

Model of Sukuk Waqf with *Wasiyyah* Contract as a Cash Waqf Fundraising Strategy

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ABSTRACT

This study aims to propose a model of sukuk-*wasiyyah*. Since waqf fundraising is one of the activities of waqf management, this model applies *wasiyyah* or the will of waqif to sukuk. *Wasiyyah* will restrict the use of the fund by the will of *Musi* while sukuk is one of the Islamic capital market instruments. Like cash waqf, the fund of sukuk-*wasiyyah* will be managed by *nazhir* and its profit can be spent on Islamic philanthropy. This study applies exploratory research. The result of the study shows that (1) *Musi* or the bequeath testator still can gain the sukuk return during his life, (2) After *Musi* died, the sukuk is transferred under custody by *Nazir*. The author argues that the proposed product applies to Waqf Institution. This study is the first to introduce the terms of sukuk-*wasiyyah* and to propose the mechanism of sukuk-*wasiyyah* in the Islamic capital market.

Abstrak: Penelitian ini bertujuan untuk menggagas model sukuk wasiat. Model ini mengaplikasikan akad wasiat pada sukuk. Wasiat akan membatasi penggunaan dana sesuai kehendak mushi sedangkan sukuk adalah salah satu instrumen pasar modal syariah. Layaknya wakaf uang, dana sukuk wasiat akan dikelola oleh Nazhir dan imbal hasilnya bisa digunakan untuk kegiatan filantropi Islam. Penelitian ini menggunakan metode penelitian eksplorasi. Hasil penelitian menunjukkan bahwa (1) Mushy atau pewasiat masih dapat menikmati imbal hasil sukuk selama hidupnya, (2) Setelah mushy wafat, sukuk tersebut dipindahkan ke dalam pengawasan Nazir. Penulis berpendapat bahwa model yang digagas dapat diterapkan di Lembaga Wakaf. Penelitian ini adalah penelitian yang pertama memperkenalkan istilah sukuk wasiat dan menggagas mekanisme sukuk wasiat di pasar modal syariah.

Kata kunci: wakaf uang, pasar modal syariah, reksadana syariah, sukuk wasiat

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INTRODUCTION

The Islamic capital market development in Indonesia shows progressive milestones since the Islamic mutual fund was endorsed by the Indonesian Council of Ulama fatwa No. 20/DSN-MUI/IV/2001 regarding Guideline on Islamic Mutual Fund Investment and fatwa No. 32/DSN-MUI/IX/2002 regarding Islamic Bonds. The development of the three instruments namely Islamic stocks, sukuk, and Islamic mutual funds continues to improve although conventional instruments are still superior¹. Regarding sukuk, the Financial Services Authority (FSA) or so-called Otoritas Jasa Keuangan (OJK) on 16 August 2021 published Islamic Bonds (Sukuk) Statistic as per July 2021 that disclosed the figure of outstanding corporate sukuk i.e IDR 34.2 trillion out of IDR 61.95 trillion sukuk issuance². The Islamic mutual fund market share as of July 2021 was approx. 13.25% which is few if it is compared to that

share of the conventional mutual funds³.

The demand for an investment fund from sukuk for financing infrastructure projects is still high as confirmed by the state budget figures for 2021. The infrastructure is budgeted at IDR 414 trillion which is 15.06% of total expenditures of IDR 2,747.5 trillion. Meanwhile, the total budgeted income is 1,776.4 trillion. It is reported that the annual growth rate of Indonesia's economy in 2021 is assumed at 4.5% – 5.5%⁴. Since the population of middle-income people increased, the Islamic capital market has an opportunity to meet the need for infrastructure funding. A funding strategy should be proposed to encourage wealthy individuals and corporates to invest their funds more thru Islamic financial instruments like sukuk.

Among the strategies being discussed mostly is to improve financial literacy. OJK published statistics on the level of society's financial literacy in 2016-2019 with a highlight on the capital market. The

¹ Mohamad Toha and Agnes Cahyatria Manaku, "Perkembangan Dan Problematika Pasar Modal Syariah Di Indonesia," *Al-tsaman: Jurnal Ekonomi dan Keuangan Islam* 2, no. 1 (May 28, 2020): 143, accessed January 6, 2021, <https://ejournal.inaifas.ac.id/index.php/Al-tsaman/article/view/312>.

² OJK, "Syariah Sukuk Statistics as per July 2021," accessed September 10, 2021, <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/data-produk-obligasi-syariah/Pages/-Statistik-Sukuk-Syariah---Juli-2021.aspx>.

³ OJK, "Islamic Mutual Fund as per July 2021" (2021): 17, accessed September 10, 2021, <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/reksa-dana-syariah/Documents/Pages/-Statistik-Reksa-Dana-Syariah---Juli-2021/Statistik%20Reksa%20Dana%20Syariah%202021%20Juli.pdf>.

⁴ See *Advertorial RAPBN 2021* (Jakarta: Ministry of Finance Republik Indonesia, 2021), <https://www.kemenkeu.go.id/media/15869/advertorial-rapbn-2021.pdf>.

level of public literacy in the capital market is still very low, resulting in low public participation in the capital market⁵. In the 2019 survey, the level of capital market literacy was 4.91% which is higher by 0.52% compared to that survey in 2016 which was 4.4%. It means the ratio of illiterate people on capital market issues is 95.09%. OJK also published that the percentage of financial inclusion in the capital market is 1.55% in 2019, meanwhile, such percentage was only 1.3% in 2016⁶. The literacy can be improved by a sustainable campaign to promote the program concerning the benefits of investment and changes in the Indonesian Islamic capital market involving content creators, public figures, and influencers on social media platforms by targeting those who interact with the internet particularly young people and millennials. Waqf Goes to Campus (WGC) is one of the waqf literacy programs initiated by the Indonesia Waqf Board that is held on several campuses in Indonesia to invite the academic community in advancing the world of Indonesian waqf.

⁵ Suparman Zen Kemu, "Literasi Pasar Modal Masyarakat Indonesia," *Jurnal Kajian* 21, no. 2 (May 21, 2017): 173, accessed January 6, 2021, <https://jurnal.dpr.go.id/index.php/kajian/article/view/773>.

⁶ OJK, "2019 National Financial Literacy and Inclusion Survey," last modified 2020, accessed January 5, 2021, <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Survei-Nasional-Literasi-dan-Inklusi-Kuangan-2019.aspx>.

The main motivation to invest is to expect a return on what they invest. Those who cannot manage their own business, they put their fund in banks or buy shares in the capital market. Before investing, investors should look at market conditions, and know more clearly about the Islamic capital market and its instruments. In choosing promising business prospects, potential investors must be able to see the various companies or industries that will be selected for investment⁷. Muslims' decision to save and invest should not only be inspired by gaining merely turnover but also be inspired by Allah's revelation in Chapter *Al-Hasyr* (18): "*O you who have believed, fear Allah. And let every soul look what it has put forth tomorrow – and fear Allah. Indeed, Allah is acquainted with what you do*". This verse encourages Muslims to prepare for their future life especially hereafter life as well as their future worldly life.

