



The Applied Fiqh Reasoning of Santri Kudus in the Development of Waqf Banks in Indonesia

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ABSTRACT

Waqf banks have also been established in Indonesia under the supervision of the Indonesian Waqf Board (BWI). The waqf banks are primarily designated to be managed by the Islamic boarding schools or pesantren community, with procedures that must be followed to be considered eligible for establishment. This research examines the perspective of Santri Kudus on the concept and practice of waqf banks in Indonesia, focusing on their fiqh reasoning in the development of waqf banks and the implementation of applied fiqh principles in the development of waqf banks. This research uses two different sources of data collection, including the primary and secondary sources. In this case, the primary source pertains to the fiqh reasoning of Santri Kudus in the development of waqf banks in Indonesia. The results indicate that Santri Kudus can accept the concept and practice of waqf banks, considering that the issue is a matter of khilafiyah. In addition, the applied fiqh reasoning of Santri Kudus in developing the waqf bank is to integrate fiqh with institutional professionalism. Furthermore, the direction of applied fiqh predominantly focuses on the aspect of the Tathbiqi Waqf Bank. Consequently, the waqf bank is deemed valid as it exemplifies the practical use of the Tathbiqi norms of cash waqf.

Keywords: mudharabah, musyarakah, profit and loss sharing.

INTRODUCTION

Sharia economic and financial system is an authentic form of realizing a just economy, and it is implemented based on Islamic law and teachings, which are *rahmatan lil alamin* (provide grace to all humankind and the environment), mutual cooperation, and the absence of exploitation by either party in trade and business.¹ Various types of banking are increasingly developing, requiring that all enhance their effectiveness and efficiency in product management. In carrying out their

¹ Sundari Sundari and Syarifudin Syarifudin, "BUMDes Syariah Sebagai Solusi Pembangunan Perekonomian Syariah Desa Yang Berkeadilan," *Iqtishoduna* 18, no. 1 (2022): 17-34.

business, Sharia banking institutions require transparency, accountability, responsibility, independence, and equality in managing funds, which can be known as Good Corporate Governance. This aims to attract customers to use the products offered by the bank², especially considering that Islamic banks do not apply an interest system.³

In recent developments, the use and management of waqf assets, especially cash waqf, have been intended not only for pure worship activities or religious interests but also for community empowerment and business development. It has become known as waqf banks or micro waqf.⁴ This shows that waqf is one of the Islamic philanthropies that continues to innovate and develop.⁵

Micro Waqf Bank (BWM, *Bank Wakaf Mikro*) is one of the Sharia Microfinance Institutions (LKMS, *Lembaga Keuangan Mikro Syariah*), which was initiated directly by President Joko Widodo to the Indonesian Financial Services Authority (OJK, *Otoritas Jasa Keuangan*). The aim behind the formation of BWM is to foster a sharia financial inclusion ecosystem in the Islamic boarding school environment, which has not been massively exposed to financial products until now. BWM focuses on individuals who do not yet have formal or bankable access to financial services. Apart from that, BWM aims to eliminate the rent or moneylender system that disturbs the community through collection and debt schemes, which add to the complexity of the situation. OJK facilitates the development of the BWM business model with the LKMS platform to bring together those who have excess funds (donors) and people who need business financing with meager returns.⁶

Individuals and companies with surplus capital who demonstrate a deep concern for the betterment of their communities qualify to become donors. This demographic includes all Indonesians who demonstrate a drive to empower communities and eradicate poverty. The funds obtained by LKMS will not be allocated for financing because some will be deposited into Sharia commercial banks. As a result, profit-sharing funds will be used to cover BWM's daily operational costs.

As of September 2019, the total financing disbursed was IDR29.33 billion, involving around 53 BWM pilot projects and 22,668 customers. OJK seeks to expand this figure to 100 BWM by the end of 2019. BWM exhibits two distinct characteristics that set it apart from other types of banks. First, this type of bank is managed by a group, which functions to prevent inappropriate distribution and misuse of loan

² Eka Rahayuningsih, "Pengaruh Good Corporate Governance Dan Loyalitas Terhadap Keputusan Nasabah Serta Dampaknya Terhadap Kualitas Produk," *Iqtishoduna* 17, no. 2 (2021): 126–40, <https://doi.org/10.18860/iq.v17i2.10478>.

³ Siti Amaro, "Measuring Financial Distress of Islamic Banks Under Pandemic and Its Determinants: Random Effect Approach," *IQTISHODUNA: Jurnal Ekonomi Islam* 12, no. 1 (2023): 73–88, <https://doi.org/10.54471/iqtishoduna.v12i1.2092>.

⁴ Gustani & Suhada, *Bank Wakaf Sebagai Lembaga Intermediasi Sosial (Suatu Inovasi Pemberdayaan Wakaf Tunai Untuk Meningkatkan Kesejahteraan Umat* (ResearchGate, 2016).

⁵ Nurul Rahman and Hartomi Maulana, "Waqf Literacy Level and Its Determinants on Public Intention to Contribute Cash Waqf: A Study of Waqf Institutions in Indonesian," *IQTISHODUNA: Jurnal Ekonomi Islam* 12, no. 1 (2023): 283–300, <https://doi.org/10.54471/iqtishoduna.v12i1.1963>.

⁶ Interview with Masyhuri, chairman of the Assa Berkah Sejahtera Kudus Micro Waqf Bank

funds. The existence of groups also allows customers to remind each other about their obligations to repay loans in installments.⁷

Second, BWM is managed by Islamic boarding schools or pesantren, which have been permitted by the OJK to carry out business activities in the form of LKMS. The decision to appoint Islamic boarding schools as managers of BWM is based on the fact that it functions as the foundation of the local economy and at the district or city level and reaches rural or remote areas. On the other hand, Islamic boarding schools or Pesantren are trusted and respected by the local community because of the noble values they promote, which ultimately make socialization and distribution of loan funds easier. It is important to note that although BWM is managed by Islamic boarding schools, it is not exclusively aimed at Muslims but is open to customers of all religions. In conclusion, BWM's unique characteristics make it a distinct and valuable addition to the banking industry.

