                                                                                                                                                                                            | <p>Details in Chapter 5 – Heading 5.2.6.</p> |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | <p>6) It is recommended that both the government of home and host countries provide tax and administrative cost incentives for cross-border <i>waqf</i> activities.</p> <p>7) The government must protect the right of the <i>waqif</i> by giving them a chance to sue and get compensation from the <i>nazir</i> if they break the promise or commit an unlawful act.</p> <p>8) The <i>nazir</i> must claim compensation for any destruction on the <i>waqf</i> caused by third party.</p> <p>9) The amount of compensation must at least cover the damage restoration, or it can be decided by the court by involving public and private appraisals and choose the most favorable one for the <i>waqf</i>.</p> <p>10) The <i>nazir</i> must separate the management of each <i>waqf</i>.</p> <p>11) The <i>nazir</i> must is separate the account of each cross-border <i>waqf</i>, including their sub-accounts.</p> <p>12) The <i>nazir</i> must keep the <i>waqf</i> funds in an Islamic bank.</p> <p>13) All transactions on all <i>waqf</i> accounts must be recorded appropriately.</p> <p>14) The <i>nazir</i> may form a special managerial unit in managing the cross-border <i>waqf</i> management.</p> <p>15) The <i>nazir</i> must do all matters necessary to protect the condition of the <i>mawquf</i>.</p> <p>16) The <i>nazir</i> can appoint substitutes and third parties in managing and developing cross-border <i>waqf</i>.</p> |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | <p>17) <i>Nazir</i> may collaborate with public and private sectors in managing and developing cross-border <i>waqf</i>.</p> <p>18) A prudent contract is essential to manage contractual relationships in managing and developing cross-border <i>waqf</i>.</p> <p>19) Taking references from international rules and laws in creating contracts related to cross-border <i>waqf</i> activities is essential.</p> <p>20) <i>Nazir</i> to set criteria before conducting direct and non-direct investment in developing the cross-border <i>waqf</i>.</p> <p>21) The <i>nazir</i> must allocate a sum of money as a buffer equal to the total investment in a <i>waqf</i> project.</p> <p>22) The <i>nazir</i> must limit their investment to projects run by related parties.</p> <p>23) The <i>nazir</i> must send the <i>waqf</i> management report every six months to the authority.</p> <p>24) The <i>waqf</i> authority must use the management report to evaluate the <i>nazir</i>'s performance.</p> <p>25) The <i>nazir</i> must publish the list of all <i>mawquf</i> annually.</p> <p>26) <i>Istibdal</i> can be implemented as a solution to maintain the <i>waqf</i>'s perpetuity.</p> <p>27) There are several key factors that need to be included in implementing the <i>istibdal</i>.</p> <p>28) The <i>nazir</i> must pay attention to the regulation about foreign to domestic currency conversion and the coverage guarantee limit by the local government.</p> |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

|                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                       |
|---------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
|                                                                                                         | 29) The <i>nazir</i> can be replaced, removed, and prosecuted for several reasons.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                       |
| 7. How should the purpose of cross-border <i>waqf</i> or <i>waqif</i> be protected in the host country? | <ol style="list-style-type: none"> <li>1) Several elements need to be fulfilled during the cross-border <i>waqf</i> creation.</li> <li>2) The <i>waqf</i> pledge must be done under several conditions.</li> <li>3) <i>Waqf</i> approval from the <i>waqif</i>'s family members is crucial to prevent legal suit in the future.</li> <li>4) The <i>waqf</i> deed must be issued under several conditions.</li> <li>5) Cross-border <i>waqf</i> declaration and publication.</li> <li>6) <i>Nazir</i>'s obligation to manage the <i>mawquf</i> according to the wishes of the <i>waqif</i>.</li> <li>7) The host country's government must guarantee the ease of usufruct distribution from the <i>nazir</i> to the <i>mawquf-alaih</i>.</li> <li>8) In a condition where the <i>mawquf'alaih</i> cannot be reached, the <i>nazir</i> may distribute the usufruct as closely as possible to the original purpose or add it to the general <i>waqf</i> fund.</li> <li>9) Any decision from the <i>fatwa</i> council shall be final.</li> <li>10) The <i>nazir</i> must refer to the <i>fatwa</i> in force in the host country or the location of the cross-border <i>waqf</i> project for any determination of matters which is not expressly provided in the statutes and unsettled or controversial question related to Islamic law.</li> <li>11) Changes in cross-border <i>waqf</i> management are permissible as long as they do not violate the deed, the <i>waqf</i>'s purpose or the <i>waqif</i>'s will.</li> </ol> | Details in Chapter 5 – Heading 5.2.7. |

Remembering that the purpose of this study is to develop ready-to-implement international guidelines for conducting prudent cross-border waqf transactions, all of the above answers to legal gaps were then processed using the sharia legal framework outlined in the third chapter of this study. The framework and WCP divide waqf activities into four stages, which serve as the basis for the proposed WCP technical notes on cross-border *waqf*. The table below only illustrates the structure and interconnection of each section in the suggested technical notes on cross-border *waqf*, taking into account the comprehensiveness and technical features of the content.

Table 6.10. Proposed The *Waqf* Core Principles' Technical Notes on Cross-Border *Waqf*

| Proposed Technical Notes's Sections                                                | Details                       | Practical Form |
|------------------------------------------------------------------------------------|-------------------------------|----------------|
| 1. The General Assessment for the Pre-creation Stage of Cross-Border <i>Waqf</i> . | Chapter 5 –<br>Heading 5.3.1. | Appendix IV    |
| 2. The General Assessment for the Creation Stage of Cross-Border <i>Waqf</i> .     | Chapter 5 –<br>Heading 5.3.2. | Appendix V     |
| 3. The General Assessment for Management Stage of Cross-Border <i>Waqf</i> .       | Chapter 5 –<br>Heading 5.3.3. | Appendix VI    |
| 4. The General Assessment for Development Stage of Cross-Border <i>Waqf</i> .      | Chapter 5 –<br>Heading 5.3.4. | Appendix VII   |

### 6.3. CONTRIBUTION TO KNOWLEDGE

This thesis contributes to the area of *waqf*, especially cross-border *waqf*. First, the novelty of this research can be seen from the utilization of international rules, commonly used in international transactions and trade, to support cross-border *waqf* activities.



Second, this research has determined issues, challenges, mitigations, and the prudent way to conduct cross-border *waqf* transactions by extracting core information and data from at least 52 (fifty-two) Indonesian *waqf*-related regulations, 31 (thirty-one) Malaysian *waqf*-related regulations, 15 (fifteen) international laws, 8 (eight) international rules, and 36 (thirty-six) practices from various institutions globally.

Third, this research creates a new international rule on cross-border *waqf* transactions and fills the gap in the current WCP by suggesting a set of amendment points and detailed clauses related to cross-border *waqf* to be added to the WCP. The result of this research is a significant contribution to international or cross-border *waqf* transactions worldwide, especially in Indonesia, which plans to conduct a cross-border *waqf* transaction in the near future.

#### **6.4. LIMITATIONS OF RESEARCH**

1. Cross-border *waqf* combines elements of *waqf* with international rules. The *waqf* originated in the early days of Islam. In contrast, international rules are developed in the global world order. To bring these two major pieces together, a connecting bridge must be built. The process revealed that, despite *waqf*'s long history, only a handful of well-documented cross-border *waqf* projects exist. On the other hand, several experts assert that the original intent of the current international transaction rules was not to benefit the *waqf* sectors. Such conditions limit the accessible sources that exclusively address cross-border *waqf*.
2. Due to time and accessibility limitations, this study exclusively examines Indonesian and Malaysian *waqf*-related laws as main sources. Other *waqf* laws from specific countries, such as Singapore, could not be included. Despite its limitations, this study has examined all primary *waqf* laws and *waqf*-related laws in Indonesia and Malaysia.
3. Due to limited language proficiency, most of the main sources of this research can only be obtained from countries and international organizations that utilize English and Bahasa. Sources that use Arabic and other languages cannot be included, except for materials that have been translated into English and Bahasa.

4. As one of the main sources, this study examines all potential international laws and rules pertaining to cross-border transactions. However, due to accessibility issues, only the ICC's international rules that have been further studied and given analysis based on the opinions of experts and practitioners.
5. Although this research focuses on cross-border *waqf*, due to the limitation of available sources, some relevant subtopics have been only briefly explained, leaving room for further exploration. These subtopics include the implication of international sanctions on cross-border *waqf* transactions, the benefit emanating from the cooperation between central banks or monetary authorities for cross-border *waqf*, and technical aspects of QR code utilization to facilitate cross-border *waqf* transactions.

## **6.5. RECOMMENDATIONS FOR FUTURE RESEARCH**

The novelty of this research, which combines the practice of *waqf* with international elements of the current global legal and economic system, makes this research a foundation for exploring a new area of research on cross-border *waqf* and its implementation. Future research could potentially focus on the following areas:

1. This research mostly relies on the regulations of Indonesia and Malaysia. Therefore, future studies should incorporate additional jurisdictions.
2. Given that this research relied primarily on text-based sources, future research might incorporate socio-legal research with a quantitative approach to include additional stakeholders in *waqf* sectors as study informants.
3. The culmination of this research is a comprehensive set of international rules on cross-border *waqf*, which serve as technical notes for the WCP. Future research may move on to the implementation and evaluation phase of this study. The implementation can be carried out via two common methods: ratification and adoption. The evaluation can be conducted with performance-based indicators.

## REFERENCES

- Ab Majid, M. Z. (2004). Fatwa dan isu Semasa: Masalah dan cabaran di Malaysia. *Jurnal Syariah*, vol. 12. No. 2. pp.79–93.
- Abd Jalil, M. I. (2023). Empowering food security through waqf. *Labuan E-Journal of Muamalat and Society (LJMS)*, vol. 17. No. 1. pp.45–67.
- Abd Mutalib, H., & Maamor, S. (2016). Utilization of waqf property: Analyzing an institutional mutawalli challenges in management practices. *International Journal of Economics and Financial Issues*, vol. 6. No. 7. pp.36–41.
- Abd Rahman, N., Mastuki, N., Osman, M. R., & Kasim, N. (2020). Islamic legal maxim for shari'ah audit in Islamic bank. *Journal of Islamic Accounting and Business Research*, vol. 11. no. 2. pp.457–471.
- Abdullah, M. A., Subri, I. M., Ibrahim, M. L., & Ghani, M. A. A. (2022). Malaysia sebagai negara yang bermazhab: Satu diskusi awal. *RABBANICA-Journal of Revealed Knowledge*, vol. 3. no. 1. pp.161–184.
- Abdullah, M. Y., Mohd Noor, M., Mohamad, M. T., Shahrudina, M. S., Mohammad Zaini, M. N., & Norman, M. P. (2019). Tanggung jawab sosial korporat (CSR): Penglibatan institusi perbankan berasaskan Islam terpilih di Malaysia dalam industri wakaf. *Journal of Islamic Philanthropy & Social Finance*, vol. 2. no. 1. pp.45–54.
- Abid, O., & Miakhil, S. (2024). A historical overview of waqf. *International Journal of Sukuk and Waqf Research*, vol. 5. no. 1. pp.1–8.
- Abu-Shamsieh, K. (2020). The application of maqāsid al-sharīʿah in Islamic chaplaincy. *Islamic Law and Ethics*, pp.76.
- Adnan, I. M. M. (2012). A history of the Acheen Street Malay enclave from oral history accounts. *Journal of the Malaysian Branch of the Royal Asiatic Society*, pp.1–44.
- Affaki, G., & Goode, R. M. (2011). *Guide to ICC Uniform Rules for Demand Guarantees URDG 758*. International Chamber of Commerce.
- Ahmad, Z. A., & Rusdianto, R. (2020). Impact of transparency and accountability on trust and intention to donate cash waqf in Islamic microfinance institutions. *Shirkah: Journal of Economics and Business*, vol. 5. no.2. pp.197–227.
- Akinsanya, A. (1987). International protection of direct foreign investments in the third world. *International & Comparative Law Quarterly*, vol. 36. no.1. pp.58–75.
- Alam, M. H. (2021). Application of CISG in arbitration: A combined procedure or parallel procedure? *International Journal of Community Service & Engagement*, vol. 2. no. 1. pp.50–53.
- Alam, M. M., Shahriar, S. M., Said, J., & E Elahi, M. M. (2018). Waqf as a tool for rendering social welfare services in the social entrepreneurship context. *Global*

- Journal Al-Thaqafah*, 2018, pp.87–98.
- Aldassouky, A., & Hatahet, S. (2020). *The Role of Philanthropy in the Syrian War: Regime-Sponsored NGOs and Armed Group Charities*. European University Institute, pp.2-4.
- Alfarissa, T., Fauzan, M., Jeremiah, K. S., Christiansen, N., Putrie, L. A., Herjendro, Z. C., & Mulyadi, M. (2023). Urgensi penguatan pengawasan eksternal yayasan sebagai bentuk preventif atas penyalahgunaan dana yayasan: Studi kasus yayasan Aksi Cepat Tanggap. *Madani: Jurnal Ilmiah Multidisiplin*, vol. 1. no.5. pp.134.
- Ali, K. M., & Kassim, S. (2021). Development of waqf forest in Indonesia: The SWOT-ANP analysis of bogor waqf forest program by bogor waqf forest foundation. *Jurnal Manajemen Hutan Tropika*, vol. 27. no.2. pp.89.
- Ali, R. R. (2012). *Assessment of damages under the convention on contracts for the International Sale of Goods (CISG)*. Kuala Lumpur: Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, pp.1-15.
- Ali, Z., & Manaf, Z. I. A. (2021). Requirement of complete constitution of property in express trust: Whether relevant in waqf. *Global Waqf Conference: Waqf Past, Present and Future, International Islamic University Malaysia, Ahmad Ibrahim Kulliyah of Laws*, pp.140–153.
- Alim, M. N., & Suryadi, D. (2021). Proposing model of sukuk waqf with wasiyyah contract as a cash waqf fund raising strategy. *Global Waqf Conference Series: Waqf Past, Present and Future*, pp.154–171.
- Alwazna, R. Y. (2016). Islamic law: Its sources, interpretation and the translation of it into laws written in English. *International Journal for the Semiotics of Law-Revue Internationale de Sémiotique Juridique*, vol. 29. pp.251–260.
- Ammana Fintek Syariah. (2024). Retrieved June 7, 2024, Retrieved from <https://ammana.id/about>
- Anam, S., & Fauzi, R. A. (2021). Waqf and renewable energy: Analysis of the potential of energy waqf in reducing the impact of climate change. *Al-Waqf*, vol. 14. no. 2. pp.123–138.
- Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA). Retrieved October 13, 2023, Retrieved from <https://eng.angkasa.coop/index.php/profile/history-of-angkasa>.
- Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA). Retrieved October 13, 2023, Retrieved from <https://eng.angkasa.coop/index.php/services/infaq-lil-waqf-endowment>.
- Angkatan Kerjasama Kebangsaan Malaysia (ANGKASA). Retrieved October 13, 2023, Retrieved from <https://eng.angkasa.coop/index.php/profile/national-co-operative-policy-2011-2020>.
- Arfat, S. (2013). Islamic perspective of children's right: An overview. *Asian Journal of Social Sciences and Humanities*, vol. 2. no.1. pp.302.
- Arif, F., Panjaitan, B., & Siahaan, N. (2023). Implementation of unwritten law as a

- breakthrough in criminal law enforcement in Indonesia. *Journal of Social Research*, vol. 2. no.4. pp.1311–1316.
- Arsad, S., Said, R., Yusoff, H., & Ahmad, R. (2022). Islamic corporate social responsibility disclosure index: The application of maqasid shari'ah and maslahah. *International Journal of Academic Research in Business and Social Sciences*, vol. 12. no. 7. pp.1039–1044.
- Asni, F. A. H. M., & Sulong, J. (2017). Wakaf tunai dan aplikasinya dalam undang-undang di negara ASEAN: Cash waqf and its application in ASEAN countries' laws. *Jurnal Syariah*, vol. 25 no. 2. pp.217–246.
- Aziz, M. (2019). Reconstruction of maqashid shari'ah perspective Muhammad Thahir Ibn'Assyria: Efforts to re-discuss sharia with reality. *Jurnal Hukum Islam IAIN Pekalongan*, vol. 17 no. 2. pp.231–249.
- Azmi, A. S. M., Hanif, N. R., Mahamood, S. M., & Ali, S. N. M. (2019). Synthesizing the maqasid al-syariah for the waqf property development. *IOP Conference Series: Earth and Environmental Science*, vol. 385. no.1. pp.3–4.
- Babatunde, J. H., Nulambeh, N. A., Ibrahim, T., Harun, M. Y., & Sanoh, M. F. (2014). Financing and developing the agricultural sector through cash waqf: An analysis of cash waqf using the mudarabah approach. *South East Asia Journal of Contemporary Business, Economics and Law*, vol. 6. no. 1. pp.1560–2289.
- Badan Amil Zakat Nasional Republik Indonesia, Bank Indonesia, & Islamic Development Bank. (2017). Technical note core principles for effective zakat operation and supervision. *Technical Notes on Risk Management on Zakat Institution*. pp.1-30.
- Badan Wakaf Indonesia. (2018). Himpunan peraturan perundang-undangan tentang wakaf. *Badan Wakaf Indonesia* (4th ed.). Badan Wakaf Indonesia. pp.iii-v.
- Baily, P. J. H. (1987). Buying abroad. *Purchasing and Supply Management*. pp.188–199. Springer.
- Bala, C. P. E. (2012). Financing of terrorism-case study, Albania. *Training and Doctrine Command*, pp.122.
- Bank Indonesia. (2022). Retrieved October 4, 2023, Retrieved from [https://www.bi.go.id/id/publikasi/ruang-media/news-release/Pages/sp\\_242222.aspx](https://www.bi.go.id/id/publikasi/ruang-media/news-release/Pages/sp_242222.aspx).
- Bank Indonesia, Badan Wakaf Indonesia, & Islamic Development Bank. (2018). *Core Principles for Effective Waqf Operation and Supervision*. pp.1-75, Islamic Economic and Finance Department, Bank Indonesia.
- Bank Muamalat Malaysia Berhad. (2016). *Wakaf Negeri Sembilan Muamalat 3rd Quarter 2016 Report*, pp.1-3.
- Bank Muamalat Malaysia Berhad. (2017). *Wakaf Negeri Sembilan Muamalat 1st Quarter 2017 Report*, pp.1-3
- Bank Muamalat Malaysia Berhad. (2023). Retrieved October 19, 2023, Retrieved from <https://www.muamalat.com.my/wakafmuamalat/Organisasi.html>.

- Bank Muamalat Malaysia Berhad. (2023). Retrieved October 17, 2023, Retrieved from <https://www.muamalat.com.my/wakafmuamalat/Pengenalan.html>
- Bank Muamalat Malaysia Berhad. (2023). *Wakaf Kedah Muamalat Report 2021*, pp.1-3.
- Bank Muamalat Malaysia Berhad. (2023). *Wakaf MAIK Muamalat Report 2018-2021*, pp.1-3.
- Bank Muamalat Malaysia Berhad. (2023). *Wakaf Muamalat Selangor Report 2013-2022*, pp.1-3.
- Bank Muamalat Malaysia Berhad. (2023). *Wakaf Negeri Sembilan Muamalat Report 2018-2021*, pp.1-3.
- Barus, U. M., & Erwanda, Y. D. (2015). Peran Otoritas Jasa Keuangan dan Dewan Pengawas Syariah dalam pengawasan akad pembiayaan pada perbankan syariah yang mengandung klausula eksonerasi. *Naskah Publikasi*, vol. 16. pp.1–5.
- Bech, M. L., & Hancock, J. (2020). Innovations in payments. *BIS Quarterly Review*, March, pp.21–34.
- Noor, Azman bin Mohd. (2014). Application of the Build, Operate, Transfer (BOT) contract as a means of financing development of waqf land: Malaysian experience. *Arab Law Quarterly*, vol. 28. no. 2. pp.136–157.
- Binekasri, R. (2022). Retrieved October 4, 2023, Retrieved from <https://www.cnbcindonesia.com/market/20220706092439-17-353305/gaji-act-sempat-rp-250-juta-ini-setara-petinggi-bumn>
- Bo'a, F. Y. (2018). Pancasila sebagai sumber hukum dalam sistem hukum nasional. *Jurnal Konstitusi*, vol. 15. no. 1. pp.21–49.
- Brutti, N. (2022). The languages of contract: A comparative law perspective with a focus on the CISG. *European Business Law Review*, vol. 33. no. 2. pp.1–2.
- Buba, T. M. (2014). Role of maqasid al-shari'ah as a social welfare concept in the interpretation of the sources of shari'ah. *Unilorin Shariah Journal*, vol. 2. no. 1. pp.61–86.
- Burns, P. (2004). *The Leiden Legacy: Concepts of Law in Indonesia*. pp. 385-388. kitlv Press Leiden.
- Bustamam-Ahmad, K. (2013). Jak u arab: Cara orang Aceh naik haji. *Penang Story Lecture and Conference: Penang and the Hajj*.
- Butt, S. (2010). Islam, the state and the constitutional court in Indonesia. *Pac. Rim L. & Pol'y J.*, vol. 19. pp.279.
- Buzama, K. (2012). Pemberlakuan teori-teori hukum Islam di Indonesia. *Al-'Adalah*, vol. 10. no. 2. pp.467–472.
- Cajee, Z. A. (2021). *How to Become an Effective Waqf Manager Nadhir/Mutawallee*. Awqaf South Africa.

