

CASH WAQF LINKED GREEN SUKUK: ANALYSIS OF HYBRID CONTRACT BASED ON FIQH MUAMALAH PERSPECTIVE

Ariza Qanita

Pascasarjana Universitas Islam Negeri Maulana Malik Ibrahim, Indonesia

Email: qanitaariza99@gmail.com

Abstrak

Penelitian ini bertujuan untuk mengkaji aspek hukum syariah dari *cash waqf linked green sukuk* dengan perspektif fikih muamalah. *Cash waqf linked green sukuk* merupakan bentuk inovasi integrasi antara *cash waqf* dan *green sukuk*. Instrumen ini memiliki potensi yang besar terhadap pemberdayaan ekonomi berkelanjutan. Namun dalam praktiknya, *cash waqf linked green sukuk* menggunakan *hybrid contract* yang menggabungkan *Islamic commercial finance* dan *Islamic social finance* sehingga diperlukan kajian terkait keabsahannya. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis normatif. Hasil penelitian menunjukkan bahwa *hybrid contract* dalam *cash waqf linked green sukuk* diperbolehkan dengan beberapa alasan. Pertama, kaidah bahwa hukum dasar segala bentuk muamalah adalah boleh selama tidak ada dalil yang mengharamkannya. Kedua, *cash waqf* dan *green sukuk* sama-sama instrumen berbasis syariah. Ketiga, integrasi *cash waqf* dan *green sukuk* tidak menghilangkan substansi wakaf untuk menciptakan kesejahteraan sosial masyarakat. Keempat, *cash waqf linked green sukuk* mendorong kemanfaatan dana yang lebih optimal. Kelima, transaksi tersebut sesuai dengan tuntutan perkembangan zaman. Keenam, *cash waqf linked green sukuk* turut berkontribusi dalam pemeliharaan lingkungan berkelanjutan.

Kata Kunci: Wakaf Tunai; Sukuk Hijau; Cash Waqf Linked Green Sukuk; Multiakad; Fikih Muamalah

Abstract

This research aims to examine the sharia legal aspects of cash waqf linked green sukuk from the perspective of fiqh muamalah. Cash waqf linked green sukuk is an innovative form of integration between cash waqf and green sukuk. This instrument has great potential for sustainable economic empowerment. However, in practice, cash waqf linked green sukuk used a hybrid contract that combines Islamic commercial finance and Islamic social finance, so studies regarding its validity are needed. This research used qualitative methods with a normative juridical approach. The research results showed that hybrid contracts in cash waqf linked green sukuk are permitted for several reasons. First, the rule that the basic law of all forms of muamalah is permissible as long as there is no argument (nash) that forbids it. Second, cash waqf and green sukuk are both sharia-based instruments. Third, the integration of cash waqf and green sukuk does not eliminate the substance of waqf to create social welfare for the community. Fourth, cash waqf linked green sukuk encourages more optimal use of funds. Fifth, the transaction is in accordance with the demands of current developments. Sixth, cash waqf linked green sukuk contributes to maintaining a sustainable environment.

Keywords: Cash Waqf, Green Sukuk, Cash Waqf Linked Green Sukuk, Hybrid Contract, Fiqh Muamalah

1. INTRODUCTION

Environmental issues have been heavily discussed lately. Human awareness of climate change and global warming is undermining it. Environmental issues are also often associated with economic behavior. Environmental crises are seen as the impact of economic activities that often overexploit natural resources. This problem gave rise to the idea of a green economy. The green economy is a model of economic development

that is environmentally friendly, low in pollution, and can contribute to climate resilience. Economic activities are not expected to focus on profits or material wealth, but they must also pay attention to environmental sustainability. Furthermore, environmental sustainability will also affect human well-being in the long term.

According to Alfred Nakatsuma, Indonesia has lost as much rainforest as the state of Maryland every year. Meanwhile, the carbon emissions from wild deforestation and logging have made Indonesia as the third-largest country in the world for greenhouse gas emissions, after the United States and China (Wahyuni, Hilal, & Madnasir, 2022). This is why the Indonesian government has also begun a consensus on environmental issues through sustainable economic concepts. Indonesia has been actively engaged in efforts to mitigate greenhouse gas emissions (GRK) to prevent an increase in GRK emissions. This is included in the Nationally Determined Contribution (NDC) of Indonesia. Indonesia also has a road map towards carbon neutrality or net zero emissions by 2060 (or earlier) in line with the long-term strategy for low carbon and climate resilience, or the Long-term Strategy on Low Carbon and Climate Resilience 2050 (LTS-LCCR 2050) (Erwinsyah, 2021).

Although a series of programs have already been launched, but in practice, the role of funding is needed in order to the idea of a sustainable green economy to be implemented as intended. Sometimes, an environmentally friendly economic project requires a higher cost. One of the financial instruments which can be used to support sustainable economic development projects is the green sukuk. This kind of sharia-based bond can even exploit the enormous potential of Islamic philanthropic funds such as the waqf. Integration between sukuk and waqf is considered to have big potential with the fact that the majority of the Indonesian population is Muslim. The government also showed positive support for waqf fund management by launching the National Cash Waqf Movement on January 25, 2021 in National Palace, Jakarta.

The flexibility of the cash waqf or money waqf drives the increasing potential of the social fund. It is even estimated that the potential of cash waqf in Indonesia reaches Rp. 178.65 trillion per year (Tanjuh, 2021). The existence of cash waqf was very useful to the economic empowerment program. In line with the goal of achieving public well-being, waqf funds can be used as financing in sustainable economic projects through the green sukuk. Nevertheless, the integration of the sukuk as Islamic commercial finance and the waqf as Islamic social finance allows for a mixture of akad or hybrid contracts. While there is a hadith that prohibits the combination of contract or akad with different orientations, such as the merger of profit-oriented transaction (*bai'*) and social oriented transaction (*salaf/qardh*).