In Indonesia, BWMs have also been widely implemented under the Indonesian Waqf Board (BWI). This body is tasked with extracting and managing waqf funds. The funds collected are managed in collaboration with the guarantor to ensure the principal value of the waqf is guaranteed. When the funds have been collected from the waqifs through their respective accounts, BWI issues a Cash Waqf Certificate (SWU, *Sertifikat Wakaf Uang*) and gives it to each. The *waqif* (individuals performing waqf) not only consists of rich people but can also come from simple or limited people from various levels of society.⁸

In its implementation, this BWM is prioritized to be managed by the Islamic boarding school community with procedures that must be followed to be considered worthy of establishing a BWM. The selection procedure is carried out to ensure that an Islamic boarding school is adequately prepared, that there exists a real need from the community around the Islamic boarding school, the type of microfinancing and its productivity, as well as the commitment of the Islamic boarding school and the community. The authority to carry out the selection is carried out by the OJK together with the Executive Council of Nahdlatul Ulama (PBNU, *Pengurus Besar Nahdhatul Ulama*). In its implementation, the two of them also formed a team together.⁹

The movement for renewal within Nahdlatul Ulama (NU) and the Islamic boarding school community can at least be seen from the scientific tradition of Islamic jurisprudence in Indonesia, which is done collectively by the Islamic scholars known as *bahtsul masail*. Through this scientific tradition, the students combine critical and creative thinking movements by creating a correlation between the sublimation of Islamic law in the NU tradition and *ijtihad*. This framework of thinking is based on the fact that nowadays, it is difficult to find people who are able to perform *ijtihad* without having *taqlid*. What is called *ijtihad* actually refers to and

⁷ Interview with Agus Susanto founder of the Assa Berkah Sejahtera Kudus Micro Waqf Bank

⁸ Dkk Gusva Hafita, "(Model Bank Wakaf Di Indonesia Dalam Potensinya Untuk Mengembangkan Wakaf Uang Dan Mengatasi Kemiskinan, Kumpulan Makalah International," in *Conference on Society and Economics Development IPEDR* (Singapura, 2011).

⁹ "Mewujudkan Kesejahteraan Masyarakat Dengan Bank Wakaf Mikro," 2017.

follows the patterns and procedures of *ijtihad* that have been formulated by previous generations of *ulama*. Creativity and critical thinking in NU are placed not only in the context of social life but are also based on the space of pluralistic thought patterns and the context of religious life. This eclectic thinking has influenced several domains through the Santri thought movement. For example, issues regarding democracy, public policy, the concept of the state, relations between religion and religion, culture and race, and the issue of productive *waqf* and BWMs.¹⁰

One form of renewal of thought and creativity for Santri Kudus is the emergence of the BWM of Assa Berkah Sejahtera Kudus in Kirig village, Mejobo district. This institution was founded purely by the Islamic boarding school community under the auspices of the Assa'idiyah Islamic Education Foundation. This initiation was definitely motivated by a strong religious spirit, as well as a contribution to playing a role in empowering poor communities through productive economic activities based on Islamic values.¹¹ In the context of the explanation above, it is necessary to carry out research that examines in depth the perspective of Santri Kudus towards the concept and practice of BWMs in Indonesia, and how the Islamic jurisprudence of Santri Kudus reason for developing BWMs in Indonesia, as well as how the applied *fiqh* perspective applies to the development of BWMs in Indonesia.

Business activities at BWM are carried out per sharia principles and offered at low yields. In this way, funds distributed to groups and members are not charged with interest. Financing is provided through an unsecured financing scheme, with a maximum value of IDR3 million and a profit-sharing margin of 3% per year. Loans are distributed with a minimum value of IDR 1 million, with installments made every week for 52 weeks or one year. However, if the customer is deemed worthy and submits a request, they are entitled to receive capital of IDR3 million.

In the initial stages, it is vital that the general public is actively involved in the process of selecting potential members through Compulsory Group Training (PWK, *Pelatihan Wajib Kelompok*) for five consecutive days, where disciplinary materials are used to instill cohesiveness, solidarity, and courage in their efforts. Subsequently, a group known as weekly halaqoh (HALMI) was formed, consisting of 3-5 groups, each consisting of five members. Then, the group undergoes weekly educational sessions that foster solidarity, commitment to shared efforts, and a sense of community. The first meeting of this group required financing. Afterward, a HALMI meeting was held, with weekly installment payment activities and sending materials related to business development and household economics.¹²

During PWK activities carried out by BWM, customers will receive various informative materials. These materials include: 1) On the first day, BWM will provide an explanation of the business capital program through *qardhul hasan* (interest-free loan) financing, with a maximum amount of IDR1 million per customer, IDR3 million per customer, along with an introduction to PWK, an explanation of the member's promise, and the selection process for disbursement of customer number funds using

¹⁰ Ahmad Dahri, "Kritik Nalar Fikih NU," 2019, <https://serikatnews.com/kritik-nalar-fikih-nu/>.

¹¹ Sugiyono. 2023. *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*. Bandung. Alfabeta

¹² Interview with Agus Susanto founder of the Assa Berkah Sejahtera Kudus Micro Waqf Bank

the 2-2-1 system; 2) On the second day, BWM will outline the Community Business Group around Indonesian Islamic Boarding Schools (KUMPI, *Kelompok Usaha Masyarakat di sekitar Pesantren*), which will include the election of the chairman and secretary of KUMPI; 3) On the third day, BWM will explain the financing application process and payment in subsequent installments, as well as the procedures for applying for financing during the following period after the first financing has been paid off; 4) On the fourth day, the name of HALMI will be determined, and the election of the chairman and secretary of HALMI will be carried out, along with the determination of the time and place for its implementation; 5) On the fifth and final day, PWK activities will be reviewed, starting from the first day to the first day of the fourth day.¹³

The process of disbursing funds is carried out through a strict 2-2-1 system, where funds are allocated alternately between HALMI. During the HALMI period, this group usually consisted of 15 members. In the first week, disbursement was given to the six people who were in the first place. Furthermore, the following week, allocations were given to six additional individuals in the middle. Finally, the remaining three individuals at the front of the queue were awarded their disbursements.