- Calhoun, G. (2021). Why wire mattered: Building US networked infrastructures, 1845–1910. *Technology and Culture*, vol. 62. no.1. pp.156–184.
- Capeheart L. & Dragan M. (2020). Social justice: Theories, issues, and movements (Revised and expanded edition). pp.2. Rutgers University Press.
- Carmeli, A., & Schaubroeck, J. (2008). Organisational Crisis-Preparedness: The Importance of Learning from Failures. *Long Range Planning*, vol. 41. no.2. pp.177–196.
- Chapman, C. M., Masser, B. M., & Louis, W. R. (2020). Identity Motives in Charitable Giving: Explanations for Charity Preferences from a Global Donor Survey. *Psychology & Marketing*, vol. 37. no.9. pp.1277–1291.
- Charities Aid Foundation. (2023). *CAF World Giving Index 2023*, pp.2-18.
- Chembea, S. A. (2020). Between charity and financing ‘terror’: The dilemma of muslim charitable organizations in Kenya. *Muslim Faith-Based Organizations and Social Welfare in Africa*, pp.143–168.
- Clark, J., Shattock, A., & Tekin, S. (2015). Demand guarantees: The consideration dilemma. *Butterworths Journal of International Banking and Financial Law*, pp.1–2.
- Clark, P. B. (1973). Uncertainty, exchange risk, and the level of international trade. *Economic Inquiry*, vol. 11. no. 3. pp.302–313.
- CNN Indonesia Team. (2019). Retrieved October 4, 2023, Retrieved from <https://www.cnnindonesia.com/nasional/20190723184459-25-414853/act-bantah-terkait-radikalisme>.
- CNN Indonesia Team. (2019). Retrieved October 20, 2023, Retrieved from <https://www.cnnindonesia.com/internasional/20190329121643-120-381781/dukung-palestina-act-suplai-bantuan-medis-dan-air-bersih>.
- CNN Indonesia Team. (2022). Retrieved October 4, 2023, Retrieved from <https://www.cnnindonesia.com/nasional/20220725190219-12-825977/polri-act-potong-30-persen-donasi-untuk-operasional>.
- CNN Indonesia Team. (2022b, July). Retrieved October 4, 2023, Retrieved from <https://www.cnnindonesia.com/nasional/20220705152009-20-817526/rincian-gaji-pimpinan-versi-act>.
- Çoştu, Y., & Çoştu, F. C. (2015). An investigation on the Turkish religious foundation of the UK (Diyanet)”. *Turkish Migration, Identity and Integration, Ed*, pp.149–157.
- Daarut Tauhiid. (2020). Retrieved June 7, 2024, Retrieved from <https://www.daaruttauhiid.org/digitalisasi-wakaf-melalui-aplikasi-terobosan-penuh-manfaat/>.
- Dahlan, N. K., Yaa’kub, N. I., Hamid, M. A., & Palil, M. R. (2014). Waqf (endowment) practice in Malaysian society. *International Journal of Islamic Thought*, vol. 5. pp.56.
- Dalvi, A. S. (2021). Islamic fintech and cash waqf. *IFHUB INCEIF*, pp.14.

- Dargahi, H., Nasrollahzaedeh Abdochalli, K., & Rahmani, H. (2017). An investigation of relationship between spiritual leadership style with organizational commitment among Tehran University of medical sciences staffs. *International Journal of Asian Social Science*, vol. 7. no. 3. pp.234–241.
- David, T., & Eichenberger, P. (2023). 'A world parliament of business'? the International Chamber of Commerce and its presidents in the twentieth century. *Business History*, vol. 65. no. 2. pp.260–283.
- Dompét Dhuafa. (2022). Retrieved October 28, 2023, Retrieved from [https://tabungwakaf.com/kisah-habib-bugak-asyi-berwakaf-untuk-masyarakat-aceh/#:~:text=Hasil keuntungan wakaf dapat membiayai,wakaf yang dikelola Baitul Asyi.](https://tabungwakaf.com/kisah-habib-bugak-asyi-berwakaf-untuk-masyarakat-aceh/#:~:text=Hasil%20keuntungan%20wakaf%20dapat%20membiayai,wakaf%20yang%20dikelola%20Baitul%20Asyi.)
- Dompét Dhuafa. (2023). Retrieved December 28, 2023, Retrieved from <https://digital.dompetdhuafa.org/wakaf/wakafambulanspalestina>.
- Dompét Dhuafa. (2023b). Retrieved April 16, 2024, Retrieved from <https://www.dompetdhuafa.org/en/dompét-dhuafa-invites-donors-to-explore-agricultural-village-introduces-modern-agriculture-and-productive-waqf-implementation/>.
- Don, M., Ali, M., & Osman, M. R. (2020). The management of waqf universities in Selangor, Malaysia. *Journal of Contemporary Islamic Studies*, vol. 6. no. 1. pp.45–60.
- Donner, M., & de Vries, H. (2021). How to innovate business models for a circular bio-economy? *Business Strategy and the Environment*, vol. 30. no. 4. pp.1932–1947.
- Eduardo Demarco, A. (2020). Analysing blockchain/distributed ledger technology in capital markets and know your customer process. *Journal of Securities Operations & Custody*, vol. 12. no. 1. pp.58–71.
- Eliandy, R. R., Amini, A., Heriadi, M., Tumanggor, E. R., & Hasibuan, E. A. (2023). Palestine conflict with Israel: The education fate of Palestinian children. *Jurnal Pendidikan Humaniora*, vol. 11 no. 1. pp.51–58.
- Emegha, N. K. (2020). Security agents and election monitoring in Nigeria: Engaging international best practices. *South East Political Review (SEPSR)*, vol. 5 no. 1. pp.45.
- Erb, R. D. (1989). The role of central bank. *Finance and Development*, vol. 56 no. 4. pp.11–13.
- Essuman, K. M. (2018). Packaging and trade. *Position Paper. World Packaging Organization*. vol. 11. pp.1-4.
- Fachri, F., & Saubani, A. (2021). Retrieved June 3, 2024, Retrieved from <https://news.republika.co.id/berita/qtyal6s409/fotofoto-ambulans-berlogo-kota-padang-di-palestina-viral>
- Fadhilah, N. (2011). Sengketa tanah wakaf dan strategi penyelesaiannya. *De Jure: Jurnal Hukum Dan Syar'iah*, vol. 3. no. 1. pp.83–84.
- Fadilah, S. A. (2021). *Implementasi PP No. 42 Tahun 2006 Tentang Pelaksanaan UU*



- Wakaf (Studi Pengelolaan Wakaf Produktif Dompot Dhuafa di RS Mata Achmad Wardi Serang Banten)*. pp.1-20. UIN SMH BANTEN.
- Faisal, F. (2020). Nadzir's responsibility for the crime of embezzlement of waqf assets by other parties based on Indonesian written law. *International Journal Reglement & Society (IJRS)*, vol. 1. no. 2. pp.130–137.
- Faisal, F. (2021). Waqf land disputes and alternative settlements. *Randwick International of Social Science Journal*, vol. 2. no. 3. pp.259–268.
- Farandy, A. R. (2020). Analyzing factors affecting Indonesian food price inflation. *Jurnal Ekonomi Dan Pembangunan*, vol. 28. no. 1. pp.65–76.
- Farooq, M. O. (2012). *Toward Our Reformation: From Legalism to Value-Oriented Islamic Law and Jurisprudence*. pp.61. International Institute of Islamic Thought (IIIT).
- Fatahillah, Z. (2023). Hambatan nazhir dalam mengelola tanah wakaf secara produktif. *Al-Ahkam: Jurnal Syariah Dan Peradilan Islam*, vol. 3. no. 1. pp.13–23.
- Firmansyah, M. J., & Hantoro, J. (2022). Retrieved October 4, 2023, Retrieved from <https://nasional.tempo.co/read/1609483/5-fakta-seputar-pengelolaan-dana-act-yang-diungkap-ppatk>
- Fitri, R., Yamin, M., & Ismail, I. (2020). The influence of post tsunami Aceh aid agencies on the participation of people in Banda Aceh toward the arrangement of land tenure and its use. *International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)*, pp.250–254.
- Fitri, S. A., Rosidy, V. P., Syauqi, H. F., Munawarah, H., & Herlambang, D. R. (2023). Penghapusan pajak pada aset wakaf di Indonesia menurut hukum positif. *Tahkim (Jurnal Peradaban Dan Hukum Islam)*, vol. 6. no. 1. pp.53–70.
- Freddy, S. P., & Mohamad, N. A. (2022). Waqf core principles: Scope and implementation issues in Indonesia. In H. Nawaz & B. Bardai (Eds.), *Latest Thought on Global Waqf Development: Vol. 10th GWC*. pp.5-6.
- Freddy, S. P., & Mohamad, N. A. (2024). Dispute in cross-border waqf: Mitigation, resolution, and the role of waqf authority. *IIUM Law Journal*, vol. 32. no. 1. pp.261–308.
- Gardner, F. (1980). The international economy and the national interest. *International Affairs*, vol. 56 no. 4. pp.697.
- Gaultier-Gaillard, S., & Louisot, J.-P. (2006). Risks to reputation: A global approach. *The Geneva Papers on Risk and Insurance-Issues and Practice*, vol. 31. pp.425–445.
- Ghazali, N. A., Raji, F., & Mohammad, M. T. S. H. (2019). Issues on waqf land registration process in Malaysia and improvement proposals. *UMRAN-International Journal of Islamic and Civilizational Studies*, vol. 6. no. 3. pp.57–71.
- Ghoul, W. A. (2011). The standardization debate in Islamic finance: a case study. pp.1–14.
- Global Donor Forums. (2022). Retrieved May 23, 2022, Retrieved from

<https://globaldonorsforum.org/>

- Gojek. (2024). Retrieved June 7, 2024, Retrieved from <https://www.gojek.com/blog/gopay/sedekah-langsung-pakai-go-pay>
- Günay, F., & Fatih, E. (2022). A comparative analysis of the real sector in Turkey from the economic and financial perspectives with the CRITIC-MAIRCA method. *Ekonomi Politika ve Finans Araştırmaları Dergisi*, vol. 7. no. 1. pp.186–219.
- Gupta, S. (2020). Retrieved October 4, 2023, Retrieved from <https://www.hindustantimes.com/india-news/security-agencies-flag-indonesia-link-to-delhi-riots/story-ysdToRBSLbjWqp2a0d6u6L.html>
- Habibaty, D. M. (2017). Peranan fatwa Dewan Syariah Nasional Majelis Ulama Indonesia terhadap hukum positif Indonesia. *Jurnal Legislasi Indonesia*, vol. 14 no. 4. pp.447–453.
- Hafandi, A., & Handayati, P. (2021). Is Cash Waqf Linked Sukuk (CWLS) less than ideal according to Islamic laws? *Studies of Applied Economics*, vol. 39. no. 12. pp.7.
- Hak, N. A., Ahmad, S., & Oseni, U. A. (2013). *Alternative Dispute Resolution (ADR) in Islam* (2nd ed.). pp.108. IIUM Press.
- Hanifa, M. A. (2021). *Foreign Exchange Operations of Social Islami Bank Ltd.* pp.33. Brac University.
- Haron, R., & Yussof, S. A. (2017). The ASEAN market: Cross-border collaboration in Islamic finance between Malaysia and Thailand. *Islamic Banking and Finance*, vol. 4. pp.21.
- Hartati, S. (2019). Wakaf uang menurut hukum Islam dan undang-undang no. 41 tahun 2004 tentang wakaf. *Syakhsia: Jurnal Hukum Perdata Islam*, vol. 20. no. 2. pp.403–430.
- Hasan, R., & Siraj, S. A. (2016). Complexities of waqf development in Bangladesh. *Journal of Emerging Economies and Islamic Research*, vol. 4. no. 3. pp.1–10.
- Hassan, K., & Mahlknecht, M. (2011). *Islamic Capital Markets: Products and Strategies* (1st ed.). pp.130. John Wiley & Sons.
- Hassan, M. A. D. (2018). *Rights and Duties of the Buyer Under the Sale of Goods in Shariah and International Trade Law: A Comparative Analysis*. pp.1-30. Kuala Lumpur: Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia.
- Hassan, S., Dhali, M., Javed, Y., & Khahro, S. H. (2022). Exploring nexus between international legal structure, cross-border transactions, and approach for economic development. *Journal of Legal, Ethical and Regulatory Issues*, vol. 25. no.1. pp.1–11.
- Hayat, N., & Naeem, A. (2014). Corporate waqf: A case of Hamdard (waqf) Pakistan. *SSRN*, pp.1–10.
- Helwig, N., Jokela, J., & Porlela, C. (2020). *Sharpening EU Sanctions Policy for a*

- Geopolitical Era*. pp.14. Prime Minister's Office of Finland.
- Hendrawati, D., & Islamiyati, I. (2018). Penyelesaian sengketa tanah wakaf yang tidak tersertifikasi di wilayah pesisir utara Jawa Tengah. *Masalah-Masalah Hukum*, vol. 47. no. 1. pp.71–80.
- Huda, N. (2021). Waqf blockchain in Indonesia. *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam*, vol. 14. no. 1. pp.31–49.
- Hülagü, M. (1994). Topal Osman Nuri Pasha life and activities. *Ottoman History Research and Application Center Magazine OTAM*, pp.145–153.
- Hurgronje, C. S. (2007). *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning. The Moslems of the East-Indian Archipelago*. pp.229-312. De Gruyter Brill.
- Hussaina, M. A., Latifb, H. M., Desac, M. R. M., Khalidd, A.-H. M., Noore, M. Z. M., & Akhir, A. M. (2018). Keterikatan kepada mazhab: Analisa undang-undang Islam dan kes-kes mahkamah di Malaysia. *PROCEEDINGS-ICLG 2018*, pp.333.
- Ihsan, H. (2021). Waqf development in Indonesia: Current landscape and future trends. *Waqf Development and Innovation*. pp.180–191. Routledge.
- Ihsan, H., & Ayedh, A. (2015). A proposed framework of Islamic governance for awqaf. *Journal of Islamic Economics, Banking and Finance*, vol. 113. no. 3170. pp.1–17.
- Iksan, M., & Wahyuningsih, S. E. (2020). Development of perspective criminal law Indonesian noble values. *Legal Standing: Jurnal Ilmu Hukum*, vol. 4. no. 1. pp.178–192.
- indonesiadefense.com. (2023). Retrieved March 8, 2024, Retrieved from [https://indonesiadefense.com/dakota-ri-001-seulawah-pesawat-angkut-persembahan-rakyat-aceh-untuk-indonesia/#:~:text=Jakarta%2C IDM – Pesawat Dakota RI,rakyat Aceh pada tahun 1948](https://indonesiadefense.com/dakota-ri-001-seulawah-pesawat-angkut-persembahan-rakyat-aceh-untuk-indonesia/#:~:text=Jakarta%2C%20IDM%20%E2%80%93%20Pesawat%20Dakota%20RI,rakyat%20Aceh%20pada%20tahun%201948).
- Indonesian Waqf Board. (2021). Retrieved October 25, 2023, Retrieved from <https://www.bwi.go.id/7625/2021/12/23/5-aset-wakaf-megah-warisan-pedagang-aceh-di-arab-saudi/>.
- Indraini, A. (2022, July). Retrieved October 4, 2023, Retrieved from <https://finance.detik.com/berita-ekonomi-bisnis/d-6166055/3-fakta-perputaran-duit-akt-donasi-diputar-dulu-hingga-transfer-ke-ln>.
- Indriani, R. M. D. (2022, July). Retrieved October 20, 2023, Retrieved from <https://www.suara.com/news/2022/07/04/153927/act-jadi-trending-topic-begini-sejarah-dan-visi-misi-aksi-cepat-tanggap>.
- International Chamber of Commerce. (2012). Retrieved February 13, 2024, Retrieved from [https://iccwbo.org/news-publications/news/icc-demand-guarantee-rules-urdg-758-celebrate-two-years-of-rising-popularity/#:~:text=The 35 articles in URDG,and exist in 21 languages](https://iccwbo.org/news-publications/news/icc-demand-guarantee-rules-urdg-758-celebrate-two-years-of-rising-popularity/#:~:text=The%2035%20articles%20in%20URDG,exist%20in%2021%20languages).
- International Chamber of Commerce. (2022). *Live Virtual Workshop INCOTERMS 2020*.

- International Chamber of Commerce. (2024). Retrieved February 12, 2024, Retrieved from <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/arbitrators/>
- International Chamber of Commerce. (2024). Retrieved February 8, 2024, Retrieved from <https://iccwbo.org/world-chambers-federation/>
- International Chamber of Commerce Indonesia. (2015). Retrieved February 13, 2024, Retrieved from <https://iccindonesia.org/urdg-758/>
- International Chamber of Commerce Indonesia. (2022). International Banking and International Trade Program. *International Banking and International Trade Program*, pp. 26.
- International Chamber of Commerce Indonesia, Sutopo, T., & Meydia. (2022). *International Banking and International Trade Program*. International Chamber of Commerce Indonesia.
- International Committee of the Red Cross. (1907). Retrieved December 1, 2023, Retrieved from <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>
- International Islamic University Indonesia, V. R.-D. M. P. D. (2022). *Indonesia and Kuwait Cross-Border Waqf Future Transaction*.
- Irfan, M., Rusyidi, B., & Lubis, Z. H. (2021). Analisis strategi kemitraan Aksi Cepat Tanggap terhadap keberhasilan program. *Jurnal Kolaborasi Resolusi Konflik*, vol. 3. no. 2. pp.199–209.
- Irfany, M. I., Ningsih, S. R., Hasanah, Q., & Rusydiana, A. S. (2023). Proposing green waqf development strategy in protecting land ecosystems in Indonesia: An interpretive structural modeling approach. *Ekonomi Islam Indonesia*, vol. 5. no. 1. pp.3.
- Islam, M. Z., & Mia, M. T. (2021). Framework of waqf management and administration in Bangladesh: Challenges and way forward. *Global Waqf Conference Series: Waqf Past, Present and Future*, pp.103–118.
- Istikomah, I. (2019). Penguatan sektor pertanian melalui Bank Wakaf Tani berbasis mudharabah. *TAWAZUN: Journal of Sharia Economic Law*, vol.2 no. 2. pp.135–146.
- Itang, I., & Syakhabyatin, I. (2017). Sejarah wakaf di Indonesia. *Tazkiya*, vol. 18. no. 02. pp.220–237.
- Jakarta Religious Court. (2007). *Keputusan Pengadilan Agama Jakarta No.38/Pdt.G/2007/PTAJK dated 24 May 2007*.
- Jalil, M. I. A. (2020). Issues and challenges of waqf practice in Malaysia: A review. *Labuan E-Journal of Muamalat And Society (LJMS)*, vol. 14. pp.80–86.
- Jayal, N. G. (2019). Reconfiguring citizenship in contemporary India. *South Asia: Journal of South Asian Studies*, vol. 42. no.1. pp.33–50.
- Jeon, S.-H. (2021). An analysis of delivery/transport documents content in relation to the contract of carriage under Incoterms 2020 rules. *Journal of Korea Trade*, vol. 25. no.

1. pp.203–219.

