




Artikel 7

The Role of Indonesian Notary in the Transfer of Stock Through the Waqf Mechanism After the Covid-19 Pandemic

 Radhityas Kharisma Nuryasinta
 Publication Articles Mei - Jun 2025 Dosen UMM
 University of Muhammadiyah Malang

Document Details

Submission ID

trn:oid::1:3244313104

Submission Date

May 9, 2025, 9:39 AM GMT+7

Download Date

May 9, 2025, 10:09 AM GMT+7

File Name

Stock_Through_the_Waqf_Mechanism_After_the_Covid-19_Pandemic.pdf

File Size

584.8 KB

13 Pages

5,375 Words

27,684 Characters

15% Overall Similarity

The combined total of all matches, including overlapping sources, for each database.





Filtered from the Report

- ▶ Bibliography
- ▶ Quoted Text




Exclusions

- ▶ 4 Excluded Sources

Match Groups

-  **50 Not Cited or Quoted 13%**
Matches with neither in-text citation nor quotation marks
-  **8 Missing Quotations 2%**
Matches that are still very similar to source material
-  **0 Missing Citation 0%**
Matches that have quotation marks, but no in-text citation
-  **0 Cited and Quoted 0%**
Matches with in-text citation present, but no quotation marks

Top Sources

- 11%  Internet sources
- 11%  Publications
- 5%  Submitted works (Student Papers)

Integrity Flags

0 Integrity Flags for Review

No suspicious text manipulations found.

Our system's algorithms look deeply at a document for any inconsistencies that would set it apart from a normal submission. If we notice something strange, we flag it for you to review.

A Flag is not necessarily an indicator of a problem. However, we'd recommend you focus your attention there for further review.

Match Groups

- 50** Not Cited or Quoted 13%
Matches with neither in-text citation nor quotation marks
- 8** Missing Quotations 2%
Matches that are still very similar to source material
- 0** Missing Citation 0%
Matches that have quotation marks, but no in-text citation
- 0** Cited and Quoted 0%
Matches with in-text citation present, but no quotation marks

Top Sources

- 11% Internet sources
- 11% Publications
- 5% Submitted works (Student Papers)

Top Sources

The sources with the highest number of matches within the submission. Overlapping sources will not be displayed.

1	Student papers		
	University of Muhammadiyah Malang		2%
2	Internet		
	jurnal.unissula.ac.id		2%
3	Publication		
	Shinta Ayu Purnamawati, Radhityas Kharisma Nuryasinta, Fadjar Ramdhani Sety...		1%
4	Internet		
	www.semanticscholar.org		1%
5	Publication		
	Nu'man Aunuh, Muhammad Lutfhi, Yaris Adhial Fajrin, Kukuh Dwi Kurniawan et ...		<1%
6	Internet		
	etheses.uin-malang.ac.id		<1%
7	Internet		
	journal.uui.ac.id		<1%
8	Publication		
	Atie Rachmiate, Ike Junita Triwardhani, Alhamuddin, Cep Ubad Abdullah. "Islam, ...		<1%
9	Internet		
	digilib.iain-palangkaraya.ac.id		<1%
10	Publication		
	Alfitri. "Expanding a Formal Role for Islamic Law in the Indonesian Legal System: ...		<1%

11	Publication	Fita Candra Nurdia, Soediro Soediro, Astika Nurul Hidayah. "Juridical Analysis on t...	<1%
12	Internet	migration.cermati.com	<1%
13	Publication	Rodotun Nimah. "The Impact of Community Social Changes on the Digitalization ...	<1%
14	Internet	repository.ubaya.ac.id	<1%
15	Publication	Evan Hamzah Muchtar. "THE SHARIAH COMPLIANCE ANALYSIS BASED ON FINANC...	<1%
16	Publication	Mohammad Samsul Arifin, Rosye Zaena, Abdul Karim, Septiana Na'afi, Aziz. "An...	<1%
17	Internet	jurnal.ar-raniry.ac.id	<1%
18	Internet	repository.unej.ac.id	<1%
19	Internet	s2.bukalapak.com	<1%
20	Publication	Bayu Indra Permana, Mohammad Rafi Al Farizy, Ferdiansyah Putra Manggala. "R...	<1%
21	Student papers	Universiti Sultan Zainal Abidin	<1%
22	Publication	Sujanoko, Guntur. "Problematika Penerapan Cyber Notary Dalam Pelaksanaan Tu...	<1%
23	Publication	Iqbal Pandu Satrio. "Authorities and Responsibilities of Notaries Regarding the I...	<1%
24	Publication	Yaris Adhial Fajrin, Radhityas Kharisma Nuryasinta, Muhammad Luthfi, Dedik Fitr...	<1%

