

## THE URGENT NEED FOR THE ESTABLISHMENT OF WAQF BANK: THE CASE OF INDONESIA

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**Abstract:** Indonesia is crowned as country with enormous Muslim inhabitants in the world which also has a huge potential in improving the welfare of its people through Islamic social finance instruments, especially money *waqf*. Social funds such as *waqf* are often ignored due to their non-commercial nature, whereas it has tremendous potential when it productively managed. Indonesia require a better *waqf* management and one of the solution is to establish a *waqf* bank. *Waqf* bank is an institution which is detach from any orientation of economic profit and fully dedicated to social welfare. Yet, a further research is still required to discover a proper *waqf* bank business entity. This research was engaging a normative juridical research method with analytical descriptive approach. In maximizing the money *waqf* management in Indonesia, the business entity model which can be established is Sharia Banking, with a focus as a manager of money *waqf* which is in line with its aim and function carried out in Sharia Banking Law, Sharia Bank also has a social function, one of which as a Sharia Financial Institutions of Money *Waqf* Recipient.

**Keywords:** Islamic social finance; Money *waqf*; Sharia banking; *Waqf* bank.

### 1. Introduction

Data from Global Islamic Finance Report (GIFR) in 2017, stated that 87.19% of Indonesia's 237 million populations are Muslim. And this is become a very significant main capital for Indonesia in developing Islamic economics. Islam has governed all aspects of human life, whether it is something related to *aqidah*, *Syariah*, and *akhlak*. Economic activity which is part of *muamalah* activities are also regulated in Islam. The obligations to conduct of Islam guidance as a whole (*kaffah*), including the economic activities is the right of citizens which is protected under 1945 Constitution amendments specifically Article 28E:

“(1) Each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return. (2) Each person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience. (3) Each person has the right to freely associate, assemble, and express his opinions.”

The guarantee of protection and compliance of citizen's rights need to be supported by government policy in implementing basic norms in the 1945 Constitution ([Muhammad, 2016](#)).

Currently, the needs of Muslim in Indonesia of economic activities in accordance with the religion guidance is accommodate by a dual economic system, where those are recognized and carried out based on two different principles, namely the conventional economic system and Sharia economic system. The conventional economic system underlies all its activities based on conventional economic system and on the other hand the Sharia economic system underlies its activities based on Sharia Economic system.

Islamic economic is a *rabbaniyah*, *ilahiyyah*, *insaniyyah*, morality and mid economy ([Muhammad, 2007; Shama, 2018](#)). This value has an impact on all aspects of the economy in the sector of assets in the form of production, consumption, circulation and distribution ([Yusuf Al Qardhawi, 1995](#)). As a *ilahiyyah* economy, Islamic

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economic has very high aspects of transcendence, holy, which combines it with material aspects, the world (profaneity). The starting point is Allah and the aim is to seek Allah's *Fadl* through the way (*thariq*) which doesn't contradict what Allah has outlined (Muhammad, 2007; Lynn, 2015). In connection with the actualization of *ilahiyah* value, it is also recognized that this value is as the soul of Islamic economic activity, therefore all concepts and applications must not deviate from the corridor of this value, even more emphasized that this value must not separate from all human being activities (Arifin, 2008; Alahoul, Azizan, & Alwi, 2016). Conceptually exhibit Islamic guidance regarding muamalah iqtishadiyyah (economic activities) is a whole and comprehensive system, as the affirmation of Allah, *udkhulu fil-alsilmi kaffah*, it means to enter into Islam completely (and perfectly) (Mardani, 2011).

The definition of sharia economics in Indonesian laws and regulations is contained in the Supreme Court Regulation No. 2 of 2008 concerning Compilation of Sharia Economic Law (hereinafter written KHES). Article 1 Number 1 KHES states that Sharia Economy is a business or activity carried out by individuals, groups of people, business entities that are incorporated or not incorporated to comply with commercial and non-commercial needs according to sharia principles. It was also stated that Islamic economic is a set of legal norms originating in the Qur'an and *al-Hadist* that govern the economy of mankind (Zainuddin, 2008). KHES is determined by considering the needs of guidance for judges regarding economic law according to sharia principles for the success inspection and resolution of Islamic economic disputes as referred to Article 49 letter i along with the explanation of Law No. 7 of 1989 as amended by No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts (Religious Court Law), Law No. 19 of 2008 concerning State Sharia Securities (SBSN Law) and Article 55 of Law No. 21 of 2008 concerning Sharia Banking (Sharia Banking Law).