Most people suspend their disbursement so that they can invest their money to earn a return. No doubt, Muslim investors still expect regular revenue from their investment in the capital market to cover their living expenditures. The concept of investment according to Islamic law is that all forms of

⁷ Ajeng Sonial Manara and Faridatun Nila, "Konsep Perencanaan Investasi pada Saham Syariah di Era Milenial," *Dinar: Jurnal Ekonomi dan Keuangan Islam* 4, no. 1 (2017): 16, accessed January 6, 2021, <https://journal.trunojoyo.ac.id/dinar/article/view/5064>.

investment are made in the framework of worshipping Allah to achieve inner and outer happiness in the world and the hereafter for both present and future generations, so it is not merely a worldly affair⁸. Therefore, Islam opens occasions to its believers to get rewards in both worldly life and hereafter life. These double rewards can be acquired by blending religious social missions and commercial business. People's awareness of Islamic philanthropy needs to be enhanced. The subject of Islamic philanthropy like waqf must become one of the topics of Friday sermons or lectures in mosques. Factors affecting people to invest are knowledge of the capital market, interest, and motivation. Therefore, sermons on philanthropy should be intensively repeated to encourage Muslims to make charity within their business that its reward is perpetually granted during and after their worldly life. Should investors be aware of charity benefits, they will make a declaration of waqf in form of cash and noncash. Religious affiliation influences the intention to leave a bequest⁹. A study in Malaysia that

involved 406 respondents shows that religiosity, health, age, and knowledge of *wasiyyah* advantages are significant variables to describe the Muslim behavior to select *wasiyyah*. Amongst all variables, the knowledge of advantages is positively affecting Muslims to select *wasiyyah*¹⁰. The more comprehension someone has about Islamic bequest, the higher the intent to make a *wasiyyah* is. The higher the level of familiarity with property management is, the higher the intent to make a *wasiyyah* is.¹¹

Regarding *wasiyyah* and cash waqf, Al-Azhar Waqf Institute (Lembaga Waqf Al-Azhar) had launched a product in the form of endowment insurance benefits and investment benefits in sharia life insurance. Indonesian Council of Ulama had endorsed this product by issuing fatwa No. 106/DSN-MUI/X/2016 stating that the number of insurance benefits to be

<http://journals.smsvaranasi.com/index.php/purushartha/article/view/197>.

¹⁰ Zairy Zainol et al., "Factors Influencing Muslims Choice on Wasiyyah: A Logit Model Analysis," *International Journal of Islamic Business* 4, no. 2 (December 31, 2019): 68, accessed September 8, 2021, <http://e-journal.uum.edu.my/index.php/ijib/article/view/13276>.

¹¹ Z H Ghul, M H Yahya, and A Abdullah, "Wasiyyah (Islamic Will) Adoption and the Barriers in Islamic Inheritance Distribution among Malaysian Muslims," *International Journal of Humanities Social Sciences and Education* 2, no. 1 (2015): 9, <https://www.arcjournals.org/pdfs/ijhsse/v2-i1/1.pdf>.

⁸ Diana Wiyanti, "Perspektif Hukum Islam Terhadap Pasar Modal Syariah Sebagai Alternatif Investasi Bagi Investor," *Jurnal Hukum IUS QUIA IUSTUM* 20, no. 2 (2013): 252, accessed January 6, 2021, <https://journal.uui.ac.id/IUSTUM/article/view/4519>.

⁹ Smitha Nair et al., "Religious Affiliation and Bequest Behavior," *PURUSHARTHA - A journal of Management, Ethics and Spirituality* 10, no. 2 (2018): 42, accessed August 14, 2021,

donated is limited to a maximum of 45%. Also, the amount of investment benefit that may be donated as waqf is as much as one-third (1/3) of *tirkah* or the wealth, unless otherwise permitted by all heirs¹². This product provides opportunities for a donor to donate within a planned period. Nonetheless, the waqf contract is still possibly canceled by either waqif or by Al-Azhar Waqf Institute, especially when the waqif has difficulty in paying the installment of the premium fund before maturity¹³.

To achieve the purpose of this study, the author applies exploratory research. Exploratory research is conducted for an unstudied problem, aimed at setting priorities, optimizing the final research design, and developing operational definitions¹⁴. The

exploratory study aims to define or explain a concept that will be employed in the research, while the researcher still does not have a clear definition or concept¹⁵. Since the exploratory research relies on techniques such as reviewing available literature¹⁶, this study will explore the provisions of sukuk in the Islamic capital market, and *wasiyyah* in Islamic law, the advantages of applying *wasiyyah* to sukuk, the cash waqf, the mechanism of Islamic mutual fund, the parties involved in the implementation of sukuk-*wasiyyah*, and the proposed mechanism of sukuk-*wasiyyah* in the capital market. The result of this research confidently can bridge the need of investors who wants to get a return perpetually from their investment fund during their life, but at the same time after their death, they can donate a certain amount of their investment. So, the principal of his donation is still complete while its return will everlastingly yield.

RESULT AND DISCUSSION

Sukuk, Wasiyyah, Waqf and Islamic Mutual Fund Sukuk

Referring to OJK Regulation No. 18/ POJK.04/2015 dated 3 November 2015, sukuk is defined as an Islamic commercial paper or certificate of ownership that has the

¹² DSN MUI, *Fatwa DSN MUI No. 106/DSN-MUI/X/2016 Tentang Wakaf Manfaat Asuransi Dan Manfaat Investasi Pada Asuransi Jiwa Syariah* (Jakarta: Dewan Syariah Nasional Majelis Ulama Indonesia, 2016), 5, <https://drive.google.com/file/d/0BxTl-INihFyzV1FVdU5EMHZxbIU/view?resourcekey=0-tJFsyrS1hVzpfZJvuefTw>.

¹³ Siska Lis Sulistiani, "Analisis Implementasi Wakaf Wasiat Polis Asuransi Syariah Di Lembaga Wakaf Al-Azhar Jakarta," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 2 (December 31, 2017): 298, accessed September 12, 2020, <https://ijtihad.iainsalatiga.ac.id/index.php/ijtihad/article/view/1174>.

¹⁴ Patricia Shields and Nandhini Rangarajan, *A Playbook for Research Methods: Integrating Conceptual Frameworks and Project Management*, 2013.

¹⁵ I.B Mantra, *Filsafat Penelitian Dan Metode Penelitian Sosial* (Jakarta: PT Grasindo, 2004).

¹⁶ Shields and Rangarajan, *A Playbook for Research Methods*.

same value or represents an undivided share or an undetermined portion of ownership (*musya*) on the underlying assets. Closure of the order and commencement of the use of funds according to their allocation¹⁷. Sukuk is the plural Arabic word of Sak which represents an investment certificate in line with Islamic principles¹⁸. The underlying assets must be real assets relating to certain investment activities or projects. A sukuk investor has a portion of the asset's ownership related to the investment even though this does not correspond to a liability owed to the issuer of sukuk.