The study aims to examine the integration of cash waqf linked green sukuk based on the perspective of how they relate to hybrid contracts. There's been some previous research related to cash waqf linked green sukuk. Research by Annisa Nur Salam and Iskandar (2021) showed that integration of cash waqf linked green sukuk has a big potential as financial instrument for funding economic projects such as sustainable agriculture. Beside that, there is a study by Khairunnisa Musari (2022) that showed that cash waqf linked green sukuk can be an innovation in a sustainable financing model for climate change mitigation projects. This study will examine the legal aspects of cash waqf linked green sukuk based on a fiqh muamalah perspective that has not been revealed in previous studies. This research will analyze the legal aspects of the cash

waqf linked green sukuk as a practice of hybrid contracts. The results of the research are expected to provide an overview of the legality of such contemporary transaction innovations based on fiqh muamalah perspective.

2. RESEARCH METHOD

The type of this research is qualitative with normative juridical approach. This research used secondary data, such as books and articles in scientific journals published during the last five years (2019-2023). The analysis technique used in this research is descriptive analysis. This research will examine the integration between cash waqf and green sukuk and its legality based on Islamic law or fiqh muamalah. The legal source used as material for analysis is contemporary muamalah jurisprudence regarding hybrid contracts because the implementation of cash waqf linked green sukuk involves several parties and several contracts at once. The research results can provide a legal aspect related to cash waqf linked green sukuk as contemporary transaction innovation.

3. RESULT AND DISCUSSION

Cash waqf

Cash waqf is one of the contemporary instruments of the Islamic philanthropy fund that is being developed. It is a defense of the concept of balance of wealth in Islam. Humans are encouraged to seek livelihoods but do not neglect the ukhrawi aspect. Man must be aware that in the property he possesses, there are rights of others that must be distributed through obligations such as zakat or other philanthropic instruments such as infak, sedekah, wakaf, grants, etc. The balance between these two aspects is very important because it is true that life in this world is just an investment or an instrument to build life in the hereafter. The orientation of human activity must be balanced between material and spiritual (Amir, 2021).

Basically, the validity of cash waqf was still a debate among classical ulama. According to Madzhab Hanafi and Maliki, legitimate property in waqf may consist of both moving and unmoving objects. The waqf with movable objects are permitted with qiyas on waqf with weapons and animals for war in the past or other movable things like books that can be taken knowledge of. The same thing applies to the cash waqf. Both of these madzhabs allowed the cash waqf on the basis of *istihsan bil 'urf*, as it has become a custom of society. The benefits of money can also last continuously in the way invested (Asri, Aqbar, & Iskandar, 2020).

Madzhab Hambali also allowed the cash waqf because the purpose of waqf is to retain the substance and spread its benefits. The cash waqf is not the substance of the money physically, but the value of its use. Different with other madzhab, Madzhab Syafi'i did not allow cash waqf or money waqf because the physical will disappear when spent. According to Madzhab Syafi'i, when the money is used as a means of payment, its value will be exhausted. Meanwhile, waqf is holding principal assets intact and giving the benefits continuously (Hizbullah & Haidir, 2020)

Meanwhile, contemporary ulama see the practical side and the potential for more effective management of cash waqf. Especially nowadays, a lot of economic transactions can be done digitally. Similarly, in practice, cash waqf can be paid and channeled in the same way. The greatness of the potential of the cash waqf must be followed by an educational effort in society that still often considers that the waqf assets

limited to the three M, that are the madrasah, the mosque, and the tomb (Madrasah, Masjid, Makam).

The regulation of cash waqf in Indonesia has been regulated in the Fatwa of DSN MUI Number 2 in 2002 about Cash Waqf. Cash waqf are meant as waqf issued by individuals, groups, institutions, or legal bodies in the form of cash, including valuable letters that can be used productively in the halal sector with the aim of achieving the welfare of the people (Rusydiana & Rahayu, 2019). Cash waqf is considered more flexible and easy to use than wakaf immovable things like land, buildings, etc. Even today, non-moving objects are considered to have limited economic benefits. Waqf for immovable property cannot help in socio-economic empowerment of the community, such as capital assistance for productive business actors (Said & Amiruddin, 2019).

In fact, economic empowerment could have more implications for improving community welfare. Funds from cash waqf can be developed for productive businesses or investments. Nadzir as the manager can invest waqf funds in sharia financial products that have good performance (financial sector), establish business entities and giving sharia microcredit funding for potential business actors (real sector) (Kharazi, 2022). In practice, the waqf can also determine or require the benefits of managing cash waqf funds for certain purposes such as health, education, economics or others. Thus, the practice of cash waqf is permitted on the grounds that it can create more optimal benefits.

Green Sukuk

Green sukuk is sukuk issued to finance projects or investments in the field of sustainable economics such as clean and renewable energy with the aim of preserving natural resources. Green sukuk is a sharia financial instrument that has the potential to encourage economic development based on environmental protection. Green sukuk was developed to reconcile two criteria, that are sharia compliance in financial products as well as the project's contribution to renewable energy and climate change (Affandi & Khanifa, 2022).

Green sukuk was first launched by the European Investment Bank in 2007. This type of bond then gained high interest in line with increasing awareness of investors who were not only looking for personal profits but also saw its advantages in supporting environmentally friendly activities (Khalilurrahman & Mubarrak, 2022). The number of green sukuk issuances in the world is also projected to continue to increase. In 2019, the proceeds from green sukuk issuance worldwide are predicted to reach 163,298 million USD. Even in 2029, it is projected to be 339.38 million USD or around IDR 4,800 trillion. This number showed a positive trend in investor demand for green sukuk. These conditions were quite favorable for countries that will issue green sukuk (Suherman, Noor, & Manzilati, 2019).

In 2020, the issuance of green sukuk in Indonesia was managed by three ministries, that are the Ministry of Transportation, the Ministry of Energy and Resources and the Ministry of Public Works and Public Housing. Green projects that are being implemented are the underlying assets for the issuance of green sukuk. Projects that have been implemented with green sukuk applications include energy efficiency, renewable energy, sustainable transportation, waste and waste management for energy and resilience to climate change for disaster-prone areas (Mauliyah, Hasanah, & Hasanah, 2023). In general, the World Bank categorizes green sukuk investments into

two criteria, namely projects to mitigate the impacts of climate change and projects to adapt to climate change that has already occurred (Tobing & Setiawati, 2022).