Installments and disbursement of qardhul hasan from BWM of Assa Berkah Sejahtera Kudus financing occur weekly during the HALMI period. If a customer applies for a loan of IDR1 million over a 40-week period, they are expected to send weekly installments of IDR25,750 rounded up to IDR25,800. This amount includes 3% yield installments. In addition to the level of funding, it is customary for each HALMI group to contribute cash to be used for the respective group's goals following the agreement between members. Cash management remains the responsibility of each member of their respective group because BWM is not involved in its management.

Financing operations at BWM faced several obstacles because customers were unable to repay their loans. This is because BWM financing is provided without collateral; thus, the institution cannot impose any sanctions. BWM of Assa Berkah Sejahtera Kudus will issue a warning letter to customers incurring arrears in their installments to overcome this problem. If this warning is ignored and the situation continues to the third round, the customer's name will be blocklisted, and they will be prohibited from applying for a loan in the next period from BWM. It is crucial for BWM to ensure the stability of its financing funds in facing challenges that may arise due to problematic installments because the institution bears a significant level of responsibility, namely funds sourced from waqf funds, which must remain intact.¹⁴

In the author's search, there were several studies on similar themes, for example, The work of Ade Iskandar Nasution, a Lecturer at the Department of Sharia Banking, Ma'soem University, with the title "Implementation of Micro Waqf from an

¹³ H. Ali Shodiqin Secretary of the Assa Berkah Sejahtera Kudus Micro Waqf Bank

¹⁴ Mawaddah Account and Administration staff of Assa Berkah Sejahtera Kudus Micro Waqf Bank

Islamic Legal Perspective". In the work, it is concluded that, first, Islamic law considers micro waqf for community empowerment and business development permissible. Micro waqf practically operates through business development consulting services, micro-scale financing, and savings management. This BWM is permitted if it meets the requirements and pillars of waqf in accordance with Islamic sharia. Second, the existence of BWM is one of the breakthroughs made by OJK in empowering productive poor communities through mentoring and microfinancing.

Next is the work of Gusva Havita et al., titled "Waqf Bank Model in Indonesia in its Potential to Develop Cash Waqf and Overcome Poverty".¹⁵ The results of this research conclude that the management of cash waqf in Indonesia is still not running optimally because its management is still not implemented in an integrative manner under the umbrella of one institution. Therefore, there needs to be special coordination under one institution. Because the potential funds are significant, in the range of 3 trillion per year, it is deemed necessary to prepare reasonable regulations in the governance of BWMs. This supply of funds can be used to finance social services, education, health, and others. This activity can also have the potential to reduce poverty rates in Indonesia.

Based on the title of the study above, the author can conclude that this research does not just want to examine social movements and empowerment in general but also wants to provide specific views on how the progressive values of the Santri can be sublimated in the social life of society through religious thought, especially through the creativity and criticism of the students.

METHODS

Because the object in this research is a social reality that is dynamic, complex, natural, and full of meaning, the researcher used a descriptive qualitative research methodology. As Sugiono states, qualitative research is carried out on objects in natural settings based on the philosophy of postpositivism.

This research uses two different data collection sources, namely primary and secondary data sources. Primary data sources are collected by researchers directly from primary sources. In this case, the main source is related to the reasons and reasoning of Islamic jurisprudence in developing BWMs in Indonesia.

Secondary data sources are defined as data sources that provide supporting references for this research. Researchers use various data collection techniques, including observing, examining, recording, discussing, documenting, and analyzing literature.

To demonstrate an accurate process in obtaining valid data, researchers use data validity testing techniques that involve triangulation, which requires researching data from various sources in various ways and at different time intervals. This research data analysis consists of data reduction, data display, and conclusion verification.

¹⁵ Gusva Hafita, "(Model Bank Wakaf di Indonesia dalam Potensinya untuk Mengembangkan Wakaf Uang Dan Mengatasi Kemiskinan), Kumpulan Makalah International."

RESULTS AND DISCUSSIONS

1. Santri Kudus' perspectives on the concept and practice of Waqf Banks in Indonesia

Santri Kudus terminology is the author's technical term for dissecting the way of thinking of the Kudus community, which is believed to have *hukmiyyah* authority in looking at the problem of BWM. In fact, this term has been around for quite some time, but generally speaking, at least two parties often talk about this matter or even have to be asked to talk. They are, firstly, the *Kyai* who care for the Islamic boarding school themselves, including the *Ustadz*, who support the Islamic boarding schools or pesantren. Secondly, the academic community has opened a publication about the BWM in Kudus.

It could be said that the fiqh approach drives Santri Kudus's perspective. The Islamic boarding school perspective is implemented within the framework of the sect. As perceived by Santri Kudus, Fiqh embodies the multiplicity of Islamic jurisprudential schools and provides many methodologies for addressing issues.

Hasan Mafik, a kyai as well as the activist of Bahsul Masail Kyai Muda Kudus Forum and teacher at Madrasah Qudsiyyah, responded promptly to inquiries concerning the BWM, stating that it was a *khilafiyah* or *ikhtilaf* (differences) issue. Certain items are permitted, while others are prohibited. Therefore, we must determine which argument is more compelling and which is more appropriate.

As is known, the root of the problem with BWM is waqf, which has special rules because there is an element of reward continuity obtained from the continuity of the goods donated (Jariyah). According to the ulama, alms (alms that flow in reward) are waqf because waqf is alms that can be used by the recipient eternally. The recipient party is bound by the rules not to change the waqf status at any time. This is different from ordinary alms or grants, which the recipient can use widely as long as they are for good.

Scholars differ in their opinions on whether the donated objects change hands from the waqif's ownership or only to their benefit. Hanafiyyah and Malikiyyah circles say that ownership of waqf goods still belongs to the waqif, while the benefits are transferred to the *mauquf* (beneficiaries). In contrast to the Hanafiyyah and Malikiyyah, the Syafi'iyyah states that the ownership of the mauquf changes hands to Allah's ownership, which is fully managed by the *nadzir* (a party that receives waqf property from waqif).

