

Cash Waqf in Normative and Economic Linkages

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Abstract

Socio-economic problems in society demand something new in achieving a more prosperous standard of living. Cash waqf has a big role in solving the problems of contemporary society. However, normatively, cash waqf is still being debated among fiqh experts, especially the Syafiiyyah school of thought, which tends to see waqf as the spirit of the immortality of objects, not benefits. This is certainly a problem for people affiliated with this school. However, positive law provides fresh air for the validity of cash waqf through Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning Implementation of Law No. 41 of 2004 concerning Waqf. In addition, the economic value of cash waqf has required the implementation of this cash waqf in order to spur economic activities of the people with religious and socio-economic dimensions for the realization of people's welfare.

Keywords: *Cash Waqf, Normative, Economical.*



A. INTRODUCTION

Cash waqf is actually an old paradigm that has been widely practiced by past Islamic civilizations, but in the Indonesian context, cash waqf is arguably a new paradigm in the history of waqf practices in Indonesia (Al-Harethi, 2019; Zabri & Mohammed, 2018). So far, Indonesian waqf has been oriented towards static forms of waqf and limited to immovable objects such as land, so many forms of waqf are found in the form of mosques, cemeteries and educational institutions (Razak et al., 2021; Duasa & Thaker, 2016). This form in turn makes waqf conditioned on consumptive nature.

The existence of this cash waqf seems to be a breath of fresh air that wants to enlighten the Indonesian waqf paradigm which has so far been stagnant and consumptive into a dynamic and productive light of waqf. Such a paradigm shift, especially in a sociological context, is not easy and certainly requires a long series of processes from various aspects of life (Fathurrahman & Maulan, 2018; Musa & Salleh, 2018). One of these processes is the community's response to the legality of cash waqf itself, bearing in mind that cash waqf in the classical paradigm of Indonesian waqf is a closed matter for practice. However, with the economic conditions of the people who are increasingly demanded to be independent, cash waqf is increasingly open to be widely discussed or even practiced, given the urgency in empowering the economy towards the welfare of the people (Asmara & Abubakar, 2019).

Historically, cash waqf has been practiced since the beginning of the second Hijri century, al-Bukhâri mentioned that Imam az-Zuhri (d. 124 H) recommended dinar and dirham endowments for the development of social facilities, da'wah, and

education of Muslims (Osman & Muhammed, 2017). The method is to use this money as business capital and then distribute the profits as waqf.

Cash waqf was also known during the Ayyubid dynasty in Egypt. At that time, the development of waqf was very encouraging. Waqf is not only limited to immovable objects, but also movable objects such as cash waqf. In 1178, in order to prosper the clergy and the interests of the mission of the Sunni madhab, Salahuddin al-Ayyubi established a policy that Christians who came from Alexandria to trade were obliged to pay customs duties. There was no explanation, the Christians who came from Alexandria paid customs duties in kind or money. Usually, however, customs duties are paid in cash (Iman et al., 2021; Ahyani & Muharir, 2021). The money from paying customs duties is collected and donated to the fuqaha' and their descendants.

In addition to utilizing waqf for the welfare of society such as the Ulama, the Ayyubid dynasty also used waqf for its political interests and the mission of its sect, namely the Sunni madhab, and to maintain its power. The Ayyubid dynasty also made state property located in the baitul mal as capital to endow it for the development of the Sunni madhab to replace the Shia madhab which was under the previous dynasty, namely the Fatimid dynasty (Afroz et al., 2019; Haidir et al., 2021).

Salahuddin al-Ayyubi also donated a lot of state-owned land for educational activities, such as waqfing several villages for the development of the Ash-Syafi'i madrasah, Maliki school of madhab, and the Hanafi school of thought with funds through the model of waqfing gardens and agricultural land, such as the construction of a Shafi school of madrasah and the grave of Imam Shafi'i by donating the agricultural gardens and the island of al-Fil.

It is permissible for the law to endow state property as was done by Salahuddin al-Ayyubi. The ruler before Salahuddin, Nuruddin ash-Shahid donated state property. Nuruddin donated state property, because there was a fatwa issued by the ulema at that time, Ibn Ishrun and supported by other scholars, that it was permissible to donate state property (*jawâz*). The argument for his ability is to maintain and protect the country's wealth.