The opportunity to develop green sukuk in Indonesia is also supported by several factors. First, increasing demand for energy, water, transportation and infrastructure development due to increasing population. Second, increasing demand for financing and investment for sustainable energy. Third, increasing investor awareness of social responsible investment (SRI). Fourth, there is a large Muslim population in Indonesia. Fifth, Indonesia's economic growth prospects are quite promising. Sixth, supporting infrastructure development programs in accordance with the Master Plan for the Acceleration and Expansion of Indonesian Economic Development (MP3EI) with the concept of green infrastructure (Mutmainah & Romadhon, 2023).

Integration of Cash Waqf and Green Sukuk

Cash waqf linked green sukuk is basically an integration of cash waqf linked sukuk and green sukuk. Cash waqf linked sukuk is a form of utilizing waqf funds by investing them in state sukuk which are used by the Ministry of Finance as a funding for state expenditure in accordance with sharia principles for social purposes and public facilities. The beneficiary of the inaugural cash waqf linked sukuk program is the Ahmad Wardi Eye Hospital in Banten (Hendrawan, 2020).

Cash waqf linked sukuk involves five stakeholders. First, Bank Indonesia as a custodian bank and accelerator in encouraging the implementation of cash waqf linked sukuk. Second, Bank Wakaf Indonesia (BWI) as the regulator, leader and nadzir who manages the cash waqf linked sukuk. Third, the Ministry of Finance as the sukuk issuer and fund manager in the real sector. Fourth, Nadzir Waqf Productive as the Partner Indonesian Waqf Agency which collects waqf funds. Fifth, sharia banks as Sharia Financial Institutions Receiving Cash Waqf (Lembaga Keuangan Syariah Penerima Wakaf Uang/LKS-PWU) and operational banks for BWI (Yasin, 2021).

Cash waqf linked green sukuk is an investment of cash waqf funds in State Sharia Securities (SBSN/sukuk) which is used for funding or investment in environmentally friendly economic projects. Cash waqf linked green sukuk has an underlying asset in the form of an environmental conservation program as a manifestation of Indonesia's commitment to overcoming the impacts of climate change. The cash waqf linked green sukuk instrument can be used to support the implementation of the concept of a sustainable green economy in Indonesia. The main orientation is to achieve sustainability of the universe. As environmental damage begins to be felt in many places, business actors are increasingly awareness about the importance of preventing the negative impact of their economic activities on the environment.

It is not uncommon for business actors to start implementing the Triple Bottom Line (3 P) concept in running their business. This concept was put forward by Elkington who stated that sustainable economic activities must pay attention to three things, that are profit, people and planet. Profit is the main goal because every business actor definitely wants to make a profit from the economic activities they carry out. However, apart from pursuing profit, business actors must also pay attention and contribute to fulfill the welfare of society (people) and play an active role in preserving the environment (planet) (Ratna & Hasanah, 2019).

The 3 P concept is in line with Islamic economic principles which also recommend that humans have to pay attention to environmental ethics in all their activities,

including economics. Islam not only regulates ethics between humans and each other but also with nature as the place where they live. Even the recommendation to protect the environment is also mentioned explicitly in al-Qur'an.

وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا وَادْعُوهُ خَوْفًا وَطَمَعًا إِنَّ رَحْمَتَ اللَّهِ قَرِيبٌ مِّنَ الْمُحْسِنِينَ
“And do not cause harm to the earth after it was created well. Pray to Him with fear and hope. Indeed, Allah's mercy is very close to those who do good.” (Qs. al-A'raf: 56)

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ
“We have seen damage on land and at sea caused by human hands. Allah wants them to feel some of the consequences of their actions so that they return to the right path.” (Qs. ar-Rum: 41)

Allah has created the universe for the benefit and welfare of all His creatures, especially humans. Humans were created as khalifah on earth who are responsible for utilizing, managing and maintaining the universe. The concept of ownership in Islam teaches that Allah is the absolute owner (haqiqiyah) while humans are only temporary owners who receive the mandate as Allah's representatives on earth. Therefore, people must always be aware that as holders of trust, their every action will later be held accountable.

In practice, the efforts made by business actors to implement a sustainable economy are by implementing zero waste companies, environmentally oriented CSR programs or distributing green financing in financial institutions. Since 2010, Bank Indonesia has been actively conducting green finance studies and has become one of the founders of the sustainable banking network (Fauzin, Sholihin, Hidayat, & Hidayah, 2022). A sustainable economy is vital and needs to be supported because it concerns long-term living needs.

The Islamic financial sector can be a starting point for synergy between the economy and environmental sustainability as a suitable financing instrument for renewable energy projects. A sharia financial instrument that can also be used to fund these projects is cash waqf (Listiana & Mutmainah, 2022). In fact, waqf for environmental protection purposes is still less popular than waqf for other fields such as religion, education, health and poverty (Hasan & Syahrudin, 2022). The cash waqf movement to fund sustainable economic programs or cash waqf linked green sukuk still requires a socialization stage.

An example of a project that could be the object of a cash waqf linked green sukuk is a tamanu tree plantation. Tamanu trees are plants that are known as raw materials for making oil which can be used as biofuel to replace fossil fuels, thereby helping reduce carbon emissions on earth. Apart from that, tamanu is effective in restoring degraded land so that land that was previously unfunctional can be reused. The potential increase in demand for environmentally friendly fuels in the future will make the demand for raw materials, namely tamanu trees, even higher. Thus, it is very important to develop a sustainable tamanu plantation industry today as an investment for the future (Sukaina, Zahidah, & Arifian, 2022).

Furthermore, sustainable economic productive projects which are the basic assets will pay profit sharing to the government or the Ministry of Finance periodically. The distribution of profits will distribute to Islamic banks. Then, Islamic banks will pay pre-

agreed profits to Nadzir. The result of investment can also be used as financing in other social programs (Musari, 2022). Despite its good potential for development, this type of financing must still be carried out with the principle of prudence. Because basically financing for sustainable economic projects has high initial costs and high risks. The risks faced include political risks, regulations, currency values, liquidity, and etc (Ibrahim, 2023). Moreover, the funds used come from waqf funds so the existence of the basic assets must be maintained. In practice, intensive management control is required, including from relevant stakeholders.