Regarding cash waqf, the first thing that must be clear is the object of the problem. What is meant is not donating money for souvenirs or mosque accessories, for example, but rather donating money for development, and what is taken is the proceeds from the money, not the principal. Based on this way of thinking, cash waqf is problematic because using money carries the risk of physical loss of the money itself, even though its value is still there.

Therefore, in fiqh, there are five perspectives regarding the validity of cash waqf. In detail, the various types of errors are as follows:

- a. Cash waqf is invalid because its use can only be done by removing the physical money. This opinion is supported by Imam Hanafi, Abu Yusuf, some Malikiyyah, and the strongest opinion among the Shafi'iyah.¹⁶
- b. Cash waqf is makruh. This opinion emerged from part of the Malikiyyah, which was claimed to be from Ibn Rushd.
- c. Cash waqf is legal if it is valid in society. This is the opinion of the majority of Hanfiyyah circles.¹⁷
- d. If the money is only used for jewelry, it is legal. If it is developed then it is not legal. This is the opinion of Qaul Ashoh Syafi'iyah.¹⁸
- e. Waqf money is legal. This is the opinion of the *mu'tamad* (official position of consensus) of the Malikiyyah, some of the Malikiyah, Syafi'iyah, and Hanabilah.

Given the reality of this school of fiqh, it is understandable that NU, in the context of community development, also chose an opinion that legalized cash waqf. This way of thinking is actually a reflection of the debate about cash waqf and cash waqf that occurred at PBNU. The topic of waqf with monetary resources was researched three times by the Kyai during the Congress. An early example occurred during the NU Congress in Semarang on 14 Rabi'ul al-Thānī 1348 AH/19 September 1929 AD, where the main agenda involved the use of monetary endowments to finance the construction of mosques. In this scenario, NU's solution is based on customary practices prevalent in the community. These practices are based on, firstly, the book of *Fatawa Kubra*.

Second, the 11th NU Congress held in Banjarmasin on 19 Rabiul Awwal 1355 AH/9 June 1936 AD resulted in the formulation of a mosque nadzir who bought mosque tiles with the money he received. Mu'tamad's opinion considers this action impermissible, while other opinions permit it. The basis for this problem can be found in the *Fatawa Kubra*, especially in the waqf article.

Third, during the 13th NU Congress in Menes Banten on 13 Rabi'ul al-Thānī 1357 AH/12 July 1938 AD, Kyai NU reviewed the office inventory obtained using waqf funds. It was concluded by the Kyai that without an explicit statement from a judge or nāzir regarding the waqf, the inventory could not be considered a waqf as such. As a reference, this book serves as a standard, namely *Asnā al-Maṭālib*.

During the NU 'Alim Ulama National Conference held on 25-28 July 2002 in Jakarta, KH. Miftah Fakhri, a prominent PBNU leader responsible for the economy, elaborated on the topic of cash waqf. The assembly, which consists of NU Kyai, considers cash waqf invalid according to the majority of ulama, namely Malikiyyah, Syafi'iyah, Hanbaliyyah, and some Hanafiyyah, because it fails to meet the waqf criteria. However, the Hanafiyyah believe it is permissible,

¹⁶ Muḥammad ibn 'Abd al-Wāḥid Ibn al-Humām, *Sharḥ Faṭḥ Al-Qadīr 'alā Al-Hidāyah Sharḥ Bidāyat Al-Mubtadi*, Juz V (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 2017).

¹⁷ Burhanuddin al-Mirginani, *Al-Hidayah Fi Syarḥ Bidāyah Al-Mubtadi*, Juz III (Kairo: Dar al-kutub al-Ilmiyyah, 1990).

¹⁸ Abu Zakaria Yahya ibn Syaraf al-Din al-Nawawi al-Syafi'I, *Rawḍlah Al-Thalibin Wa 'Umdah Al-Muftin*, Juz 5 (Beirut: Dar al-Kutub al-Ilmiyyah, 1992).

arguing that it is equivalent to preserving the values in maḍārabah. The legal basis for this decision comes from scientific sources, namely; al-Fatāwa al-Ināyah, Rauḍah al-Ṭālibīn wa 'Umdah al-Muftin and al-Mughnī 'alā Mukhtasyar al-Kharabī.

It highlighted a complete series of applied fiqh reasoning regarding the problems faced by KH. Abdul Halim, chairman of the Assaidiyyah Foundation. He emphasized that the waqf issue is a global problem that includes fiqh and other aspects. Cash waqf forms an important part of economic difficulties that develop into complex social confusion and require the involvement of state institutions, even across countries. In order to study the complexity of cash waqf, social, economic, and political approaches must be taken. It would be a mistake to be indifferent to the fact that the decision to legalize cash waqf in this country is either completely correct or completely incorrect. It is vital to maintain a balanced perspective. Fiqh considers the state as an entity that cannot undergo any changes. The state functions as a macro-scale entity for the collective human psyche, similar to how the body possesses a conscience that inspires goodness, and some passions tend to corrupt, known as *ammâratun bi al-sû i*.

2. The Islamic jurisprudence reasoning of Santri Kudus in the development of waqf banks in Indonesia

KH. Nadjib Hassan, Chairman of the Menara Mosque and Sunan Kudus Tomb Foundation (YM3SK) said two interesting phenomena at the fiqh level were developing in Kudus. First, the emergence of dialogical studies introduces additional challenges. A synthesis of revelation, reason, and reality characterizes the offered fiqh. Revelation, as a metaphysical entity, cannot actually do anything without being supported by reason and reality. Reason cannot be liberated without the direction of revelation. Reality is not an arbitrary construct, as it is the source of revelation. In this way, there is a huge opportunity to uncover unlimited possibilities, understand the meanings contained therein, re-examine them, and build new meanings without ignoring the *lafadh* itself as a history and written legacy of previous people. This process will give rise to a dynamic logic of fiqh as an effort to build Islamic law that is not based on presumptions, beliefs, introductions, interests, interests, and bad intentions. Otherwise, it is based on a theory that is progressive, visible, and capable of criticizing other logic, both formal and material.