The Mamluk dynasty also developed waqf rapidly. Everything can be donated as long as the benefits can be taken. It's just that waqf objects that were popular as waqf at that time were agricultural land and buildings, such as office buildings, lodging, and places of study. Also, during the Mamluk dynasty there were slaves (slaves) who were donated to care for religious institutions. For example, donating slaves for the maintenance of mosques and madrasahs.

In this modern era, cash waqf has become popular thanks to the services of M. A. Mannan who founded an institution he called Social Investment Bank Limited (SIBL) in Bangladesh. This institution introduced the Cash Waqf Certificate product for the first time in the world. SIBL collects funds from the *aghniya'* (rich people) to be managed professionally so as to generate profits that can be distributed to the *mustadh'afin* (poor people).

B. METHOD

This paper will specifically examine cash waqf from a juridical perspective, both in Islamic law and positive law, and sociologically, the legality of cash waqf has an impact on the economic activities of the community in the future. Therefore, the urgency of cash waqf for the progress and empowerment of the people's economy is a necessity.

C. RESULT AND DISCUSSION

1. Normative Aspects of Cash Waqf

Juridically, waqf is an *ijtihādī* issue. There is no legal source in the form of texts of the Koran which explicitly designate the word waqf itself, waqf is *istinbath* from general texts which order to do good by giving alms, such as Qs al- Imrân verse 92 which reads "lan tanâlu al-birra hatta tunfiqû mimmâ tuhibbûn". Anas bin Mâlik narrated that when this verse was revealed, Abu Thalhah who at that time had a date palm garden named "bayruha" came to the prophet to consult and ask for instructions on how he should treat his garden which he wanted to donate, so the prophet replied "lucky, really lucky, the garden is a profitable treasure and indeed I suggest that you make the land (alms) to your relatives.

In another hadith history, Tsâbit states that the editorial statement of the prophet to Abû Thalhah is "ij'alhu li fuqarâi aqâribika" which means make the garden (alms) for your relatives (in need). This hadith is a hadith which the scholars later used as the basis for the legality of waqf, to be precise the waqf referred to by later scholars as *ahlî* or *dzurrî* waqf, namely waqf originally intended for the waqif or a particular person or entity, although in the end it is for the public interest (Berakon et al., 2022).

Specifically, waqf is indicated by several hadiths of the prophet. In addition to the hadith narrated by Anas bin Mâlik above, there are other hadiths including: Hadith narrated by Abu Hurairah which states that the Prophet said "Idzâ mâta ibnu âdam inqatha'a 'amaluhu illâ min tsalâtsin shadaqatin jâriyah wa 'ilmin yuntafa'u bihi wa waladin shâlihîn yad 'ûlahu'. Ibn Abbas and several other friends such as Mu'âdz bin Jabal, Zayd bin Tsâbit, Â'isyah, Khâlid bin al-Walîd, Jâbir bin 'Abdillâh and so on consider that what is meant by the word "shadaqin jâriyah" in the text of the hadith is waqf because assets basically stuck and the results keep flowing al-Nawawi called this hadith the basis for the legality of waqf.

Another popular hadith that has even become the main reference as the basis for the legality of waqf is the hadith narrated by Ibn 'Umar which was stated by al-Aimmah al-Sittah that Umar once consulted the Prophet about instructions for the use of his land called "tsamgha" in Khaibar, the Prophet then said " ...in syi'ta habbasta ashlahâ wa tashaddaqa bihâ (meaning: if you want it, hold on to it and donate the results or benefits). In the continuation of the hadith, the narrator in this case is Ibn 'Umar explained that then 'Umar donated the khaibar land to the needy, relatives, servants, public interest (*sabîlillâh*), guests and *ibn sabîl* with a commitment he would not sell, donate or bequeath the land. The caretaker or *nazhir* of the land is allowed to take the results wisely (*ma'rûf*) or in a good way and not excessively.

What Umar did was then followed by other friends such as Uthmân bin Affân, 'Alî bin Abî Thalib who donated "yanbû" land for the poor and other public interests, Until the time of 'Umar's caliphate, a friend of Jabir bin 'Abdillâh witness that none of the friends who have wealth except donate their wealth as an eternal sadaqah, namely waqf as what Umar did and declared in front of the companions of the Prophet.