The Hybrid Contract Concept

The increasingly rapid development of sharia-based business models is a challenge for the flexibility of Islamic law, especially in the field of muamalah. Many contemporary transactions have emerged that are adapted to society's needs, while their legal status has not been clearly found in the texts or requires contextual expansion. One phenomenon that is still being debated is the existence of hybrid contracts and their legality based on Islamic sharia law.

Hybrid contracts or in fiqh terms referred to *al-'uqud al-maliyah al-murakkabah* are a combination of economic and financial contracts to become one contract through modification with all the rights and obligations that can be accepted by the parties to the transaction as a result of having become single contract (Mufid, 2021).

The contract is a parameter that really determines the validity of a transaction. Multi-contracts or hybrid contracts have been widely practiced to respond to society's transaction needs which are becoming increasingly complex according to the challenge of time. On the one hand, this practice is a necessity. However, on the other hand, there are concerns that the application will contradict with sharia provisions.

The practice of hybrid contracts or *al-'uqud al-maliyah al-murakkabah* is an innovation that is needed for adaptability to change. However, attention must also be paid to its implementation so there is no contract manipulation that deviates from the permitted provisions. There are limits that must not be violated so that sharia compliance of a transaction is maintained.

Moreover, this is related to the contract which is the basic of every transaction and determines the applicable legal consequences. The legality of *al-'uqud al-maliyah al-murakkabah* is still a matter of debate among ulama. This is related to the hadith of the Prophet which states the prohibition against combining sale and purchase contracts with loans (*bai'* and *salaf/qardh*), combining two sales and purchase contracts in one sale and purchase contract (*bai'ataini fii bai'atin*), and combining two transactions in one transaction (*shafqataini fii shafqatin*).

Basically, there are two opinions regarding the validity of hybrid contract practices. A number of ulama consisting of Hanafiyah, Malikiyah, Syafi'iyah and Hanabilah were gave opinion that hybrid contracts are permissible and not haram as long as there is no command found in the Sharia that forbids it. Meanwhile, the second opinion from the Dhahiriyyah ulama states that a hybrid contracts is not permitted and is not valid unless there is an argument that allows it. The permissibility of hybrid contracts in the first opinion is based on the Qs. al-Maidah verse 1.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

"O you who believe, fulfill your promises." (Qs. Al-Maidah: 1)

The word *al-'uqud* in this verse is the plural form of the word *al-'aqd*. This plural form indicates the existence of more than one contract. Thus, the practice of hybrid contracts or multiple contracts is permitted. Meanwhile, the second opinion is based on Qs. al-Maidah verse 3.

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ

"Today I have perfected your religion for you." (Qs. Al-Maidah: 3)

The second opinion interprets this verse as a decree that what is stated in the nash (al-Qur'an and Hadith) is something that cannot be changed. Dhahiriyah are textual in taking an understanding of a problem. They are of the view that the practice of multiple contracts is not permitted because it is not mentioned in the nash, even though Islamic law has been perfected. The different interpretation of these verses show that there is a contradiction in opinion among scholars regarding the legality of hybrid contracts. Qs. al-Maidah verse 1 is used as the basis for the ability to practice hybrid contracts, while Qs. al-Maidah verse 3 is the basis for the prohibition of hybrid contracts by other scholars. Each opinion has its own basis in the Qur'an.

Based on its origin, *al-'uqud al-maliyah al-murakkabah* or hybrid contracts are divided into two, namely hybrid contracts which are natural (*al-'uqud al-murakkabah al-thabi'iyah*) and hybrid contracts which are the result of modifications (*al-'uqud al-murakkabah al-ta'dilah*) (Maarif & Munir, 2022). Natural hybrid contracts occur because of the interconnected or there is a relationship between the contracts. The contract that follows (*al-'aqd al-tabi'*) can only be valid if the main contract (*al-'aqd al-ashli*) is valid. The implementation of *al-'aqd al-tabi'* is also adjusted to needs. If the parties entering into the contract do not wish for *al-'aqd al-tabi'* to come into effect, then the contract does not have to exist. Meanwhile, the modified hybrid contract (*al-'uqud al-murakkabah al-ta'dilah*) was prepared deliberately with the aim of facilitating contracts for sharia products. The modification of the contract is used as the underlying transaction.

Hybrid contracts or *al-'uqud al-maliyah al-murakkabah* are divided into five forms, that are (Lutfiyah, 2023):

1. Dependent/conditional contract (*al-'uqud al-mutaqabilah*). *Al-'uqud al-mutaqabilah* is a collection of two or more contracts that are mutually bound. The perfection of the first contract will determine the perfection of the second contract through a reciprocal process. This applies like the terms of the contract in the contract.
2. Collected contracts (*al-'uqud al-mujtami'ah*). This means combining two or more contracts into one and has different legal consequences. *Al-'uqud al-mujtami'ah* can apply to two objects with one price, two objects with two prices, or two contracts put together for one object with one reward. The implementation can be at the same time or at different times.
3. Contrary contracts (*al-'uqud al-mutanaqidhah wa al-mutadhadah wa al-mutanafiyah*). *Mutanaqidhah* means that two things cannot be combined at the same time. *Mutadhadah* means two things that are contradictory or opposite so that they cannot be combined. Meanwhile, *mutanafiyah* means rejecting or eliminating. Two or more contracts which are practically contradictory and have contradictory legal consequences cannot be combined. The example is hybrid contract between bai' contract with a sharf contract. Bai' transaction allows for delays and khiyar, while this is not permitted in the sharf. *Al-'uqud al-murakkabah* which are *mutanaqidhah*,

mutadhadah and *mutanafiyah* are contracts that cannot be combined into one contract.