- Johari, J. (2022). Empowerment of cash waqf in the agricultural sector. *Proceeding of The International Conference on Economics and Business*, vol. 1. no. 2. pp.330–348.
- Johnson, O. E. G., Destresse, J.-M., Roberts, N., Swinburne, M., Lybek, T., & Abrams, R. K. (1998). Payment systems, monetary policy and the role of the central bank. *Payment Systems, Monetary Policy and the Role of the Central Bank*. pp.35-36. International Monetary Fund.
- Kader, S. Z. S. A. (2021). Analysis of the law applicable to the creation of waqfs during the British era in Penang. *Global Waqf Conference: Waqf Past, Present and Future, International Islamic University Malaysia, Ahmad Ibrahim Kuliyyah of Laws*, pp.16–30.
- Kader, S. Z. S. A., & Mohamed, N. A. (2017). The legal position of waqf lands in Malaysia. *Waqf Laws and Management*. pp.85–110.
- Kahf, M. (1999). Towards the revival of awqaf: A few fiqhi issues to reconsider. *Harvard Forum on Islamic Finance and Economics*, vol. 1. pp.1–16.
- Kameswari, I., Beik, I. S., & Asnawi, Y. H. (2023). Factors that influence waqif intention on cash waqf and waqf through money (Case study Berkahwakaf.id Indonesian Waqf Board). *Al-Infahq: Jurnal Ekonomi Islam*, vol. 14. no. 2. pp.231–251.
- Kapsoulis, N., Litke, A., & Soldatos, J. (2022). Efficient and accelerated KYC using blockchain technologies. *Big Data and Artificial Intelligence in Digital Finance*, pp.115.
- Karim, M. F. (2010). Problems and prospects of awqaf in Bangladesh: A legal perspective. *Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Jalan Gombak, Kuala Lumpur, Malaysia*, pp.13.
- Kasih Palestina. (2024). Retrieved January 25, 2024, Retrieved from <https://www.kasihpalestina.com/campaign/terangimasjidpalestina?lng=id>.
- Khalidi, O. (2009). Indian Muslims and Palestinian Awqaf. *Jerusalem Quarterly*, vol. 40. pp.52.
- Khalim, M. B. A. (2018). *Amalan Dalam Pengurusan Pentadbiran Tanah Wakaf di Negeri Johor*. pp.72-99. Universiti Tun Hussein Onn Malaysia.
- Kim, J.-H. (2022). The comparative study of Incoterms 2020 and 2010 in international physical distribution. *Journal of Distribution Science*, vol. 20. no. 4. pp.101–110.
- Kızılkaya, N. (2021). Sources of the legal maxims. *Legal Maxims in Islamic Law*. pp.49–62. Brill Nijhoff.
- Krebs, T. (2020). The UNIDROIT principles of international commercial contracts. *Research Handbook on International Commercial Contracts*. pp.132–157. Edward Elgar Publishing.
- Kunhibava, S., Muneeza, A., Mustapha, Z., Khalid, M., & Kiran, G. (2024). Blockchain

- use case in Islamic social finance. *ISRA International Journal of Islamic Finance*, vol. 16. no. 1. pp.93–110.
- Kusumadara, A. (2022). Pemakaian hukum asing dalam hukum perdata internasional: Kewajiban dan pelaksanaannya di pengadilan Indonesia. *Arena Hukum*, vol. 15. no. 3. pp.443–470.
- Kusumastuti, A. S., Karimah, R., Saidah, I. N., Nuarisa, R. H., & Putri, S. F. R. A. (2022). The role of Dompot Dhuafa shelter house in realizing Sustainable Development Goals (SDGs) in Indonesia. *Indonesian Conference of Zakat-Proceedings*, pp.250–254.
- Laborde, R., Oglaza, A., Wazan, S., Barrere, F., Benzekri, A., Chadwick, D. W., & Venant, R. (2020). Know your customer: Opening a new bank account online using UAAF. *2020 IEEE 17th Annual Consumer Communications & Networking Conference (CCNC)*, pp.1–2.
- Labuan International Financial and Business Centre. (2022). Retrieved June 2, 2024, Retrieved from [https://www.labuanibfc.com/clients/asset\\_52E835CC-1342-4701-B6FA-E2CD03AD74B4/contentms/img/publications/brochures/Labuan-IBFC\\_Labuan-Companies-Brochure\\_220418\\_RGB.pdf](https://www.labuanibfc.com/clients/asset_52E835CC-1342-4701-B6FA-E2CD03AD74B4/contentms/img/publications/brochures/Labuan-IBFC_Labuan-Companies-Brochure_220418_RGB.pdf)
- Lahsasna, A. (2013). *Maqasid al-Shari'ah in Islamic Finance*. pp.227-252. IBFIM.
- Laldin, M. A., Abdul-Kader, S. Z. S., & Djafri, F. (2021). Waqf development in Malaysia. *Waqf Development and Innovation*. pp.207–225. Routledge.
- Laldin, M. A., & Furqani, H. (2013). Developing Islamic finance in the framework of maqasid al-shari'ah: Understanding the ends (maqasid) and the means (wasa'il). *International Journal of Islamic and Middle Eastern Finance and Management*, vol. 6. no. 4. pp.278–289.
- Larsson, J., & Larsson, L. (2020). Integration, application and importance of collaboration in sustainable project management. *Sustainability*, vol. 12. no. 2. pp.585.
- Lateef, A. W., Abdurrazzaq, A. A., Shukor, S. A., & Tajudin, A. A. (2017). Maqasid al-shari'ah in ijarah (leasing) contract of Islamic banking system. *Journal of Islamic Finance*, vol. 6. no. 2. pp.38–44.
- Law Teacher. (2021). Retrieved November 5, 2023, Retrieved from <https://www.lawteacher.net/free-law-essays/constitutional-law/english-common-law-law-essays.php?vref=1>.
- Layali Rahmatun, S. (2022). Halal tourism and foreign exchange reserves in Indonesia: Error correction model. *Etikonomi*, vol. 21. no. 1. pp.177–189.
- Lin, M. (2015). Retrieved November 5, 2023, Retrieved from <https://www.linkedin.com/pulse/common-law-rules-equity-malaysian-legal-system-relation-mazuan-lin/>.
- LinkAja Syariah. (2024). Retrieved June 7, 2024, Retrieved from <https://www.linkaja.id/linkajasyariahberbagi>
- Listiana, L., Alhabshi, S. M., & Harjunadhi, A. W. (2020). Waqf for socio-economic

- development: A perspective of Ibn Khaldun. *İbn Haldun Çalışmaları Dergisi*, vol. 5. no. 1. pp.83–94.
- Lubis, H., Hasanah, N., & Khairunisa, M. (2023). Influence wakif's understanding and income of interest in waqf in PW. Salimah Riau Province. *Al-Kharaj: Journal of Islamic Economic and Business*, vol. 5. no. 1. pp.85–88.
- Ma, J., & Lu, Y. (2011). Free trade or protection: A literature review on Trade Barriers. *Research in World Economy*, vol. 2. no. 1. pp.69.
- Mahamood, S. M. (2006). *Waqf in Malaysia: Legal and Administrative Perspectives*. pp.34-93. University of Malaya Press.
- Mahamood, S. M. (2007). Pembentukan dana wakaf menurut perspektif syariah dan undang-undang serta aplikasinya di Malaysia. *Jurnal Syariah*, vol. 15. no. 2. pp.61–83.
- Mahamood, S. M. (2011). Law of waqf in Malaysia: Recent developments. M. Kahf & S. M. Mahamood (Eds.), *Essential Readings in Contemporary Waqf Issues*. pp.77–106. CERT Publications Sdn. Bhd.
- Mahmud, M. W., & Shah, S. S. (2010). Optimization of philanthropic waqf: The need for maqasid-based legislative strategies. *Shariah Law Reports*, vol. 2. pp.29–45.
- Majelis Ulama Indonesia. (2002). Retrieved May 26, 2022, Retrieved from <http://mui.or.id/wp-content/uploads/files/fatwa/29.-Wakaf-Uang.pdf>.
- Majelis Ulama Indonesia. (2023). Retrieved November 29, 2023, Retrieved from <https://dsnmuinstituteweb.com/profil-dsn-mui-institute/#:~:text=Tentang DSN-MUI&text=Jumlah Fatwa DSN-MUI hingga,dan Fatwa yang bersifat general>.
- Majid, R. (2022). Rice land sustainability and agricultural financing through waqf. *Review of Islamic Social Finance and Entrepreneurship*, pp.17–35.
- Majlis Ugama Islam Singapura. (n.d.). Retrieved July 24, 2022, Retrieved from <https://www.muis.gov.sg/wakaf/Understanding-Wakaf/History-of-Wakaf>.
- Makrus, A. (2016). Wakaf produktif. *Jurnal Al-Hikmah*, vol. 4. no. 1. pp.87–93.
- Manaf, Z. I. A. (2017). Resolution of waqf land disputes: The relevance of a waqf tribunal in Malaysia. *Kertas Prosiding, International Conference on Dispute Resolution, Modern Trends in Effective Disputes Resolution, Universiti Islam Antarabangsa Malaysia (UIAM)*, pp.9–10.
- Manaf, Z. I. A., Kader, S. Z. S. A., & Mohamad, N. A. (2018). ADR as an alternative access to justice in resolving waqf land disputes. *CLJ Bulletin-Legal Network Series (LNS), LNS (A) ii*. vol. 1. pp.14.
- Manaf, Z. I. B. A. (2017). The use of ADR in cases of illegal occupation of waqf lands. *5th Global Waqf Conference*, pp.2–15.
- Mandala, S. (2007). The UNIDROIT principles of international commercial contracts as a reference for modern Indonesian contracts. *Indonesian Law Journal*, 2nd, pp.13–22.

- Mansoori, M. T. (2022). 3 general principles of business contracts in Islamic law. *Institutional Islamic Economics and Finance*. pp.27–40. Routledge.
- Mardani, D. (2015). *Hukum Sistem Ekonomi Islam*. pp.223-227. Jakarta: PT Raja Grafindo Persada.
- Marijana, D. M., & Đorđević, D. (2023). Standby letter of credit as a means of security in international contractual relations. *Pravo-Teorija i Praksa*, vol. 40. no.4. pp.1–16.
- Martínez, J. C., & Eng, B. (2016). The unintended consequences of emergency food aid: neutrality, sovereignty and politics in the Syrian civil war, 2012–15. *International Affairs*, vol. 92. no. 1. pp.153–173.
- Martoyo, I. D. (2018). *Letter of Credit in the Central Bank of Indonesia*. Department of Banking Services, Licensing and Treasury Operations.
- Masyita, D., Tasrif, M., & Telaga, A. S. (2005). A dynamic model for cash waqf management as one of the alternative instruments for the poverty alleviation in Indonesia. *The 23rd International Conference of The System Dynamics Society Massachusetts Institute of Technology (MIT)*, pp.1–29.
- Mat Hassan, S. H., & Nasir Ayub, D. M. (2016). Wakaf tunai instrumen pembangunan sosioekonomi ummah di Malaysia. *Voice of Academia (VOA)*, vol. 11. no. 2. pp.22–40.
- Mat Rani, M. A., & Abdul Aziz, A. (2010). Waqf management and administration in Malaysia: its implementation from the perspective of Islamic law. *Management & Accounting Review (MAR)*, vol. 9. no. 2. pp.1–7.
- McDonald, J. (2005). Domestic Regulation, International Standards, and Technical Barriers to Trade. *World Trade Review*, vol. 4. no. 2. pp.249–274.
- Meiliana, D. (2022, August). Retrieved October 4, 2023, Retrieved from <https://nasional.kompas.com/read/2022/08/05/15315071/ppatk-dana-rp-17-triliun-masuk-ke-act-50-persennya-mengalir-ke-kantong>.
- Menkel-Meadow, C. J., Porter-Love, L., & Kupfer-Schneider, A. (2006). *Mediation: Practice, Policy, and Ethics*. pp.61. Aspen Publishing.
- Meral, Y. (2018). Documentary risk in international trade. *Strategic Design and Innovative Thinking in Business Operations*. pp.413–431. Springer.
- Milton-Edwards, B. (2017). Securitizing charity: The case of Palestinian zakat committees. *Global Change, Peace & Security*, vol. 29. no. 2. pp.161–177.
- Ministry of Communication and Information of the Republic of Indonesia. (2022). Retrieved March 28, 2023, Retrieved from <https://www.kominfo.go.id/content/detail/46247/provinsi-papua-barat-daya-diresmikan-indonesia-sekarang-miliki-38-provinsi/0/berita#:~:text=Jakarta Pusat%2C Kominfo - Menteri Dalam,Indonesia kini memiliki 38 provinsi>.
- Ministry of Home Affairs of the Republic of Indonesia. (2022). Retrieved October 22, 2024, Retrieved from <https://dataindonesia.id/ragam/detail/sebanyak-869-penduduk->



indonesia-beragama-islam.

- Ministry of Religion of the Republic of Indonesia. (2018). Retrieved October 25, 2023, Retrieved from <https://www.kemenag.go.id/nasional/kisah-habib-bugak-kumpulkan-dana-untuk-tanah-wakaf-di-makkah-vdnrjd>.
- Ministry of Religion of the Republic of Indonesia. (2022). Retrieved October 25, 2023, Retrieved from <https://kemenag.go.id/opini/belajar-amanah-mengelola-wakaf-dari-nadzir-baitul-asyi-yu229c#:~:text=nadzir dalam mengelolanya.,Syeikh Abdul Latief Baltou yang sudah menjadi nadzir wakaf selama,telah berusia 200 tahun lebih>.
- Mittal, S. (2018). International trade barriers. *International Journal of Research and Analytical Reviews (IJRAR)*, vol. 5. no. 4. pp.541–547.
- Mizik, T. (2021). Climate-smart agriculture on small-scale farms: A systematic literature review. *Agronomy*, vol. 11. no. 6. pp.1096.
- Mohamad, N. A. (2017). Promoting community based waqf. *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam*, vol. 10(Special). pp.176–185.
- Mohamad, N. A. (2019). Protection of property through waqf institution: Analysis of court decisions in Malaysia pre and post-independence. N. A. Mohamad, M. Z. Islam, S. Z. S. A. Kader, & M. Y. M. Isa (Eds.), *Waqf in Selected Asian Countries*. pp.40–54. International Islamic University Malaysia.
- Mohamad, N. A., & Haron, A. H. (2021). Perpetuity of waqf: Issues and discussion. *Global Waqf Conference: Waqf Past, Present and Future, International Islamic University Malaysia, Ahmad Ibrahim Kuliyyah of Laws*, pp.61–75.
- Mohamad, N. A., Kader, S., & Ali, Z. (2012). Waqf lands and challenges from the legal perspectives in Malaysia. *IIUM-Toyo Symposium*, pp.1–9.
- Mohamad, N. A., Kader, S. Z. S. A., & Ali, Z. (2017). Challenges in management for sustainability of waqf lands in Malaysia. *Waqf Laws and Management*. pp.111–131. International Islamic University Malaysia.
- Mohiddin, M. N. (2019). Waqf development in minority Muslim country: Singapore's experience. *Journal of Islamic Philanthropy & Social Finance*, vol. 2. no. 1. pp.19–34.
- Muhsin, S. M., Amanullah, M., & Zakariyah, L. (2019). Framework for harm elimination in light of the Islamic legal maxims. *Islamic Quarterly*, vol. 63. no. 2. pp.233–272.
- Mujahidin, A. (2021). *Hukum Wakaf di Indonesia dan Proses Penanganan Sengketanya (Waqf Law in Indonesia and Its Dispute Resolution)* (1st ed.). pp.65-128. Kencana.
- Murdaningsih, D. (2018). Retrieved June 3, 2024, Retrieved from <https://khazanah.republika.co.id/berita/p2bzzt368/act-kirimkan-bantuan-beras-ke-somalia-hingga-palestina>.
- Mutia, K., Roisah, K., & Supriadhie, K. (2016). Kapasitas pemerintah daerah dalam melakukan hubungan luar negeri menurut hukum internasional (Studi kasus tindakan pemerintah daerah istimewa Aceh mengambil alih Baitul Asyi di Arab Saudi tanpa

- melalui hubungan konsuler RI). *Diponegoro Law Journal*, vol. 5. no. 3. pp.1–18.
- Mutiara, I. S. B., & Widigdo, A. M. N. (2021). *Nazir Management Improvement and Regulation Adjustments to Increase Waqf Land Productivity*. pp.2-4. BWI Working Paper Series.
- Nasir, F. M. (2019). Menengahi polemik rencana investasi BPKH pada tanah wakaf Baitul Asyi. *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam*, vol. 12. no. 1. pp.27–44.
- Natasya, F. (2023). *Strategi Penghimpunan Dana ZIS (Zakat, Infaq dan Sedekah) melalui Digital QRIS di LAZNAS Daarut Tauhiid Peduli Lampung*. pp.103-104. Universitas Islam Negeri Raden Intan Lampung.
- Nicholson, J. (2006). The Hejaz Railway. *Asian Affairs*, vol. 37. no. 3. pp.320–336.
- Niepmann, F., & Schmidt-Eisenlohr, T. (2017). International Trade, Risk and The Role of Banks. *Journal of International Economics*, vol. 107. pp.111–126.
- Niswah, F. M., Mutmainah, L., Hadyantari, F., Nurwahidin, N., & Huda, N. (2020). Do Indonesian Muslims have intention to participate on cash waqf through fintech? *ICSGS 2019*, pp. 97–114.
- Nor, N. B. M., & Mohammed, M. O. (2009). Categorization of waqf lands and their management using Islamic investment models: The case of the state of Selangor, Malaysia. *International Conference on Waqf Laws & Management: Reality and Prospects, IIUM*, pp.20–22.
- Nurdin, H. (2020). Problems and crisis of Islamic education today and in the future. *International Journal of Asian Education*, vol. 1. no. 1. pp.21–28.
- Nurita, D., & Febriyan. (2022, July). Retrieved October 4, 2023, Retrieved from <https://nasional.tempo.co/read/1608805/ini-temuan-majalah-tempo-dan-tanggapan-act-soal-isu-penyelewengan-dana-donasi-hingga-konflik-di-internal>.
- Nurmasari, J. (2023). *BAZNAS Cross-Border Charity Partners*. Secretary of the Head of Badan Amil Zakat Nasional.
- Nwaobi, E. A. (2022). An analysis of the carrier's liability regime under the Hague-Visby, Hamburg and Rotterdam rules. *International Journal of Law*, vol. 8. no. 2. pp.115–121.
- O'Leary, R. E. (2009). Improving the terrorist finance sanctions process. *NYUJ Int'l L. & Pol.*, vol. 42. pp.549.
- Obaidullah, M. (2013). *Awqaf Development and Management*. pp.31. Islamic Research and Training Institute, Islamic Development Bank.
- Ochsenwald, W. (1973). The financing of the Hejaz railroad. *Die Welt Des Islams*, vol. 14. no. 1/4. pp.129–149.
- Ochsenwald, W. (2010). A modern waqf: the Hejaz railway, 1900-48. In *Religion, Economy, and State in Ottoman-Arab History*. pp.193–206. Gorgias Press.

- Osman, R. (2022). Addressing waqf disputes in Malaysian court: Towards a new arbitration model. *BiLD Law Journal*, vol. 7. no. 4s. pp.255–258.
- Osngo, A., Piermartini, R., & Rocha, N. (2015). *Trade Policy Uncertainty as Barrier to Trade*. pp.4-5. WTO Staff Working Paper.
- Oswaldo, I. G. (2022, July). Retrieved June 3, 2024, Retrieved from <https://finance.detik.com/berita-ekonomi-bisnis/d-6163096/sedang-jadi-sorotan-begini-sejarah-singkat-act>.
- Özyüksel, M. (1989). A state initiative in Ottoman railway operation: Hicaz railway. *Iktisad Magazine*, vol. 292. pp.18–23.
- Padmo, A., & Joesoef, I. E. (2020). COVID-19 as force majeure in insurance agreement. *Mulawarman Law Review*, pp.114–125.
- Pejabat Mufti Wilayah Persekutuan. (n.d.). Retrieved July 21, 2022, Retrieved from [muftiwp.gov.my](http://muftiwp.gov.my).
- Pejabat Mufti Wilayah Persekutuan. (2018). Retrieved October 23, 2023, Retrieved from <https://www.muftiwp.gov.my/ms/artikel/irsyad-fatwa/irsyad-fatwa-umum/2824-irsyad-al-fatwa-274-wakaf-ahmad-dawjee-dadabhoy>.
- Pelu, I. E. A. S. (2019). Kedudukan fatwa dalam konstruksi hukum Islam. *El-Mashlahah Journal*, vol. 9. no.2. pp.167–181.
- Pertiwi, R. S., Ryandono, M. N. H., & Rofiah, K. (2019). Regulations and management of waqf institutions in Indonesia and Singapore: A comparative study. *KnE Social Sciences*, pp.766–783.
- Petrová, M., Krügerová, M., & Kozieł, M. (2021). INCOTERMS – history and future development. *Proceedings of the 15th International Conference Liberec Economic Forum*, pp.589–598.
- Pitchay, A. A., Yusoff, M. N., Jalil, M. I. A., Azhar, Z., & Thaker, M. A. M. T. (2022). The cost saving method: A proposal of awqaf alternative plan. *Labuan E-Journal of Muamalat and Society (LJMS)*, vol. 16. pp.49–60.
- Prabowo, B. A., & Jamal, J. Bin. (2017). Peranan dewan pengawas syariah terhadap praktik kepatuhan syariah dalam perbankan syariah di Indonesia. *Jurnal Hukum Ius Quia Iustum*, vol. 24. no. 1. pp.113–129.
- Putra, T. W., Saputra, J., Possumah, B. T., & Hasyim, M. Y. I. (2023). Productive waqf development model: A comparative study between Indonesia and Malaysia. *Tazkia Islamic Finance and Business Review*, vol. 17. no. 1. pp.17–25.
- Qibtiyah, M., Hasan, H., & Sibawaihi, M. (2023). Quick Response Code (QR Code) assistance in realizing the digitalization of public services at the Religious Affairs Office of The Pelayanan Sub-District of Jambi City. *AMALA Jurnal Pengabdian Kepada Masyarakat*, vol. 2. no. 1. pp.114–119.
- Qurrata, V. A., Narmaditya, B. S., Seprillina, L., & Hussain, N. E. B. (2019). The implementation and development of productive waqf in Indonesia: Case at Malang