25	Internet	
ej-politics.org		<1%
<hr/>		
26	Internet	
ojs.elearning-pintar.com		<1%
<hr/>		
27	Internet	
journals.itb.ac.id		<1%
<hr/>		
28	Internet	
journal.umpo.ac.id		<1%

Conference Paper

The Role of Indonesian Notary in the Transfer of Stock Through the Waqf Mechanism After the Covid-19 Pandemic

Radhityas Kharisma Nuryasinta, Yaris Adhial Fajrin, Kukuh Dwi Kurniawan*,
Yohana Puspitasari Wardoyo, Nu'man Aunuh

Law Faculty, University of Muhammadiyah Malang

ORCID

Radhityas Kharisma Nuryasinta: <https://orcid.org/0000-0002-3774-1465>

Kukuh Dwi Kurniawan: <https://orcid.org/0000-0002-4883-9716>

Abstract.

Since the Covid-19 cases appeared in several countries including Indonesia, it had a direct impact on every sector in Indonesia, especially in the capital market sector. However, because Indonesia is currently entering a new phase in economic recovery after the acceleration of vaccination, accompanied by positive policies from the government, this provides new hope for investors who wish to waqf stocks. This study discusses the role of the Notary as the Official Making the Waqf Pledge Deed in the Transfer of Stock Waqf after the Covid-19 Pandemic. The new role of the Notary as stated in the explanation of Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of a Notary (UUJN), especially in the explanation of Article 15 paragraph (3) that Notary have other authorities regulated in laws and regulations, one of which is to make a Deed of Waqf Pledge. This is related to the provisions of Article 37 paragraph (4) of Government Regulation Number 42 of 2006 concerning the Implementation of the Waqf Law (PP Wakaf), which states that a Notary has the opportunity to make a Waqf Pledge Deed. As the most important element in the transfer of stock waqf, the Waqf Pledge Deed requires an official who has competence in making a deed containing the Wakif's desire to surrender his assets to be used by Nazhir. This study aims to clarify the authority of a notary who is still foreign in making a waqf pledge deed, especially the object of stock waqf. This type of research is normative-juridical research. The results of this study obtained answers to existing problems related to the authority of a Notary as a PPAIW, namely that until now the regulations regarding the requirements of a Notary as a PPAIW that have been mandated in the provisions of Article 3 paragraph (5) of PP Wakaf have not yet been stipulated by the Minister of Religion.

Keywords: notary, waqf, stock, Indonesia, Covid-19

OPEN ACCESS

1. INTRODUCTION

The capital market in general is a market that trades various types of financial instruments in a relatively long time. So the activity not only in terms of funding but also on investment facilities for companies and other agencies. Various instruments marketed by the capital market include stocks, bonds, mutual funds, warrants, and various other derivative instruments which are normally exercised within a period of more than one year. Conventional capital markets and Islamic capital markets are two types of capital markets in Indonesia, which in the application of law both have different characteristics. The Islamic capital market focuses more on how transaction activities must always follow the principles of Islamic Sharia, namely if the company's activities are not engaged in alcohol products, production of which raw materials are pork, gambling, and pornography. while the conventional capital market provisions do not apply as long as they comply with and comply with **Law Number 8 of 1995 concerning Capital Markets**.

Stocks are one of the capital market instruments that are in great demand by investors, because they are able to provide profits to certain parties by way of capital participation. In terms of separating Sharia and non-Sharia stocks, **Bapepam-LK and the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) issue the Indonesian Sharia Stock Index (ISSI) which consists of all stocks listed on the Indonesia Stock Exchange and have been incorporated in the Stock List. Sharia (DES)**. Regarding the transfer or transfer of rights to stocks, it is regulated in **Article 56 of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), namely through a deed of transfer of rights which can be made in the form of a notarial or private deed**.

Along with **the increasing opportunities for Sharia stocks in Indonesia, the transfer mechanism can be done through waqf**. In fact, according to data from the Indonesian Waqf Agency, there are currently 5 (five) securities companies along with 4 (four) waqf institutions that provide facilities for waqf stocks. In addition to the ease of transferring stocks, **waqf is also a form of social worship, because the ownership of assets that have been handed over will be used for the public interest [1]. Based on law no. 41 of 2004 concerning Waqf (UU Wakaf), the types of assets that can be waqf are in the form of immovable (fixed) and movable (non-permanent)**. Immovable objects include buildings and land, while movable objects include precious metals, money, and securities. Stocks and bonds are part of the form of securities, so the object can be waqf.