Among the sharia indexes that are always observed by the investor, the level is Islamic mutual funds, Islamic stocks, and Islamic bonds (*sukuk*) which are an inseparable part of transactions in the capital market¹⁹. In the case of conventional bonds, on certain interest rates, dates, and amounts, the issuer is

liable to pay bondholders. Meanwhile, under a sukuk structure, each sukuk investors each have undivided possession of the underlying assets. Accordingly, sukuk holders have the entitlement to a share in the revenues generated by sukuk assets. The sukuk sale relates to the sale of a proportionate share in the assets. Indeed, sukuk holders receive remuneration from the Sukuk underlying assets performance. While the conventional bond receives interest for money loaned²⁰. Research has shown that the products of the Islamic capital market in Indonesia are compliant not only with Islamic legal formal rules, i.e., the procedural aspect and the substantive aspect, but also with the higher aims of Islamic investment products, i.e. realizing social benefit, educating investors, and upholding justice²¹.

¹⁷ DSN MUI, *Fatwa DSN MUI No. 137/DSN-MUI/IX/2020 Tentang Sukuk* (Jakarta: IMZ: Dewan Syariah Nasional Majelis Ulama Indonesia, 2020).

¹⁸ Alaoui El Mrani Driss and El Mezouari Saïd, "Empirical Study of the Performance of the Islamic Investment," *Zenodo* 4 (April 15, 2020), accessed January 6, 2021, https://zenodo.org/record/3753464#.X_UCdV_MzY2w.

¹⁹ Awaluddin Awaluddin, "Pasar Modal Syariah: Analisis Penawaran Efek Syariah Di Bursa Efek Indonesia," *Maqdis: Jurnal Kajian Ekonomi Islam* 1, no. 2 (December 1, 2016): 149, accessed January 6, 2021, <http://journal.febi.uinib.ac.id/index.php/maqdis/article/view/42>.

²⁰ Driss and Saïd, "Empirical Study of the Performance of the Islamic Investment"; Mohammad Lukmanul Hakim, "Obligasi Konvensional Dan Obligasi Syariah (Sukuk) Dalam Tinjauan Fiqih," *Dinar: Jurnal Prodi Ekonomi Syariah* 1, no. 1 (September 1, 2017): 62, accessed January 6, 2021, <https://ejurnal.stail.ac.id/index.php/dinar/article/view/34>; Parno Parno, "Sistem Kerja Dan Prinsip Pasar Modal Syariah," *Mazahib* 12, no. 2 (2013): 139, accessed January 6, 2021, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/326>.

²¹ Andri Soemitra, "Higher Objectives of Islamic Investment Products: Islamizing Indonesian Capital Market," *Studia Islamika* 23, no. 2 (August 25, 2016): 263, accessed January 6, 2021,

The sukuk mechanism with the *mudharabah* scheme, in brief, is that the issuer will firstly issue sukuk to an investor for a certain project as an underlying asset. The investor pays his fund to the sukuk issuer. The investment fund is then used by the issuer to finance the project i.e. to improve production capacity and to purchase supporting facilities. During a certain period, the project generates income and its corresponding expenses are matched with revenues. The net income is then shared with the agreed percentage as stated in the sukuk certificate. Finally, on the due date, the issuer will repay the sukuk principal to the investor.

The aim of investors to invest in their fund is to gain profit as much as possible and to avoid the risk of loss. Nonetheless, not all investors can analyze the risks. Some investors expect a high return on high-risk financial instruments. Although sharia investment will not escape the risks, investors feel comfortable in investing because there is no element of usury, maysir (gambling), or *gharar* (uncertainty). The appropriate choice for gaining better returns compared to bank savings or time-deposit is the Islamic mutual fund. Indonesian Council of Ulama had issued a fatwa number: 20/DSN-MUI/IV/2001 on Guidelines for the Investments of Islamic Mutual Fund. In Article 1 (6), an Islamic

mutual fund is operated according to the rules and Islamic law principles, in the form of a contract between the Investment Manager in the name of the capital owners and the investor, as well as the Investment Manager as a rep of the owners of capital by user investing. The difference between the conventional mutual fund and the Islamic one is in the operational implementation. The fatwa stated that the agreement between the investment manager and the investor is based on the *wakalah* contract. *Wakalah* means mandate or delegation. Meanwhile, the financing scheme between the Investment Manager and the fund users is based on the *mudharabah* or *ijarah* system. In May 2003, the Accounting and Auditing Organization for Islamic Institutions (AAOIFI) determined that 14 sukuk can be issued by sharia standards. 9 sukuk that comply with AAOIFI standards are *Murabahah Sukuk*, *Mudharabah Sukuk*, *Ijarah Sukuk*, *Musyarakah Sukuk*, *Salam Sukuk*, and *Istishna Sukuk*. Apart from these six contracts, two sukuk issuance contracts are practiced in Malaysia, namely the *bay al-inah* contract and the *bay al-day* contract²².

Currently, the issuance of corporate sukuk in the Indonesian

²² Eka Nuraini Rachmawati and Ab Mumin B. A. Ghani, "Akad Jual Beli Dalam Perspektif Fikih Dan Praktiknya Di Pasar Modal Indonesia," *AL-'ADALAH* 12, no. 2 (2015): 787, accessed January 6, 2021, <http://ejournal.radenintan.ac.id/index.php/adalah/article/view/214>.

Capital Market uses two types of contracts, namely the *Mudharabah* and *Ijarah* contracts²³. The characteristic of the *mudharabah* system is explained further in the above-mentioned fatwa in Chapter 2(2). The profit share between the investor who is represented by the fund manager and the fund user is distributed based on a certain percentage already agreed upon between the two parties. There is no guarantee of gaining profit perpetually being promised to investors. Investment managers acting as investor representatives do not bear any loss risk as far as such loss is not due to his negligence.

There are several types of mutual fund instruments with different risks and various returns on investment. The Islamic mutual fund operating in Indonesia Stock Market shows that the lower risk the mutual fund instrument has, the lower return it will gain. On the contrary, the higher risk it carries, the higher return it will generate. Sukuk is an ideal instrument for managing liquidity and mobilizing funds, and their Asset backing makes investment in sukuk more protected²⁴. Based on quantitative

analysis, sukuk provides a lower risk as well as a better benefit. However, in a short period, Islamic equity provides a higher return than sukuk²⁵. Hence, innovative and creative sukuk structures are required to protect the sustainability of Islamic financial sources provided that they must follow the sharia principles²⁶.

Some investors invest in Islamic mutual funds. The existing mechanism of the Islamic mutual fund is as follows: First, investors will come to the Investment Manager with his fund. And then, the investment manager will place the fund in an instrument as per the investors' request. The revenue gained will be shared with the agreed percentage between the investors and the investment manager. On the sukuk due date, the principal is repaid to the investors.