- Islamic Hospital. *Humanities & Social Sciences Reviews*, vol. 7. no. 4. pp.533–537.
- Rahmadi, R., Mahmudi, Y., & Syauquillah, M. (2019). The humanitarian assistance role of Aksi Cepat Tanggap (ACT) toward victims of Syrian conflict in Syria and Turkey from 2012 to 2018. *Proceedings of the 2nd International Conference on Strategic and Global Studies, ICSGS 2018, October 24-26, 2018, Central Jakarta, Indonesia*, pp.6.
- Rahman, I., & Widiastuti, T. (2020). Model pengelolaan wakaf produktif sektor pertanian untuk meningkatkan kesejahteraan petani (Studi kasus pimpinan ranting Muhammadiyah Penatarsewu Sidoarjo). *Jurnal Ekonomi Syariah Teori Dan Terapan*, vol. 7. no. 3. pp.486–498.
- Ramadhan, A. B. (2022, July). Retrieved October 4, 2023, Retrieved from <https://news.detik.com/berita/d-6198309/jadi-tersangka-presiden-eks-presiden-act-terancam-20-tahun-penjara>.
- Ramadhan, J. A. (2014). Retrieved June 3, 2024, Retrieved from <https://www.merdeka.com/peristiwa/peggy-melati-sukma-dan-akhwat-bergerak-akan-berangkat-ke-gaza.html>
- Rane, N., Choudhary, S., & Rane, J. (2023). Blockchain and Artificial Intelligence (AI) integration for revolutionizing security and transparency in finance. *Available at SSRN 4644253*, pp. 1–13.
- Rasyid, A. (2016). Retrieved October 23, 2024, Retrieved from <https://business-law.binus.ac.id/2016/06/28/hukum-perwakafan-di-indonesia-dari-masa-ke-masa/>.
- Rasyid, H. (2022). *Waqf Regulatory Issues Faced by Finterra Technologies Sdn Berhad*.
- Razali, R. (2015). The contribution of waqaf properties toward Acehnese Dayah's educational empowerment. *At-Tafkir*, vol. 8. no. 1. pp.1–20.
- Republika Newspaper. (2023). Retrieved October 28, 2023, Retrieved from <https://www.republika.id/posts/42352/4-343-jamaah-haji-aceh-nikmati-manfaat-wakaf-habib-bugak>.
- Retnowulandari, W. (2020). Hukum Islam dalam tata hukum di Indonesia. *Buku Dosen-2020* (2nd ed.). pp.1-5. Universitas Trisakti.
- Rodrigues, B. S. (2021). UNCITRAL and the governance of international investments. *Transnational Actors in International Investment Law*, pp.1–18.
- Rohmah, A. N., & Zafi, A. A. (2020). Jejak eksistensi mazhab Syafii di Indonesia. *Tamaddun: Jurnal Sejarah Dan Kebudayaan Islam*, vol. 8. no. 1. pp.173–192.
- Rohman, M. M. (2011). Lembaga penjamin simpanan syariah. *Jurnal Hukum Dan Ekonomi Islam Al-Mizan*, vol. 3. no. 2. pp.199.
- Rojab, B. (2022, July). Retrieved October 4, 2023, Retrieved from <https://www.idxchannel.com/economics/ppatk-temukan-aliran-dana-act-ke-negara-berisiko-tinggi-terorisme>.
- Rosana, F. C., & Silaban, M. W. (2019). Retrieved October 15, 2023, Retrieved from

- <https://bisnis.tempo.co/read/1227715/dituding-kirim-bantuan-untuk-isis-act-jelaskan-posisi-kerja-sama-dengan-bukalapak>.
- SA, H. M. M. (1991). Wakaf tanah menurut Islam dan perkembangannya di Indonesia. *Pekan Baru: UIR Pres Pekan Baru*, pp.140–143.
- Saad, N. M. D., Kayadibi, S., Hamid, Z., Saleem, M. Y., Kasim, S., & Osman, A. Z. (2018). *The Role of Corporate and Public Entities in Managing Waqf Institutions in Muslim Countries* (1st ed.). pp.76-85. The International Institute of Islamic Thought East and South East Asia.
- Sabit, M. T. (2017). A proposal for a new comprehensive waqf law in Malaysia. *Waqf Laws and Management, IIUM Press, Malaysia*. pp.3–12. Malaysia Waqf Academy.
- Safutra, I. (2022, July). Retrieved October 4, 2023, Retrieved from <https://www.jawapos.com/kasuistika/01395584/izin-act-dicabut-60-rekening-dibekukan>.
- Sarkar, P., & Patrick, M. (2015). India's trade barriers: An analysis with reference to tariffs and customs procedures'. *Centre for Policy Research, New Delhi, India*. pp.21.
- Schoenblum, J. A. (1999). The role of legal doctrine in the decline of the Islamic waqf: A comparison with the trust. *Vand. J. Transnat'l L.*, vol. 32. pp.1192.
- Schott, J. J. (2019). Retrieved May 23, 2022, Retrieved from <https://www.piie.com/research/piie-charts/united-states-relies-wto-settle-trade-disputes-more-any-other-member>.
- Scott, B. (2020). OFAC sanctions compliance: Insights from recent enforcement actions. *Journal of Financial Compliance*, vol. 3. no. 3. pp.247–254.
- Securities Commission Malaysia. (2014). Waqf Assets: Development, Governance and the Role of Islamic Capital Market. *Securities Commission Malaysia, Kuala Lumpur*. pp.38-40.
- Setiawan, A., Saputra, A. B., & Wahyudi, H. (2020). Peran global qurban Aksi Cepat Tanggap Indonesia dalam menyalurkan bantuan kemanusiaan transnasional. *JDP (Jurnal Dinamika Pemerintahan)*, vol. 3. no. 1. pp.42–64.
- Setiawan, R. (2018, August). Retrieved June 3, 2024, Retrieved from <https://news.detik.com/berita/d-4163413/act-raih-penghargaan-peradaban-gib-awards-2018>.
- Shaham, R. (2020). Legal maxims (qawā'id fiqhiyya) in Yūsuf al-Qaradāwī's jurisprudence and fatwas. *Journal of the American Oriental Society*, vol. 140. no. 2. pp.435–454.
- Shamshuddin, H., AlmaAmun, S., & Ahmad, R. (2020). Yayasan Wakaf Antarabangsa (YWA) di bawah Pusat Kewangan Pesisir Pantai Labuan: Cadangan model penubuhan berdasarkan kepada peruntukan perundangan: International Waqf Foundation (IWF) Under Labuan Offshore Financial Center: A Proposed Model of Establishment. *International Journal of Islamic Economics and Finance Research*, vol. 3 (1 July).

pp.30–43.

Sharia Economic and Financial Department of Bank Indonesia., Ministry of Religion of the Republic of Indonesia., Ministry of Finance of the Republic of Indonesia., & National Committee of Sharia Economic and Financial of the Republic of Indonesia. (2024). *Indonesian Sovereign Waqf Funds Meeting, 22 November 2024*.

Sharia Economic and Financial Department of Bank Indonesia. (2017). Retrieved January 27, 2024, Retrieved from <https://www.bi.go.id/id/fungsi-utama/moneter/pengembangan-ekonomi/cetak-biru/default.aspx>.

Sharia Economic and Financial Department of Bank Indonesia. (2021). *Pengantar Ekonomi Islam (Introduction to Islamic Economic)* (R. Ismal & A. Sakti (eds.); 1st ed.). pp. 269-275. Departemen Ekonomi dan Keuangan Syariah Bank Indonesia.

Sharia Economic and Financial Department of Bank Indonesia. (2024). *Indonesian Sovereign Waqf Funds*.

Sharia Economic and Financial Department of Bank Indonesia., & Business and Economic Faculty of Airlangga University. (2016). *Wakaf: Pengaturan dan Tata Kelola yang Efektif* (1st ed.). pp. 105-142, Bank Indonesia.

SharingHappiness. (2024). Retrieved June 7, 2024, Retrieved from <https://sharinghappiness.org/about-us>.

Sholikhah, N. A. (2021). Peran Lembaga Filantropi untuk Kesejahteraan Masyarakat Global: Studi Kasus pada Aksi Cepat Tanggap Madiun. *Journal of Islamic Philanthropy and Disaster (JOIPAD)*, vol. 1. no. 1. pp.27–42.

Simanjuntak, E. (2019). Peran Yurisprudensi dalam Sistem Hukum di Indonesia. *Jurnal Konstitusi*, vol. 16. no. 1. pp.83–104.

Sivasubramaniam, B. (2012). The legal system of Malaysia. *Commercial Law in a Global Context*, vol. 1. pp.13.

Society for Worldwide Interbank Financial Telecommunication (SWIFT). (2016). Retrieved February 13, 2024 Retrieved from <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj4gq6KkaaEAXUOoGMGHaztBdcQFnoECA8QAw&url=https%3A%2F%2Fwww.swift.com%2Fswift-resource%2F35051%2Fdownload%23%3A~%3Atext%3D%25E2%2580%259EA%2520Bank%2520Payment%2520Obl>.

Sokhatska, O., Bashynska, I., Stepanova, T., Malanchuk, M., Rybianets, S., & Sobol, O. (2019). Modelling the risks of international trade contracts. *International Journal of Innovative Technology and Exploring Engineering (IJITEE)*, vol. 8. no. 11. pp.2815–2820.

Souaiaia, A. (2005). On the sources of Islamic law and practices. *Journal of Law and Religion*, vol. 20. no. 1. pp.123–147.

Suara Merdeka Newspaper Malaysia. (2021). Retrieved December 1, 2023, Retrieved from

- <https://suaramerdeka.com.my/ahmad-dawjee-jutawan-wakafkan-tanah-1-2-ekar-di-jalan-tun-perak/>.
- Sudrajat, B., & Imronah, A. (2023). Productive waqf: Concepts and its impact on improving community economy. *Proceeding of International Conference on Islamic Economics, Islamic Banking, Zakah and Waqf*, vol. 1. pp.127–140.
- Sugiarto, U. S. (2021). *Pengantar Hukum Indonesia (Introduction to Indonesia's Law)* (Tarmizi & Ihsan (eds.)). pp.30-34. Sinar Grafika.
- Suhaili, N. A., & Palil, M. R. (2016). Crowdfunding: A collaborative waqf based internet platform. *International Journal of Business, Economics and Law*, vol. 11. no. 5. pp.41–46.
- Sulistiani, S. L. (2017). Analisis implementasi wakaf wasiat polis asuransi syariah di Lembaga Wakaf al-Azhar Jakarta. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, vol. 17. no. 2. pp.285–299.
- Surau Wakaf Ahmad Dawjee Dadabhoy. (2023). Retrieved October 23, 2023 Retrieved from <https://www.swadd.com.my/sejarah-surau-wakaf-ahmad-dawjee-dadabhoy>.
- Syukur, F. A., & Bagshaw, D. M. (2013). When home is no longer “sweet”: Family violence and Sharia Court–annexed mediation in Indonesia. *Conflict Resolution Quarterly*, vol. 30. no. 3. pp.271–294.
- Tahiri-Jouti, A. (2022). Waqf offshore centers and cross-border waqf operations. In *Financial Instruments and Cash Waqf*. pp.251–271. Springer.
- Tanjung, H., & Windiarto, A. (2021). Role of cash waqf linked sukuk in economic development and international trade. *Signifikan: Jurnal Ilmu Ekonomi*, vol. 10. no. 2. pp.275–290.
- Tapah, S. (2004). Perundangan dan penguatkuasaan fatwa. *Fatwa Di Malaysia, Kuala Lumpur: Jabatan Syariah Dan Undang-Undang Universiti Malaya*, pp.26.
- The International Institute for the Unification of Private Law (UNIDROIT). (2013). Retrieved February 10, 2024, Retrieved from <https://www.unidroit.org/english/principles/modelclauses2013/modelclauses-2013.pdf>.
- The International Institute for the Unification of Private Law (UNIDROIT). (2016). Retrieved February 10, 2024, Retrieved from <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>.
- The International Institute for the Unification of Private Law (UNIDROIT). (2024). Retrieved February 10, 2024, Retrieved from <https://www.unidroit.org/about-unidroit/overview/>.
- The International Institute for the Unification of Private Law (UNIDROIT), United Nations Commission On International Trade Law (UNCITRAL), & The Hague Conference on Private International Law (HCCH). (2020). Retrieved February 10, 2024, Retrieved from <https://uncitral.un.org/sites/uncitral.un.org/files/media->

- documents/uncitral/en/tripartiteguide.pdf.
- The Istanbul 29 Mayıs University. (2024). Retrieved January 6, 2024, Retrieved from <https://www.29mayis.edu.tr/en/founding-foundation>.
- The London Institute of Banking and Finance (LIBF), & International Chamber of Commerce (ICC). (2021). *Certificate in International Trade and Finance - Tutorial 2024*. International Chamber of Commerce.
- The Muslims Around the World (MATW) Project. (2024). Retrieved April 9, 2024, Retrieved from <https://matwproject.org/>.
- The World Trade Organization. (1994). Retrieved December 1, 2023, Retrieved from [https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm).
- The World Zakat and Waqf Forum International Working Group. (2022). Retrieved June 30, 2024, Retrieved from <https://www.bwi.go.id/8460/2022/11/22/technical-notes-on-good-nazir-governance-september-2022/>.
- Triyanta, A., & Zakie, M. (2014). Problematika Pengelolaan Tanah Wakaf: Konsep Klasik dan Keterbatasan Inovasi Pemanfaatannya di Indonesia. *Jurnal Hukum Ius Quia Iustum*, vol. 21. no. 4. pp.583–606.
- Turan, Ö. (2008). The Turkish Diyanet Foundation. *The Muslim World*, vol. 98. no. 2/3. pp.370.
- Uluysol, B., & Abdullah, A. (2016). The legal maxims of Islamic law (Excluding five leading legal maxims) and their applications in Islamic finance. *Journal of King Abdulaziz University: Islamic Economics*, vol. 29. no. 2. pp.144.
- UNIDROIT. (2022). Retrieved July 29, 2022, Retrieved from <https://www.unidroit.org/>.
- United Nations. (1945). Retrieved December 1, 2023, Retrieved from <https://www.un.org/en/about-us/un-charter>.
- Case Law on UNCITRAL Texts (CLOUT). (1988). Retrieved February 7, 2024, Retrieved from <https://www.uncitral.org/clout/index.jsp>.
- United Nations Commission on International Trade Law (UNCITRAL). (1992). Retrieved February 7, 2024, Retrieved from <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-credittrans.pdf>
- United Nations Commission on International Trade Law (UNCITRAL). (2001). Retrieved February 7, 2024, Retrieved from [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_signatures#:~:text=The Model Law on Electronic,electronic and hand-written signatures](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_signatures#:~:text=The Model Law on Electronic,electronic and hand-written signatures).
- United Nations Commission on International Trade Law (UNCITRAL). (2005). Retrieved February 7, 2024, Retrieved from <https://uncitral.un.org/en/node/772/1000>.
- United Nations Commission on International Trade Law (UNCITRAL). (2006). Retrieved February 7, 2024, Retrieved from



- [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf).
- United Nations Commission on International Trade Law (UNCITRAL). (2008). Retrieved February 7, 2024, Retrieved from [https://uncitral.un.org/en/texts/mediation/modellaw/commercial\\_conciliation](https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation)
- United Nations Commission on International Trade Law (UNCITRAL). (2024). Retrieved October 24, 2024, Retrieved from <https://ciscg-online.org/ciscg-contracting-states>.
- United Nations Commission on International Trade Law (UNCITRAL). (2024). Retrieved February 5, 2024, Retrieved from [https://uncitral.un.org/en/about/faq/mandate\\_composition/memberhistory](https://uncitral.un.org/en/about/faq/mandate_composition/memberhistory).
- United Nations Commission on International Trade Law (UNCITRAL). (2024). Retrieved February 5, 2024, Retrieved from [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg).
- United Nations Commission On International Trade Law (UNCITRAL). (2009). Retrieved February 5, 2024, Retrieved from <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>
- United Nations Commission On International Trade Law (UNCITRAL). (2024). Retrieved February 5, 2024, Retrieved from [https://uncitral.un.org/en/texts/transportgoods/conventions/hamburg\\_rules#:~:text=%22Hamburg Rules%22\)-,United Nations Convention on the Carriage of Goods by Sea,\(the %22Hamburg Rules%22\)&text=Adopted by a diplomatic conference,carriage of goods by sea](https://uncitral.un.org/en/texts/transportgoods/conventions/hamburg_rules#:~:text=%22Hamburg Rules%22)-,United Nations Convention on the Carriage of Goods by Sea,(the %22Hamburg Rules%22)&text=Adopted by a diplomatic conference,carriage of goods by sea).
- United Nations Conference on Trade and Development (UNCTAD). (2008). Retrieved February 5, 2024, Retrieved from <https://unctad.org/topic/transport-and-trade-logistics/policy-and-legislation/international-maritime-transport-law/rotterdam-rules#:~:text=The UN Convention on Contracts,provide a modern successor to>.
- Utomo, S. B., Masyita, D., & Hastuti, F. (2020). Why cash waqf fails to meet the expectation: Evidence from Indonesia. *Journal of Islamic Economic Studies (Issue October)*, pp.12.
- Valeev, R. M., Abidulin, A. M., & Ayupova, N. I. (2017). The project of Hejaz railway construction: A historical and historiographic review. *European Research Studies Journal*, vol. 20(Special Issue). pp.234–241.
- Vidiati, C., Hendra, E., Santoso, S., & Faturrizky, I. (2021). What blockchain technology can do to contribute to waqf. *Al-Afkar, Journal For Islamic Studies*, pp.53–71.
- Wahanisa, R., Suhadi, S., & Niravita, A. (2022). Compensation system of waqf land acquired for developing public interest. *Diponegoro Law Review*, vol. 7. no. 1. pp.70–87.
- Wahyuni, S. (2023). Islamic law in Indonesia (history and prospects). *Batulis Civil Law Review*, vol. 4. no. 1. pp.6–19.

- Waqf Center for Indonesian Development and Studies. (2021). Retrieved October 14, 2023, Retrieved from <https://wacids.or.id/en/2021/08/30/wakaf-dan-pajak-potensi-dan-peluangnya-untuk-pengembangan-wakaf-di-indonesia/>.
- Wildana, M. D. A., & Alhabshi, S. M. S. J. (2018). Proposed waqf framework for food security and price stabilization policy of rice in Indonesia. *Journal of Islamic Finance*, vol. 7. no. 2. pp.70–85.
- World Congress of Muslim Philanthropists. (2008). *1st World Congress of Muslim Philanthropists*. pp.4.
- Wulandari, D., Sari, A. P., & Fauziyyah, R. (2024). Literatur review: Penerapan dan pelaporan akuntansi wakaf pada Badan Wakaf Indonesia. *Journal of Management and Innovation Entrepreneurship (JMIE)*, vol. 1. no. 2. pp.113–132.
- Yaacob, A. M. (2009). Perlaksanaan Perundangan Islam di Malaysia: Satu Penilaian. *Jurnal Fiqh*, vol. 6. pp.1–20.
- Yaacob, H., & Yaacob, H. (2013). Waqf history and legislation in Malaysia: A contemporary perspective. *Journal of Islamic and Human Advanced Research*, vol. 3. no. 6. pp.387–402.
- Yakin, K. A. (2024). *SINERGI Foundation “Palestine Aid.”*
- Yang, J.-H. (2021). A study on the reasonable choice and utilization of Incoterms 2020 rules from the perspective of logistics and supply chain management. *Journal of Korea Trade*, vol. 25. no. 1. pp.152–168.
- Yayasan Waqaf Malaysia. (2023). Retrieved September 20, 2023, Retrieved from <https://www.ywm.gov.my/kaedah-berwakaf>.
- Yayasan Waqaf Malaysia. (2018). *Laporan Program Agihan 2018 Yayasan Waqaf Malaysia (Distribution Report 2018)*. pp.3-8.
- Yayasan Waqaf Malaysia. (2019). *Laporan Program Agihan 2019 Yayasan Waqaf Malaysia (Distribution Report 2019)*. pp.1-7.
- Yayasan Waqaf Malaysia. (2020). *Laporan Program Agihan 2020 Yayasan Waqaf Malaysia (Distribution Report 2020)*. pp.1-21.
- Yayasan Waqaf Malaysia. (2021). *Laporan Program Agihan 2021 Yayasan Waqaf Malaysia (Distribution Report 2021)*. pp.1-17.
- Yayasan Waqaf Malaysia. (2021). *Laporan Tahunan 2021 Yayasan Waqaf Malaysia (Annual Report 2021)*. pp.1-149.
- Yayasan Waqaf Malaysia. (2022). *Laporan Program Agihan 2022 Yayasan Waqaf Malaysia (Distribution Report 2022)*. pp.6-25.
- Yulianingtyas, R., Wigati, P. A., & Suparwati, A. (2016). Analisis pelaksanaan manajemen risiko di rumah sakit Islam sultan agung semarang. *Jurnal Kesehatan Masyarakat*, vol. 4. no. 4. pp.121–128.

- Yusof, M. F. M., Yusof, M. F. M., Hasarudin, M. H., & Romli, N. (2014). Cash waqf and infaq: A proposed e-philanthropy in Malaysia. *Jurnal Kemanusiaan*, vol. 12. no. 1. pp.5–8.
- Yusuf, M. Y., Fitriady, & Nasir, F. M. (2022). *Pengelolaan Wakaf untuk Pembangunan Ekonomi Berkelanjutan (Waqf Management for Sustainable Economic Development)* (H. Maulana (ed.)). pp.74-77. Ar-Raniry Press.
- Zaenuri. (2023). Retrieved May 16, 2023, Retrieved from <https://www.bwi.go.id/wp-content/uploads/2020/09/Dr.-Zaenuri-MH.pdf>.
- Zekos, G. I. (2002). Arbitration as a dispute settlement mechanism under UNCLOS, the Hamburg Rules, and WTO. *Journal of International Arbitration*, vol. 19. no. 5. pp.497–504.