The two latter hadiths, namely the hadiths narrated by Abû Hurairah and Ibn 'Umar which were later followed and practiced (atsar) by the companions above, are referred to by Muhammad Abu Zahra as the three main foundations of the legality and existence of waqf.

In addition to the references to the legal sources above, al-Zarqâ mentions several waqf practices that show the existence of waqf such as the prophet's waqf for the Qubâ' mosque which was built when the prophet emigrated to Medina. waqf of the prophet for the nabawî mosque in the first year of hijrah. Whereas waqf in the form of productive assets is exemplified by the prophet who made seven date palm gardens in Medina as waqf. These seven palm groves originally belonged to Mukhairiq, a Jew who became an admirer of the Prophet he participated in the war in the ranks of the Muslims in the uhud war, and he made a will that if he died in the war then his property in the form of seven palm trees was handed over to the prophet Muhammad, and it turned out that he died so the prophet took a policy to endow him.

In Indonesia, cash waqf began to be discussed and discussed through seminars led by the Middle East and Islamic Studies Program, Postgraduate Program at the University of Indonesia. This discourse then rolled on to 2002, the Government, in this case the National Sharia Council followed up the seminar by issuing letter number Dt.1.IIU5/BA.03.2/2772/2002, April 26 2002, requesting a fatwa regarding cash waqf to Indonesian Council of Ulama. To this request, MUI responded until the following month, to be precise on 28 Shafar 1423 H or 11 May 2002 AD, MUI issued a fatwa permissible cash waqf. The MUI fatwa is an effort by the MUI to provide understanding and understanding for Muslims that cash waqf can be an alternative to waqf, moreover money is an important variable in the economic development of society.

This MUI fatwa had such a strong impact on society, including the struggle from various groups to urge the government to upgrade the status of this fatwa into a legal umbrella that is more enhanced and binding, namely in the form of a law. Finally, the Government of Indonesia issued Law Number 41 of 2004 concerning Waqf along with Government Regulation Number 42 of 2006 concerning the implementation of Law Number 41 of 2004 concerning waqf.

In Law No. 41/2004 concerning Waqf, the issue of cash waqf is mentioned in four articles, (articles 28,29,30,31), even cash waqf is specifically discussed in the tenth part of the Law with the title "Waqf of Movable Objects in the Form of Money ". Article 28 of the Waqf Law reads as follows "Wakifs can endow movable objects in the form of money through an Islamic financial institution appointed by the Minister." There are three important conclusions from this article, namely: 1) The legality of cash waqf is very clear and does not need to be disputed anymore; 2) Cash waqf management

through shari'ah financial institutions; and 3) LKS appointed by the Minister.

The appointment of an Islamic financial institution as a medium for the development of cash waqf is due to financial institutions:

- a. The ability of Islamic financial institutions to invest in waqf funds. Investments are made with consideration of security & level of business profitability, by doing. First, analysis of the investment sector that is not yet saturated, by carrying out "spreading risk" and "risk management" of the investment to be made. Second, "Market survey" to ensure market guarantees from investment output/products, Third, analysis of investment feasibility, Fourth, determination of parties who will work together to manage the investment. Fifth, monitoring the investment realization process, and sixth, monitoring the level of investment profitability.
- b. Ability to administer beneficiary accounts. This requires technology & reliable HR capabilities. This capability is owned by banks, whose business "nature" is to manage customer accounts. The bank's technology is also sufficient to accommodate many beneficiary data bases.
- c. The ability to distribute the results of investment funds. Islamic banks have a "profit distribution" system, both with the concept of "pool of funds" and "special investment" (Mudharabah Muqayaddah). The benefits of waqf funds, if permitted by the waqif, can be used, for example, as a revolving fund for weak economic empowerment.
- d. Has credibility in the eyes of the public, and is controlled by strict laws/regulations and supervised by Bank Indonesia or the Ministry of Finance. Banks or other professional LKS are institutions of public trust. Banks are "high regulated" institutions, BI guarantees public deposits, including waqf deposits. Islamic banks are "high regulated sharia" institutions, where DSN) and DPS monitor the adequacy of sharia aspects of Islamic bank operations and products.
- e. Ability to invest waqf funds.