²³ Eka Nuraini Rachmawati and Ab Mumin Bin Ab Ghani, "Akad Penerbitan Sukuk Di Pasar Modal Indonesia Dalam Perspektif Fikih," *AL-'ADALAH* 14, no. 1 (June 21, 2017): 258, accessed January 6, 2021, <http://ejournal.radenintan.ac.id/index.php/adalah/article/view/2203>.

²⁴ Driss and Saïd, "Empirical Study of the Performance of the Islamic Investment," 1002.

²⁵ Akhmad Yusuf Khoiruddin, "Best Choice for Investment-Islamic Equity or Sukuk?," *Global Review of Islamic Economics and Business* 4, no. 1 (December 8, 2016): 65, accessed January 6, 2021, <http://ejournal.uin-suka.ac.id/febi/grieb/article/view/977>.

²⁶ Norlela Kamaluddin et al., "Shariah Principles of Sukuk Structure in Islamic Capital Market," *Journal of Contemporary Islamic Studies* 1 (2015): 73, accessed January 6, 2021, <http://ir.uitm.edu.my/id/eprint/13776/>; Romansyah Romansyah, "Pasar Modal Dalam Perspektif Islam," *Mazahib* 14, no. 1 (2015): 10, accessed January 6, 2021, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/332>.

Investment managers have an important role in mutual fund activities in portfolio management services. They manage portfolios of securities for clients or collective investments for a group of clients²⁷. Their performance is indicated by the ability to choose stocks and market timing as well as risk management of mutual fund investments²⁸. The role of investment managers is initiated by signing an agreement between the custodian bank and investment managers so-called Collective Investment Contract or Kontrak Investasi Kolektif (KIK). In the contract, the duties of each party are mentioned in detail. The main duty of an investment manager is to invest the fund in capital market instruments.

The implementation of investment and research functions must be coordinated by an

employee who has an Investment Manager Representative license and has work experience in the investment management sector for at least 3 (three) years²⁹. Investment managers' abilities in-stock selection and market timing reduce the risk of loss due to investment analysis errors and positively affect mutual fund performance³⁰.

In conventional bonds, the issuer must pay interest to the bondholders at certain rates, dates, and amounts. Meanwhile, under a sukuk structure, each of the sukuk investors has undivided possession of the underlying assets. Subsequently, sukuk holders are entitled to a share of sukuk assets income. A mutual fund contract is offered to investors first. Investors who want to invest will transfer their funds to the mutual fund account with the custodian bank. A certificate will be furnished to investors signifying their ownership in a unit of the mutual fund. The fund is then managed by the

²⁷ OJK, *Pasar Modal: Seri Literasi Keuangan Perguruan Tinggi* (Jakarta: Otoritas Jasa Keuangan, 2016), 156.

²⁸ JR. Dwi Mas Sukma Agung and I Wayan Pradnyantha Wirasedana, "Analisis Kinerja Reksa Dana Saham Di Indonesia," *E-Jurnal Akuntansi Universitas Udayana* 7, no. 1 (n.d.): 250-265, accessed January 7, 2021, <https://ojs.unud.ac.id/index.php/Akuntansi/article/view/8814/>; Anindita Putri Nurmali Sari and Agus Purwanto, "Analisis Kebijakan Alokasi Aset, Kinerja Manajer Investasi Dan Tingkat Risiko Terhadap Kinerja Reksadana Saham Di Indonesia," *Diponegoro Journal of Accounting* 1, no. 1 (2012): 253, accessed January 7, 2021, <https://ejournal3.undip.ac.id/index.php/accounting/article/view/357>.

²⁹ OJK, *Peraturan Otoritas Jasa Keuangan No 24/POJK.04/2014 Tentang Pedoman Pelaksanaan Fungsi-Fungsi Manajer Investasi* (Otoritas Jasa Keuangan, 2014), 5, https://www.ojk.go.id/Files/201411/3RP_OJKfungsi2MI_permohonanpenetapan_1416475688.pdf.

³⁰ A. A. Sagung Putra Pradnya Paramitha and Ni Ketut Purnawati, "Pengaruh Kinerja Manajer Investasi Dan Kebijakan Alokasi Aset Terhadap Kinerja Reksa Dana Saham Di Indonesia," *E-Jurnal Manajemen* 6, no. 8 (July 28, 2017): 4025, accessed January 7, 2021, <https://ojs.unud.ac.id/index.php/Manajemen/article/view/31681>.

investment manager in various investment instruments like stocks, obligations, or financial market instruments³¹.

The contract between the investor and the investment managers is based on the *wakalah* contract³². By *wakalah*, investment managers deserve certain fees from investors to be deducted from the profit of the mutual fund. In carrying out its activities, the Investment Manager is liable for carrying out the functions as (a) Investment and Research function; (b) Trading function; (c) Finalization of Effect Transactions function; (d) Management, risk, compliance, and internal audit function; (e) Marketing and customer complaint function; (f) Information technology function; (g) Accounting and finance function; and (h) Human resource development function³³.

Wasiyyah

Wasiyyah (bequest or the will) is a covenant to preserve something or to contribute some wealth after the death of the one who declares it³⁴. *Wasiyyah* is a message from

someone to others to look after his assets by his will after his life and therefore *wasiyyah* is executed after the death of someone who declares it³⁵. Kompilasi Hukum Islam (KHI) or Islamic Law Compilation (ILC) in article 171 defines *wasiyyah* as an endowment from a testator to someone or institution that becomes valid upon the death of the testator. It is lawful to accept the bequest during the life or after the death of the testator. Likewise, the testator can abolish his bequest as long as he worries about the misuse of what he is bequeathing. *Wasiyyah* can also be in form of a message, advice, or direction which are not related to wealth³⁶. Such a message *wasiyyah* must be executed.

Most scholars mention 4 elements of a bequest to become valid³⁷, namely: (1) *Musi* or the testator who makes the bequest, (2) *Musa lahu* or the one whom the bequest is made for, (3) *Musa bihi* or the property to be taken as a bequest by *Musa lahu*, and (4) *Shighat* of the

³¹ OJK, *Pasar Modal: Seri Literasi Keuangan Perguruan Tinggi*, 56.

³² DSN MUI, *Fatwa DSN MUI No. 137/DSN-MUI/IX/2020 Tentang Sukuk*, 7.

³³ OJK, *POJK 24/POJK.04/2014*, 2-3.

³⁴ Abu Bakr Jaber Aljzaary, *Minhaj Al-Muslim (Muslim Platform)* (Cairo: Darussalam, 2007), 301, <https://www.noor-book.com/en/ebook-%D9%85%D9%86%D9%87%D8%A7%D8%AC-%D8%A7%D9%84%D9%85%D8%B3%D9%84%D9%85-pdf>.