## APPENDIX I: INDONESIAN CORE *Waqf* LAWS

| No. | Indonesian <i>Waqf</i> Core Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | Decree of the Director General of Islamic Community Guidance of the Republic of Indonesia No.DJ.II/420 of 2009 concerning the Model, Shape, and Specification of Cash <i>Waqf</i> Form ( <i>Keputusan Direktur Jenderal Bimbingan Masyarakat Islam No.DJ.II/420 Tahun 2009 tentang Model, Bentuk dan Spesifikasi Formulir Wakaf Uang</i> ).                                                                                                                                                                                     |
| 2.  | Decision of the Director General of Islamic Community Guidance of the Republic of Indonesia No.800 of 2014 concerning the Implementation of the Regulation of the Minister of Religion No.73 of 2013 concerning Procedures for <i>Waqf</i> of Immovable and Movable Objects Other Than Money ( <i>Keputusan Direktur Jenderal Bimbingan Masyarakat Islam No.800 Tahun 2014 tentang Pelaksanaan Peraturan Menteri Agama No.73 Tahun 2013 tentang Tata Cara Perwakafan Benda Tidak Bergerak dan Benda Bergerak Selain Uang</i> ). |
| 3.  | Government Regulation of the Republic of Indonesia No.42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning <i>Waqf</i> ( <i>Peraturan Pemerintah Republik Indonesia No.42 Tahun 2006 tentang Pelaksanaan Undang-Undang No.41 tahun 2004 tentang Wakaf</i> ).                                                                                                                                                                                                                                               |
| 4.  | Government Regulation of the Republic of Indonesia No.25 of 2018 concerning Changes to Government Regulation No.42 of 2006 about the Implementation of Act No. 41 of 2004 concerning <i>Waqf</i> ( <i>Peraturan Pemerintah Republik Indonesia No.25 Tahun 2018 tentang Perubahan atas Peraturan Pemerintah Republik Indonesia No.42 Tahun 2006 tentang Pelaksanaan Undang-Undang No.41 tahun 2004 tentang Wakaf</i> ).                                                                                                          |
| 5.  | Indonesian <i>Waqf</i> Board Regulation No.1 of 2007 concerning the Organization and Working Procedures of the Indonesian <i>Waqf</i> Board ( <i>Peraturan Badan Wakaf Indonesia No.1 Tahun 2007 tentang Organisasi dan Tata Cara Kerja Badan Wakaf Indonesia</i> ).                                                                                                                                                                                                                                                            |
| 6.  | Indonesian <i>Waqf</i> Board Regulation No.1 of 2008 concerning Procedures for Formulating Recommendations on Applications for Exchange/Change of <i>Waqf</i> Assets Status ( <i>Peraturan Badan Wakaf Indonesia No.1 Tahun 2008 tentang Prosedur Penyusunan Rekomendasi Terhadap Permohonan Penukaran/ Perubahan Status Harta Benda Wakaf</i> ).                                                                                                                                                                               |
| 7.  | Indonesian <i>Waqf</i> Board Regulation No.2 of 2008 concerning Representatives of Indonesian <i>Waqf</i> Boards ( <i>Peraturan Badan Wakaf Indonesia No.2 Tahun 2008 tentang Perwakilan Badan Wakaf Indonesia</i> ).                                                                                                                                                                                                                                                                                                           |

|     |                                                                                                                                                                                                                                                                                                                                                       |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8.  | Indonesian Waqf Board Regulation No.3 of 2008 concerning Procedures for Registration and Substitution of Nazir of Intangible Waqf Assets in the Form of Land ( <i>Peraturan Badan Wakaf Indonesia No.3 Tahun 2008 tentang Tata Cara Pendaftaran dan Pergantian Nazir Harta Benda Wakaf Tidak Bergerak Berupa Tanah</i> ).                             |
| 9.  | Indonesian Waqf Board Regulation No.1 of 2009 concerning Guidelines for the Management and Development of Movable Waqf Assets in the Form of Money ( <i>Peraturan Badan Wakaf Indonesia No.1 Tahun 2009 tentang Pedoman Pengelolaan dan Pengembangan Harta Benda Wakaf Bergerak Berupa Uang</i> ).                                                    |
| 10. | Indonesian Waqf Board Regulation No.2 of 2009 concerning Guidelines of Cash Waqf Acceptance for Indonesian Waqf Board Nazir ( <i>Peraturan Badan Wakaf Indonesia No.2 Tahun 2009 tentang Pedoman Penerimaan Wakaf Uang Bagi Nazir Badan Wakaf Indonesia</i> ).                                                                                        |
| 11. | Indonesian Waqf Board Regulation No.1 of 2010 concerning Procedures for Appointment and Dismissal of Members of the Indonesian Waqf Board ( <i>Peraturan Badan Wakaf Indonesia No.1 Tahun 2010 tentang Tata Cara Pengangkatan dan Pemberhentian Anggota Badan Wakaf Indonesia</i> ).                                                                  |
| 12. | Indonesian Waqf Board Regulation No.2 of 2010 concerning Procedures for Registration of Cash Waqf Nazir ( <i>Peraturan Badan Wakaf Indonesia No.2 Tahun 2010 tentang Tata Cara Pendaftaran Nazir Wakaf Uang</i> ).                                                                                                                                    |
| 13. | Indonesian Waqf Board Regulation No.3 of 2010 concerning Amendments of Indonesian Waqf Board Regulation No.2 of 2008 concerning Representatives of Indonesian Waqf Boards ( <i>Peraturan Badan Wakaf Indonesia No.3 Tahun 2010 tentang Perubahan atas Peraturan Badan Wakaf Indonesia No.2 Tahun 2008 tentang Perwakilan Badan Wakaf Indonesia</i> ). |
| 14. | Indonesian Waqf Board Regulation No.4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets ( <i>Peraturan Badan Wakaf Indonesia No.4 Tahun 2010 tentang Pedoman Pengelolaan dan Pengembangan Harta Benda Wakaf</i> ).                                                                                                      |
| 15. | Indonesian Waqf Board Regulation No.2 of 2012 concerning Representatives of the Indonesian Waqf Board ( <i>Peraturan Badan Wakaf Indonesia No.2 Tahun 2012 tentang Perwakilan Badan Wakaf Indonesia</i> ).                                                                                                                                            |
| 16. | Law of the Republic of Indonesia No.41 of 2004 concerning Waqf ( <i>Undang-Undang Republik Indonesia No.41 Tahun 2004 tentang Wakaf</i> ).                                                                                                                                                                                                            |
| 17. | Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No.2 of 2017 concerning Procedures for Registering Waqf Land ( <i>Peraturan Menteri Agraria dan Tata</i>                                                                                                            |

|     |                                                                                                                                                                                                                                                                                                                            |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | <i>Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia No.2 Tahun 2017 tentang Tata Cara Pendaftaran Tanah Wakaf).</i>                                                                                                                                                                                               |
| 18. | Regulation of the Minister of Religion of the Republic of Indonesia No.4 of 2009 concerning the Administration of Cash Waqf ( <i>Peraturan Menteri Agama Republik Indonesia No.4 Tahun 2009 tentang Administrasi Pendaftaran Wakaf Uang</i> ).                                                                             |
| 19. | Regulation of the Minister of Religion of the Republic of Indonesia No.73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects other than Money ( <i>Peraturan Menteri Agama Republik Indonesia No.73 Tahun 2013 tentang Tata Cara Pewakafan Benda Tidak Bergerak Dan Benda Bergerak Selain Uang</i> ). |



## APPENDIX II: INDONESIAN *WAQF*-RELATED LAWS

| No. | Indonesian <i>Waqf</i> -Related Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | Decree of the Minister of Religion of the Republic of Indonesia No.73 of 1978 concerning Delegation of Authority for Regional Offices Head of the Ministry of Religion at Provinces or Equivalent Levels Throughout Indonesia to Appoint or Dismiss Heads of Sub-District Religious Affairs Offices as Officials for Making <i>Waqf</i> Pledge Deeds (PPAIW) ( <i>Keputusan Menteri Agama Republik Indonesia No.73 Tahun 1978 tentang Pendelegasian Wewenang Kepala Kantor Wilayah Departemen Agama Propinsi/setingkat di Seluruh Indonesia untuk Mengangkat atau Memberhentikan Setiap Kepala Kantor Urusan Agama Kecamatan sebagai Pejabat Pembuat Akte Ikrar Wakaf</i> (PPAIW)). |
| 2.  | Decree of the Minister of Home Affairs of the Republic of Indonesia No.348 of 1982 concerning Land Certification for Religious Legal Entities, Social Legal Entities, and Educational Institutions, which are the Object of the Agrarian National Operations Project ( <i>Keputusan Menteri Dalam Negeri Republik Indonesia No.348 Tahun 1982 tentang Penyertifikatan Tanah bagi Badan Hukum Keagamaan, Badan Hukum Sosial dan Lembaga Pendidikan yang Menjadi Objek Proyek Operasi Nasional Agraria</i> ).                                                                                                                                                                         |
| 3.  | Government Regulation of the Republic of Indonesia No.10 of 1961 concerning Land Registration ( <i>Peraturan Pemerintah Republik Indonesia No.10 Tahun 1961 tentang Pendaftaran Tanah</i> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 4.  | Government Regulation of the Republic of Indonesia No.38 of 1963 concerning Appointment of Legal Entities that can Have Freehold Rights over Land ( <i>Peraturan Pemerintah Republik Indonesia No.38 Tahun 1963 tentang Penunjukan Badan-Badan Hukum yang dapat Mempunyai Hak Milik atas Tanah</i> ).                                                                                                                                                                                                                                                                                                                                                                               |
| 5.  | Government Regulation of the Republic of Indonesia No.28 of 1977 concerning <i>Waqf</i> of Owned Land ( <i>Peraturan Pemerintah Republik Indonesia No.28 Tahun 1977 tentang Perwakafan Tanah Hak Milik</i> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 6.  | <i>Herzien Inlandsch Reglement of 1848</i> ( <i>Reglemen Indonesia Yang Diperbaharui Tahun 1848</i> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 7.  | Instruction of the Minister of Religion of the Republic of Indonesia No.3 of 1979 concerning Instructions for Implementing the Decree of the Minister of Religion No.73 of 1978 ( <i>Instruksi Menteri Agama Republik Indonesia No.3 Tahun 1979 tentang Petunjuk Pelaksanaan Keputusan Menteri Agama No.73 Tahun 1978</i> ).                                                                                                                                                                                                                                                                                                                                                        |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.  | Instruction of the President of the Republic of Indonesia No.1 of 1991 concerning Compilation of Islamic Law ( <i>Instruksi Presiden Republik Indonesia No.1 Tahun 1991 tentang Kompilasi Hukum Islam</i> ).                                                                                                                                                                                                            |
| 10. | Joint Instruction of the Minister of Religion and Minister of Home Affairs of the Republic of Indonesia No.1 of 1978 regarding the implementation of Government Regulation No.28 of 1977 concerning Waqf of Owned Land ( <i>Instruksi bersama Menteri Agama dan Menteri Dalam Negeri Republik Indonesia No.1 Tahun 1978 tentang pelaksanaan Peraturan Pemerintah No.28 Tahun 1977 tentang Perwakafan Tanah Milik</i> ). |
| 11. | Joint Instruction of the Minister of Religion and Head of the National Land Agency No.4 of 1990 regarding Waqf Land Certificate ( <i>Instruksi Bersama Menteri Agama dan Kepala Badan Pertanahan Nasional Republik Indonesia No.4 Tahun 1990 tentang Sertifikat Tanah Wakaf</i> ).                                                                                                                                      |
| 12. | Law of the Republic of Indonesia No.5 of 1960 concerning Basic Agrarian Regulations ( <i>Undang-Undang Republik Indonesia No.5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria</i> ).                                                                                                                                                                                                                            |
| 13. | Law of the Republic of Indonesia No.7 of 1989 concerning Religious Courts ( <i>Undang-Undang Republik Indonesia No.7 Tahun 1989 tentang Peradilan Agama</i> ).                                                                                                                                                                                                                                                          |
| 14. | Law of the Republic of Indonesia No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution ( <i>Undang-Undang Republik Indonesia No.30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa</i> ).                                                                                                                                                                                           |
| 15. | Law of the Republic of Indonesia No.16 of 2001 concerning Foundation ( <i>Undang-Undang Republik Indonesia No.16 Tahun 2001 tentang Yayasan</i> ).                                                                                                                                                                                                                                                                      |
| 16. | Law of the Republic of Indonesia No.3 of 2006 concerning Amendments to Law No.7 of 1989 concerning Religious Courts ( <i>Undang-Undang Republik Indonesia No.3 Tahun 2006 tentang Perubahan atas Undang-Undang No.7 Tahun 1989 tentang Peradilan Agama</i> ).                                                                                                                                                           |
| 17. | Law of the Republic of Indonesia No.48 of 2009 concerning Judicial Power ( <i>Undang-Undang Republik Indonesia No.48 Tahun 2009 tentang Kekuasaan Kehakiman</i> ).                                                                                                                                                                                                                                                      |
| 18. | Law of the Republic of Indonesia No.50 of 2009 concerning the Second Amendment to Law No.7 of 1989 concerning Religious Courts ( <i>Undang-Undang Republik Indonesia No.50 Tahun 2009 tentang Perubahan Kedua atas Undang-Undang No.7 Tahun 1989 tentang Pengadilan Agama</i> ).                                                                                                                                        |
| 19. | Letter of the Director General of Islamic Community Guidance and Hajj Affairs of the Republic of Indonesia No.DII/5ED/14/1981 concerning Instructions for Numbering on Owned Land Waqf Forms ( <i>Surat Dirjen Bimas Islam dan Urusan</i>                                                                                                                                                                               |



|     |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | <i>Haji Republik Indonesia No.DII/5ED/14/1981 tentang Petunjuk Pemberian Nomor pada Formulir Perwakafan Tanah Milik).</i>                                                                                                                                                                                                                                                                                                                |
| 20. | Letter of the Minister of Home Affairs of the Republic of Indonesia No.SK.178/DJA/1982 concerning Appointment of the Central Mosque Welfare Board (BKM) as a Legal Entity that can Own Land with Freehold Rights ( <i>Surat Menteri Dalam Negeri Republik Indonesia No.SK.178/DJA/1982 tentang Penunjukan Badan Kesejahteraan Masjid (BKM) Pusat sebagai Badan Hukum yang dapat Mempunyai Tanah dengan Hak Milik).</i>                   |
| 21. | Regulation of the Director General of Islamic Community Guidance of the Republic of Indonesia No.Kep/D/75/78 dated April 18, 1978 concerning Forms and Guidelines for Implementing Regulations concerning Waqf of Owned Land ( <i>Peraturan Direktur Jenderal Bimbingan Masyarakat Islam Republik Indonesia No.Kep/D/75/78 tanggal 18 April 1978 tentang Formulir dan Pedoman Pelaksanaan Peraturan tentang Perwakafan Tanah Milik).</i> |
| 22. | Regulation of the Minister of Agrarian Affairs of the Republic of Indonesia No.14 of 1961 concerning Requests for and Granting Permits for Transfer of Land Rights ( <i>Peraturan Menteri Agraria Republik Indonesia No.14 Tahun 1961 tentang Permintaan dan Pemberian Izin Pemindahan Hak Atas Tanah).</i>                                                                                                                              |
| 23. | Regulation of the Minister of Home Affairs of the Republic of Indonesia No.6 of 1977 concerning Procedures for Land Registration Regarding Waqf of Owned Land ( <i>Peraturan Menteri Dalam Negeri Republik Indonesia No.6 Tahun 1977 tentang Tata Pendaftaran Mengenai Perwakafan Tanah Milik).</i>                                                                                                                                      |
| 24. | Regulation of the Minister of Religion of the Republic of Indonesia No.1 of 1978 about the Implementation of Government Regulation of the Republic of Indonesia No.28 of 1977 concerning Waqf of Owned Land ( <i>Peraturan Menteri Agama Republik Indonesia No.1 Tahun 1978 tentang Peraturan Pelaksanaan Peraturan Pemerintah No.28 tahun 1977 Perwakafan Tanah Milik).</i>                                                             |
| 25. | Regulation of the Minister of Home Affairs of the Republic of Indonesia No.2 of 1978 concerning Land Registration Fees ( <i>Peraturan Menteri Dalam Negeri Republik Indonesia No.2 Tahun 1978 tentang Biaya Pendaftaran Tanah).</i>                                                                                                                                                                                                      |
| 26. | Regulation of the Supreme Court of the Republic of Indonesia No.2 of 2008 concerning Compilation of <i>Sharia</i> Economic Law ( <i>Peraturan Mahkamah Agung Republik Indonesia No.2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah).</i>                                                                                                                                                                                            |
| 27. | Regulation of the Supreme Court of the Republic of Indonesia No.1 of 2016 concerning Mediation Procedures in Courts ( <i>Peraturan Mahkamah Agung Republik Indonesia No.1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan).</i>                                                                                                                                                                                                        |



### APPENDIX III: LIST OF INTERVIEWEES AND QUESTIONS

| No. | Name                     | Position                                                                                | Question                                                                                                                                                                                                                                           | Date of Short Interview |
|-----|--------------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1.  | Toto Sutopo, CITF, MLIBF | Executive Assistant, Trade Finance Specialist, International Chamber of Commerce (ICC). | a. Is there any possibility of implementing international trade and finance rules in cross-border <i>waqf</i> activities?<br>b. Do you have any suggestion about the international rules to be implemented in cross-border <i>waqf</i> activities? | 19 May 2022             |
| 2.  | Meydia, CITF, CSCF, CDCS | Trade Finance Specialist, International Chamber of Commerce (ICC).                      |                                                                                                                                                                                                                                                    |                         |
| 3.  | Hamid Rashid             | CEO of FINTERRA                                                                         | a. Does FINTERRA have any cross-border <i>waqf</i> experience?<br>b. Does FINTERRA have experienced any cross-border <i>waqf</i> transactions that include international physical movement of the mawquf (other than money or cash)?               | 10 August 2022          |

|    |                                    |                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |
|----|------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
|    |                                    |                                                                              | c. Has FINTERRA faced any issues or difficulties in conducting cross-border <i>waqf</i> ?                                                                                                                                                                                                                                                                                                                                             |                 |
| 4. | Zeinoul Abedien Cajee              | Founder and CEO of the National Awqaf Foundation of South Africa (Awqaf SA). | I am studying cross-border <i>waqf</i> and I am using the WCP as one of the foundations of my research. I found out that the WCP has regulated several aspects about cross border <i>waqf</i> but more to the governance aspects. In conducting cross-border <i>waqf</i> we need to consider several aspects, could you give your opinion about these aspects:                                                                        | 16 August 2022  |
| 5. | Assoc. Prof. Dr. Irfan Syauqi Beik | Department of Islamic Economics - Bogor Agricultural University.             | <ul style="list-style-type: none"> <li>a. What is the best method in transporting <i>mawquf</i> and usufruct?</li> <li>b. What is the best method to guarantee the perpetuity of the <i>waqf</i> in the host country?</li> <li>c. Who should be involved?</li> <li>d. What are the current international best practices of the international goods movement and to what extent it may be used in cross-border <i>waqf</i>?</li> </ul> |                 |
| 6. | Julita Nurmasari                   | Personal Assistant to the                                                    | a. Does BAZNAS has any experience in conducting                                                                                                                                                                                                                                                                                                                                                                                       | 7 December 2023 |

|    |                          |                                                                    |                                                                                                                                                                                                          |                  |
|----|--------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
|    |                          | Head of Badan Amil Zakat Nasional (BAZNAS) Indonesia               | cross-border Islamic social finance activity?<br>b. What kind of mitigations taken by BAZNAS to overcome barriers in cross-border activity?                                                              |                  |
| 7. | Budiutomo Kurniadi       | Advisor of the International Chamber of Commerce (ICC).            | In determining the choice of applicable law, especially for non-contracting states of the CISG, which country's law and the location of dispute resolution should be chosen and written in the contract? | 7 September 2024 |
| 8. | Meydia, CITF, CSCF, CDCS | Trade Finance Specialist, International Chamber of Commerce (ICC). | In mitigating the non-payment risk versus the quality and quantity of goods, could you share the best international payment method for each party in cross-border transactions?                          | 12 October 2024  |
| 9. | Khori Ainul Yakin        | SINERGI Foundation                                                 | Please explain the mechanism used by the SINERGI Foundation in distributing charities to Palestine?                                                                                                      | 2 November 2024  |

