



## Regulatory Model of Cash Waqf within the National Legal System and Its Challenges

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### Abstract:

**Background.** Cash waqf has emerged as an important instrument for social and economic development, yet its regulatory framework within the national legal system remains fragmented and inconsistently applied.

**Aim.** This study aims to analyze the structure, effectiveness, and gaps of the current regulatory model governing cash waqf while identifying the challenges faced by key stakeholders.

**Methods.** A qualitative legal approach is used, combining statutory analysis, case studies, and interviews with regulators and waqf managers to evaluate how existing norms function in practice.

**Results.** The study finds that although the legal framework provides a formal foundation for cash waqf management, several issues persist, including overlapping authorities, weak enforcement mechanisms, and limited institutional capacity.

**Conclusions.** A more coherent, integrated, and adaptive regulatory model is required to strengthen legal certainty and improve institutional performance in managing cash waqf.

**Implication.** The findings underscore the need for policymakers, regulators, and waqf institutions to refine governance standards, enhance coordination, and adopt technological innovations to ensure transparent and efficient cash waqf administration.

**Keywords:** Cash Waqf, Regulatory Model, National Legal System, Governance, Legal Challenges, Waqf Institutions



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## INTRODUCTION

The development of cash waqf in Indonesia has expanded rapidly as public awareness and institutional capacity continue to grow (Haryono, S., & Melis, M. (2022)). Cash waqf, as a monetary endowment channeled for long-term socio-economic benefits, has proven to be more adaptable than traditional land-based waqf. This flexibility enables wider participation

from the community and allows its impact to reach sectors such as education, health, and micro-enterprise support. However, the broader utilization of cash waqf requires a regulatory framework that ensures legal clarity, institutional accountability, and effective public oversight.

Indonesia's legal foundation for waqf management is primarily established through Law No. 41 of 2004 and Government Regulation No. 42 of 2006, later strengthened by Government Regulation No. 25 of 2018 on the implementation of waqf (Fauzia, A. (2023). These regulations formally acknowledge cash waqf and regulate its management through Nazir, who are responsible for maintaining, investing, and distributing its benefits according to sharia guidelines. Despite this foundation, the operationalization of cash waqf still faces a number of legal and administrative challenges, showing gaps between regulatory expectations and practical realities.

One of the major issues emerges from overlapping authority and unclear regulatory coordination among institutions at the national and regional levels. The roles of the Ministry of Religious Affairs, the Indonesian Waqf Board (BWI), sharia financial institutions, and local governments are often interpreted differently, resulting in delays or inconsistencies in program execution (Naimah, H. (2021). This condition is compounded by the absence of standardized operational procedures for Nazir, which leads to varied quality of governance and accountability across institutions.

Another challenge relates to the limited capacity of Nazir in managing cash waqf as a financial asset that requires professional investment skills. Many Nazir still operate with minimal administrative resources, insufficient financial literacy, and limited access to professional investment instruments. These constraints contribute to the suboptimal performance of cash waqf programs, even when regulatory provisions allow flexible and productive investment models.

Public trust also plays a crucial role in the effectiveness of cash waqf. Although regulatory frameworks provide mechanisms for reporting and supervision, transparency and disclosure practices remain inconsistent. This situation raises concerns about the reliability and security of cash waqf funds, especially when cases of mismanagement or unclear reporting occur (Ismail, A. G. (2015). Strengthening legal certainty and compliance is therefore essential to maintaining trust and encouraging broader participation.

Within this context, the main problem addressed in this research concerns how the current regulatory model of cash waqf functions within Indonesia's national legal system

and why various implementation challenges persist (Arbaien, M. F., Heni S., Listia A. (2025). The study aims to analyze the regulatory structure, evaluate its effectiveness, and identify internal and external factors that restrict the optimal governance of cash waqf. Understanding these dynamics is important not only for policymakers but also for Nazir, financial institutions, and the broader public.

For the purposes of this research, cash waqf is defined as a monetary endowment entrusted to Nazir, invested according to sharia principles, and whose returns must be allocated to public benefit in accordance with donor intentions. By examining both the normative framework and real-world constraints, this study seeks to offer a comprehensive understanding of the regulatory gaps that affect the development of cash waqf. Ultimately, the findings are expected to contribute to efforts in strengthening legal certainty, improving governance standards, and enhancing the role of cash waqf as a sustainable instrument for national welfare.