Furthermore, article 29 of Law No. 41/2004 concerning Waqf states: (1) Waqf of movable objects in the form of money as referred to in article 28 is carried out by the waqf with a written statement of the will of the waqf, (2) Waqf of movable objects in the form of money as referred to in paragraph (1) issued in the form of a cash waqf certificate, (3) a cash waqf certificate as referred to in paragraph (2) is issued and submitted by an Islamic financial institution to the waqif and nazhir as proof of delivery of waqf assets.

Article 30 of Law No. 41/2004 concerning Waqf states that Islamic financial institutions on behalf of Nazhir register assets in the form of money with the Minister no later than 7 (seven) working days after the issuance of the Cash Waqf Certificate. Whereas in Article 31 it is stated that further Provisions regarding waqf of movable objects in the form of money as referred to in articles 28, 29, 30 are regulated by government regulations.

Government Regulation no. 42 of 2006 concerning Implementation of Law No.

41 of 2004 concerning Waqf in its article 22 confirms that cash waqf that can be donated is the rupiah currency, if the money to be donated is still in foreign currency such as Rials, Dollars, Euros, Malaysian Ringgits and so on, convert it first into foreign currency. rupiah money.

Furthermore, Article 22 paragraph 3 of the government regulation states that a wakif who will endow his money is required to: 1) Be present at the Money waqf Recipient Sharia Financial Institution (LKS-PWU) to state his intention of cash waqf; 2) Explain the ownership and origin of the money to be donated; 3) Deposit a sum of money in cash to the LKS-PWU; and 4) Fill out the waqif will statement form which functions as a waqf pledge deed (AIW).

In the event that the wakif cannot attend the LKS-PWU, the wakif can appoint a representative or proxy, and the representative of the wakif can declare a movable object waqf pledge in the form of money to the nazir before the Waqf Pledge Deed Making Officer (PPAIW) and so on the nazir submits the waqf pledge deed (AIW) to LKS-PWU. (Article 22 paragraphs 4 and 5 of PP No. 42/2006). Several articles of the statutory provisions above clearly show that cash waqf waqf is recognized in positive law in Indonesia.

The existence of the legality of cash waqf has received a positive response from the community (Mohd et al., 2016). Among practitioners, sharia financial institutions emerged with funding products such as Dompot Dhua'fa Republika Cash Waqf, PKPU Cash Waqf and Waqtumu (Muamalat Cash Waqf) which was launched by Baitul Muamalat – BMI. Bank Muamalat Indonesia (BMI) launched a product called a Cash Waqf Certificate, namely by depositing some money with the BMI, then BMI issues a Cash Waqf Certificate to the waqf. The waqf money is invested by the Bank, and the results of the investment are used according to the waqf objectives by the waqf.

By considering and accommodating the objections of some groups to the legal status of cash waqf, such as those of the Syafi'iyah who are concerned about the end of the waqf principal, it is very urgent to formulate and formulate a model and mechanism such as an early warning system to avoid the risk of reducing waqf capital in the context of risk management even though the funds are played in real sector investment. Therefore, in response to this, up to now there have been five Islamic Banks appointed by the Minister of Religion of the Republic of Indonesia as Islamic Financial Institutions Receiving Cash Waqf, namely Bank Negara Indonesia (PERSERO) Lts. Sharia Division; Bank Muamalat Indonesia Ltd; Bank DKI Jakarta Ltd; Bank Mandiri Syariah Ltd; and Bank Mega Syariah Indonesia Ltd.

With the promulgation of Law No. 41 of 2004, the position of cash waqf has become clearer, not only from the point of view of fiqh (Islamic law), but also from the point of view of the national legal system. That is, with the promulgation of this law, cash waqf has become positive law, so that the issue of khilafiyah regarding cash waqf has been completed in accordance with the principles of Islamic law theory hukmu al-hakim yarfa' al-khilâf.

2. Practical Economic Value for Cash Waqf

The economic crisis that hit this country has left poverty and suffering in the community. World Bank Deputy President for East Asia and the Pacific Region Jamaluddin Kassum reminded that approximately three-fifths (60 percent) of Indonesia's population currently live below the poverty line, while 10-20 percent live in absolute poverty (extreme poverty). Poverty is a frightening problem, which can run rampant and affect the macro life system, so that there is no other way but to be eliminated (Ahyani & Slamet, 2021; Nugroho & Hilal, 2019). Poverty that occurs in society is actually not entirely the responsibility of the government, but is a shared responsibility between the government and the community. To deal with the problem of poverty, actually in Islam there are several institutions that have the potential to be developed to overcome poverty, one of which is waqf.