³⁵ Ramulyo, H, *Perbandingan Hukum Kewarisan Islam Dengan Kewarisan Kitab Undang-Undang Hukum Perdata* (Jakarta: Sinar Grafika, 2004), 105.

³⁶ Nuzha Nuzha, "Wasiat dan Hutang dalam Warisan," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 2, no. 2 (December 15, 2015): 163, <http://journal.uin-alauddin.ac.id/index.php/al-qadau/article/view/2639>.

³⁷ Jamiu Muhammad Busari, "Al-Wasiyyah (Bequest) According to the Four Sunni Schools: A Concise Analysis," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 23, no. 2 (2018): 55, www.iosrjournals.org.

statement either orally or in writing confirming the offer of the testator and the acceptance of the trustee. Aljzaary (2007) mentions two types of bequests, the first one is a bequest regarding what must be spent on a specific thing, and the second one is a bequest to someone who will render a right or payout debt, or take care of the children until they reach the age of adolescence. Making a will or bequest is a legitimate action as it is because of Allah's revelation as stated in Al-Quran Chapter Al-Maidah (106) and An-Nisa (011).

It is mandatory for anyone who has a trust or a debt to bequeath. This is because of the fear that he will pass away and lose someone's property and rights, so he will be asked (that is, responsible) on the Day of Judgement. Likewise, it is advised that someone who possesses a large number of assets and whose heirs are wealthy give a third or less of his property to his kinfolds who are not heirs or to any benefaction. The Messenger of Allah to Saad bin Abi Waqqas concerning the will: "*A third, and a third is a lot. Verily it is better if you leave your inheritors wealthy than if you leave them poor and with their palms out begging from the people*" (Al-Bukhari and Muslim). Then, no matter the level of magnanimity, a Muslim is prohibited to donate exceeding one-third of his property and wealth, otherwise, he may leave his heirs in abject pennilessness which the

Messenger of Allah warned against³⁸.

It is conditional on the fact that a person who is asked in a will to take care of something must be Muslim, healthy of mind, and adult. For the sick person, the same conditions apply with the addition that he be rational, and the possessor of what he bequeaths³⁹. In ILC article 171(f), such a condition is also mentioned in addition to the minimum age that is not less than 21, sound in mind, and not under pressure (Article 194 (1) of ILC). The ownership of what he bequeaths is mentioned in Article 194 (2) of ILC. Referring to Indonesian Civil Law article 897, the minimum age of a person who declares *wasiyyah* is 18⁴⁰.

Given the bequeathed thing, it should be an allowable thing. A will that is made regarding something prohibited should not be implemented⁴¹. Article 197 (2) of ILC mentioned that someone who is willed something is to receive what has been willed. If he rejects it, the

³⁸ Taiwo Moshood Salisu, "Will-Making (Wasiyyah) In Islam: A Juristic Exposition," *Jurnal Syariah* 24, no. 1 (2016): 176, accessed August 14, 2021, <https://ajap.um.edu.my/index.php/JS/article/view/4343>.

³⁹ Aljzaary, *Muslim Platform*, 329.

⁴⁰ Wahyul Azikin, "Hibah Dan Wasiat Dalam Perspektif Hukum Perdata (BW) Dan Kompilasi Hukum Islam," *Meraja Journal* 1, no. 3 (2018): 85, accessed November 12, 2020, <https://merajajournal.com/index.php/mrj/article/view/19>.

⁴¹ Aljzaary, *Muslim Platform*, 329.

will is abolished, and he will not have any right to it afterward. Article 199 (2) of ILC said that someone is allowed to reconsider his will or alter it whatever he wishes. Umar bin Khattab said: "Someone can change whatever he likes of his will."⁴²

The Prophet prohibited whoever bequeath more than a third of his wealth by his statement to Saad when he said, "Should I give two-thirds of my wealth away in charity?", The Prophet said: "No". Sa'ad then said, "Then half, O Messenger of Allah?". He replied: "No". Sa'ad said, "Then a third?" The Prophet replied: "Yes, A third, and a third is a lot. Verily it is better if you leave your inheritors wealthy than if you leave them poor and with their palms out begging from the people." (Al-Bukhari and Muslim). If a third does not cover all of the inheritances in the will, it must be divided equally among the different recipients, such as the distribution of the debtors. According to ILC Article 195, wills are only permitted up to a third of the inheritance except when all heirs consent. If the will exceeds one-third of the legacy, while some heirs disagree with it then the will is only executed to the extent of one-third of the inheritance⁴³. Islamic law also prohibits bequeathing something to the heir, even if it is little unless the

rest of the heirs agree to it after the death of the testator.⁴⁴ The Messenger of Allah said: "Surely, Allah gave everyone who has a right what is owed to him. Therefore, there is no bequest to an heir. (At-Tirmidhi, who graded it Sahih.). This means the property can be given to those who are not entitled under the inheritance law⁴⁵. However, the verse that establishes the condition "the will made without harming the heirs" indicates that *wasiyyah* is lawful only with the intention not to harm the heirs, even if it is not more than a third. Therefore, *wasiyyah* performed on foreigners to harm the heirs, as it is disagreeing with the aim of Islamic law, can be circumscribed by public authority⁴⁶.

⁴⁴ Mohammed Abulail and Emad Alzeyaddat, "The Ruling of Bequests in Favor of an Inheritor in Islamic Fiqh," *Dirasat: Shari'a and Law Sciences* 37, no. 1 (May 30, 2010): 300, accessed January 6, 2021, <https://journals.ju.edu.jo/DirasatLaw/article/view/106>; Anand Kumar Tripathi, "The Concept Of 'Will' Under Muslim Law: A Study," *International Journal of Law and Legal Jurisprudence Studies* 4, no. 3 (August 22, 2017): 82, accessed January 10, 2021, <http://ijlljs.in/the-concept-of-will-under-muslim-law-a-study/>.

⁴⁵ Mohammad Tahir Sabit Haji Mohammad, "The Contemporary Application Of Wasayah (Muslim Will) In Malaysia," *International Journal of Real Estate Studies* 9, no. 1 (2015): 8, https://www.utm.my/intrest/files/2017/10/02_the-contemporary-application-of-wasayah-muslim-will-in-malaysia.pdf.

⁴⁶ İbrahim Yılmaz, "İslâm Hukukunda Vasiyet Yoluyla Varisleri Mirastan Mahrum Etmeye Yönelik Tasarrufların Sınırlandırılması," *Cumhuriyet İlahiyat*

⁴² Ibid.

⁴³ Abdul Shomad, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Jakarta: Kencana Prenada Media Group, 2017), 356.