4. Different contracts (*al-'uqud al-mukhtalifah*). *Al-'uqud al-mukhtalifah* means bringing together two or more contracts, each of which has different legal consequences. For example, between purchasing with leasing. In a leasing contract, there is a time requirement, whereas in purchasing, this does not apply. Likewise, the ownership status of objects is also different between purchasing contract and leasing contract.
5. Similar contracts (*al-'uqud al-mutajanisah*). *Al-'uqud al-mutajanisah* is collecting several contracts into one without any influence on the law and its legal consequences. This hybrid contract can consist of several contracts that have the same form or several contracts that have different forms but have similar legal consequences.

Merging several contracts has the consequence of changing the provisions and legal consequences of the new contract. According to ash-Syatibi, the provisions regarding merging contracts are not the same as when the contracts stand separately. Hybrid contracts cannot be seen from the perspective of the original law that applies to each of the contracts that form them. Although the contracts that form it can be accepted separately, when these contracts are combined into one whole, this is not necessarily considered to be in accordance with sharia (Sari & Yuliani, 2023).

There are several limitations that must pay attention so the combination of several contracts does not contradict with sharia provisions. This limitation may not be violated so as not to fall into the forbidden practice of muamalah. Some of these limitations include (Winarni, Mega, & Masni, 2022):

1. Multiple contracts that contradict with religious texts or nash. There is a Hadith of the Prophet which states the prohibition against three forms of multiple contracts, namely the prohibition on combining a sale and purchase contract with a loan (*bai'* and *salaf/qardh*), two sales and purchases in one sale and purchase (*bai'ataini fii bai'atin*) and two transactions in one transaction (*shafqataini fii shafqatin*). These contracts may not be combined with notes if their implementation leads to prohibited legal reason (*'illat*), for example there is fear that *gharar* will occur.
2. Multi contracts as *hilah ribawi*. The mean of *hilah* is a strategy. The practice of hybrid contracts or *al-'uqud al-maliyah al-murakkabah* which is carried out with the aim of circumventing usury is not permitted by law. This applies as in the practice of *bai' al-'inah*. *Bai' al-'inah* is a form of buying and selling where someone sells things on credit to a buyer and then the buyer sells it back to the seller in cash at a lower price. In this transaction, it seems as if there are two sales and purchase contracts, even though in reality, that is the *hilah* of usury in loans (*qardh*). Hybrid contracts with this kind of purpose are prohibited to prevent usurious transactions that harm weak parties (Hadi, 2021). Every way (*washilah*) that leads to the accomplishment of a forbidden matter secretly, the haram law also applies to that way. Ibn Taimiyah and Ibn al-Qayyim prohibited *hilah* on the basis of the following fiqh rules (Sayuti, 2019):

العبرة بالمقاصد والمسميات لا بالألفاظ والمسميات

“What is the benchmark for actions is the intention and substance, not the editorial or the term.”

3. Multiple contracts which result in usury. Every hybrid contract that leads to something haram, such as usury, is haram, even though the law of the contracts that build it is permissible. Putting together several contracts whose original law is permissible but bringing them into something that is prohibited causes the law to become prohibited. An example is a multiple contract between *qardh* and a *hibah* to a lender (*muqridh*). Ulama agree that *qardh* is prohibited if it is accompanied by requirements for more compensation, in the form of gifts or other things. For example, someone lends (gives debt) an asset to another person on the condition that he or she occupies the loan recipient's house (*muqtaridh*) or the *muqtaridh* gives a gift to the lender, or provides additional quantity or quality of the *qardh* object when returning it. Transactions like this are prohibited because they contain elements of usury. If this lending and borrowing transaction is then accompanied by a gift or excess, but is carried out voluntarily by the person who is given the loan without any conditions or prior agreement, then the law is halal.
4. Multiple contracts whose legal consequences are contradictory to each other. Multiple contracts between contracts with different legal provisions or have the contradictory legal consequences are not permitted. This prohibition is based on the Prophet's prohibition on combining *qardh* contracts and *bai'*. These two contracts contain different laws. *Bai'* is a business-oriented muamalah activity with profit and loss calculations. Meanwhile, *qardh* is social oriented which prioritizes aspects of brotherhood and affection as well as noble goals.

The implementation of hybrid contracts is also suitable with maqashid sharia. Maqashid sharia is one approach that is widely used in studying fiqh muamalah issues. Maqashid sharia is considered the main goal that should be achieved in every economic activity based on Islamic values. According to Thahir bin Asyur in his book *Maqashid ash-Syariah al-Islamiyah*, maqashid sharia are several goals that are used as a basis for sharia in all provisions of religious law, with these goals not only for one specific sharia law product. In other words, the essence of maqashid sharia is the aim of establishing sharia law to achieve human benefit in this world and the hereafter (Nasution & Nasution, 2020).

Maqashid sharia can be a benchmark for the suitability of the final goal of a muamalah activity based on the main indicators, namely maqashid dharuriyyah al-khamsah (maintaining religion/*hifdz al-din*, maintaining the soul/*hifdz al-nafs*, maintaining reason/*hifdz al-'aql*, maintaining offspring/*hifdz al-nasl*, and maintaining wealth/*hifdz al-maal*). The practice of hybrid contracts or *al-'uqud al-maliyah al-murakkabah* has several benefits if viewed from the maqashid sharia approach, that are (Irawan & Anisah, 2020):

1. Maintaining religion (*hifdz al-din*). The development of hybrid contracts can encourage the flexibility of sharia financial instruments. This can help to fulfill the needs of people for Islamic transactions. The existence of the hybrid contract concept is also an effort to broadcast Islamic values to the wider community that Islam is a religion that regulates its people for achieving welfare.
2. Maintaining the soul (*hifdz al-nafs*). Hybrid contract helps people to fulfill their daily needs through sharia-based muamalah maliyah transactions. This has implications for fulfilling the maintenance of their souls so their living needs can be reached.

3. Maintaining reason (*hifdz al-'aql*). The hybrid contract concept can optimize the use of creative and innovative human resources. This reflects the maximization of the intellectual potential that God has given to humans.
4. Maintaining offspring (*hifdz al-nasl*). The existence of hybrid contract innovation encourages the development of financing in Indonesia. It can develop market needs and can provide benefits to society. The growth and development of the Islamic financial market in Indonesia helps people to obtain funding to support their families.
5. Maintaining assets (*hifdz al-maal*). The existence of the hybrid contract concept can strengthen and increase the role of the sharia-based financial system in the country. This is an alternative financing instrument as a sharia-based investment model to accommodate the interests of Muslims in general and society at large.