## **LITERATURE REVIEW**

The concept of cash waqf has been widely discussed in contemporary Islamic economic literature as an innovative instrument capable of generating sustainable social and economic benefits. Early theoretical foundations emphasize that cash waqf represents a shift from traditional land-based endowments toward more liquid and productive financial mechanisms, enabling broader public participation and more flexible asset allocation (Bahtiar, E. (2019). In the Indonesian context, scholars highlight that the recognition of cash waqf within formal regulations strengthens legal certainty and legitimizes its development as part of the national economic system (Gustina, G., Lukman, S., Sakti, M. R. P., & Alfarisi, M. F. (2024). These theoretical perspectives provide a basis for understanding the importance of a coherent regulatory structure to ensure the proper functioning of cash waqf.

Research examining governance mechanisms consistently underscores the need for accountability, transparency, and professional management within waqf institutions (Huda, N. (2020). Studies show that effective regulation must address issues such as institutional coordination, reporting standards, and financial supervision to maintain public trust (Ismail, A. G. (2015). In Indonesia, the role of Nazir has become central to the discourse on waqf governance, as their administrative capacity and investment skills significantly influence the outcomes of waqf programs (Mubarak, J. (2019). Literature suggests that without sufficient

training, adequate resources, and clear operational guidelines, Nazir often struggle to manage cash waqf in a productive and compliant manner.

Legal scholarship also highlights challenges in the harmonization of regulations related to waqf. Although Law No. 41 of 2004 provides the principal legal framework, subsequent regulations such as Government Regulation No. 42 of 2006 and Government Regulation No. 25 of 2018 have introduced new provisions that sometimes overlap or lack operational clarity. Several studies emphasize the need for regulatory refinement to avoid fragmented authority, especially between the Ministry of Religious Affairs and the Indonesian Waqf Board (BWI), which frequently creates inconsistencies in policy implementation.

In recent years, scholars have expanded the discussion to include technological innovation in the management of cash waqf. Digital platforms and financial technologies are seen as tools that can enhance transparency, monitoring, and public accessibility.. However, this literature notes that regulatory frameworks must adapt to ensure data protection, prevent misuse of digital platforms, and support standardized reporting practices. These developments highlight the growing intersection between waqf governance and digital infrastructure.

Furthermore, empirical studies show that successful cash waqf programs depend not only on regulations but also on institutional synergy between waqf managers, financial institutions, and government bodies. Literature suggests that strong inter-institutional cooperation contributes to more effective supervision, risk mitigation, and program scalability. Weak coordination, on the other hand, has been identified as a recurring obstacle that undermines the effectiveness of cash waqf governance in several regions.

Overall, the reviewed literature demonstrates that cash waqf requires an integrated regulatory model supported by clear legal mandates, competent Nazir, strong institutional collaboration, and adaptive mechanisms that respond to technological changes. These theoretical and empirical discussions form the foundation for analyzing the gaps and challenges in Indonesia's current regulatory framework for cash waqf.

## **METHOD**

The research employs a qualitative approach with a normative-empirical orientation to examine the regulatory model governing cash waqf within the national legal system. The normative dimension focuses on the analysis of laws and regulations related to waqf,

including Law No. 41 of 2004, Government Regulation No. 42 of 2006, and Government Regulation No. 25 of 2018, while the empirical dimension explores how these regulatory provisions operate in practice. The research subjects consist of regulatory documents, institutional reports, and stakeholders involved in cash waqf management, particularly officials from the Ministry of Religious Affairs, the Indonesian Waqf Board (BWI), and selected Nazir institutions.

The research was conducted between January and June 2025, with primary data collection carried out in Jakarta, Bandung, and Yogyakarta as regions where cash waqf programs are actively implemented. The research instrument includes structured interview guidelines, document analysis sheets, and observation checklists designed to capture information regarding regulatory interpretation, institutional coordination, and practical challenges in cash waqf governance.

The research procedure begins with document identification and regulatory mapping to outline the legal structure governing cash waqf. This is followed by field data collection through interviews and direct observation of administrative processes within waqf institutions. Triangulation techniques are applied to validate information by comparing findings from regulatory analysis, institutional documents, and stakeholder interviews.

Data analysis employs an interactive model consisting of data reduction, data display, and conclusion drawing. Legal materials are categorized based on regulatory themes, while empirical data are coded to identify implementation gaps, governance challenges, and institutional constraints. The combined analysis allows for a comprehensive assessment of the coherence, consistency, and practical effectiveness of the current regulatory model of cash waqf. Through this methodology, the study aims to generate findings that accurately reflect both the normative ideals of the legal framework and the empirical realities faced by institutions managing cash waqf.