Al-Quran disallows implementation of the will unless the deceased's debts have been paid⁴⁷. Ali says: *"The Messenger of Allah ruled that the will is implemented after the debts (of the deceased) be paid."* (At-Tirmidhi and there is a weakness in its narration chain. At-Tirmidhi said concerning it, *"Verily the people of knowledge act according to it."*). Paying off debt is mandatory, whereas a bequest is an act of donation, and mandatory things take priority over voluntary ones. If any debt arises after implementing the deceased's will, the one who received the bequest shall not be responsible for such debt. He did not realize it while ignoring it, nor did he neglect what he was held liable for. The will is valid if it is something unknown or non-existent, it is a donation and an act of kindness. In case it is present, then that is good and the legacy takes place, and if it is not available then there is no harm. For example, a person makes a bequest from the offspring of his sheep or whatever the trees produce from him. If the inheritance is used up, *wasiyyah* is canceled, but if there is still any residue, then one-third of the remaining legacy can be used to carry out the *wasiyyah* of the heir⁴⁸

Dergisi 21, no. 3 (December 15, 2017): 1743, accessed January 6, 2021, <https://dergipark.org.tr/tr/pub/cuid/314744>.

⁴⁷ Nuzha, "Wasiat dan Hutang dalam Warisan," 165.

⁴⁸ Margaretha Robinson, "Pelaksanaan Wakaf Wasiat Dan Akibat Hukumnya

A person who receives a *wasiyyah* for specific purpose cannot use it for another purpose. This is because dealing with people's rights without their consent is invalid in Islam. If a person bequeaths a certain thing, the bequeather perishes, and the will becomes void, and (the testator) is not held accountable for replacing it with his other property. If one of his heirs issues a will, and some of the heirs allow the execution of the will, and some do not, then the part of the will they allowed will be executed. The part of those who do not allow such a legacy will not be executed. This is due to the Messenger of Allah's statement: *"unless the other heirs wish so"*. Whoever writes a will without testifying, is allowed as long as it is not known that it was withdrawn, in which circumstance it would be annulled and not fulfilled. *Wasiyyah* is a means to provide assistance to people in need, strengthen friendship, and kinship who are not heirs⁴⁹.

Cash Waqf

Waqf or endowment is a legal act of the donor or waqif to separate

Ketika Harta Warisan Dipailitkan," *Acta Comitas: Jurnal Hukum Kenotariatan* 5, no. 1 (April 28, 2020): 66, accessed September 12, 2020,

<https://ojs.unud.ac.id/index.php/ActaComitas/article/view/57187>.

⁴⁹ Maimun Maimun, "Konsep Wasiat Dalam Perspektif Hukum Islam," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-undangan, dan Ekonomi Islam* 9, no. 1 (2017): 147, accessed January 5, 2021, <https://journal.iainlangsa.ac.id/index.php/jurisprudensi/article/view/420>.

part of their property to be used forever or for a specified time for religious or welfare purposes according to sharia.⁵⁰ In the Arabic language, waqf means to confine, prevent, restrain, hold, prohibit, or detain⁵¹. Therefore, waqf cannot be sold, given away as a gift, or inherited. Its earnings should be spent on charity. Allah encouraged waqf by saying: *"Except that you do kindness to those brothers"* (QS 033:006). The Messenger of Allah said: *"When a man dies, his actions are cut off, except for three things: a charity whose benefit is continuous, knowledge from which benefit continues to be reaped, or the supplication of a righteous child (for him)"*. (Muslim and the Sunan compilers, except for Ibn Majah).

Elkhatib mentions five elements to make a waqf valid namely the founder of the waqf, the nature of the property (which can be a movable or immovable property), the mutawalli or trustee, the beneficiaries, and the declaration of waqf. *Waqif* should be the owner of what he endows and be qualified to

make donations⁵². The qualifications of *waqif* namely adult (*baligh*), a free person (*hurr*), and capable of transferring the property ownership from himself to the ownership of Allah⁵³. The statement is made in a written contract to avoid disagreement or misunderstanding in the future⁵⁴. The role of the *waqif* becomes inactive once the endowment is handed over to *Nazir*⁵⁵.

According to Aljzaary, making an endowment should be in clear wording, such as endowment, donation, or charity⁵⁶. The gifted thing should exist even after using its buff among other buildings and lands. What does not exist after its uses like food, perfume and the like is not valid for a waqf. These are not called endowments; rather they are considered charity.⁵⁷

The term cash waqf is defined as the confinement of a sum of money by a founder(s), (institutions, corporations, individuals, or organizations private or public), and the dedication of its usufruct in timelessness to the prosperity of the

⁵⁰ DSN MUI, *Fatwa DSN MUI No. 131/DSN-MUI/X/2019 Tentang Sukuk Wakaf* (Dewan Syariah Nasional Majelis Ulama Indonesia, 2019).

⁵¹ Mohammad Tahir Sabit Mohammad, Abdul Iman, and Ismail Omar, "An Ideal Financial Mechanism For The Development Of Waqf Properties In Malaysia," *Pusat Pengurusan Penyelidikan Universiti Teknologi Malaysia* (August 30, 2005): 10, https://www.researchgate.net/publication/279339062_An_ideal_financial_mechanism_for_the_development_of_Waqf_properties_in_Malaysia.

⁵² Aljzaary, *Muslim Platform*, 331.

⁵³ Mazen Elkhatib, "Waqf, Its Rules and Applications in Islamic Finance," *INCEIF* (March 21, 2016): 1-12.

⁵⁴ Mohamad Isa Abd Jalil, Sofri Yahya, and Anwar Pitchay, "The Contemporary Model of Waqf Structure" (Presented at the The International Conference on Islamic Leadership and Management, Brunei: Universiti Islam Sultan Sharif Ali, 2016), 1-23.

⁵⁵ Ibid.

⁵⁶ Aljzaary, *Muslim Platform*, 331.

⁵⁷ Ibid.

community⁵⁸. Cash waqf is considered to have high potential in developing the community's economy, besides that it also makes it easier for many Muslims who want to donate waqf, because cash waqf can be done with a minimum amount of IDR 10,000 or USD 0.6⁵⁹. Cash waqf can be used to sustain financing and human resource development for micro-businesses⁶⁰. Waqf has great prospective to be developed into productive assets, which are not only to support socio-religious services but also to support various social justice and educational activities⁶¹. This type of endowment is worth more than the

endowment of immovable objects, such as land⁶². The conditions of cash waqf are similar to those of non-cash waqf. The problem that occurred in managing waqf lies in the unqualified waqf manager and lack of transparency to the public⁶³. Meanwhile, transparency and accountability of endowment institutions, including good governance of *Nazir*, are important and crucial to maintaining public trust⁶⁴. The strategies to improve the

⁵⁸ AbdelMohsin, M., *Cash Waqf: A New Financial Product*. (Kuala Lumpur: Pearson, 2009).

⁵⁹ Mustafa Kamal, "Wakaf Tunai Menurut Pandangan Fiqh Syāfi'iyah Dan Fatwa Majelis Ulama Indonesia No. 2 Tahun 2002 Tentang Wakaf Uang," *Jurnal Ilmiah Islam Futura* 15, no. 1 (August 1, 2015): 108, accessed January 6, 2021, <https://jurnal.ar-raniry.ac.id/index.php/islamfutura/article/view/560>.