Waqf is one of the Islamic institutions that gets special regulation in the laws and regulations in Indonesia. Thus, waqf is one of the Islamic legal institutions that has become positive law in Indonesia. As a religious institution, in addition to functioning as a worship service to Allah, waqf also has a social function. In its function as worship, waqf is expected to be a provision for the life of wakif (people who donate waqf) in the hereafter because the rewards will continue to flow as long as the waqf assets are utilized. As for its social function, waqf is a very valuable asset in development. Waqf apart from being an effort to shape the character and personality of a Muslim to give up part of his wealth for the benefit of others, is also a high-value development investment without taking into account the time period and material benefits for the person donating it. Its role in distributing welfare among the people and alleviating poverty is one of the goals of waqf.

Waqf is basically an "economic corporation", so that waqf is an activity that contains elements of future investment and develops productive assets for future generations in accordance with the objectives of waqf, both in the form of services and direct utilization of the results. The forms of waqf that have been put forward are parts or units of investment funds. Investment is the main foundation for economic development. Investment itself has the meaning of directing part of the assets owned by a person to form production capital, which is capable of producing benefits or goods and can be used for future generations (Alifandy & Sukmana, 2020). The investment in question is in the form of an investment whose ownership and purpose is capable of producing planned benefits economically and the results are distributed to those determined by the wakif in the waqf pledge.

Thus, it can be said that economically, waqf (Islam) is building productive assets through investment activities for the benefit of those who need it as specified in the waqf pledge. Thus, the results or products of waqf assets can be divided into two parts. First, direct waqf, namely waqf assets that produce services in the form of goods for direct consumption by people entitled to waqf, such as hospitals, schools, orphanages and settlements. Second, productive waqf, namely waqf that is managed for investment purposes and the production of goods and services that are permitted under Islamic law. In this form, the capital (waqf assets) is invested, then the

investment returns are distributed to those who are entitled (Zain et al., 2019).

In the context of waqf which does not only have an worship dimension but also has a socio-economic dimension, cash waqf is expected to be a tool for social reconstruction and development, in which the majority of the population can participate. To realize this participation, various efforts to recognize the importance of cash waqf as a means of transferring the savings of the rich to entrepreneurs and community members in funding various activities in Islamic countries need to be carried out intensively. According to M.A. Mannan, cash waqf can act as a supplement to the funding of various social investment projects managed by Islamic banks, so that it can turn into a waqf bank (a bank that accommodates waqf funds).

In Bangladesh cash waqf has a very important meaning in mobilizing funds for the development of property waqf. Social Investment Bank Ltd (SIBL) introduces Cash Waqf Certificates, a new product in the history of voluntary sector banking. In Dhaka, Bangladesh SIBL opens opportunities for the public to open cash waqf deposit accounts with the aim of achieving the following objectives: (1) Making banks a facilitator for creating cash waqf and assisting in waqf management; (2) Helping to mobilize community savings; (3) Increasing social investment and transforming community savings into Capital; (4) Providing benefits to the general public, especially the poor, by using resources taken from the rich; (5) Creating awareness among the rich about their social responsibility towards society; (6) Assist the development of the Social Capital Market; (7) Assist the nation's development efforts in general and create a unique relationship between social security and social welfare.

The target of utilizing the funds from cash waqf management managed by SIBL is to improve the living standards of the poor, rehabilitation of the disabled, improve the living standards of slum dwellers, help educate orphans, scholarships, develop modern education, develop schools, madrasas, courses, colleges and universities, funding research, assisting nursing education, researching certain diseases and building research centers, establishing hospitals and blood banks, assisting research, development and education programs to honor the services of predecessors, solving non-Muslim social problems, and assisting projects for job creation which is important for eradicating poverty in accordance with Islamic law.

Cash waqf is very important to develop in Indonesia at a time when economic conditions are getting worse. There are at least four benefits of cash waqf as stated by M. Syafei Antonio; First, someone who has limited funds can start giving waqf funds without having to wait to become a landlord first. Second, through cash waqf, waqf assets in the form of vacant land can begin to be used for building construction or processed for agricultural land. Third, cash waqf funds can also help some Islamic educational institutions. Fourth, God willing, Muslims can be more independent in developing the world of education without having to depend too much on the state education budget which is increasingly limited.