One sub-system of the Islamic economic system is the Islamic financial system. The financial system is the economic structure in a country that plays a role and performs activities in various financial services which organized by financial institutions (Andri, 2010). The financial system has a very vital function in the modern economy (Andri, 2010). The financial system serves to provide a payment mechanism, provide funds for financing / credit, the creation of an instrument of exchange (money), and as a medium of savings mobilization (Andri, 2010). Sharia financial system is a financial system which confront those who need funds and those who have excess funds through financial products and services in accordance with sharia principles (Andri, 2010). Sharia finance in the Islamic economic system, is not only about commercial finance, but also includes social finance with the same goal of achieving *falah* (prosperity in the world and the hereafter) (Ascarya, 2016). Islamic commercial finance such as partnerships, buying and selling, rent and so on, as well as Islamic social finance such as *zakat* and *waqf*.

The sharia financial system in Indonesia is implemented by financial institutions which its activities are based on sharia principles or also called the Sharia Financial Services Institution (LJKS) consisting of Sharia Banking, Sharia Capital Markets, Sharia Insurance, Sharia Pension Funds, Sharia Financing Institutions, and Other Sharia Financial Services Institutions. Sharia Banking consists of Sharia

Commercial Banks (BUS), Sharia People Financing Banks (BPRS), and Sharia Business Units (UUS).

The sharia financial industry in Indonesia has unique characteristics compared to other countries, such as Malaysia and the Gulf Cooperation Council (GCC) countries which more focus on investment banking and Islamic financial markets. The fundamental difference is located in the orientation of the retail segment and the industry complexity which includes various types of Islamic financial services institutions, such as the Sharia People Financing Bank (BPRS) and Islamic microfinance institutions that play a role in construct the unique characteristics of the Sharia finance industry in Indonesia.

Sharia financial institutions have two roles at the same time, namely as a business entity and social entity (Andri, 2010). As a business entity, sharia financial institution serve as an investment manager, investor, and service provider (Andri, 2010). As a social entity, Sharia financial institutions serve as managers of social funds for the collection and distribution of zakat, infaq, and alms funds (Andri, 2010). Social funds such as waqf are often ignored due to their non-commercial nature, whereas based on data released by GIFR in 2017, the potential for cash waqf calculated by the Indonesian Waqf Board (BWI) is estimated reach up to Rp. 120 trillion (around US \$ 8.93 billion) per year. This potential must be optimally utilized, especially in the development of Sharia Financial Institutions in order to achieve people's welfare.

Waqf is one of the Sharia economic scope that has great potential in improving people's welfare. *In Islamic terminology, waqf means "a dedication of property either in expressed terms or by implication, for any charitable or religious object, or to secure any benefit to human being"* (Siti, 2006). Waqf in Indonesia have been specifically regulated in the Law of the Republic of Indonesia No. 41 of 2004 concerning Waqf (Waqf Law) and Government Regulation No. 42 of 2006 concerning the Implementation of the Waqf Law (PP Waqf). Article 1 Paragraph 1 of the Waqf Law states that Waqf is a legal act of *Wakif* to separate and / or surrender a portion of his property to be used permanently or for a certain period in accordance with their interests for the purposes of worship and / or public welfare according to sharia. The majority (jumhur) Ulama provides a definition of waqf, that is to keep an object that can be utilized, while the asset's *'ain* neither lost nor diminished due to loss of its benefits, as long as the use of property is permitted according to Islamic law (Nurul, 2013).

Waqf property includes both movable and immovable objects. One of the waqf property in the form of movable objects is money. As the purpose of waqf is to utilize waqf property in accordance with its function, the presence of a professional *Nazhir* is indispensable in managing money waqf, so that the efficiency of the money continues to grow and be able to provide maximum benefits. *Nazhir* is the party that receives the *waqf* property from a *waqif* to be managed and developed according to its purpose.