## DISCUSSION

### Coherence and Effectiveness of the Existing Regulatory Framework

The coherence of Indonesia's regulatory framework for cash waqf remains a decisive factor in determining the success of its implementation. Although Law No. 41 of 2004 establishes the fundamental principles and legal recognition of cash waqf, the operational rules detailed in Government Regulation No. 42 of 2006 and Government Regulation No. 25 of 2018 present challenges when interpreted and applied in real institutional settings. The absence of clear harmonization between these regulations results in overlapping mandates, especially in relation to supervision, administrative approval, and reporting procedures. As a consequence, waqf institutions frequently experience uncertainty regarding procedural compliance, creating delays and inconsistencies in program execution (*Suhadi, A. (2021)*).

Furthermore, the legal framework does not sufficiently elaborate on technical operational standards needed to manage cash waqf effectively. Key aspects such as investment criteria, risk management procedures, valuation mechanisms, and accountability structures are described only in broad terms, leaving significant room for interpretation. This wide regulatory latitude leads to disparities in governance quality among Nazir, where some adopt conservative practices due to regulatory ambiguity while others engage in investment activities with minimal oversight. Such disparities weaken the national consistency of cash waqf governance and hinder efforts to build a predictable and trustworthy waqf ecosystem.

Another critical issue concerns the alignment of cash waqf regulations with broader financial sector rules. Although cash waqf intersects closely with banking, investment, and sharia finance industries, the waqf regulatory framework has yet to fully integrate principles from these sectors (*Amalia, S. (2022)*). For instance, the requirements for reporting, financial disclosure, and audit mechanisms for waqf institutions are not aligned with the standards applied in sharia financial institutions. This misalignment complicates cooperation between Nazir and Islamic financial entities, as the operational and compliance expectations differ significantly. Consequently, the ability of Nazir to access diverse financial instruments and investment opportunities becomes constrained, limiting the potential growth of cash waqf assets.

Moreover, the rapid digital transformation of waqf administration has outpaced the regulatory environment (*Hefni, M. (2021)*). Digital applications for cash waqf collection, donor records, and transparency reporting have become widely used, yet the existing regulations do not address the governance of digital platforms, cybersecurity standards, or verification mechanisms for online waqf transactions. This regulatory void raises concerns about data protection, system reliability, and consistency in digital reporting practices. As institutions independently develop their own digital systems, fragmentation becomes more pronounced and the lack of uniform standards poses risks to donor trust and institutional credibility.

In addition, the regulatory model has not fully accommodated regional disparities in institutional capacity. Many Nazir operating at the district or community level lack the resources, administrative competence, and financial expertise required to meet national regulatory expectations. Without a coherent framework for capacity-building, supervision, and technical support, these institutions find it difficult to comply with the legal standards, resulting in uneven implementation across regions. The legal framework's effectiveness is therefore diminished not only by regulatory gaps but also by the unequal capabilities of its implementing actors.

Taken together, these challenges suggest that while Indonesia has established a solid statutory basis for cash waqf, the existing regulations remain fragmented, insufficiently harmonized, and inadequately responsive to contemporary financial and technological developments. To enhance coherence and effectiveness, reforms must focus on regulatory integration, clearer operational guidelines, alignment with financial sector standards, stronger digital governance provisions, and systematic capacity-building for Nazir. Strengthening these areas is crucial for creating a consistent, accountable, and high-performing cash waqf system capable of meeting national socio-economic goals.

### **Institutional Capacity and Implementation Challenges**

Institutional capacity remains one of the most decisive factors affecting the success of cash waqf governance in Indonesia. Although the regulatory framework provides space for the productive management of cash waqf, many Nazir institutions struggle to meet the operational demands expected by national regulations (Maesya'bani., Dede A.F. (2024). One of the key limitations lies in human resource competence. Numerous Nazir, especially those operating at the local or community level, lack personnel with adequate financial literacy, investment management skills, and administrative expertise. This limitation affects their ability to manage endowment funds professionally, evaluate investment feasibility, and maintain proper financial documentation. As a result, cash waqf programs often fail to reach optimal performance despite the existence of legal provisions supporting productive waqf initiatives.