Second, the dialectic of fiqh and tasawwuf is accommodated in the tariqah movement. As a religious model that places more emphasis on the esoteric (inner) dimension, the tasawwuf movement was born as an antithetical response to the pattern of life of the people, which has become too tilted towards the religious side of fiqh which emphasizes more on exoteric (outer) dimensions. In accordance with its nature as a normative discipline that refers to external aspects, fiqh limits itself to direct, measurable, formal, and objective things.

For fiqh scholars, their perspectives on religious practice emphasize If, for example, fiqh is asked about "what is the law regarding the Hajj pilgrimage with corruption money or commissions, of course, the answer will be "The Hajj pilgrimage is legal". The validity of an act of worship is contingent upon its

adherence to specified terms and conditions. In fiqh theory, this implies that there are indeed conditions concerning the legitimacy of commission money or corruption that may be deemed acceptable by Allah for a Mabrur Hajj. The fiqh scholars honestly answered: "*wallâhu a'lam*, that is not our authority."

In fact, with an answer like that, fiqh has acted relatively in accordance with its proportions and authority. As a legal discourse in Islam, the area of study of fiqh is the formal-outward, observable, and measurable aspects of life. If we wish, we can indeed call fiqh a positivistic religious discipline. Outside the formal outer world, another dimension is essential to the inner, and fiqh does not deny it.

These two dimensions are inherently interconnected; spirituality serves as the fundamental basis of morality, and morality represents the most genuine manifestation of spirituality. In the context of Sufism, it is often emphasized that the core of religion lies in cultivating nobility and closeness to the divine. This is not only counterproductive but also detrimental to both the individual and the Islamic faith in general, for someone to diligently perform prayers without accompanying moral behavior and a loyal heart of obedience and virtue.

In essence, KH. Nadjib Hassan also stated that the Islamic jurisprudence of Santri Kudus refers to the balance between the external and internal, which is the balance between fiqh and tasawwuf. Therefore, when the polarization between the tendencies of fiqhism versus shufism strengthened, he immediately shouted: "Man tafaqqaha bi ghairi tshawwufin tafassaq; wa man tashawwafa bi ghairi tafaqquhin tazandaq [Whoever uses fiqh without tashawwuf can become fasiq; conversely, whoever uses tashawwuf without fiqh can become zindiq]."

Based on this line of reasoning, it can be concluded that BWM's position is *fiqh alaqah* with *waqi'ah ijtimaiyyah*. It is postulated that the existence of cash waqf is expected to function as a medium for reconstruction and social development, thus facilitating the participation of the majority of the population. In order to realize this participation, joint efforts have been made to introduce the importance of cash waqf as a means to encourage the economic wheels of the *ummah*.

In further elaboration, Gus Aqil, Chair of the Bahsul Masail Kyai Muda Kudus Forum, outlined the historical practice of cash waqf since the beginning of the second century of Hijriah. The famous personality, Imam Ibn Shihab al-Zuhri, pioneered the implementation of Dinar and Dirham waqf to establish Islamic, social, and educational *da'wah* facilities. He showed mercy by waiving 1000 dinars for business community members, and its profits are used for social welfare. It is mandated that entrepreneurs refrain from reducing their capital because these funds are perpetual. The responsibility of an entrepreneur requires effective management and allocation of profits to worthy beneficiaries.

In terms of *manhajism*, there are at least two manhajs adopted by the Kudus community in response to the presence of the *mawah* of money, namely the Shafi'iyah manhaj and the Hanafiyyah-Malikiyyah manhaj. The Shafi'iyah holds that the existence of cash waqf, which includes items such as perfume,

candles, and food, cannot be supported. This is due to the inherent risk that the benefits of *maqshuda* give rise to the destruction of *'ain*, which in turn jeopardizes the immortality of merit, which is the fundamental purpose of waqf. Since money is considered solely as a medium of exchange rather than a commodity, it cannot be designated as *mauquf alaih* (beneficiaries) by the Shafi'iyyah.

Currency serves as business capital and a means of trade; nevertheless, its utility does not constitute its principal purpose, referred to as *ghar* benefit *maqshuda*; therefore, inhibiting its role as a foundation for enabling cash waqf.

Sarmidi Husna, a student of NU and the appointed secretary of BWI, stated that the BWM growth model has progressed significantly. During this two-year period, BWI conducted monthly sessions focused on the advancement of cash waqf. Materials that direct waqf development include:¹⁹

a. The role of cash waqf in building civilization

Historical records show that many companies have managed to survive by utilizing waqf funds and even made significant contributions. The Uthman bin Affan Hotel and several leading Islamic educational institutions have survived the centuries. In fact, they have offered scholarships to many students from various regions in the Islamic world. Illustrations of this establishment are Al-Azhar University in Egypt, Zaitunyah University of Tunis, Nizhamiyah University in Baghdad, and thousands of Imam Lisesi madrassas in Turkey. In the case of Indonesia, some examples of recipients of waqf funds are Pondok Modern Darussalam Gontor, Islamic Boarding School As-Salam, UII Waqf Foundation, Sultan Agung University, UMI Makassar, UISU Medan, as well as the waqf institution under the auspices of NU, Muhammadiyah al-Washilah.

b. Waqf Fund Fundraising Management

Fundraising refers to soliciting funds from individuals, organizations, and legal entities. It is also the process of exerting influence on the public or potential waqifs to engage in charitable acts by offering their property to the proxies. This is very important because waqf property comes from community donations. In order to achieve the desired goals and bring productive waqf projects to fruition, it is important to carry out strategic actions in collecting assets, which will then be managed and developed. Fundraising activities can be broadly categorized into direct and indirect fundraising.

c. Cash Waqf Investment Management

Government Regulation Number 46 of 2006, especially Article 48, mandates that regulations and development of cash waqf assets must comply with investment in Sharia Finance Institution (LKS, *Lembaga Keuangan Syariah*) products and/or sharia financial instruments. This article determines that cash waqf investment instruments cover two sectors: investment in Sharia