Currently, management of money waqf in Indonesia are involving many parties, namely (1) the Indonesian Waqf Board (BWI) as supervisor of the management and development of money waqf which conducted by *Nazhir*, (2) *Nazhir* as manager of money waqf, (3) Sharia Financial Institutions Receiving money Waqf (LKS-PWU) as the party that issues the money waqf certificate, and (4) general

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director of waqf empowerment which act on behalf of the minister of religion as supervisors of waqf money that conducted by LKS-PWU.

LKS-PWU only acts as the recipient of a money waqf and issues a money waqf certificate, but its management remains the responsibility of Nazhir. Certificate of waqf money is a letter of evidence issued by LKS-PWU to the waqif and nazhir regarding the submission of money waqf. Assignment of waqf money through LKS-PWU is intended as a deposit (wadi'ah), then Nazir can manage it by considering the will of the waqif and the investment manager's recommendation (if necessary).

The mechanism of money waqf management is considered still not optimal. There are several factors that cause waqf in Indonesia has not yet played a role in empowering the people's economy, including: (1) public understanding of the laws and objects represented, (2) socialization, (3) institutional issues that are still not maximally collecting waqf money, and (4) lack of government sensitivity to exploit the potential for money waqf, so that public access to channeling waqf is still not optimal and transparency in management and allocation of waqf funds is not optimal, and this can reduce people's trust to distribute waqf (Qurratul'Aini, 2017). Lead to the discovery of ideas regarding establishment of waqf bank in Indonesia. According to Mohammad Tahir Sabit Haji Mohammad of Malaysia University of Technology, waqf bank is defined as follows (Mohammad, 2011):

*"waqf bank is intended to mean as one that is an interest free, not-for profit, and social bank the capital of which is dedicated mainly to social welfare, provision of micro financing, and economic development of the poor and under privileged."*

Waqf bank is an institution which is free from any orientation of economic profit and is fully dedicated to social welfare by providing financing for small businesses and focusing on the economic development of marginal communities. Once social finance and commercial finance can be implemented optimally, it can produce enormous potential in supporting development and improving people's welfare. It is interesting to investigated what is the model of a waqf bank business entity in the context of optimizing the management of waqf money in Indonesia.

## **2. Research Methodology**

This research was engaging a normative juridical approach. The normative juridical approach method is a method that focuses on researching secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Secondary data has a very broad scope, including legislation, literature books, legal journals, newspapers, magazines, to official documents issued by the government (Soerjono, 2006). In this study, a waqf bank business entity model will be examined in the context of optimizing the management of waqf money in Indonesia.

The research specifications that used in this study are analytical descriptive. The specification of analytical descriptive research is by making systematic depiction of facts including the description of applicable regulations (Soerjono, 2006). The description research aims to solve the actual problems currently faced by collecting data or information to be compiled, explained, and analyzed (Beni, 2008). Therefore, this research will illustrate various legal issues obtained through a positive legal inventory, the discovery of the principle of law and the discovery of the law in concreto concerning the waqf bank business entity model which aims to

obtain a comprehensive and systematic picture through a process of analysis, using legal regulations, legal principles, and legal understanding regarding Waqf Bank.

### **2.1 *Theo Waqf banking entity model in optimizing the management of money waqf in Indonesia***

One of the scope of Islamic economics is waqf. Waqf in Indonesia is regulated in the Waqf Law. Article 1 Paragraph 1 of the Waqf Law states that Waqf is a legal act of *Wakif* to separate and / or surrender a portion of his property to be used permanently or for a certain period in accordance with their interests for the purposes of worship and / or public welfare according to sharia. *Waqf literally means detention (Habas), but its legal meaning is the dedication of a property or giving it away in charity for the benefit of certain property for a good purpose other religious, pious, or charitable (Abdur Rahman, 2015).* Waqf has enormous potential in improving the welfare of many people and one form of waqf property is money.

The Indonesian Ulema Council (MUI) has issued a Fatwa on Money Waqf stipulating that money waqf (cash waqf / waqf al-Nuqud ) is waqf which conducted by a person, group of people, institutions or legal entities in the form of money. Included in the definition of money according to this fatwa are securities. The legal status of money waqf is *jawaz* (permissible) and waqf money may only be distributed and used for matters that are permitted by *syar'i* as well as the principal value money waqf must be guaranteed its sustainability, may not be sold, granted, or inherited.