**APPENDIX IV: THE GENERAL ASSESSMENT FOR THE PRE-CREATION STAGE OF CROSS-BORDER *WAQF***

| No. | The General Assessment for the Pre-creation Stage of Cross-Border <i>Waqf</i>                                     | Not Comply | Partially Comply | Fully Comply |
|-----|-------------------------------------------------------------------------------------------------------------------|------------|------------------|--------------|
| 1   | Compliance with the Islamic law of the country where the performance occurs.                                      |            |                  |              |
| 2   | Compliance with the <i>fatwa</i> of the country where the performance occurs.                                     |            |                  |              |
| 3   | Compliance with the local law that complies with the <i>Sharia</i> of the country where the performance occurs.   |            |                  |              |
| 4   | Applying the KYC to the <i>waqif</i> :                                                                            |            |                  |              |
|     | a. A <i>waqif</i> can be a person, group of persons, or a legal entity acknowledged in the home and host country. |            |                  |              |
|     | b. Have come of age.                                                                                              |            |                  |              |
|     | c. Has good sense.                                                                                                |            |                  |              |
|     | d. Prudent.                                                                                                       |            |                  |              |
|     | e. Sober.                                                                                                         |            |                  |              |
|     | f. Free or not under pressure.                                                                                    |            |                  |              |
|     | g. Not hindered from carrying out legal actions by their own will.                                                |            |                  |              |
|     | h. Not restrained by order of the court.                                                                          |            |                  |              |
|     | i. The legal owner of the <i>mawquf</i> .                                                                         |            |                  |              |
|     | j. Clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in                          |            |                  |              |

|   |                                                                                                                                                                                         |  |  |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | USD and EU Sanction if the <i>waqf</i> transaction is in EURO.                                                                                                                          |  |  |  |
|   | k. Clean from international unlawful activities, such as money laundering and terrorist financing.                                                                                      |  |  |  |
| 5 | Applying the KYC to the <i>nazir</i> :                                                                                                                                                  |  |  |  |
|   | a. Acknowledged in the home and host country.                                                                                                                                           |  |  |  |
|   | b. An individual <i>nazir</i> must be:                                                                                                                                                  |  |  |  |
|   | 1) a Muslim.                                                                                                                                                                            |  |  |  |
|   | 2) has come of age.                                                                                                                                                                     |  |  |  |
|   | 3) trustworthy.                                                                                                                                                                         |  |  |  |
|   | 4) has good integrity.                                                                                                                                                                  |  |  |  |
|   | 5) competent.                                                                                                                                                                           |  |  |  |
|   | 6) professional.                                                                                                                                                                        |  |  |  |
|   | 7) is not hindered from carrying out legal actions.                                                                                                                                     |  |  |  |
|   | c. All members of a <i>nazir</i> in the form of organizations or legal entities must fulfil the exact requirements as the individual <i>nazir</i> .                                     |  |  |  |
|   | d. Must be registered or have written permission from the <i>waqf</i> authority or relevant ministries in their country.                                                                |  |  |  |
|   | e. Has the ability to manage and develop the cross-border <i>mawquf</i> , including the way to maintain the <i>mawquf</i> condition, shipping, and seafaring procedures or experiences. |  |  |  |

|   |                                                                                                                                                                                                                                                                                                             |  |  |  |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | f. Has the ability to administer all <i>waqf</i> -related documents properly.                                                                                                                                                                                                                               |  |  |  |
|   | g. Must be a party that can be held accountable to protect the <i>waqf</i> 's perpetuity and preserve the <i>waqif</i> 's will.                                                                                                                                                                             |  |  |  |
|   | h. Must be able to account for all his activities in managing the <i>waqf</i> , inside or outside the court.                                                                                                                                                                                                |  |  |  |
|   | i. May sue and be sued.                                                                                                                                                                                                                                                                                     |  |  |  |
|   | j. Clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.                                                                                                                                                     |  |  |  |
|   | k. Clean from international unlawful activities, such as money laundering and terrorist financing.                                                                                                                                                                                                          |  |  |  |
|   | l. Must agree that the sum of compensation for the <i>nazir</i> complies with the local law.                                                                                                                                                                                                                |  |  |  |
|   | m. Highly recommended to be domiciled in the same city as the <i>mawquf</i> 's location.                                                                                                                                                                                                                    |  |  |  |
| 6 | Applying the KYC to the host country:                                                                                                                                                                                                                                                                       |  |  |  |
|   | a. The <i>nazir</i> must conduct a KYC assessment as a preliminary examination of <i>waqf</i> regulations and policies in the host country, especially those related to <i>waqf</i> registration, acknowledgment, takeover, permits, conflict of jurisdiction in resolving <i>waqf</i> disputes, and taxes. |  |  |  |
|   | b. The <i>nazir</i> must conduct an initial coordination and KYC assessment to                                                                                                                                                                                                                              |  |  |  |



|  |                                                                                                                                                                               |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | the <i>waqf</i> authorities, <i>waqf</i> experts, and <i>waqf</i> practitioners in the host county to obtain input on the cross-border <i>waqf</i> project to be carried out. |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|



**APPENDIX V: THE GENERAL ASSESSMENT FOR THE  
CREATION STAGE OF CROSS-BORDER *WAQF***

| No. | The General Assessment for the Creation Stage of Cross-Border <i>Waqf</i>                                          | Not Comply | Partially Comply | Fully Comply |
|-----|--------------------------------------------------------------------------------------------------------------------|------------|------------------|--------------|
| 1   | Compliance with the Islamic law of the country where the performance occurs.                                       |            |                  |              |
| 2   | Compliance with the <i>fatwa</i> of the country where the performance occurs.                                      |            |                  |              |
| 3   | Compliance with the local law, that complies with the <i>Sharia</i> , of the country where the performance occurs. |            |                  |              |
| 4   | Compliance with international rules and laws related to the status of all parties.                                 |            |                  |              |
| 5   | Utilize several elements as guideline in determining the type of cross-border <i>waqf</i> project:                 |            |                  |              |
|     | a. The <i>maqasid al-Sharia</i> :                                                                                  |            |                  |              |
|     | 1) Protection of religion.                                                                                         |            |                  |              |
|     | 2) Protection of life.                                                                                             |            |                  |              |
|     | 3) Protection of intellect.                                                                                        |            |                  |              |
|     | 4) Protection of lineage.                                                                                          |            |                  |              |
|     | 5) Protection of property.                                                                                         |            |                  |              |
|     | b. <i>Sharia</i> economic principles:                                                                              |            |                  |              |
|     | 1) Controlling individual assets so that they flow productively.                                                   |            |                  |              |

|   |                                                                                                                                    |  |  |  |
|---|------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | 2) Distribution of assets to ensure the inclusiveness of the entire community.                                                     |  |  |  |
|   | 3) Business optimization (buying and selling) and risk sharing.                                                                    |  |  |  |
|   | 4) Transactions in the real sector, without unproductive speculation.                                                              |  |  |  |
|   | 5) Social participation for the public interest.                                                                                   |  |  |  |
|   | 6) <i>Muamalah</i> is based on fairness, transparency, non-harmful, non-unjust cooperation, and does not contain haram substances. |  |  |  |
|   | c. <i>Sharia</i> economic values:                                                                                                  |  |  |  |
|   | 1) Ownership: Allah is the sole owner of the <i>mawquf</i> .                                                                       |  |  |  |
|   | 2) Striving fairly.                                                                                                                |  |  |  |
|   | 3) Balanced growth: business and natural conservation.                                                                             |  |  |  |
|   | 4) Working together for good.                                                                                                      |  |  |  |
| 6 | The cross-border <i>waqf</i> creation must fulfil several elements as follows:                                                     |  |  |  |
|   | a. The <i>waqf</i> pledge or commitment must be done by the <i>waqif</i> , or a representative under a power of attorney.          |  |  |  |
|   | b. The deed creation must be done in the presence of the <i>waqf</i> authority's representative or official.                       |  |  |  |

|  |                                                                                                                                                                   |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | c. The deed must be issued by, registered in, and maintained by the <i>waqf</i> authority.                                                                        |  |  |  |
|  | d. All related documents must be maintained by the <i>waqf</i> authority.                                                                                         |  |  |  |
|  | e. The deed must be created in front of:                                                                                                                          |  |  |  |
|  | 1) <i>waqif</i> .                                                                                                                                                 |  |  |  |
|  | 2) <i>nazir</i> .                                                                                                                                                 |  |  |  |
|  | 3) <i>mawquf'alaih</i> .                                                                                                                                          |  |  |  |
|  | 4) two witnesses.                                                                                                                                                 |  |  |  |
|  | f. The deed must be written and signed.                                                                                                                           |  |  |  |
|  | g. The cross-border <i>waqf</i> registration form must contain information:                                                                                       |  |  |  |
|  | 1) date of the deed.                                                                                                                                              |  |  |  |
|  | 2) <i>waqif</i> 's identity.                                                                                                                                      |  |  |  |
|  | 3) <i>nazir</i> 's identity.                                                                                                                                      |  |  |  |
|  | 4) witnesses' identity.                                                                                                                                           |  |  |  |
|  | 5) data of the <i>mawquf</i> .                                                                                                                                    |  |  |  |
|  | 6) <i>waqf</i> objective.                                                                                                                                         |  |  |  |
|  | 7) <i>waqf</i> duration.                                                                                                                                          |  |  |  |
|  | h. Details on <i>mawquf</i> must be recorded in the exhibit.                                                                                                      |  |  |  |
|  | i. The <i>mawquf</i> must be registered under the name of the <i>nazir</i> or the <i>waqf</i> authority, depending on the local law where the performance occurs. |  |  |  |
|  | j. The ownership of the <i>mawquf</i> , including related documents, must be transferred to the <i>nazir</i> immediately.                                         |  |  |  |

|   |                                                                                                                                                       |  |  |  |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | k. The <i>nazir</i> is prohibited from using the <i>mawquf</i> before it is registered.                                                               |  |  |  |
|   | l. The deed or certificate can only be issued up to thirty days after <i>waqf</i> registration and publication.                                       |  |  |  |
|   | m. Copies of the deed must be distributed to all parties.                                                                                             |  |  |  |
|   | n. <i>Waqf</i> by a will must not exceed 1/3 (one-third) of the inherited assets after deducting it for debts, except if the heirs consent.           |  |  |  |
| 7 | Several elements must be considered when carrying out the transport of cross-border <i>mawquf</i> :                                                   |  |  |  |
|   | a. Classify the type of <i>mawquf</i> , whether it is a movable, immovable, tangible, and intangible object.                                          |  |  |  |
|   | b. Determine the best transfer or shipping and packing methods.                                                                                       |  |  |  |
|   | c. Check the legality of <i>mawquf</i> 's origin, ownership status, proof of ownership, and guarantee of being free from all burdens and liabilities. |  |  |  |
|   | d. Check the legality of <i>mawquf</i> 's ownership status.                                                                                           |  |  |  |
|   | e. Check the legality of <i>mawquf</i> 's proof of ownership.                                                                                         |  |  |  |
|   | f. Check the <i>mawquf</i> 's guarantee of being free from all burdens and liabilities.                                                               |  |  |  |

|  |                                                                                                                                                                                |  |  |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | g. Check the <i>mawquf</i> 's condition                                                                                                                                        |  |  |  |
|  | h. Check the authenticity of <i>mawquf</i> 's administrative documents.                                                                                                        |  |  |  |
|  | i. Ensure the protection of the <i>mawquf</i> during cross-border shipment by having <i>takaful</i> .                                                                          |  |  |  |
|  | j. Determine the party responsible for delivering the <i>mawquf</i> to the <i>nazir</i> in the host country.                                                                   |  |  |  |
|  | k. Mitigate barriers by:                                                                                                                                                       |  |  |  |
|  | 1) using a trusted sea freight company.                                                                                                                                        |  |  |  |
|  | 2) establishing a representative office or appointing a strategic partner in the host country or surrounding areas.                                                            |  |  |  |
|  | 3) establishing a logistic and warehousing center near the project location.                                                                                                   |  |  |  |
|  | 4) collaborate with local partners in the host country.                                                                                                                        |  |  |  |
|  | l. Taking references from international rules to smoothen the cross-border movement of <i>mawquf</i> , the INCOTERMS, for international shipping procedures (must select one): |  |  |  |
|  | 1) Ex Works (EXW)                                                                                                                                                              |  |  |  |
|  | 2) Free Carrier (FCA)                                                                                                                                                          |  |  |  |
|  | 3) Free Alongside Ship (FAS) - Only for Waterways Transport                                                                                                                    |  |  |  |

|   |                                                                                                                                                                                         |  |  |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | 4) Free On Board (FOB) - Only for Waterways Transport                                                                                                                                   |  |  |  |
|   | 5) Cost and Freight (CFR) - Only for Waterways Transport                                                                                                                                |  |  |  |
|   | 6) Cost, Insurance and Freight (CIF) - Only for Waterways Transport                                                                                                                     |  |  |  |
|   | 7) Cost Paid To (CPT)                                                                                                                                                                   |  |  |  |
|   | 8) Carrier and Insurance Paid To (CIP)                                                                                                                                                  |  |  |  |
|   | 9) Delivered at Place Unloaded (DPU)                                                                                                                                                    |  |  |  |
|   | 10) Delivered at Place (DAP)                                                                                                                                                            |  |  |  |
|   | 11) Delivered Duty Paid (DOP)                                                                                                                                                           |  |  |  |
|   | m. Taking references from international laws to smoothen the cross-border movement of <i>mawquf</i> with specific usage as follows:                                                     |  |  |  |
|   | 1) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent.                              |  |  |  |
|   | 2) the Model Law on International Credit Transfers, for international banking transfers.                                                                                                |  |  |  |
| 8 | The <i>nazir</i> must obtain <i>waqf</i> approval from the <i>waqif</i> 's family members to prevent a <i>waqf</i> legal suit filed by the <i>waqif</i> 's family member in the future. |  |  |  |
| 9 | The <i>waqf</i> authority or <i>nazir</i> must make public announcements upon creating a new cross-                                                                                     |  |  |  |

|    |                                                                                                                                                                                            |  |  |  |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | border <i>waqf</i> through Government Gazette, local newspaper, regular publication, and press releases on the registered <i>nazir</i> or government <i>waqf</i> authority official media. |  |  |  |
| 10 | The <i>waqf</i> authority or <i>nazir</i> must maintain the data of cross-border <i>waqf</i> and made it accessible to the public.                                                         |  |  |  |





**APPENDIX VI: THE GENERAL ASSESSMENT FOR THE  
MANAGEMENT STAGE OF CROSS-BORDER *WAQF***

| No. | The General Assessment for Management Stage of Cross-Border <i>Waqf</i>                                               | Not Comply | Partially Comply | Fully Comply |
|-----|-----------------------------------------------------------------------------------------------------------------------|------------|------------------|--------------|
| 1   | Compliance with the Islamic law of the country where the performance occurs.                                          |            |                  |              |
| 2   | Compliance with the <i>fatwa</i> of the country where the performance occurs.                                         |            |                  |              |
| 3   | Compliance with the local law that complies with the <i>Sharia</i> of the country where the performance occurs.       |            |                  |              |
| 4   | Compliance with international rules and laws related to the status of all parties.                                    |            |                  |              |
| 5   | Compliance with international rules and laws related to the cross-border movement of the <i>mawquf</i> and usufructs. |            |                  |              |
| 6   | Utilize several elements as guideline in determining the type of cross-border <i>waqf</i> project:                    |            |                  |              |
|     | a. The <i>maqasid al-Sharia</i> :                                                                                     |            |                  |              |
|     | 1) Protection of religion.                                                                                            |            |                  |              |
|     | 2) Protection of life.                                                                                                |            |                  |              |
|     | 3) Protection of intellect.                                                                                           |            |                  |              |
|     | 4) Protection of lineage.                                                                                             |            |                  |              |
|     | 5) Protection of property.                                                                                            |            |                  |              |
|     | b. <i>Sharia</i> economic principles:                                                                                 |            |                  |              |

|   |                                                                                                                                                                                                                                 |  |  |  |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | 1) Controlling individual assets so that they flow productively.                                                                                                                                                                |  |  |  |
|   | 2) Distribution of assets to ensure the inclusiveness of the entire community.                                                                                                                                                  |  |  |  |
|   | 3) Business optimization (buying and selling) and risk sharing.                                                                                                                                                                 |  |  |  |
|   | 4) Transactions in the real sector, without unproductive speculation.                                                                                                                                                           |  |  |  |
|   | 5) Social participation for the public interest.                                                                                                                                                                                |  |  |  |
|   | 6) <i>Muamalah</i> is based on fairness, transparency, non-harmful, non-unjust cooperation, and does not contain haram substances.                                                                                              |  |  |  |
|   | c. <i>Sharia</i> economic values:                                                                                                                                                                                               |  |  |  |
|   | 1) Ownership: Allah is the sole owner of the <i>mawquf</i> .                                                                                                                                                                    |  |  |  |
|   | 2) Striving fairly.                                                                                                                                                                                                             |  |  |  |
|   | 3) Balanced growth: business and natural conservation.                                                                                                                                                                          |  |  |  |
|   | 4) Working together for good.                                                                                                                                                                                                   |  |  |  |
| 7 | Applying the KYC to the third party:                                                                                                                                                                                            |  |  |  |
|   | a. The <i>nazir</i> must act in good faith, without neglect, exercise due skill and care in the selection of any person or agent for the management of the <i>waqf</i> , such as representative or subsidiary and counterparts. |  |  |  |

|  |                                                                                                                                                                                                                                                                                                                      |  |  |  |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | b. The <i>nazir</i> can apply the KYC in the process of hiring professionals as advisors, agents, and employees, including but not limited to lawyers, accountants, bankers, property managers, and financial advisors.                                                                                              |  |  |  |
|  | c. The <i>nazir</i> can apply the KYC in the process of appointing any party that will become the administrator or manager and hold any <i>mawquf</i> on his behalf.                                                                                                                                                 |  |  |  |
|  | d. The <i>nazir</i> can apply the KYC to the business counterparts, by examining their published accounts or reports and their reputation with their clients, to learn the business structure, legality, and bargaining position, which will affect possible clause selections in business or cooperation contracts. |  |  |  |
|  | e. The third party must be competent and qualified to manage cross-border <i>waqf</i> .                                                                                                                                                                                                                              |  |  |  |
|  | f. The third party must clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.                                                                                                                                         |  |  |  |
|  | g. The third party must clean from international unlawful activities, such as money laundering and terrorist financing.                                                                                                                                                                                              |  |  |  |

|   |                                                                                                                                                                                                                                           |  |  |  |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | h. The <i>nazir</i> can examine the business counterparts through published accounts or reports and their reputation with their clients.                                                                                                  |  |  |  |
| 8 | The government's role in protecting the <i>waqf</i> perpetuity in cross-border <i>waqf</i> management:                                                                                                                                    |  |  |  |
|   | a. Restrict cross-border <i>waqf</i> revocation.                                                                                                                                                                                          |  |  |  |
|   | b. Restrict the transfer of <i>mawquf</i> 's ownership status.                                                                                                                                                                            |  |  |  |
|   | c. Restrict the change of <i>waqf</i> 's status and purpose by requiring a written permission from the <i>waqf</i> authority in the host country and can only be done if the <i>mawquf</i> cannot be utilized as the <i>waqif</i> wishes. |  |  |  |
|   | d. Guarantee the ease of usufruct distribution from the <i>nazir</i> to the <i>mawquf'alaih</i> .                                                                                                                                         |  |  |  |
|   | e. The government of the host country should enact a regulation to prevent any status change of the <i>waqf</i> land.                                                                                                                     |  |  |  |
|   | f. The government of the host country should oblige citizens to preserve the land and prevent destruction over it.                                                                                                                        |  |  |  |
|   | g. The government of home and host countries should provide tax and administrative cost incentives for cross-border <i>waqf</i> activities.                                                                                               |  |  |  |
|   | h. The government of home and host must protect the right of the <i>waqif</i> by giving                                                                                                                                                   |  |  |  |

|   |                                                                                                                                                                                                                                                                                         |  |  |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | them a chance to sue and get compensation from the <i>nazir</i> if they break the promise or commit an unlawful act.                                                                                                                                                                    |  |  |  |
| 9 | The <i>nazir</i> 's role in protecting the <i>waqf</i> perpetuity in cross-border <i>waqf</i> management:                                                                                                                                                                               |  |  |  |
|   | a. Avoid risky transactions.                                                                                                                                                                                                                                                            |  |  |  |
|   | b. Always be in possession of the property.                                                                                                                                                                                                                                             |  |  |  |
|   | c. Uphold the principles of good governance, protect, preserve, and develop the <i>mawquf</i> .                                                                                                                                                                                         |  |  |  |
|   | d. Ensure that the <i>mawquf'alaih</i> enjoy the usufruct generated from the <i>mawquf</i> .                                                                                                                                                                                            |  |  |  |
|   | e. In a condition where the <i>mawquf'alaih</i> cannot be traced, deceased, or ceases to exist, under the approval of the <i>waqf</i> authority, the <i>nazir</i> may distribute the usufruct as closely as possible to the original purpose or add it to the general <i>waqf</i> fund. |  |  |  |
|   | f. Utilize sources in restoring or redeveloping a damaged <i>mawquf</i> , such as the <i>waqf</i> fund, <i>baitulmal</i> , reserves, donations, state assistance, benevolent loan, and other permitted sources pursuant to Islamic law.                                                 |  |  |  |
|   | g. Claim compensation for any destruction on the <i>waqf</i> caused by third party. The amount of compensation must at least cover the damage restoration, or it can be                                                                                                                 |  |  |  |

|    |                                                                                                                                                        |  |  |  |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | decided by the court by involving public and private appraisals and choose the most favorable one for the <i>waqf</i> .                                |  |  |  |
|    | h. Must have the power to evict errant tenants, remodel the property, provide value-enhancing utilities and facilities.                                |  |  |  |
|    | i. May form a special managerial unit for cross-border <i>waqf</i> for better and prudent <i>waqf</i> management.                                      |  |  |  |
|    | j. May lease the <i>waqf</i> property with fixed rental rates according to the market, collect rentals, claim lost values and rentals.                 |  |  |  |
|    | k. May insure the <i>mawquf</i> and all cross-border <i>waqf</i> management activities against major and known risks by using <i>takaful</i> .         |  |  |  |
|    | l. Must do all matters necessary to support their duties and responsibilities.                                                                         |  |  |  |
| 10 | Account management to protect the <i>waqf</i> perpetuity in managing the cross-border <i>waqf</i> :                                                    |  |  |  |
|    | a. The <i>nazir</i> must separate the management of each cross-border <i>waqf</i> .                                                                    |  |  |  |
|    | b. The <i>nazir</i> must separate the account of each cross-border <i>waqf</i> .                                                                       |  |  |  |
|    | c. The <i>nazir</i> must separate the account between the <i>mawquf</i> , <i>istibdal</i> proceeds, usufruct, <i>waqf</i> reserves, <i>baitulmal</i> , |  |  |  |