Legal Aspects of Cash Waqf Linked Green Sukuk from the Fiqh Muamalah Perspective

The application of cash waqf linked green sukuk is also part of the hybrid contract application. This instrument is an innovation that integrates sukuk as Islamic commercial finance and cash waqf as Islamic social finance. The integration of these two elements can create a better role in overcoming economic problems such as income inequality (Widodo, 2019) and poverty alleviation (Siswantoro, 2022). In cash waqf linked green sukuk, the integration of Islamic commercial finance and Islamic social finance can encourage more optimal and more effective use of waqf funds to create prosperity for the people.

However, from a muamalah jurisprudence perspective, the integration of commercial and social instruments in cash waqf linked green sukuk is a form of hybrid contract which is feared to violate sharia provisions as a hybrid contract whose legal consequences are contradictory. Cash waqf is social based, while green sukuk aims to gain profit or commercial oriented. Therefore, the sharia legal aspects of cash waqf linked green sukuk still require more in-depth study.

Cash waqf linked green sukuk at least involves several parties such as the Indonesian Waqf Board (BWI) as the nadzir which manages waqf funds, the Ministry of Finance as the sukuk issuer and fund manager in the real sector, Productive Waqf Nadzir as the Partner Indonesian Waqf Agency which collects waqf funds and Islamic bank as a Sharia Financial Institution Receiving Cash Waqf (LKS-PWU) and operational bank for BWI. Management of waqf funds by BWI can use the *wadiah yad dhamanah* agreement because it actually manages waqf assets belonging to the people. Distribution of waqf funds in green sukuk in collaboration with the Ministry of Finance can use *mudharabah* or *musyarakah* contracts. Meanwhile, productive waqf nadzir uses a *wakalah* contract and sharia banks as LKS PWU can use an *ijarah* contract for the services provided.

Transactions involving various parties certainly require more than one contract. Waqf funds collected at BWI will be used to green financing projects through sukuk instruments. Profit sharing from the project can be used for social development of the community. Even though green sukuk are basically business oriented while cash waqf is socially oriented, the combination of the two instruments does not eliminate the ultimate goal of waqf, namely the benefit of the people. The distribution of waqf fund to sukuk is only a form of innovation so that the benefits received can be managed more optimally.

However, the distribution of waqf funds must strictly pay attention to prudential aspects and ensure that the projects financed and all implementation procedures are carried out in accordance with sharia provisions. Based on a review of muamalah jurisprudence regarding the hybrid contracts, the practice of cash waqf linked green sukuk is permitted because it does not violate the substance of the main contract, namely waqf. Basically, the combination of several contracts can be prohibited because the implementation method is not in accordance with sharia law. However, as long as things are carried out in accordance with sharia, then any innovation is permitted according to developments in place and time (Musyarrofah, 2023).

Hybrid contracts in cash waqf linked green sukuk are permitted because basically they are in accordance with sharia orientation, that are ease of muamalah, lightening of burdens, and providing opportunities for innovation. This also has relevance to current developments and human needs for modern transactions and contracts (Kholijah, 2020). Even so, the form of muamalah which is based on human creations created in accordance with social changes can change again if other social changes occur. This means that at some point a form of muamalah is permissible and legalized according to the syara', if at some point human benefit is no longer in line with that form of muamalah, then that type of muamalah can be declared no longer valid (Haryono, 2019).

Based on the typology of hybrid contract by al-'Imrani, the combination of contracts in a cash waqf linked green sukuk is included in al-'uqud al-mujtami'ah. This term refers to gathering contracts into one. However, this does not necessarily mean that the contract will be dissolved. These contracts can be merged into one or simply collected but still stand alone (Abdullah & Bahri, 2022). Thus, hybrid contracts in cash waqf linked green sukuk are a form of ijtihad that is permitted as long as it does not violate sharia provisions and its substance is for the benefit of the people. There are some of the reasons behind the legality of cash waqf linked green sukuk:

1. The rule that the original law is that all forms of muamalah are permissible as long as there are no arguments in nash that forbid it. Humans are given the flexibility to organize their lives in terms of muamalah. Ijtihad in the field of muamalah is always open to change in order to adapt to human needs. This rule illustrates that Islamic law is very open to the innovations needed to keep up with current developments. Meanwhile, the provisions in the nash have function as restrictions so that transactions carried out do not deviate and have an impact on community losses. For this reason, integration of cash waqf linked green sukuk is permitted because there is no text in the nash that specifically prohibits it.
2. The basic contracts of cash waqf and green sukuk are both sharia-based instruments. The integration between cash waqf and green sukuk is a combination of two sharia-based instruments. Partially, the cash waqf law is permissible. Likewise, the law on green sukuk as a stand-alone contract is permissible. Both cash waqf and green sukuk have the obligation to meet sharia compliance. Thus, the merger of the two contracts must also comply with sharia provisions.
3. The integration of cash waqf linked green sukuk does not eliminate the main substance of waqf, namely creating the benefit of the people. The integration of cash waqf linked green sukuk does not eliminate the main purpose of waqf. Waqf funds channeled into green sukuk will receive returns and profit sharing. Profit sharing

funds can be used for other social programs in accordance with the allocation of waqf funds. That way, the benefits obtained from waqf funds will be more optimal and not just in one aspect.