As implementing regulations of the Waqf Law and Waqf government regulation (PP) have been legitimized by the Minister of Religion of the Republic of Indonesia No. 4 of 2009 Concerning Administration of Money Waqf Registration (PMA Admistration Registration for Waqf Money). There are differences in the scope of the money waqf object as specified in the MUI Fatwa Regarding Money Waqf and the scope money waqf as specified in the laws of waqf.

MUI Fatwa About Waqf money determines that securities are included in the scope of money, so when referring to the fatwa, money waqf not only in the form of money, but also in the form of movable objects, namely securities, but the provisions of waqf legislation distinguish between waqfs of movable objects in the form of money (money waqf) with waqf of movable objects other than money including securities. Then the definition of money waqf in this article is money waqf as referred to waqf legislation.

Submission of waqf money in Indonesia is submitted through LKS-PWU which already has a ministerial permit on the recommendation of BWI. LKS-PWU submitted the waqf certificate of money as evidence of the receipt of waqf assets in the form of money from the waqf. Money Waqf Certificate is a letter of evidence issued by LKS to Wakif and Nazhir regarding the submission of Money Waqf. Then the waqf certificate was registered with the Minister of Religion by LKS-PWU on behalf of Nadzhir.

LKS-PWU places waqf money into a safekeeping account (*wadi'ah*) in the name of Nazhir designated by the wakif, meaning LKS-PWU has a product of receiving funds based on the deposit agreement provided that the LKS-PWU can manage the deposit for safekeeping until nazhir determines otherwise, thus the contract used is the *wadi'ah Yad Dhamanah*.



Article 48 PP waqfs stipulate that the management and development of waqf assets can only be done through investments in products of Islamic Financial Institutions and / or Islamic financial instruments. Nazhir can only manage and develop the properties of money waqf at the said LKS-PWU if the LKS-PWU accepts the waqf for a certain period of time. Management and development of waqf assets carried out at a Sharia bank must follow the Savings Insurance Institution program and if done in the form of investments outside Sharia banks must be insured with Sharia insurance.

In reality, the mechanism for managing waqf money has not yet had a significant impact on improving people's welfare. Although Nazhir has the authority to manage money waqfs, the waqf PP limits it by determining that the management and development of money waqfs can only be done through investments in Islamic Financial Institution products and / or Islamic financial instruments, meaning Nazhir can only determine in Islamic Financial Institution products or Islamic financial instruments in which waqfs will be invested. On the other hand with this mechanism the LKS-PWU actually participates in managing waqf money through its products, but the full authority to determine which products are used remains in Nazir's hands. So that both Nazhir and LKS-PWU have limited authority in managing waqf money in Indonesia.

Mohammad Tahir Sabit explained that the function of money waqf as a social instrument in the welfare of the people could be a function of the existence of a waqf bank (Fahmi, 2017). According to M.A. Mannan, waqf bank is a bank that holds waqf funds. Money Waqf can act as a supplement to funding various social investment projects managed by Islamic banks, so that it can turn into a waqf bank. The establishment of a waqf bank could also be allowed, if it could be for the benefit of waqf, its beneficiaries, and is in the interest of the public (maslahah amah) (Mohammad, 2011).

Referring to the waqf legislation in Indonesia, the submission of waqfs must be made through LKS-PWU. There are several types of LKS which are referred to as Islamic Financial Services Institutions (LJKS) as specified in Law No. 21 of 2011 concerning the Financial Services Authority (OJK Act) which consists of Sharia Banking, Sharia Capital Markets, Sharia Insurance, Sharia Pension Funds, Sharia Financing Institutions, and Other Sharia Financial Services Institutions. Sharia Banking consists of Sharia Commercial Banks (BUS), Sharia People Financing Banks (BPRS), and Sharia Business Units (UUS).

Waqf banks should be in the form of institutions that act as financial intermediaries, considering that waqf banks play a role not only as recipients of money waqfs but also managers of these waqfs. Sharia financial services institutions that act as intermediary institutions are Sharia banking and Baitul Maal Wat Tamwil (BMT) which are included in the category of Sharia Microfinance Institutions (LKMS).