The successful example of the implementation of cash (money) waqf certificates in Bangladesh can be used as an example for Muslims in Indonesia. If Muslims are able to carry it out on a large scale, the positive implications of the cash waqf activities

will be seen. Cash waqf presents a unique opportunity for investment in religion, education and social services. The income obtained from the management of waqf waqf can be spent for a variety of different purposes, such as education, health, community economic empowerment, maintenance of waqf assets, and so on. If there is a waqf institution capable of professionally managing cash waqf, then this institution is a new means for Muslims to do charity. In this matter, Mustafa Edwin Nasution once made the assumption that the population of middle-class Muslims in Indonesia is 10 million people with an average monthly income of between IDR. 500,000.00 (five hundred thousand rupiahs) – IDR. 10,000,000.00 (ten million rupiahs). then the calculation can be made as follows: If there are 4 million Muslims who earn IDR. 500,000.00 and every year each endows IDR. 60,000.00, IDR. 240,000,000,000.00 is collected every year.

If there are 3 million people who earn IDR. 1,000,000.00 – IDR. 2,000,000.00 and each year they donate IDR. 120,000.00, then IDR. 360,000,000,000.00 will be collected every year. If there are 2 million people who earn IDR. 2,000,000.00- IDR. 5,000,000.00 and each year each donates IDR. 600,000.00, then IDR. 1,200,000,000,000.00 funds are collected every year. If there are 1 million people who earn IDR. 5,000,000.00 – IDR. 10,000,000.00 and each year they donate IDR. 1,200,000.00, then IDR. 1,200,000,000,000.00 will be collected annually.

Thus the waqf collected for one year is IDR. 3,000,000,000,000.00. Based on the example calculation above, it can be seen that the success of the institution in mobilizing waqf funds will greatly determine the benefits of the existence of waqf institutions. The problem is, the money cannot be given directly to the mauquf 'alaih, but the nazhir must first manage and develop it. What must be conveyed to the mauquf 'alaih is the result of the IDR. 3,000,000,000,000.00 investment, while the waqf money itself cannot be reduced in the slightest.

This potential must immediately be worked on professionally by Indonesian Muslims, especially waqf institutions, even by Islamic financial institutions. The importance of waqf development in Indonesia certainly has implications for optimal management of waqf in providing benefits for the community. This requires professional, trustworthy, transparent and accountable waqf management. For this reason, it is necessary to improve the quality and capability of nazirs through training, workshops and other supporting activities.

D. CONCLUSION

Juridically, cash waqf is a legal product produced through the ijthihad of several Islamic jurists. As a result of ijthihad, of course cash waqf cannot be separated from matters of khilafiyyat (debatable). The juridical reason for allowing cash waqf is benefit which, when broken down theoretically methodologically by Islamic law (usul fiqh), is based on the istihsan bi al-'urfi method. This decision was widely followed by mutaqaddimin hanafiyyah and some malikiyyah jurists such as Ibn Qudamah and Ibn Taymiyyah. In the Indonesian context, juridically cash waqf first appeared through an MUI fatwa which legalized cash waqf, then was followed up with the issuance of Law

no. 41 of 2004 concerning Waqf and Government Regulation no. 42 of 2006 concerning Implementation of Law No. 41 of 2004 concerning Waqf. Such positivization of cash waqf is a means of social engineering, to make changes in the thoughts, attitudes and behavior of Muslims so that they are in line with the spirit of the law. This positivization simultaneously completes the khilafiyah discourse about the legal status (permissible or not) of cash waqf in one legal statement.

The legality of cash waqf both in Islamic law and positive law is a breath of fresh air and a new opportunity for Indonesian Muslims to manage and develop a large potential for community funds in improving the economic welfare of Muslims and releasing Muslims from poverty. It is even possible that cash waqf can be an alternative way to release this nation's dependence on multilateral creditor institutions as well as stimulate Indonesia's economic growth. As a country with a predominantly Muslim population, the existence of this sharia instrument has good and bright prospects and will be very acceptable so that cash waqf is expected to make a major contribution to accelerating development in Indonesia.

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