⁶⁰ Jarita Duasa and Mohamed Asmy Bin Mohd Thas Thaker, "A Cash Waqf Investment Model: An Alternative Model For Financing Micro-Enterprises In Malaysia," *Journal of Islamic Monetary Economics and Finance* 1, no. 2 (February 29, 2016): 169, accessed November 28, 2020, <https://jimf-bi.org/index.php/JIMF/article/view/533>.

⁶¹ Abdurrahman Kasdi, "Reinterpretasi Konsep Wakaf Menuju Pengembangan Wakaf Produktif," *ZISWAF: Jurnal Zakat dan Wakaf* 2, no. 1 (August 19, 2016): 174, accessed September 12, 2020, <https://journal.iainkudus.ac.id/index.php/Ziswaf/article/view/1540>.

⁶² Sri Lumatus Sa'adah, "Zakat Wakaf (Ziswa): Solusi Dalam Mewujudkan Pemberdayaan Umat," *IQTISHODUNA: Jurnal Ekonomi Islam* 6, no. 2 (October 2, 2017): 280, accessed January 27, 2021, <https://ejournal.iaisyarifuddin.ac.id/index.php/iqtishoduna/article/view/184>.

⁶³ Hidayatul Ihsan and Shahul Hameed Mohamed Ibrahim, "Waqf Accounting And Management In Indonesian Waqf Institutions: The Cases Of Two Waqf Foundations," *Humanomics* 27 (November 1, 2011): 265; Rininta Nurrachmi, "Implication of Cash Waqf in the Society," *Jurnal Al-Infaq* 3, no. 2 (September 14, 2012): 153, accessed January 6, 2021, <http://ejournal.uika-bogor.ac.id/index.php/al-infaq/article/view/64>.

⁶⁴ 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 (August 31, 2020): 220, accessed December 6, 2020, <http://shirkah.or.id/new-ojs/index.php/home/article/view/317>; Aam Slamet Rusydiana et al., "Cash Waqf for Developing Islamic Economy: Case Study in Indonesia," *al-Uqud: Journal of Islamic Economics* 5, no. 1 (December 15, 2020): 54, accessed January 8, 2021, <https://journal.unesa.ac.id/index.php/jie/article/view/6142>.

best practice in waqf institutions are to apply accounting and computerization⁶⁵, development of waqf education institutions, and improvement in waqf fund management quality⁶⁶. The endowment, a venerable institution, was able to see the light of day with careful accounting. The current recovery, in addition to the continued existence of the endowment institution, is a testimony that Islamic accounting has lived up to expectations in the business of disseminating information within the scope of Sharia and is an indispensable condition if the institution is to continue to exist⁶⁷.

Cash waqf must first be deposited to the Islamic Financial Institution Receiving Cash Waqf (LKS-PWU) before being used for productive waqf projects. Nazir of cash waqf must be an organization

or legal entity and registered with the Indonesian Waqf Board (BWI)⁶⁸. Nowadays, sukuk issuance is linked to cash waqf. In general, the sukuk-based waqf instrument is divided into two groups, namely sukuk linked waqf and waqf-linked Sukuk. Sukuk-linked waqf transactions are purely investment and commercial in nature, namely in the form of sukuk issued by business corporations or issuers whose use is to build commercial assets on waqf land, or are related to waqf projects. As for the waqf linked Sukuk, the basic transaction is cash waqf which is used to build social assets. Sukuk linked waqf can be temporary with a minimum term of 5 years or permanent. The source of repayment, if it is temporary, can be from waqf crowdfunding or the government budget (if the project being built coincides with a government project that has been scheduled in the Government Budget⁶⁹. Sukuk-based waqf is an innovation in empowering the many unproductive waqf assets in Indonesia.⁷⁰ The discourse of the

⁶⁵ Rosnia Masruki and Z. Shafii, "The Development of Waqf Accounting in Enhancing Accountability," *Middle-East Journal of Scientific Research* 13 (January 1, 2013): 1-6.

⁶⁶ Aam Rusydiana and Abrista Devi, "Elaborating Cash Waqf Development In Indonesia Using Analytic Network," *International Journal of Islamic Business and Economics (IJIBEC)* 2, no. 1 (June 2018): 12.

⁶⁷ Oluwaseun Sulaiman Saidu, "Highlighting the Links Between Islamic Accounting and the Cash Waqf | International Journal of Islamic Business and Economics (IJIBEC)," *International Journal of Islamic Business and Economics* 3, no. 2 (2019): 153, accessed January 14, 2021, <http://e-journal.iainpekalongan.ac.id/index.php/IJIBEC/article/view/1404>.

⁶⁸ Imam Saptono, "Pengembangan Instrumen Wakaf Berbasis Investasi Sosial Studi Wakaf Linked Sukuk," *Al-Awqaf: Jurnal Wakaf dan Ekonomi Islam* 11, no. 2 (2018): 119, accessed January 7, 2021, <https://jurnal.bwi.go.id/index.php/awqaf/article/view/20>.

⁶⁹ Ibid., 121-122.

⁷⁰ Siska Lis Sulistiani, Eva Misfah Bayuni, and Muhammad Yunus, "Analisis Hukum Islam Terhadap Pengembangan Wakaf Berbasis Sukuk Untuk Pemberdayaan Tanah Yang Tidak Produktif Di Indonesia," *Ijtihad: Jurnal*

Indonesian Waqf Board (BWI) in the future will not focus too much on asset management, but rather on productive waqf assets, namely cash waqf link sukuk. It must be appreciated because if BWI collects community waqf money and then invest it in sukuk, it is relatively safe. The Sukuk return will be given to the beneficiaries⁷¹.

The placement of cash waqf in Sukuk is in line with Waqf Core Principle (WCP). WCP suggests that cash waqf should immediately be distributed appropriately. The Nazir invests the collected cash waqf in various investment portfolios like the funds in Islamic (non-interest) financial institutions and/or Islamic financial products in both domestic and overseas banks⁷².

The Concept of Sukuk-Wasiyyah

The term *sukuk-wasiyyah* is named by the author as the combination of two words i.e. sukuk and *wasiyyah*. Sukuk in this term is a

sukuk-linked waqf that is purely investment and commercial in nature, namely in the form of sukuk issued by business corporations or issuers whose use is to build commercial assets on waqf land, or are related to waqf projects, and to optimize the benefits of waqf assets and/or returns for the public interest (*mashalih 'ammah*) which are not contradictory with sharia principles⁷³. Sukuk-waqf is regarded as an alternative tool to mobilize funds from Muslim societies sustainably and regularly. It combines Sukuk flexibility and endowment sustainability⁷⁴.

Wasiyyah is an endowment from a testator to someone or institution that becomes valid upon the deaths of the testators⁷⁵, thus, before the death of Musi, the *sukuk-wasiyyah* fund is still possessed by Musi, and accordingly the sukuk benefit is still paid to him. Since *wasiyyah* is executed after the death of someone who declares it⁷⁶, *sukuk-wasiyyah* contract comes into force soon after the death of Musi.