BMT is a microfinance institution with Sharia principles that has special characteristics, namely Baitul Maal which contains social values which raise funds and distribute funds to the public in the form of zakat, infaq sodaqoh, besides that there is a Tamwil element which contains commercial business values that collect and distribute funds to the public middle down (Nourma, 2017). The results of the current conclusions can be concluded that until now BMT management still uses various regulations, this is due to the special characteristics of BMT and types of

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legal entities that can be either cooperative or limited liability company ([Nourma, 2017](#)).

Until now there are no laws that specifically regulate BMT in Indonesia, besides that the narrow range of BMT is not on a national scale, it will be a significant obstacle if the waqf bank in Indonesia is a BMT business entity, considering that waqf banks do not only have the role of managers waqf funds but also recipients of waqf funds, so with Indonesia's vast territory and a very large population, an institution is needed that is able to reach all levels of society both in terms of revenue but also its management. On the other hand BMT can be a strategic partner of waqf banks in the distribution of financing through the management of waqf money, according to the characteristics of BMT which have a significant role in community empowerment and micro businesses that do not have access to banking institutions.

Recently, to increase waqf acceptance, BWI collaborated with 18 (eighteen) national Sharia Banks incorporated in the LKS-PWU whose task was to increase waqf acceptance by developing various payment innovations. Islamic banking as a business entity has an intermediation function that carries out profitable business activities and as a social entity the Islamic banking carries out its social function as a Baitul Mal institution and collector of social funds derived from waqfs of money, as specified in Article 4 of the Law No. 21 of 2008 concerning Sharia Banking (Sharia Banking Law).

According to the Sharia Banking Law, a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and / or other forms in order to improve the people's standard of living. The sharia banking industry has the greatest assets compared to other sharia financial institutions, so sharia banking has a very strategic role in the development of the sharia financial industry, including in Indonesia. GIFR data for 2017 records that the growth of the sharia banking industry has experienced a rapid growth of an average of 19.95% in the last five years, although it slowed down in 2014 and 2015. Industrial growth was also seen from an increase in market share to more than 5% of total Indonesian banking assets in 2016. Total assets of Islamic banking were recorded at Rp. 365.65 trillion (US \$ 27.21 billion) or 5.33% compared to total commercial bank assets of Rp. 6,852 trillion or US \$ 509.97 billion.

The Financial Services Authority (OJK) as a regulator and supervisor of sharia banking in Indonesia has established a strategic plan in the development of sharia banking as outlined in the 2015-2019 Sharia Banking Roadmap for Indonesia. The roadmap contains strategic issues or fundamental problems that still occur in the sharia banking industry, as well as policy directions and activity programs that support the achievement of policy directions and involve various stakeholders in the framework of developing the sharia banking industry that can make a significant contribution to the national economy which is based by sustainable economic growth, equitable development, the stability of the financial system and the highly competitive Islamic banking industry.

Strategic issues faced and impact on the development of Islamic banking in Indonesia include the incompatible vision and lack of coordination between governments and authorities in the development of Islamic banking, inadequate capital, small scale industries and individual banks and low efficiency, low cost of

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funds expensive which has an impact on the limitations of the financing segment, products that are not varied and services that do not meet public expectations, the quantity and quality of Human Resources (HR) are inadequate and information technology (IT) that has not been able to support the development of products and services, understanding and public awareness is still low, and regulation and supervision are still not optimal.

Facing the strategic issues of national sharia banking, a vision for developing national sharia banking was developed, namely "Realizing sharia banking that contributes significantly to sustainable economic growth, equitable development and financial system stability and high competitiveness." The vision is then elaborated in the form of policy directions along with work program and implementation plan consisting of seven policy directions, namely strengthening the policy synergy between the authorities and the government and other stakeholders, strengthening capital and business scale and improving efficiency, improving the structure of funds to support the expansion of the financing segment, improving service quality and product diversity, improve the quantity and quality of HR and IT and other infrastructure, increase literacy and community preferences, and strengthen and harmonize regulation and supervision.