4. The cash waqf linked green sukuk model can encourage more optimal benefits for economic empowerment. Cash waqf funds which is distributed in green sukuk can not only give benefit for waqf recipients. This can provide a multiplier effect not only for social interests but also for the environment. Cash waqf funds through green sukuk are not only limited to infrastructure development, but can also be used to empower the community's economy, especially in environmentally friendly businesses.
5. Hybrid contracts in cash waqf linked green sukuk make it easier for economic actors to make transactions according to the needs of the times but still in accordance with sharia. Islamic Sharia wants convenience for the human. Hybrid contracts are a necessity because current conditions are so complex. That it is very difficult to only use a single contract in a transaction. Hybrid contracts are allowed because it can help people in contemporary transaction needs.
6. Cash waqf linked green sukuk helps contribute to sustainable environmental maintenance as recommended by religion to preserve the universe. Not only for social humanitarian interests, cash waqf linked green sukuk will also contribute to environmental preservation. Islam also encourages humans to protect nature as a place to live. Environmental maintenance will benefit human life at large so that the positive impact of waqf funds cannot only be felt by people who are waqf recipients.

4. CONCLUSION

The enormous potential of cash waqf can be managed more optimally through cash waqf linked green sukuk. This innovation not only will give benefit for the people in particular and the public in general, but it will also boost the role of the waqf towards environmental conservation through sustainable economic projects with the tools of the branch. Basically, the instruments of cash waqf and green sukuk have different orientations between social and commercial purposes. The integration of both also triggered the occurrence of hybrid contracts or multiakad practices, so it is necessary to examine the legal aspects of their legality from the perspective of Shariah. Based on our perspective, the practice of hybrid contracts in cash waqf linked green sukuk includes hybrid contracts with the category *al-'uqud al-mujtami'ah*. Such practices are permitted for a number of reasons. First, the principle that the basic law of all forms in muamalah is permissible as long as there is no prohibition from the nash. Secondly, cash waqf and green sukuk are both sharia-based instruments. Thirdly, the integration of cash waqf and green sukuk does not eliminate the waqf substance to create the social well-being of the community. Fourthly, cash waqf linked green sukuk can encourage more optimal fund utilization. Fifth, the transaction is in line with the demands of the times. Sixth, cash waqf linked green sukuk also contribute to sustainable environmental conservation. This research can be advice for policy makers to start socializing and encouraging the implementation of cash waqf linked green sukuk as a part of waqf fund management. This research only focuses on examining the legality aspects of cash waqf linked green sukuk based on fiqh muamalah perspective. It is hoped that future research can examine

the potential of this instrument with analytical tools such as SWOT to determine the opportunities and challenges of its implementation in Indonesia.

5. REFERENCES

- Abdullah, Z., & Bahri, R. (2022). *Hukum Perikatan Islam*. Jakarta: Damera Press.
- Affandi, A., & Khanifa, N. K. (2022). Konsep Harta: Penentuan Keuntungan Green Sukuk Pemicu Impact Investment SDGs. *Journal of Economic, Management, Accounting and Technology (JEMATech)*, 5(2), 213–224.
- Amir, A. (2021). *Ekonomi Pembangunan Islam*. Jambi: WIDA Publishing.
- Asri, Aqbar, K., & Iskandar, A. (2020). Hukum dan Urgensi Wakaf Tunai Dalam Tinjauan Fikih. *Bustanul Fuqaha: Jurnal Bidang Hukum Islam*, 1(1), 79–92.
- Erwinsyah. (2021). Peluang Ekonomi Hijau dan Keterampilan Hijau Menuju Netral Karbon Indonesia Tahun 2060. *Journal of Applied Business and Economic (JABE)*, 8(2), 159–181.
- Fauzin, A., Sholihin, R., Hidayat, A. R., & Hidayah, K. L. (2022). Strategy For Intensifying Cash Waqf In Islamic Banking To Support Green Finance Programs In Indonesia. *Jurnal Ekonomi*, 11(2), 1247–1254.
- Hadi, M. Q. Al. (2021). Fiqh Mu'amalah in Theory and Practice: An Overview of Islamic Economics. *ALHURRIYAH : Jurnal Hukum Islam*, 06(2), 102–117.
- Haryono. (2019). Dinamika dan Solusi Pengembangan Multi Akad (Hybrid Contract) Sebagai Basis Produk Perbankan Syariah. *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam*, 3(1), 17–38.
- Hasan, N. F., & Syahrudin, S. (2022). Enhancing Green Waqf For Carbonization Technology: Opportunities for Sustainable Development Goals (SDGs) in Indonesia. *El Barka: Journal of Islamic Economics and Business*, 5(2), 235–251. <https://doi.org/10.21154/elbarka.v5i2.4739>
- Hendrawan, R. (2020). Cash Waqf Link Sukuk untuk Pembangunan Berkelanjutan. *Misykat Al-Anwar: Jurnal Kajian Islam Dan Masyarakat*, 3(2), 285–310.
- Hizbullah, M., & Haidir, H. (2020). Wakaf Tunai Dalam Perspektif Ulama. *Jurnal Ilmiah Metadata*, 2(3), 170–186.
- Ibrahim, A.-J. (2023). Renewable Energy Financing in Islamic Finance: A Community Green Waqf Financing Model for Rural Electrification. *SSRN Electronic Journal*, 1–30. <https://doi.org/10.2139/ssrn.4341419>
- Irawan, A. W., & Anisah, Z. (2020). Tinjauan Hybrid Contract Perspektif Maqashid Syariah. *Journal of Islamic Banking*, 1(1), 54–82.
- Khalilurrahman, & Mubarrak, H. (2022). Retail Green Sukuk in Indonesia: Toward A Maqashid Approach. *Share: Jurnal Ekonomi Dan Keuangan Islam*, 11(1), 208–228. <https://doi.org/10.22373/share.v11i1.12460>
- Kharazi, M. (2022). Studi Literatur Pengelolaan Wakaf Tunai Sebagai Instrumen Investasi di Indonesia. *J-Sen: Jurnal Ekonomi Syariah Dan Bisnis Islam*, 1(1), 71–80.
- Kholijah, S. (2020). Akad Murakkab dalam Produk Keuangan Syariah. *Jurnal BAABU AL-ILMI: Ekonomi Dan Perbankan Syariah*, 5(1), 104–116. <https://doi.org/10.29300/ba.v5i1.3122>
- Listiana, L., & Mutmainah, L. (2022). Toward Energy Security and Sustainability in Indonesia: Exploring The Waqf-Based Potential. *Global Review of Islamic*