¹⁹ Sarmidi Husna secretary of the Indonesian Waqf Board

financial institutions and other Sharia instruments. Cash waqf investments can also be made in the real sector, such as financing small and medium enterprises (SMEs) and micro-enterprises. All investments, whether through LKS, sharia financial instruments, or the real sector, are subject to applicable regulations. Collateral must be considered as the primary focus for preserving waqf property. Investments through Sharia banks are guaranteed through deposit insurance institutions, while investments outside Sharia banks are guaranteed through Sharia insurance.

d. An integrated approach to productive and non-productive waqf

Waqf development patterns are usually classified as productive or unproductive. The productive pattern requires managing waqf property for productive sectors that generate profits, with the results produced being used for society's betterment while preserving the basic value of waqf property. On the other hand, the non-productive or non-profit pattern involves establishing free hospitals, schools, and various other community service initiatives. The operational costs of non-productive waqf businesses usually come from alternative sources such as zakat, alms, and infaq. It should be noted that this non-productive approach definitely reduces the principle of waqf, namely self-sufficiency or self-reliance. An integrated method has been devised that merges charity and commerce, directing excess resources towards mauquf 'alaih and/or the functioning of community service organizations under a unified program layer.

e. Global Waqf

Based on the observation that cash waqf tends to concentrate on productive waqf, the problems faced can often not be solved only locally but require a universal and global approach. The establishment of a global waqf is deemed necessary to address the urgency. Global waqf is an institution that manages community waqf assets in a professional, reliable, and extensive (i.e., global) manner to promote the well-being of deserving individuals through programs that primarily focus on empowerment (i.e., productivity).

As a philanthropic organization rooted in Islamic principles, the main goal of global waqf is to make Muslims around the world key contributors to the progress of a superior global civilization. With tenacity and determination, global waqf has emerged as an important force in developing a robust civil society and promoting waqf as a movement involving Islamic communities worldwide.²⁰

3. Applied fiqh perspective on the development of BWMs in Indonesia

a. Tathbiqi Waqf Bank Paradigm

To discuss the waqf bank paradigm in a tathbiqi manner, one must first read the *maqashid al-tasyri'* (sharia establishment purposes) of the waqf itself. The wisdom of waqf is the flow of benefits in the long term according to the age of the object donated, according to the hadith of the Prophet:

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

²⁰ Sarmidi Husna secretary of the Indonesian Waqf Board

"When a person dies, his actions will stop, except for three different things: alms, useful knowledge, or prayers for pious children and descendants." (HR. Muslim)

This flow of benefits is subsequently interpreted by fiqh, which means that waqf must be in the form of objects that do not run out when used, such as land, houses, and the like, and in the form of objects that become invalid after their use, such as wax or oil waqf. Differences in the condition of the objects issued are seen from whether these objects last or not, giving rise to variations in naming, such as infaq, alms, grants, gifts, and others.

Due to the fact that its intention is a recurring gift, it is understandable that the role of waqf in economic empowerment remains very limited, hardly disseminated, or even completely unpublished to the broader community.²¹ The current distribution of waqf assets in Indonesia seems to have led to less economic empowerment for the ummah, instead emphasizing the maintenance of Mahdlah worship activities, such as mosques, prayer rooms, educational institutions, and cemeteries. This particular waqf distribution model, which is characterized by a flow of thought, is also considered consumerist.

The concept of *ikhtiar* (effort, endeavour, or initiative) reintroduced waqf into the realm of maqashid al-shari'ah, it emerged as a productive waqf. Productive waqf refers to the use of existing waqf to increase productivity. Undoubtedly, implementing different consumer waqf measures is essential to achieving this goal. Productive waqf, in essence, instills fresh optimism in the Muslim community.

Meanwhile, the concept of productive waqf is characterized by a dual objective, namely the eradication of unequal social structures and the creation of an environment conducive to improving the welfare of Muslims. The realization of this goal depends on the implementation of strategic steps that facilitate the overall continuity of productive waqf.

The category of waqf that produces these results is undeniably oriented towards social welfare. Its main aim is to promote the welfare of Muslims. Consequently, the waqf in question serves humanity rather than one that concentrates exclusively on the divine aspect. Therefore, what is observed in this variation of waqf is an emphasis on the practical circumstances of Muslims, including poverty, backwardness, and lack of understanding.

The waqf that emerged from the abovementioned process is a development and may even be a deviation from the traditional understanding of waqf. One of these waqfs was created through waqf funds and further strengthened by establishing a waqf financial institution.

²¹ Mustafa E. Nasution, "Wakaf Tunai: Strategi Untuk Menyejahterakan Dan Melepas Ketergantungan Ekonomi, Makalah Workshop Internasional Tentang Pemberdayaan Ekonomi Ummat Melalui Pengelolaan Wakaf Produktif," in *The International Institute Of Islamic Thought (IIIT)* (Batam, 2002).

This way of thinking is valid from applied fiqh but leaves problems at the normative fiqh level because the physical money will disappear when used. Fortunately, there has been a shift in perspective at the normative fiqh level; thus, several fatwas that have legitimacy have given room to the legitimacy of money law.

The logic of his thinking is also understandable. Money is considered to have a value that remains, even if its physical form changes. Money has intrinsic and extrinsic value. This characteristic is not found in other objects. Thus, the presence of cash waqf does not damage the principle of *baqa'* in waqf. The difference is that non-cash waqf uses *baqa' ainiha* (its physical value remains), while cash waqf uses *baqa' qimatiha* (its value remains).

According to the authors, from a Tathbiqi perspective, cash waqf is normatively and appliedly valid. The validity of fiqh can be seen from the side of the text of the norms and the side of the application of the norms in reality. The first is the truth of the text, indicating that the research is inherently Bayani. The Bayani debate ends with a conclusion about the norms that should be implemented. The second is the application of norms, which no longer talks about the sound of the text but rather what the text can do to shape reality. The first study is called normative fiqh, and the second is called applied fiqh. The truth of normative fiqh is speculative, and applied fiqh is correspondence. If this is the case, in an effort to build applied epistemology, two jobs must be done simultaneously. The first is analyzing the normative aspects of a text (proposition) to find the validity of the norm, and the second is how the norm is actualized in reality.