|    |                                                                                                                                      |  |  |  |
|----|--------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | general endowment fund, and general administration fund.                                                                             |  |  |  |
|    | d. The <i>nazir</i> must keep <i>waqf</i> funds in an Islamic bank.                                                                  |  |  |  |
|    | e. The <i>nazir</i> must record all transactions on all <i>waqf</i> accounts appropriately.                                          |  |  |  |
| 11 | Coordination and collaboration in managing the cross-border <i>waqf</i> :                                                            |  |  |  |
|    | a. The <i>nazir</i> can appoint substitutes under a written contractual document with several conditions:                            |  |  |  |
|    | 1) the substitutes can have the same or some of the <i>nazir</i> 's powers, authority, and discretions as the <i>nazir</i> .         |  |  |  |
|    | 2) the <i>nazir</i> may impose restrictions to the substitutes.                                                                      |  |  |  |
|    | 3) the <i>nazir</i> must have the power to monitor all activities of its administrators, managers, servants, agents and substitutes. |  |  |  |
|    | b. The <i>nazir</i> can appoint third party under a written contractual document with several conditions:                            |  |  |  |
|    | 1) the third party can have some of the <i>nazir</i> 's powers, authority, and discretions as the <i>nazir</i> .                     |  |  |  |
|    | 2) the <i>nazir</i> may impose restrictions on the third party.                                                                      |  |  |  |

|    |                                                                                                                                                                                                 |  |  |  |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | 3) the third party must inform the <i>nazir</i> about all their actions and matters in managing the <i>waqf</i> .                                                                               |  |  |  |
|    | 4) the <i>nazir</i> can sue the third party for compensation if in conducting they fail to fulfil their part of the bargain.                                                                    |  |  |  |
|    | c. The <i>nazir</i> may collaborate with public and private sectors in the host country to get more benefits for cross-border <i>waqf</i> management.                                           |  |  |  |
| 12 | Contractual relationship in managing the cross-border <i>waqf</i> :                                                                                                                             |  |  |  |
|    | a. The <i>nazir</i> must consider several points in creating the contractual relationship with the third party:                                                                                 |  |  |  |
|    | 1) any agreement between the <i>nazir</i> and a third party must be made in the form of a contract or another legally recognized form.                                                          |  |  |  |
|    | 2) all parties involved in any contract must be competent and have a sound mind, which means of the age of majority according to the law, and not disqualified from contracting by related law. |  |  |  |
|    | 3) selecting a legal entity in the form of institutions over individuals is preferable.                                                                                                         |  |  |  |



|  |                                                                                                                                                  |  |  |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | 4) an agreement or contract must be made based on mutual and free consent.                                                                       |  |  |  |
|  | 5) a contract must be made for a lawful consideration and with a lawful object.                                                                  |  |  |  |
|  | 6) a contract must be made in writing, in the presence of witnesses, registered, and well-kept.                                                  |  |  |  |
|  | 7) a contract must have clear and understandable provisions such as details of the goods and services, price, and information about the parties. |  |  |  |
|  | 8) must state the currency for the transaction.                                                                                                  |  |  |  |
|  | 9) must state the price.                                                                                                                         |  |  |  |
|  | 10) must describe the attributes of the goods or services.                                                                                       |  |  |  |
|  | 11) must state packing requirements.                                                                                                             |  |  |  |
|  | 12) must state inspection and quality control requirements.                                                                                      |  |  |  |
|  | 13) must state <i>takaful</i> requirements.                                                                                                      |  |  |  |
|  | 14) must state shipping terms based on the INCOTERMS.                                                                                            |  |  |  |
|  | 15) must state the date by which goods must be dispatched or delivered.                                                                          |  |  |  |

|  |                                                                                                                                                                                                                                             |  |  |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | 16) must state the method and timing of payment based on international best practices.                                                                                                                                                      |  |  |  |
|  | 17) must state the obligations of the parties.                                                                                                                                                                                              |  |  |  |
|  | 18) any amendments made after the contract has been signed must require consent of both parties                                                                                                                                             |  |  |  |
|  | 19) breach of the contract will entitle the other party to make legal claim or void the contract.                                                                                                                                           |  |  |  |
|  | 20) alternative dispute resolutions as the first step in conflict resolution.                                                                                                                                                               |  |  |  |
|  | 21) must specify the applicable law, for cross-border <i>waqf</i> , it is suggested to choose the law of the nazir's country as the top priority, but if not possible, the law of a neutral country can be an alternative.                  |  |  |  |
|  | 22) must determine the location of the court to handle the dispute, it is suggested to choose a court located in nazir's country as the top priority, but if cannot, a court located in an easy-to-access neutral country can be an option. |  |  |  |
|  | 23) must state force majeure conditions.                                                                                                                                                                                                    |  |  |  |
|  | b. The <i>nazir</i> or experts hired by the <i>nazir</i> may utilize several international laws and rules as references in creating                                                                                                         |  |  |  |

|  |                                                                                                                                                                                 |  |  |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | contracts related to cross-border <i>waqf</i> activities:                                                                                                                       |  |  |  |
|  | 1) the UNIDROIT Principles of International Commercial Contracts 2016, for general rules of international contracts.                                                            |  |  |  |
|  | 2) the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts, for technical aspects of international contracts.                            |  |  |  |
|  | 3) the UNIDROIT Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, to harmonize international laws on commercial contracts. |  |  |  |
|  | 4) the ICC Model Contracts as guidance and contract principles in drafting any business contract related to cross-border <i>waqf</i> management and development.                |  |  |  |
|  | 5) the URC522, in utilizing the <i>murabahah</i> documentary collection.                                                                                                        |  |  |  |
|  | 6) the UCP600 in utilizing the <i>murabahah</i> and <i>musyarakah</i> L/C.                                                                                                      |  |  |  |
|  | 7) setting the priority of international payment method utilization based on the position of the nazir:                                                                         |  |  |  |

|    |                                                                                                                     |  |  |  |
|----|---------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | a) open account or documentary collection if the nazir act as the buyer.                                            |  |  |  |
|    | b) payment in advance or L/C if the nazir act as the seller.                                                        |  |  |  |
| 13 | Several elements must be considered when carrying out usufruct transport for cross-border <i>waqf</i> distribution: |  |  |  |
|    | a. The <i>nazir</i> can conduct direct and indirect distribution with several considerations:                       |  |  |  |
|    | 1) <i>waqif</i> 's will.                                                                                            |  |  |  |
|    | 2) appropriateness of the <i>mawquf'alaih</i> .                                                                     |  |  |  |
|    | 3) poverty reduction.                                                                                               |  |  |  |
|    | 4) job vacancy creation.                                                                                            |  |  |  |
|    | 5) benefits the community.                                                                                          |  |  |  |
|    | 6) sustainable program.                                                                                             |  |  |  |
|    | 7) encourage community self-sufficiency.                                                                            |  |  |  |
|    | 8) for indirect distribution, the usufruct must be channeled to registered social institutions.                     |  |  |  |
|    | b. Classify the type of usufruct, whether it is a movable, immovable, tangible, and intangible object.              |  |  |  |
|    | c. Determine the best transfer or shipping and packing methods.                                                     |  |  |  |

|                                                                                                                     |  |  |  |
|---------------------------------------------------------------------------------------------------------------------|--|--|--|
| d. Check the usufruct's condition and authenticity of its administrative documents.                                 |  |  |  |
| e. Ensure the protection of the usufruct during cross-border shipment by having <i>takaful</i> .                    |  |  |  |
| f. Determine the party responsible for delivering the usufruct to the <i>mawquf'alaih</i> in the host country.      |  |  |  |
| g. Mitigate barriers by:                                                                                            |  |  |  |
| 1) using a trusted sea freight company.                                                                             |  |  |  |
| 2) establishing a representative office or appointing a strategic partner in the host country or surrounding areas. |  |  |  |
| 3) establishing a logistic and warehousing center near the project location.                                        |  |  |  |
| 4) collaborate with local partners in the host country.                                                             |  |  |  |
| h. Taking references from international rules and laws to smoothen the cross-border movement of the usufruct:       |  |  |  |
| 1) the INCOTERMS, for international shipping procedures (must select one):                                          |  |  |  |
| a) Ex Works (EXW)                                                                                                   |  |  |  |
| b) Free Carrier (FCA)                                                                                               |  |  |  |

|  |                                                                                                                                                                                           |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | c) Free Alongside Ship (FAS) - Only for Waterways Transport                                                                                                                               |  |  |  |
|  | d) Free On Board (FOB) - Only for Waterways Transport                                                                                                                                     |  |  |  |
|  | e) Cost and Freight (CFR) - Only for Waterways Transport                                                                                                                                  |  |  |  |
|  | f) Cost, Insurance and Freight (CIF) - Only for Waterways Transport                                                                                                                       |  |  |  |
|  | g) Cost Paid To (CPT)                                                                                                                                                                     |  |  |  |
|  | h) Carrier and Insurance Paid To (CIP)                                                                                                                                                    |  |  |  |
|  | i) Delivered at Place Unloaded (DPU)                                                                                                                                                      |  |  |  |
|  | j) Delivered at Place (DAP)                                                                                                                                                               |  |  |  |
|  | k) Delivered Duty Paid (DOP)                                                                                                                                                              |  |  |  |
|  | 2) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution.                                                                                                |  |  |  |
|  | 3) the Convention on the Use of Electronic Communications in International Contracts, for removing obstacles and establishing equivalence between electronic and written forms contracts. |  |  |  |
|  | 4) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic                                                                            |  |  |  |

|    |                                                                                                                  |  |  |  |
|----|------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | and hand-written signatures are equivalent.                                                                      |  |  |  |
|    | 5) the Model Law on International Credit Transfers, for international banking transfers.                         |  |  |  |
| 14 | Implementation of <i>istibdal</i> :                                                                              |  |  |  |
|    | a. <i>Istibdal</i> or the exchange of <i>mawquf</i> as a solution for maintaining the <i>waqf</i> 's perpetuity. |  |  |  |
|    | b. <i>Istibdal</i> can only be implemented by the <i>nazir</i> under certain conditions as follows:              |  |  |  |
|    | 1) permitted by the <i>waqf</i> authority.                                                                       |  |  |  |
|    | 2) needed for social benefit by the government.                                                                  |  |  |  |
|    | 3) the <i>mawquf</i> cannot be used as originally intended or the <i>waqf</i> purpose.                           |  |  |  |
|    | 4) there is an urgency for the benefit of the religion or public interest.                                       |  |  |  |
|    | 5) if the <i>waqf</i> is inconsistent with any written law;                                                      |  |  |  |
|    | 6) the <i>mawquf</i> has been acquired by any authority under any written law.                                   |  |  |  |
|    | 7) if there are other circumstances deemed necessary.                                                            |  |  |  |
|    | c. Several key factors that need to be included in <i>istibdal</i> implementation:                               |  |  |  |

|    |                                                                                                                                           |  |  |  |
|----|-------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | 1) <i>istibdal</i> is a way to replace a <i>mawquf</i> , wholly or partly.                                                                |  |  |  |
|    | 2) conducted by using methods that comply with Islamic law such as exchanging, purchasing, selling, or any other permitted manner.        |  |  |  |
|    | 3) the exchange property must have valid legal proof of ownership.                                                                        |  |  |  |
|    | 4) the exchange property must be easily developed.                                                                                        |  |  |  |
|    | 5) the exchanged <i>mawquf</i> must have same or higher market-value than the previous one.                                               |  |  |  |
|    | 6) in assessing the market value, any suitable method may be used by considering the price of <i>mawquf</i> with similar characteristics. |  |  |  |
|    | 7) if the exchanged <i>mawquf</i> is a land lot, the value of any building on it shall be disregarded if that building is not permitted.  |  |  |  |
|    | 8) the sale proceeds by <i>istibdal</i> may be used to develop the remaining <i>waqf</i> property.                                        |  |  |  |
|    | 9) all processes must follow the local <i>waqf</i> law.                                                                                   |  |  |  |
| 15 | <i>Nazir</i> replacement, removal, and prosecution in cross-border <i>waqf</i> management:                                                |  |  |  |



|  |                                                                                                                                               |  |  |  |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | a. Changes in cross-border <i>waqf</i> 's <i>nazir</i> or management are permissible as long as they do not violate:                          |  |  |  |
|  | 1) the deed.                                                                                                                                  |  |  |  |
|  | 2) the <i>waqf</i> 's purpose.                                                                                                                |  |  |  |
|  | 3) the <i>waqif</i> 's will.                                                                                                                  |  |  |  |
|  | b. The new <i>nazir</i> must be trustworthy, prudent, and professional.                                                                       |  |  |  |
|  | c. The management transfers must be carried out properly.                                                                                     |  |  |  |
|  | d. Conflicting matters must be resolved through negotiation.                                                                                  |  |  |  |
|  | e. The <i>nazir</i> can be replaced, removed, and prosecuted for several reasons:                                                             |  |  |  |
|  | 1) natural and legal incapacity;                                                                                                              |  |  |  |
|  | 2) embezzlement and misappropriation of the funds.                                                                                            |  |  |  |
|  | 3) negligence or mismanagement of <i>waqf</i> properties.                                                                                     |  |  |  |
|  | 4) lack of good performance.                                                                                                                  |  |  |  |
|  | 5) not putting the <i>waqf</i> properties to the best and highest use as demanded by the established standards of the business community.     |  |  |  |
|  | 6) causing financial loss to the <i>waqf</i> .                                                                                                |  |  |  |
|  | 7) if can be proven any breach of duties, the <i>nazir</i> not only can be dismissed but should also be sued in a court of law for willful or |  |  |  |

|    |                                                                                                                                                          |  |  |  |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | negligent mismanagement of <i>waqf</i> properties.                                                                                                       |  |  |  |
| 16 | Foreign currency risk mitigation in cross-border <i>waqf</i> can be done by the <i>nazir</i> by obeying the host country's regulations about:            |  |  |  |
|    | a. foreign to domestic currency conversion.                                                                                                              |  |  |  |
|    | b. coverage guarantee limit by the local government.                                                                                                     |  |  |  |
| 17 | Report, evaluation, and publication in managing the cross-border <i>waqf</i> :                                                                           |  |  |  |
|    | a. The <i>nazir</i> must be obliged to send the <i>waqf</i> management report every six months to the <i>waqf</i> authority and or Ministry of Religion. |  |  |  |
|    | b. The report must cover:                                                                                                                                |  |  |  |
|    | 1) date or period of reporting.                                                                                                                          |  |  |  |
|    | 2) data of <i>waqif</i> and <i>nazir</i> .                                                                                                               |  |  |  |
|    | 3) <i>waqf</i> purpose.                                                                                                                                  |  |  |  |
|    | 4) <i>waqf</i> or <i>mawquf</i> registration data.                                                                                                       |  |  |  |
|    | 5) <i>mawquf</i> management and development.                                                                                                             |  |  |  |
|    | 6) cash flow including cost, expenses, and income.                                                                                                       |  |  |  |
|    | 7) <i>mawquf</i> utilization result.                                                                                                                     |  |  |  |
|    | 8) distribution of the usufruct.                                                                                                                         |  |  |  |
|    | 9) changes in <i>waqf</i> status (if any).                                                                                                               |  |  |  |
|    | 10) <i>nazir</i> changes (if any).                                                                                                                       |  |  |  |

|    |                                                                                                                                                                                                      |  |  |  |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | c. The <i>waqf</i> authority must use the <i>waqf</i> management report to evaluate the <i>nazir</i> 's performance.                                                                                 |  |  |  |
|    | d. If needed, the <i>waqf</i> authority can appoint a public accountant or auditor to examine the <i>nazir</i> 's performance.                                                                       |  |  |  |
|    | e. If needed, the <i>waqf</i> authority may also oblige the <i>nazir</i> to submit financial reports occasionally.                                                                                   |  |  |  |
|    | f. As part of transparency, the <i>nazir</i> must publish the list of all <i>mawquf</i> in the gazette or the <i>nazir</i> 's official media or the <i>waqf</i> authority's official media annually. |  |  |  |
|    | g. The publication must include:                                                                                                                                                                     |  |  |  |
|    | 1) the <i>waqf</i> scheme.                                                                                                                                                                           |  |  |  |
|    | 2) the <i>mawquf'alaih</i> .                                                                                                                                                                         |  |  |  |
|    | 3) investments.                                                                                                                                                                                      |  |  |  |
|    | 4) the usufruct or proceeds.                                                                                                                                                                         |  |  |  |
|    | 5) the profits.                                                                                                                                                                                      |  |  |  |
|    | 6) losses.                                                                                                                                                                                           |  |  |  |
|    | 7) the rate of income distribution to the <i>mawquf'alaih</i> .                                                                                                                                      |  |  |  |
|    | 8) the reserves.                                                                                                                                                                                     |  |  |  |
|    | 9) expenses spent on the repair or maintenance of <i>waqf</i> property.                                                                                                                              |  |  |  |
| 18 | Dispute resolution in cross-border <i>waqf</i> management:                                                                                                                                           |  |  |  |

|  |                                                                                                                                                                                                                                                                                     |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | a. Peaceful conflict resolution ( <i>sulh</i> ) always becomes the first choice over litigation because it will generate a win-win solution to maintain the relationship between <i>waqf-related</i> parties.                                                                       |  |  |  |
|  | b. <i>Nazir</i> and <i>waqf-related</i> parties must agree to choose an alternative dispute resolution to resolve the conflict in cross-border <i>waqf</i> and related activities. It can be written in every cross-border <i>waqf-related</i> contract or in a separate agreement. |  |  |  |
|  | c. Sequentially, the alternative dispute resolution process consists of discussion or consultation, good office, negotiation, mediation, inquiry or fact-finding, conciliation, court-annexed mediation, and arbitration.                                                           |  |  |  |
|  | d. Litigation is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border <i>waqf</i> issues. It is strongly recommended to choose the Islamic or Religious Court to handle cross-border <i>waqf</i> dispute.                                    |  |  |  |
|  | e. A District Court can be an option if no Islamic or Religious Court is available, but only with judges with decent knowledge about Islamic or <i>waqf</i> laws.                                                                                                                   |  |  |  |

|  |                                                                                                                                                                                                                               |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | f. The dispute resolution process must be held in the language that the <i>waqif</i> and <i>nazir</i> can understand.                                                                                                         |  |  |  |
|  | g. It is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a Muslim, to ensure the adherence to Islamic principles in the legal process. |  |  |  |
|  | h. The neutral third parties or judges must have a decent knowledge of Islamic law including <i>waqf</i> .                                                                                                                    |  |  |  |
|  | i. It is recommendable that neutral third parties or judges have knowledge about laws related to the type of the <i>mawquf</i> .                                                                                              |  |  |  |
|  | j. On the first day of the trial, the judges must suggest to the parties to make peace or to conduct mediation.                                                                                                               |  |  |  |
|  | k. Parties must pay close attention to the litigation costs to prevent the corpus and <i>waqf</i> funds from deteriorating.                                                                                                   |  |  |  |
|  | l. It is recommended that the government of the region where the litigation process is being held to assist with litigation costs and legal aid to indigent applicants.                                                       |  |  |  |
|  | m. Several international rules and laws can be used as references in a dispute resolution of cross-border <i>waqf</i> :                                                                                                       |  |  |  |

|  |                                                                                                                                                                                                                  |  |  |  |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | 1) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution.                                                                                                                       |  |  |  |
|  | 2) The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, to provide uniform rules of the mediation process and encouraging the use of mediation. |  |  |  |
|  | 3) the CLOUT, to provide data about previous cross-border transaction cases as a reference in mitigating and resolving cross-border <i>waqf</i> disputes.                                                        |  |  |  |