- Economics and Business*, 10(1), 15–26.
- Lutfiyah, S. (2023). Penerapan Konsep Al-Uqud Al-Murakkabah atau Hybrid Contract Pada Lembaga Keuangan Syariah. *Ulil Albab: Jurnal Ilmiah Multidisiplin*, 2(2), 609–616.
- Maarif, M. N., & Munir, S. (2022). Multi Akad dalam Aplikasi Mobile Banking Bank Syariah Indonesia Perspektif Fiqh Muamalah. *Tawazun: Journal of Sharia Economic Law*, 5(1), 121–132.
- Mauliyah, N. I., Hasanah, H., & Hasanah, M. (2023). Potensi Pengembangan Green Sukuk dan Aspek Hukum di Indonesia. *Ekonomika Sharia: Jurnal Pemikiran Dan Pengembangan Ekonomi Syariah*, 8(221–234).
- Mufid, M. (2021). *Filsafat Hukum Ekonomi Syariah Kajian Ontologi, Epistemologi, dan Aksiologi Akad-Akad Muamalah Kontemporer*. Jakarta: Penerbit Kencana.
- Musari, K. (2022). Integrating Green Sukuk and Cash Waqf Linked Sukuk, The Blended Islamic Finance of Fiscal Instrument in Indonesia: A Proposed Model for Fighting Climate Change. *IJIK: International Journal of Islamic Khazanah*, 12(2), 133–144.
- Musyarrofah. (2023). konsep Hybrid Contract dalam Fatwa Dewan Syariah Nasional MUI Perspektif Fikih. *Istidlal*, 7(1), 14–24.
- Mutmainah, S., & Romadhon, M. R. (2023). Pendayagunaan Green Sukuk dalam Menghadapi Perubahan Iklim di Indonesia. *JEBI: Jurnal Ekonomi Dan Bisnis Islam*, 3(1), 1–14.
- Nasution, M. S. A., & Nasution, R. H. (2020). *Filsafat Hukum Islam & Maqashid Syariah*. Jakarta: Kencana.
- Ratna, L., & Hasanah, U. (2019). Triple Bottom Line Theory dalam Perspektif Corporate Social Responsibility. *Majalah Keadilan FH UNIHAZ*, 19(1), 22.
- Rusydiana, A. S., & Rahayu, S. S. (2019). Bagaimana Strategi Pengembangan Wakaf Tunai Di Indonesia? *Jurnal Ekonomi Dan Bisnis Islam (Journal of Islamic Economics and Business)*, 5(1), 15–33. <https://doi.org/10.20473/jebis.v5i1.10416>
- Said, S., & Amiruddin, A. M. A. (2019). Wakaf Tunai dan Pemberdayaan Ekonomi Masyarakat. *AL-MASHRAFIYAH: Jurnal Ekonomi, Keuangan, Dan Perbankan Syariah*, 3(1), 43–55.
- Salam, A. N., & Iskandar. (2021). Integration of Green Sukuk and Cash Waqf Linked Sukuk for Financing Agriculture Sustainable. *Asy-Syari'ah*, 23(2), 345–364. <https://doi.org/10.15575/as.v23i2.24059>
- Sari, W. R., & Yuliani. (2023). Hybrid Contract Model (HCM) dalam Perspektif Etika Bisnis Islam. *Jurnal Ekonomi Dan Bisnis Akuntansi*, 3(2), 24–30.
- Sayuti, M. N. (2019). Kontekstualisasi Rasio Logis Hybrid Contract: Upaya Penguatan Persepsi Masyarakat Terhadap Bank Syariah. *AL-IQTISHADIIYAH: Jurnal Ekonomi Syariah Dan Hukum Ekonomi Syariah*, 5(2).
- Siswanto, S. (2022). Can The Integration Between Islamic Social Finance and Islamic Commercial Finance Tackle Poverty in Indonesia? *Jurnal Ekonomi & Keuangan Islam*, 8(2), 236–249. <https://doi.org/10.20885/jeki.vol8.iss2.art7>
- Suherman, Noor, I., & Manzilati, A. (2019). Identifikasi Potensi Pasar Green Sukuk Republik Indonesia. *Human Falah: Jurnal Ekonomi Dan Bisnis Islam*, 6(1), 37–53. Retrieved from <http://jurnal.uinsu.ac.id/index.php/humanfalah/article/view/4177>
- Sukaina, I. D., Zahidah, H. F., & Arifian, F. D. (2022). Inovasi Aplikasi Online Green

- Waqf Berbasis Blockchain Guna Pendanaan Produktivitas Tamanu Sebagai Upaya Pelestarian Lingkungan. *Journal of Indonesian Sharia Economics*, 1(2), 139–156.
- Tanjuh, H. (2021). Gerakan Nasional Wakaf Uang 2021.
- Tobing, K. S. J. L., & Setiawati, W. (2022). Tinjauan Yuridis Terhadap Efek Bersifat Utang Berwawasan Lingkungan (Green Bond) Sebagai Instrumen Investasi dalam Penerapan Sustainable Investment di Pasar Modal Indonesia. *Technology and Economics Law Journal*, 1(1), 18–35.
- Wahyuni, E. F., Hilal, S., & Madnasir. (2022). Analisis Implementasi Etika Kerja Islam, Ekonomi Hijau dan Kesejahteraan dalam Perspektif Ekonomi Islam. *Jurnal Ilmiah Ekonomi Islam*, 8(3), 3476–3486.
- Widodo, A. (2019). The Role of Integrated Islamic Commercial and Social Finance in Reducing Income Inequality in Indonesia. *Journal of Islamic Monetary Economics and Finance*, 5(2), 263–286. <https://doi.org/10.21098/jimf.v5i2.1063>
- Winarni, E., Mega, W. T., & Masni. (2022). Hukum Penggabungan Kontrak (Multi Akad) dalam Transaksi Keuangan Syariah. *Al-Azhar Islamic Law Review*, 1(1), 1–13.
- Yasin, R. M. (2021). Cash Waqf Linked Sukuk: Issues, Challenges, and Future Direction in Indonesia. *JEBIS: Jurnal Ekonomi Dan Bisnis Islam*, 7(1), 100–112.