At the level of normative validity, we find *mashadir al-ahkam*. Here, we are often presented with standard procedures as a prerequisite for the validity of understanding, for example, the qualifications *shahih* (sound), *hasan* (good), and *dha'if* (weak). Text diversification (output counter-text) that looking for the benefits can be tried to overcome this problem. If a text provides any benefit, regardless of its status, Hadith can still function as a source of law with the authority to do *takhshih* (correcting) or being *takhshih* (corrected) and to do *nasakh* (deleting or canceling) or being *nasakh* (deleted or canceled), and other rights in full, as regulated in *ushul fiqh*. If necessary, this approach can utilize the theoretical precedent of using the rule: *I' malu al-dalilaini khairun min ihmali ahadihima* [Using two postulates is better than discarding one of them]. Besides, as al-Thufi said, *maslahah* (public good) is something that is *qath'i*, while the text is *dzanni*; of course, the *qath'i* (definite/uninterpretable) is stronger than the *dzanni* (indefinite/interpretable).

At the factualization level, the target of changing ideas into facts, universality into a singularity, and shifting untestable truths into testable ones can be started by distinguishing between the substance of universal norms and the accidents of particular norms. The substance of the norm is the *maqashid*, which is the moral ideal of the norm, while the accident of the norm is the implementation of the norm in a certain space-time.

b. Formation of behavior in Micro Waqf Bank (BWM)

From a behavioral perspective, the *mahkum bih* (the act) of the waqf bank are the parties related to the waqf and the bank. Starting from waqif, *nadzir*, waqf managers, and bank service users. All parties related to waqf banks must have a shared awareness regarding productive waqf.

Achieving this level needs several actions, both personal and collective. Analogous to football, the BWM team needs to create a new formation to enhance its offensive capability. The formation here means the design framework for the elements that form BWM, starting from how BWM understands the vision, experience, abilities, hopes, and internalization to objectification in psychological, sociological, anthropological, and physiological structures.²²

At the level of normative validity, *mashadir al-ahkam* becomes relevant. At this time, we found standard procedures that were a prerequisite for what BWM of Assa Berkah Sejahtera had achieved with the KUMPI, HALMI, and PWK. These efforts reveal that economic development formations can be legitimately understood if they are sown, nurtured, and nurtured in a network culture. For example, one may consider the qualifications of shahih, hasan, and dha'if. The concept of togetherness is followed by a contemporary approach to management, considering the unique strengths of each Islamic boarding school. This, in turn, led to a repeat of the merchant revival phenomenon witnessed in 1918, such as the Nahdlatut Tujjar; the Islamic boarding school community consisting of caregivers, students, alums, parents, and congregations, gathers harmoniously to achieve economic independence.

By reflecting on the Nabawiyyah sunnah, where the aspect of monotheism must be arranged first before other aspects, Islamic boarding schools also need to organize this aspect as the foundation of the movement. Islamic boarding schools require a theology of independence as the basis of the movement. The field of theology presented here goes beyond the mere study of God or divine reality, specifically, God's relationship to the world. It is a systematically organized compilation of doctrines related to the essence of God and His relationship to humanity and the cosmos.²³ The discipline of Theology is concerned with the academic study of Divinity as it relates to the world, covering the entire spectrum from initial creation to final consummation. It must be emphasized that Theology represents the religious paradigm of a particular society or the unique attributes of a religious group as it seeks to spread its teachings.²⁴

The differences between KUMPI, HALMI, and the PWK implemented by BWM of Assa Berkah Sejahtera Kudus can be related to the orientation of

²² Dogobert D. Runes, *Dictionary of Philosophy* (New Jersey: Litle Field Adams Co, 1976).

²³ Loren Bagus, *Kamus Filsafat* (Jakarta: Gramedia, 2000).

²⁴ Stephen B Bevans, *Models of Contextual Theology* (New York: Orbis Books, 1992).

different psychological theories that explain and predict human behavior. In essence, these groups exhibit behavior that is on the right track because of the existence of three main behavioral traditions. The first tradition states that environmental factors trigger behavior, while the second suggests that deterministic, internal factors are responsible for behavior. Third, behavior is viewed as caused by system-complexity interactions.

Following behaviorism ideas, Islamic boarding school communities can be seen as human beings, comprising a collective of living and complex people. Therefore, their behavioral patterns show behavioristic characteristics. Their behavior is a direct response or reaction to any external stimulus or stimulation, thus allowing for the refinement of their attitudes through the systematic application of the SOR (Stimulus-Organism-Response) approach.

Behaviorism holds that certain behaviors are inherently linked to their consequences. These consequences act as catalysts for the repetition of the behavior, given their conformity to the goals and objectives underlying the behavior. This principle is consistent with the scholarship of Izek Ajzen, who proposed the Theory of Planned Behavior.²⁵ This research explains the factors that cause behavioral intentions. The Theory of Planned Behavior (TPB) argues that the formation of behavioral intentions depends on three main determining factors: attitude, subjective norms, and perceived behavioral control.

In a social environment, the Islamic boarding school community engages in dialogue with objects imbued with evocative stimuli. These stimulants, in turn, exert influence on the progressive development of behavioral patterns. This developmental process can be expressed through the formula $B = f(E, O)$, where behavior is a function of the environment and organism.²⁶



Figure 1 Behavior Patterns

As a psychological symptom, the process of birth of this behavior does not appear immediately, but after going through a psychological process in the form of:

²⁵ Nilan Widayarani, *Psikologi Populer: Kunci Pengembangan Diri* (Jakarta: PT Elex Media Komputindo, 2009).

²⁶ Albert Bandura, *Self-Efficacy: Toward a Unifying Theory of Behavioral Change* (New York: Academic Press, 1977).