## APPENDIX VII: THE GENERAL ASSESSMENT FOR THE DEVELOPMENT STAGE OF CROSS-BORDER *WAQF*

| No. | The General Assessment for Development Stage of Cross-Border <i>Waqf</i>                                        | Not Comply | Partially Comply | Fully Complied |
|-----|-----------------------------------------------------------------------------------------------------------------|------------|------------------|----------------|
| 1   | Compliance with the Islamic law of the country where the performance occurs.                                    |            |                  |                |
| 2   | Compliance with the <i>fatwa</i> of the country where the performance occurs.                                   |            |                  |                |
| 3   | Compliance with the local law that complies with the <i>Sharia</i> of the country where the performance occurs. |            |                  |                |
| 4   | Utilize several elements as guideline in determining the type of cross-border <i>waqf</i> project:              |            |                  |                |
|     | a. The <i>maqasid al-Sharia</i> :                                                                               |            |                  |                |
|     | 1) Protection of religion.                                                                                      |            |                  |                |
|     | 2) Protection of life.                                                                                          |            |                  |                |
|     | 3) Protection of intellect.                                                                                     |            |                  |                |
|     | 4) Protection of lineage.                                                                                       |            |                  |                |
|     | 5) Protection of property.                                                                                      |            |                  |                |
|     | b. <i>Sharia</i> economic principles:                                                                           |            |                  |                |
|     | 1) Controlling individual assets so that they flow productively.                                                |            |                  |                |
|     | 2) Distribution of assets to ensure the inclusiveness of the entire community.                                  |            |                  |                |

|   |                                                                                                                                                                                                                                 |  |  |  |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | 3) Business optimization (buying and selling) and risk sharing.                                                                                                                                                                 |  |  |  |
|   | 4) Transactions in the real sector, without unproductive speculation.                                                                                                                                                           |  |  |  |
|   | 5) Social participation for the public interest.                                                                                                                                                                                |  |  |  |
|   | 6) <i>Muamalah</i> is based on fairness, transparency, non-harmful, non-unjust cooperation, and does not contain haram substances.                                                                                              |  |  |  |
|   | c. <i>Sharia</i> economic values:                                                                                                                                                                                               |  |  |  |
|   | 1) Ownership: Allah is the sole owner of the <i>mawquf</i> .                                                                                                                                                                    |  |  |  |
|   | 2) Striving fairly.                                                                                                                                                                                                             |  |  |  |
|   | 3) Balanced growth: business and natural conservation.                                                                                                                                                                          |  |  |  |
|   | 4) Working together for good.                                                                                                                                                                                                   |  |  |  |
| 5 | Applying the KYC to the third party:                                                                                                                                                                                            |  |  |  |
|   | a. The <i>nazir</i> must act in good faith, without neglect, exercise due skill and care in the selection of any person or agent for the management of the <i>waqf</i> , such as representative or subsidiary and counterparts. |  |  |  |
|   | b. The <i>nazir</i> can apply the KYC in the process of hiring professionals as advisors, agents, and employees, including but not limited to lawyers,                                                                          |  |  |  |



|  |                                                                                                                                                                                                                                                                                                                      |  |  |  |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | accountants, bankers, property managers, and financial advisors.                                                                                                                                                                                                                                                     |  |  |  |
|  | c. The <i>nazir</i> can apply the KYC in the process of appointing any party that will become the administrator or manager and hold any <i>mawquf</i> on his behalf.                                                                                                                                                 |  |  |  |
|  | d. The <i>nazir</i> can apply the KYC to the business counterparts, by examining their published accounts or reports and their reputation with their clients, to learn the business structure, legality, and bargaining position, which will affect possible clause selections in business or cooperation contracts. |  |  |  |
|  | e. The third party must be competent and qualified to develop cross-border <i>waqf</i> .                                                                                                                                                                                                                             |  |  |  |
|  | f. The third party must clean from international sanctions, such as OFAC if the <i>waqf</i> transaction is in USD and EU Sanction if the <i>waqf</i> transaction is in EURO.                                                                                                                                         |  |  |  |
|  | g. The third party must clean from international unlawful activities, such as money laundering and terrorist financing.                                                                                                                                                                                              |  |  |  |
|  | h. The <i>nazir</i> can examine the business counterparts through published accounts or reports and their reputation with their clients.                                                                                                                                                                             |  |  |  |

|   |                                                                                                                                                                                |  |  |  |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
| 6 | Investment in developing the cross-border <i>waqf</i> :                                                                                                                        |  |  |  |
|   | a. The <i>nazir</i> must set criteria before conducting direct and non-direct investment in managing the <i>waqf</i> , which at least includes:                                |  |  |  |
|   | 1) <i>Sharia</i> and law compliance.                                                                                                                                           |  |  |  |
|   | 2) comprehensive assessment of the character, condition, capital, capacity, collateral, people, purpose, and payment.                                                          |  |  |  |
|   | 3) conducting the feasibility study.                                                                                                                                           |  |  |  |
|   | 4) prioritizing productive projects.                                                                                                                                           |  |  |  |
|   | 5) have a bank guarantee from an Islamic financial institution if deemed necessary.                                                                                            |  |  |  |
|   | b. The <i>nazir</i> must allocate a sum of money as a guarantee or buffer equal to the total investment in a <i>waqf</i> project.                                              |  |  |  |
|   | c. The <i>nazir</i> must limit their investment to projects run by related parties, it is suggested that the total investment must not exceed 10% of the total <i>mawquf</i> . |  |  |  |
| 7 | Coordination and collaboration in developing the cross-border <i>waqf</i> :                                                                                                    |  |  |  |
|   | a. The <i>nazir</i> 's can appoint substitutes and third parties in developing the cross-border <i>waqf</i> .                                                                  |  |  |  |

|   |                                                                                                                                                            |  |  |  |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|   | b. The <i>nazir</i> can appoint third parties under a written contractual document with several conditions:                                                |  |  |  |
|   | 1) the <i>nazir</i> may delegate some of their powers or impose restrictions.                                                                              |  |  |  |
|   | 2) the third party must inform the <i>nazir</i> about all their actions and matters in managing the <i>waqf</i> .                                          |  |  |  |
|   | 3) the <i>nazir</i> must have the power to monitor all activities of the third party.                                                                      |  |  |  |
|   | 4) the <i>nazir</i> can sue the third party for compensation if they fail to fulfil their part of the bargain.                                             |  |  |  |
|   | c. The <i>nazir</i> may collaborate with public and private sectors in the host country to get more benefits for developing the cross-border <i>waqf</i> . |  |  |  |
| 9 | Contractual relationship in developing the cross-border <i>waqf</i> :                                                                                      |  |  |  |
|   | a. The <i>nazir</i> must consider several points in creating the contractual relationship with the third party:                                            |  |  |  |
|   | 1) any agreement between the <i>nazir</i> and a third party must be made in the form of a contract or another legally recognized form                      |  |  |  |
|   | 2) all parties involved in any contract must be competent and have a sound mind, which means of the age                                                    |  |  |  |

|  |                                                                                                                                                  |  |  |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | of majority according to the law, and not disqualified from contracting by related law.                                                          |  |  |  |
|  | 3) selecting a legal entity in the form of institutions over individuals is preferable.                                                          |  |  |  |
|  | 4) an agreement or contract must be made based on mutual and free consent.                                                                       |  |  |  |
|  | 5) a contract must be made for a lawful consideration and with a lawful object.                                                                  |  |  |  |
|  | 6) a contract must be made in writing, in the presence of witnesses, registered, and well-kept.                                                  |  |  |  |
|  | 7) a contract must have clear and understandable provisions such as details of the goods and services, price, and information about the parties. |  |  |  |
|  | 8) must state the currency for the transaction.                                                                                                  |  |  |  |
|  | 9) must state the price.                                                                                                                         |  |  |  |
|  | 10) must describe the attributes of the goods or services.                                                                                       |  |  |  |
|  | 11) must state packing requirements.                                                                                                             |  |  |  |
|  | 12) must state inspection and quality control requirements.                                                                                      |  |  |  |
|  | 13) must state <i>takaful</i> requirements.                                                                                                      |  |  |  |

|  |                                                                                                                                                                                                                                             |  |  |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | 14) must state shipping terms based on the INCOTERMS.                                                                                                                                                                                       |  |  |  |
|  | 15) must state the date by which goods must be dispatched or delivered.                                                                                                                                                                     |  |  |  |
|  | 16) must state the method and timing of payment based on international best practices.                                                                                                                                                      |  |  |  |
|  | 17) must state the obligations of the parties.                                                                                                                                                                                              |  |  |  |
|  | 18) any amendments made after the contract has been signed must require consent of both parties                                                                                                                                             |  |  |  |
|  | 19) breach of the contract will entitle the other party to make legal claim or void the contract.                                                                                                                                           |  |  |  |
|  | 20) alternative dispute resolutions as the first step in conflict resolution.                                                                                                                                                               |  |  |  |
|  | 21) must specify the applicable law, for cross-border <i>waqf</i> , it is suggested to choose the law of the nazir's country as the top priority, but if not possible, the law of a neutral country can be an alternative.                  |  |  |  |
|  | 22) must determine the location of the court to handle the dispute, it is suggested to choose a court located in nazir's country as the top priority, but if cannot, a court located in an easy-to-access neutral country can be an option. |  |  |  |

|  |                                                                                                                                                                                      |  |  |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | 23) must state force majeure conditions.                                                                                                                                             |  |  |  |
|  | b. The <i>nazir</i> or experts hired by the <i>nazir</i> may utilize several international laws as a reference in creating contracts related to cross-border <i>waqf</i> activities: |  |  |  |
|  | 1) the UNIDROIT Principles of International Commercial Contracts 2016, for general rules of international contracts.                                                                 |  |  |  |
|  | 2) the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts, for technical aspects of international contracts.                                 |  |  |  |
|  | 3) the UNIDROIT Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, to harmonize international laws on commercial contracts.      |  |  |  |
|  | 4) the ICC Model Contracts as guidance and contract principles in drafting any business contract related to cross-border <i>waqf</i> management and development.                     |  |  |  |
|  | 5) the URC522, in utilizing the <i>murabahah</i> documentary collection.                                                                                                             |  |  |  |
|  | 6) the UCP600 in utilizing the <i>murabahah</i> and <i>musyarakah</i> L/C.                                                                                                           |  |  |  |

|    |                                                                                                                       |  |  |  |
|----|-----------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | 7) setting the priority of international payment method utilization based on the position of the nazir:               |  |  |  |
|    | a) open account or documentary collection if the nazir act as the buyer.                                              |  |  |  |
|    | b) payment in advance or L/C if the nazir act as the seller.                                                          |  |  |  |
| 10 | Several elements must be considered when carrying out usufruct transport for cross-border <i>waqf</i> investment:     |  |  |  |
|    | a. Classify the type of usufruct to be invested, whether it is a movable, immovable, tangible, and intangible object. |  |  |  |
|    | b. Determine the best transfer or shipping and packing methods.                                                       |  |  |  |
|    | c. Check the usufruct's condition and authenticity of its administrative documents.                                   |  |  |  |
|    | d. Ensure the protection of the usufruct during cross-border shipment by having <i>takaful</i> .                      |  |  |  |
|    | e. Determine the party responsible for delivering the usufruct to be invested.                                        |  |  |  |
|    | f. Mitigate barriers by:                                                                                              |  |  |  |
|    | 1) using a trusted sea freight company.                                                                               |  |  |  |
|    | 2) establishing a representative office or appointing a strategic partner in                                          |  |  |  |

|  |                                                                                                                                        |  |  |  |
|--|----------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | the host country or surrounding areas.                                                                                                 |  |  |  |
|  | 3) establishing a logistic and warehousing center near the project location.                                                           |  |  |  |
|  | 4) collaborate with local partners in the host country.                                                                                |  |  |  |
|  | g. Taking references from international rules to smoothen the cross-border movement of <i>usufruct</i> with specific usage as follows: |  |  |  |
|  | 1) the INCOTERMS, for international shipping procedures (must select one):                                                             |  |  |  |
|  | a) Ex Works (EXW)                                                                                                                      |  |  |  |
|  | b) Free Carrier (FCA)                                                                                                                  |  |  |  |
|  | c) Free Alongside Ship (FAS) - Only for Waterways Transport                                                                            |  |  |  |
|  | d) Free On Board (FOB) - Only for Waterways Transport                                                                                  |  |  |  |
|  | e) Cost and Freight (CFR) - Only for Waterways Transport                                                                               |  |  |  |
|  | f) Cost, Insurance and Freight (CIF) - Only for Waterways Transport                                                                    |  |  |  |
|  | g) Cost Paid To (CPT)                                                                                                                  |  |  |  |
|  | h) Carrier and Insurance Paid To (CIP)                                                                                                 |  |  |  |



|  |                                                                                                                                                                                                                                                                        |  |  |  |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | i) Delivered at Place Unloaded (DPU)                                                                                                                                                                                                                                   |  |  |  |
|  | j) Delivered at Place (DAP)                                                                                                                                                                                                                                            |  |  |  |
|  | k) Delivered Duty Paid (DOP)                                                                                                                                                                                                                                           |  |  |  |
|  | 2) the URBPO, in utilizing the bank payment obligation to provide a financial or payment guarantee based on prerequisite in the business contract to an overseas third-party in a condition where <i>nazir</i> 's international reputation is not convincing enough.   |  |  |  |
|  | 3) the URDG and the ISDGP, in utilizing the demand guarantee to ensure that the third parties receive payment from the <i>nazir</i> if a party cannot fulfil their obligation, especially when both parties do not know each other and operate in different countries. |  |  |  |
|  | 4) the ISP98, in utilizing the standby letter of credit to benefit the <i>nazir</i> by providing a strong reputation due to payment guarantee for a long-term contractual relationship given by a bank with a good international reputation.                           |  |  |  |
|  | h. Taking references from international laws to smoothen the cross-border                                                                                                                                                                                              |  |  |  |

|    |                                                                                                                                                                                           |  |  |  |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|    | movement of <i>mawquf</i> with specific usage as follows:                                                                                                                                 |  |  |  |
|    | 1) the CISG, for the formation and standard terms of the international contract.                                                                                                          |  |  |  |
|    | 2) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution.                                                                                                |  |  |  |
|    | 3) the Convention on the Use of Electronic Communications in International Contracts, for removing obstacles and establishing equivalence between electronic and written forms contracts. |  |  |  |
|    | 4) the MLES, to enable and facilitate the use of electronic signatures and create a condition where electronic and hand-written signatures are equivalent.                                |  |  |  |
|    | 5) the Model Law on International Credit Transfers, for international banking transfers.                                                                                                  |  |  |  |
| 10 | Foreign currency risk mitigation in cross-border <i>waqf</i> can be done by the <i>nazir</i> by obeying the host country's regulations about:                                             |  |  |  |
|    | a. foreign to domestic currency conversion.                                                                                                                                               |  |  |  |
|    | b. coverage guarantee limit by the local government.                                                                                                                                      |  |  |  |

|    |                                                                                                                                                                                                                                                                                       |  |  |  |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
| 11 | Dispute resolution in cross-border <i>waqf</i> development:                                                                                                                                                                                                                           |  |  |  |
|    | a. Peaceful conflict resolution ( <i>sulh</i> ) always becomes the first choice over litigation because it will generate a win-win solution to maintain the relationship between <i>waqf-related</i> parties.                                                                         |  |  |  |
|    | b. <i>Nazir</i> and <i>waqf</i> -related parties must agree to choose an alternative dispute resolution to resolve the conflict in cross-border <i>waqf</i> and related activities. It can be written in every cross-border <i>waqf</i> -related contract or in a separate agreement. |  |  |  |
|    | c. Sequentially, the alternative dispute resolution process consists of discussion or consultation, good office, negotiation, mediation, inquiry or fact-finding, conciliation, court-annexed mediation, and arbitration.                                                             |  |  |  |
|    | d. Litigation is the last method to be chosen if alternative dispute resolutions cannot resolve cross-border <i>waqf</i> issues. It is strongly recommended to choose the Islamic or Religious Court to handle cross-border <i>waqf</i> dispute.                                      |  |  |  |
|    | e. A District Court can be an option if no Islamic or Religious Court is available, but only with judges with decent knowledge about Islamic or <i>waqf</i> laws.                                                                                                                     |  |  |  |

|  |                                                                                                                                                                                                                               |  |  |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | f. The dispute resolution process must be held in the language that the <i>waqif</i> and <i>nazir</i> can understand.                                                                                                         |  |  |  |
|  | g. It is strongly recommended that the position of neutral third parties in alternative dispute resolution or judges in litigation be filled by a Muslim, to ensure the adherence to Islamic principles in the legal process. |  |  |  |
|  | h. The neutral third parties or judges must have a decent knowledge of Islamic law including <i>waqf</i> .                                                                                                                    |  |  |  |
|  | i. It is recommendable that neutral third parties or judges have knowledge about laws related to the type of the <i>mawquf</i> .                                                                                              |  |  |  |
|  | j. On the first day of the trial, the judges must suggest to the parties to make peace or to conduct mediation.                                                                                                               |  |  |  |
|  | k. Parties must pay close attention to the litigation costs to prevent the corpus and <i>waqf</i> funds from deteriorating.                                                                                                   |  |  |  |
|  | l. It is recommended that the government of the region where the litigation process is being held to assist with litigation costs and legal aid to indigent applicants.                                                       |  |  |  |
|  | m. Several international rules and laws can be used as references in a dispute resolution of cross-border <i>waqf</i> :                                                                                                       |  |  |  |

|  |                                                                                                                                                                                                                  |  |  |  |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|  | 1) the Rotterdam Rules, for rights and obligations of the parties and conflict resolution.                                                                                                                       |  |  |  |
|  | 2) The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, to provide uniform rules of the mediation process and encouraging the use of mediation. |  |  |  |
|  | 3) the CLOUT, to provide data about previous cross-border transaction cases as a reference in mitigating and resolving cross-border <i>waqf</i> disputes.                                                        |  |  |  |

## GLOSSARY

**Agent.** The person employed to do any act for another or to represent another in dealings with third persons.

*Awqaf.* Plural of *waqf*

*Baitulmal.* A pool of fund that consist of all moneys and property, movable or immovable, which by *Hukum Syarak* or under related regulations made there under accrue, or are contributed by any persons, to the *baitulmal*.

**Besluit.** A decree from the Dutch colonial government.

**Bijblad.** An addition to the state gazette during the Dutch colonial government.

**Cash *Waqf* Linked Sukuk.** The first innovative sukuk-based modern *waqf* fundraising development was issued by the Indonesian government in 2020. Using a social investment scheme where the collected cash waqf will be managed and placed in state Sukuk instruments, and the usufructs or margin will be used for social charity programs.

*Fatwa.* Decree or *Sharia* ruling issued by qualified *Sharia* scholars.

*Fuqaha.* Jurist(s).

**Hadith.** Sayings of the Prophet Muhammad.

*Ibadah.* To worship Allah as He wishes to be worshipped.

*Imam.* A person who leads worship services in a mosque, also serves as a community leader and provides religious guidance.

**Immovable property.** The property which cannot be moved including land, building and those similar thereto.

*Infag.* Expenditure, spending.

**Intellectual property.** Anything in connection with copyright, patent, industrial design, optical disk, trademark and those similar thereto.

Issuing bank. The issuing bank is the bank that issues the Letter of Credit, usually following a request from an applicant.

*Istibdal*. Substitution of *waqf* asset.

Letter of Credit. A Letter of Credit is a contractual commitment by the foreign buyer's bank to pay once the exporter ships the goods and presents the required documentation to the exporter's bank as proof.

*Marad al-maut*. This means a fatal disease that fulfils the following conditions: (a) the illness must cause the death; (b) the illness must cause the fear of death in the mind of the deceased; and (c) shall possess be some external signs of a serious disease.

*Mawquf'alaih*. The beneficiaries of the *waqf* can be persons and public utilities. The Founder can specify which persons are eligible for benefit (such the founder's family, entire community, only the poor, travellers). Public utilities such as mosques, schools, bridges, graveyards and drinking fountains can be the beneficiaries of a *waqf*.

Movable property. The property which can be moved including shares, money, gold, silver and those similar thereto.

*Mutawalli*. Manager, director.

*Murabahah*. An Islamic financing structure that works as a sales contract, fixing the price of goods or items as required by a customer, inclusive of a pre-agreed profit margin.

*Musarakah*. A form of financing with a joint business cooperation scheme (*syirkah*), where more than one party jointly places funds as capital for the business in accordance with the agreed portion of their respective funds. Profits generated from business activity will be shared according to the agreed ratio, while losses are borne according to each portion of the funds.

*Nazir*. *Waqf* institution/administrator (called *nazir* or *mutawalli* or *kayyim*). *Nazir* must have capacity to act and contract. In addition, trustworthiness and administration skills are required.

Principal. The person for whom such act is done, or who is so represented.

*Shadaqah*. Charity.

*Shadaqah Jariyah*. Perpetual charity.

*Sharia*. Divine guidance as given by the Holy Qur'an and the Sunnah of the Prophet Muhammad (PBUH) and embodies all aspects of the Islamic Faith, including beliefs and practice.

*Staatsblad*. Known as *Staatsblad van Nederlandsch-Indie* or pronounced as *Het Staatsblad van Indonesie* is a sheet of paper containing various official regulations from the Dutch colonial government.

*Sukuk*. This is the plural of *sakk*. Asset-based or asset-backed financial certificate(s). Certificates of equal value which evidence undivided ownership or investment in the assets in accordance with *Sharia* principles and concepts.

*Sunnah*. Tradition of the prophet Muhammad.

Vilayet. Is a first-order administrative division, or province of the later Ottoman Empire, introduced with the promulgation of the Vilayet Law (Turkish: Teşkil-i Vilayet Nizamnamesi) of 21 January 1867.

*Waqf*. Islamic endowment, a voluntary and irrevocable endowment of *Sharia*-compliant assets for *Sharia*-compliant purposes. Hold, confinement or prohibition. *Waqf* is holding a certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside its specific objectives. This definition accord perpetuity of waqf, i.e. it applies to non-perishable properties whose benefits and usufructs can be extracted without consuming the property itself. *Waqf* also can be defined as a form of “*sadaqah jariyyah*” (continuous charity), is created by giving away an asset that produces benefits/revenues for targeted objective on a permanent basis.

*Waqif*. Donor or the person who is making the grant (or *al-muhabbis*).



*Zakah*. obligatory contribution(s) or due payable to the poor by all Muslims having wealth above the *nisab* (threshold or exemption limit).