Wacana Hukum Islam dan Kemanusiaan 18, no. 2 (2018): 187, accessed January 8, 2021, <https://ijtihad.iainsalatiga.ac.id/index.php/ijtihad/article/view/1937>.

⁷¹ KNKS, "Menangkap Peluang Tren Wakaf Produktif," *INSIGHT Buletin Ekonomi Syariah*, 2019, 4, accessed January 13, 2021, <https://knks.go.id/storage/upload/1569306459-KNKS%20Edisi%20Keempat%20-%20September.pdf>.

⁷² BWI, BI, and IRTI-IsDB, *Waqf Core Principle: Core Principles For Effective Waqf Operation And Supervision* (International Working Group on Waqf Core Principle, 2018), 4, <https://www.bwi.go.id/wp-content/uploads/2020/05/Waqf-Core-Principles-2018.pdf>.

⁷³ DSN MUI, *Fatwa DSN MUI No. 131/DSN-MUI/X/2019 Tentang Sukuk Wakaf*, 6.

⁷⁴ Lahsen Oubdi and Abdessamad Raghbi, "Sukuk-Waqf: The Islamic Solution for Public Finance Deficits," *Munich Personal RePEc Archive (MPRA) Paper No. 85629* (April 1, 2018): 7, accessed January 9, 2021, <https://mpra.ub.uni-muenchen.de/85629/>.

⁷⁵ See Islamic Law Compilation (ILC) in article 171.

⁷⁶ Ramulyo, H, *Perbandingan Hukum Kewarisan Islam Dengan Kewarisan Kitab Undang-Undang Hukum Perdata*, 105.

The Elements of Sukuk-Wasiyyah Contract

Referring to the above-mentioned definition and conditions of these two words, the author proposes compulsory elements of *sukuk-wasiyyah* (so-called *rukun sukuk wasiyat*) as follows:

1. *Musi* or testator who acts at the same time as *waqif* or donor that donates his property. In the capital market, *Musi* is the investor.
2. *Musa lahu* or the recipient of wasiyyah who is trusted to manage the property and preferably a waqf institution or *Nazir* (the mutawalli).
3. An investment manager with functions that are stated in OJK Regulation No. 24/POJK04/2014 regarding the Guideline of Investment Manager Functions. The stated functions do not depict investment manager duty as *Nazir* or *Musa lahu*. Therefore, there must be separate entities acting as *Musa Lahu* or *Nazir*. Such segregation of duty will improve the supervisory function in the *sukuk-wasiyyah* mechanism.
4. Witnesses, especially the relatives of *Musi* like the spouse and children. Non-relatives are preferred to become witnesses to conform with Chapter Al-Baqarah verse 282.
5. *Musa bihi* or *mauquf* i.e. the donated fund in form of sukuk. It can be a certain percentage of intact sukuk or a split one

separated from the original principal.

6. *Shigat* or a statement of *Musi*. The *sukuk-wasiyyah* contract is signed on a notarial deed.
7. *Mauquf 'alaihi* or the beneficiaries of *sukuk-wasiyyah* return.

The Mechanism of Sukuk-Wasiyyah

The proposed mechanism of *sukuk-wasiyyah* is illustrated in the diagram below:

The above diagram describes as follows:

- Step 1 Declaration *sukuk-wasiyyah* contract. All parties are requested to sign the *sukuk-wasiyyah* contract before the notary.
- Step 2 The existing mechanism is still applicable and *Musi* still gets the profit of sukuk during his life.
- Step 3 When *Musi* dies, the *sukuk-wasiyyah* contract is executed. The sukuk waqf is under the trusteeship of *Nazir*.
- Step 4 *Nazir* distributes the benefit of Sukuk waqf to *Mauquf Alaihi* (beneficiaries).

The role of a notary is to notarize the will, which provides the best mechanism and option for the management of estates, especially the succession by will accordingly. This will serve as useful information for stakeholders and especially the Muslim community about the

importance of documenting a will to protect its beneficiaries.⁷⁷

Referring to the product of *wasiyyah* and cash waqf in the form of the endowment of insurance benefit. and investment benefits in sharia life insurance, the which Indonesian Council of Ulama endorsed by issuing fatwa No. 106/DSN-MUI/X/2016 stating that the number of insurance benefits to be donated is limited to a maximum of 45% and the amount of investment benefit that may be donated as waqf is as much as one-third (1/3) of *tirkah* or the property unless otherwise permitted by all heirs⁷⁸, the author suggests that this model needs further endorsement by the Council of Ulama particularly in case of *Musi* still has outstanding debts and other obligations that must be paid out. In turn, this *wasiyyah* is executed after confirming that all debts have been paid and the amount of the will does not exceed a third.

⁷⁷ Mohammad Mahyuddin Khalid, Mohd Ashrof Zaki Yaakob, and Hanifah Musa Fathulah Harun & Nadirah Abdul H, "Towards Managing the Beneficiaries Rights via Writing a Will," *Global Journal of Management And Business Research* 16, no. 3 (2016): 18, accessed August 14, 2021, <https://www.journalofbusiness.org/index.php/GJMBR/article/view/2084>.

⁷⁸ DSN MUI, *Fatwa DSN MUI No. 106/DSN-MUI/X/2016 Tentang Wakaf Manfaat Asuransi Dan Manfaat Investasi Pada Asuransi Jiwa Syariah*, 5.

CONCLUSION

By implementing *sukuk-wasiyyah*, the advantages will be obtained are as follow: (a) *Musi* or the bequeath testator still can gain the sukuk return during his life, (b) The fund principal will endure being managed by an investment manager, (c) After the death of *Musi*, the return of *sukuk-wasiyyah* is transferred under the custody of *Nazir*, (c) The return of *sukuk-wasiyyah* can be used for financing Islamic philanthropy activities.

The parties involved in the *sukuk-wasiyyah* contract are (1) *Musi* or testator, (2) *Musa lahu* or *Nazir*, (3) Investment manager, (4) witnesses Additional elements of *Sukuk-wasiyyahs* are (5) *mauquf bihi* or donation, (6) *sighat* and (7) *mauquf alaihi* or the beneficiaries.

The mechanism of *sukuk-wasiyyah* is proposed as follows: (1) Appointment of a trustworthy *Nazir*, (2) Signing of the *sukuk-wasiyyah* contract by all parties required by Islamic law to be present. The contract is signed before the notary, (3) The investor pays his fund to the Investment Manager for placement of sukuk, (4) Execution of investment that the profit share is still paid to the investor during his life. The existing sukuk mechanism is still applicable, (5) When the investor passes away, the *sukuk-wasiyyah* contract comes into force, (6) The donated fund is transferred under *Nazir* custody. The remaining balance is still kept by the inheritor of the investor.

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