- 1) Awareness is when the person is aware in the sense of knowing in advance about the stimulus (object).
- 2) Interest is where people start to be interested in the stimulus.
- 3) Evaluation whether or not the stimulus is good for him.
- 4) Trial where the subject starts trying to do something with what the stimulus wants.
- 5) Adoption is where the subject has new behavior in accordance with knowledge and awareness of the stimulus. ²⁷

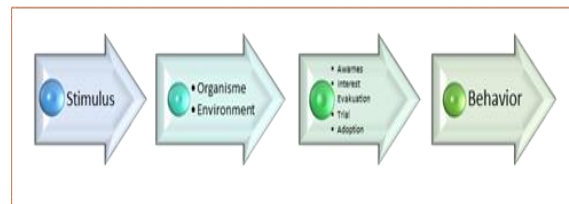


Figure 2 Stimulus selection process

This formula merely describes a behavioral process seen externally, while intrinsic motivation cannot yet be detected or confirmed. Behavioral demonstrations culminate in various factors, including external, internal, endogenous, and exogenous influences. It is important to note that human behavior manifests a variety of psychological phenomena, including but not limited to knowledge, desires, volitions, interests, drives, perceptions, and attitudes. Upon further analysis, it becomes clear that this psychiatric phenomenon is also influenced by additional factors such as experience, beliefs, physical resources, sociocultural norms, and others.

Norms are influenced by subjective and intrinsic factors such as intentions, reasons, and determination, which originate from within the individual. These factors function as determinants to produce specific behaviors, even without external stimuli from the environment. The mechanisms that drive individual behavior reflect the "what," "how," and "why" of that behavior. "What" signifies the goal intended to be achieved through behavior, while "how" relates to the type and form of action that will be taken to achieve that goal. Finally, "why" indicates the motivation that drives behavior, whether it is intrinsic or extrinsic, and is responsible for its occurrence and development.

Each unit of the outer and inner structures has its own function, interactions, and processes within the psychological structure, along with certain relationship patterns. This entire series of psychological activities and dynamics ultimately leads to the solidity of behavior, according to the level of compound and valence.

²⁷ Notoatmodjo, *Prinsip-Prinsip Dasar Ilmu Kesehatan Masyarakat* (Jakarta: Rineka Cipta, 2003).

In this context, the compound and valence processes are very dependent on the chosen religious pattern (*tadayyun*), which includes aspects of theology, ritual, intellect, and experience. This synergy process is managed in the stream of consciousness until it forms a new cognitive map in the configuration of faith. In this position, what emerges is not just psychological dynamics but begins to build an empirical behavioral figure.

Indeed, in its dynamics, there is an opportunity for clashes between values, motivation, and even ego and superego, as analytical psychologists believe, because Islamic boarding school communities live in a complex adaptive system. Humans--as living systems--have unique complexities that are different from most other systems. Humans cannot be understood simply by the blueprint of Newton's three laws of motion but rather by a complex, creative adaptive system. An entity has the ability to prospectively investigate its own future trajectory while displaying adaptability and evolution in an environment that is intrinsically attuned to its internal dynamics, thereby allowing constituent entities to exist on the edge of chaotic flux. After being incited by environmental upheaval, the entire megasystem (consisting of organisms, the environment, and their constituent elements) undergoes a unified evolution, thus turning to new attractors and functioning according to a new logic.²⁸

CONCLUSIONS

The conclusion contains a summary of answers to the research objectives, possible applications or development, and suggestions or recommendations for further research. First, Santri Kudus's perspective on the concept and practice of bank waqf in Indonesia follows the construction of fiqh, especially the Shafi'iyah.

In terms of fiqh, there are five perspectives regarding the validity of cash waqf, including Cash waqf is invalid because its use can only be done by removing the physical money; Cash waqf is makruh according to the opinion that emerged from part of the Malikiyyah, which was claimed to be from Ibn Rushd; Cash waqf is valid if it is valid in society according to the opinion of the majority of Hanfiyyah circles; According to Qaul Ashoh of Syafi'iyah, it is legal if the waqf money is only used for jewelry, but it is not legal if it is developed; Waqf money is legal according to the opinion of the mu'tamad of the Malikiyyah, some of the Malikiyah, Syafi'iyah, and Hanabilah. Therefore, Santri Kudus' perspective on the concept and practice of the BWM can be accepted because the problem is *khilafiyah*, and the members of PBNU and International Majma Fiqh can accept it.

Second, the applied fiqh reasoning of Santri Kudus in the development of the BWM is oriented towards the collaboration of revelation, reason, and reality. In this case, revelation is represented by propositions, and the reason is represented by *manhaj istidlal* based on propositions from various Islamic schools of thought, while the reality is represented by economic analysis and empowerment of Islamic boarding school communities. On this basis, the

²⁸ Danah Zohar, *Spiritual Capital; Memberdayakan SQ Di Dunia Bisnis* (Jakarta: Mizan, 2005).

existence of the waqf banks can be accepted and needs to be developed because there are *maqashid* and *'alaqah fiqhiyyah*, which are directly related to *waqi'ah ijtima'iyah*.

The rationale for developing the waqf bank for Santri Kudus leads to the integration of fiqh with institutional professionalism, which includes the role of cash waqf in building civilization, fundraising management of waqf funds, investment management of cash waqf, an integrated approach to productive and non-productive waqf, and global waqf.

Third, the designation indicates that the focus of applied fiqh is mostly on the Tathbiqui waqf bank aspect. In practice, bank waqf is legitimate as it aligns with the standard for cash waqf. KUMPI, HALMI, and PWK, implemented by BWM of Assa Berkah Sejahtera Kudus, demonstrate scientifically valid behavior development, aligning with Planned Behavior Theory and Social Construct Theory.

However, in its dynamics, there is still the opportunity for clashes between values, motivation, and interests because the Islamic boarding school community lives in a complex adaptive system. Humans cannot be understood only by planning blueprints and regulations. Consequently, BWM of Assa Sejahtera Kudus has to change, adapt, and establish a new framework encompassing the entire megasystem of its constituent elements – psychological, sociological, anthropological, and juridical – at both individual and societal levels, as well as locally, nationally, and internationally, to adequately mitigate potential risks.

Author's Contribution

Muhaimin: Contribute to the formulation of research ideas, data collection, data processing, and data interpretation.

Abdul Jalil: Contributing to the systematics of writing and research methodologies.

Suhadi: Contributing to the analysis of interpretation findings and language proofreading.

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The author declares that there is no conflict of interest.

Ethical Approval

Ethical approval No patient-identifying parts in this paper were used or known to the authors. Therefore, no ethical approval was requested.

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