Another significant challenge relates to institutional infrastructure. Many waqf institutions operate with minimal technological support, limited office facilities, and insufficient administrative tools. These constraints hinder effective data management, reporting consistency, and timely communication with donors and regulatory authorities. Digital transformation has been expanding within the waqf sector, yet the adoption of technological tools remains uneven. Large national institutions tend to utilize digital platforms for collection, monitoring, and reporting, while smaller Nazir still rely on manual systems. This technological gap contributes to disparities in transparency, efficiency, and public accountability across waqf institutions.

Coordination challenges also play a central role in limiting effective implementation. Cash waqf administration involves multiple institutions, including Nazir, Islamic financial institutions, the Ministry of Religious Affairs, and the Indonesian Waqf Board (BWI). However, communication between these entities is often fragmented, leading to inconsistent interpretations of regulatory requirements and delays in administrative processes. Examples include unclear procedures for registering Nazir, inconsistencies in reporting formats, and overlapping supervisory duties (Rahman, F. (2024). Without strong coordination mechanisms, regulatory enforcement tends to be reactive rather than systematic, weakening overall governance.

Financial constraints further complicate the implementation of cash waqf. Many Nazir do not have access to professional investment instruments or advisory services, limiting their ability to grow waqf assets sustainably. Some institutions prefer conservative investment strategies—not because they are optimal, but because they lack guidance and confidence in navigating more complex financial products. In addition, limited funding for operational activities often forces Nazir to rely on volunteers, affecting professional consistency and long-term program planning.

Transparency and accountability also remain recurring concerns. Although regulations require periodic reporting and clear documentation, many Nazir face difficulty in meeting these standards because of limited administrative systems and inconsistent internal controls (*Rifai, A. (2022)*). The absence of standardized tools for financial reporting and monitoring contributes to variations in accountability practices. This inconsistency undermines donor confidence and reduces the potential for long-term public participation in cash waqf programs.

Moreover, regional disparities create further obstacles in implementation. Nazir located in rural or remote areas often lack access to training programs, investment networks, and financial institutions. These disparities lead to uneven development of cash waqf across regions, with some areas experiencing rapid growth while others lag behind. Without targeted capacity-building initiatives, the national effort to strengthen cash waqf governance is likely to remain fragmented and inconsistent.

Overall, institutional capacity and implementation challenges reflect structural weaknesses that cannot be addressed solely through regulatory improvements. Enhancing Nazir competence, investing in technological infrastructure, strengthening inter-institutional coordination, and ensuring equitable access to financial resources are essential steps to ensure effective and sustainable management of cash waqf.

## CONCLUSION

This study demonstrates that the regulatory framework governing cash waqf in Indonesia provides a formal legal foundation but remains limited in its operational coherence and practical effectiveness. Although Law No. 41 of 2004 and its derivative regulations have legitimized cash waqf within the national legal system, inconsistencies and gaps persist due to overlapping mandates, insufficiently detailed operational guidelines, and limited

alignment with contemporary financial and technological developments. These regulatory shortcomings contribute to uneven governance practices among waqf institutions and hinder the creation of a unified and accountable waqf management ecosystem.

The findings also highlight that institutional capacity plays an equally critical role in shaping the performance of cash waqf programs. Many Nazir face constraints in financial literacy, administrative competence, technological adoption, and resource availability. These limitations impair their ability to implement regulatory standards effectively, manage investments professionally, and maintain transparency in reporting. Weak coordination among relevant institutions further exacerbates implementation challenges, creating procedural delays and varied interpretations of regulatory requirements.

Overall, the study concludes that strengthening the governance of cash waqf requires more than statutory reform. It necessitates a combination of regulatory harmonization, clearer operational mechanisms, enhanced capacity-building for Nazir, and the integration of digital governance tools. By addressing both regulatory and institutional challenges simultaneously, Indonesia can move toward a more coherent and effective cash waqf system capable of supporting long-term socio-economic development.

## **IMPLICATION**

**Implications for the Academic World.** This study offers a clearer understanding of regulatory and institutional issues in cash waqf governance, providing a basis for further research on legal reform, governance models, and interdisciplinary approaches combining law, finance, and public administration.

**Implications for Society.** The findings highlight the need for stronger transparency and professionalism, which can increase public trust and encourage wider participation in cash waqf as a tool for social welfare and community empowerment.

**Implications for the Nation and State.** The study emphasizes the importance of regulatory harmonization, improved institutional coordination, and standardized operational procedures to support national development goals and strengthen the role of waqf in public welfare programs.

Implications for the International Community. The Indonesian experience presented here can serve as a reference for other countries, fostering international dialogue and collaboration on developing effective and modern cash waqf governance systems.

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