One step to improve bank stability is to diversify its funding structure. Islamic banking is expected to balance the market share of the commercial and corporate segments, as well as increase support for cross-border trading activities. Other funding sources must also be considered to strengthen the liquidity and authorized capital of Islamic banks for the expansion of financing distribution, one of which is through optimizing the management of waqfs, zakat and shadaqah as well as in order to increase the integration of social functions into Islamic bank business activities.

The collection of waqf funds in Islamic banking, on the one hand can help strengthen the capital structure of Islamic banks and on the other hand the management of money waqfs can be done in a professional and more structured manner. The reach of Sharia banking which is currently quite large both through branch offices and through financial services without offices (smart behavior) is expected to be able to reach all levels of society in collecting waqf funds and channeling them back to achieve the objectives to be achieved in waqf management money and sharia banking itself, which is to improve the distribution of people's welfare.

Examples of banks that have optimized the implementation of commercial finance and social finance are Social Islamic Bank, Ltd (SIBL) in Bangladesh. SIBL is an extraordinary banking model, the aim of which is to eradicate poverty and empower families through social investment based on a participatory economic system. *Targeting poverty, SIBL is indeed a concept of 21<sup>st</sup> century participatory three sector banking model in one. In the formal sector, it works as an Islamic participatory commercial bank with human face approach to credit and banking on the profit and loss sharing. it has a Non-Formal banking sector too with informal finance and investment package that empowers and humanizes real poor family and create local opportunities and discourages internal migration. The bank has another sector to monetize the voluntary sector and management of waqf, mosque properties and has introduced cash waqf system for the first time in the*



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*history of banking. In the formal corporate sector, this bank, among others, offers the most up-to-date banking services through opening of various types of deposit and investment accounts, financing trade, providing letters of guarantee, opening letters of credit, collection of bills, leasing of equipment and consumers durable, hire purchase and instalment sale for capital goods, investment in low-cost housing and management of real estate, participatory investment in various industrial, agricultural, transport, educational and health projects and so on.*

Voluntary banking uses the waqf model and sharia grameen model supported by waqf funds, non-formal banking uses the sharia grameen model and individual models for microbusinesses, while corporate banking provides ordinary banking products and services. SIBL developed a model where cross-subsidies and low-cost financing for microbusinesses occur.

The purpose of utilizing funds from the management of waqf money managed, among others, are to: improve the living standards of the Ummah, rehabilitate the disabled, improve the living standards of slum dwellers, help orphanage education, scholarships, school development, madrasas, courses, academies, and universities, funding research, assisting in nursing education, researching specific diseases and establishing research programs, setting up hospitals and blood banks, assisting projects for job creation that are important for eradicating poverty.

It is a challenge in Indonesia that Islamic banking is able to optimize its functions in the implementation of the commercial economy and the social economy, especially in producing money waqfs so that the results can improve the welfare of the people at large. Therefore, the renewal of Sharia banking regulations and waqf is the main thing so that the concept of waqf bank as implemented in Bangladesh can also be implemented in Indonesia, especially the provisions regarding the role of LKS especially Sharia banking in managing money waqf not only acting as LKS-PWU, but more from that role as manager of waqf money (Nazhir). In accordance with its characteristics, BMT can be a strategic partner of waqf banks in channeling waqf funds through a linkage program and reach out to non-bankable communities.

The cooperation of various stakeholders has become an urgent matter in the formation of this waqf bank, especially the government as a policy holder and BWI as an institution formed in the context of developing and advancing representation in Indonesia. Islamic Banking with a focus as the Manager of Waqf Money can be a model of waqf bank business entities in Indonesia. Waqf bank was formed with the body of a Sharia banking business that focuses on the implementation of its business activities in the management of waqf money.

### **3. Conclusion**

The model of a waqf bank business entity that can be established in Indonesia in the context of optimizing the management of money waqf in Indonesia is in the form of Sharia banking with a focus as a manager of money waqf.

### **4. Suggestion**

Renewal of Islamic banking regulations and waqf money regulations in Indonesia is needed in the establishment of waqf banks, especially regarding the authority of Sharia banking in managing money waqf, so that Sharia banking does not only play the role as LKS-PWU but also can play a role as Nazir.

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