However, waqf in Indonesia in its implementation is still dominated by the form of land and building waqf which is functioned for religious, social and educational facilities. Whereas in order to realize **the welfare of the people for the benefit of objects, waqf can also reach new objects (among them such as objects of stock), so that it does not only**

8 dwell on immovable objects [2]. The contemporary waqf paradigm, which has begun to shift the shape of the object of waqf, has also raised awareness of the importance of the role of a professional PPAIW (Official Waqf Pledge Maker) [3]. As for the authority as PPAIW in Indonesia is a notary, although in the case of making a Waqf Pledge Deed is an unusual thing in the notary world, especially for waqf whose object is in the form of stocks. Moreover, in Indonesia at this time there is no regulation at the level of the Minister that regulates the authority of a Notary as PPAIW with the object of stocks.

24 It is interesting to study in this paper about the role of the Notary in making the Waqf Pledge Deed (AIW), especially the waqf whose object is in the form of stocks, as well as the legal consequences of the waqf object (in the form of stocks) that have not received legality (waqf pledge deed) by the Notary. The paper also has a practical aim [4]. There are several previous writings that became the author's reference in this paper. First, a thesis entitled "Legal Principles Against Notary Authority in Making Waqf Pledge Deed" (Prinsip Hukum terhadap Kewenangan Notaris dalam Pembuatan Akta Ikrar Wakaf) by Lalu Rizky Rachmatullah which provides a reference on the new role of Notary in terms of making waqf pledge deeds. [5] and "Waqf in Historical Perspective: Online fatwa and Contemporary Discourses by Muslim Scholars" by Sabrina Joseph which provides references related to contemporary waqf discourses that are currently developing [6].

3 2. METHODOLOGY/ MATERIALS

3 This research uses normative legal research. While the data collection techniques in this study were through written primary legal sources such as legislation, books, scientific journals, or articles related to stock waqf and sources of materials, while secondary legal sources were encyclopedias, legal dictionaries, websites, modules and Writings related to notary and stocks. The analysis process was carried out from the beginning to the end of the study, to be able to describe the concept of stock waqf, the authority of a notary, and the urgency of PPAIW legality by the Ministry of Religion.

3 3. RESULTS AND DISCUSSIONS

2 3.1. The Official of the Maker of the Stock Waqf Pledge Deed as the New Role of the Notary

Waqf is an instrument of wealth transfer which is known/ taught in Islam as a means of empowering community assets, which is not found in any socio-economic system. About the use of waqf property, it will be handed over to nazhir institutions or individuals, which are then used for the benefit of the wider community (not for personal interests).

6
10
6
2
7
2
8

Waqf according to the law Waqf is an act of wakif in the legal field to partially separate his assets for the sake of worship or public benefit according to sharia within a certain time or for an unspecified time. The Shariah, with its sources in the holy Qur'an and the Sunnah, is essential because it is the divine revelation containing absolute truths [7].

The role of waqf as one of the religious institutions is very necessary, in increasing the effective general welfare. Because apart from being an effort to provide facilities, social infrastructure and worship, waqf also has an economic spirit that is likely to increase the level of economic welfare of the people/community. Therefore, waqf must be in line with the initiative to develop the use of waqf in accordance with Islamic sharia principles [8]. So far, in this country, the object of waqf is understood to be limited to buildings and land. Whereas the types of property that can be the object of waqf according to Article 16 paragraph (1) of the Waqf Law include immovable (fixed) and movable (non-permanent) objects.

Taking into account the provisions in the Waqf Law, stocks are a form of object that can be waqf (as a type of productive waqf, the capital market is a movable asset category), so that stocks owned by a person can be transferred partially or completely for waqf allocation. The mechanism for waqf stocks is no different from waqf of other assets, but what distinguishes it is the waqf property, namely stocks. Specifically, what is meant is Sharia stocks listed on the Indonesia Stock Exchange (IDX) records or profits from Sharia stocks which are also listed on the IDX. So that in addition to the stock itself which can be the object of waqf, dividend profits or capital gains from a stock itself can also be donated. Regulations on the procedures and provisions for waqf with objects of stocks are regulated in the Regulation of the Minister of Religion of the Republic of Indonesia Number 73 of 2013 concerning Procedures for Waqf of Movable Objects Other than Money.

The presence of stock waqf that emerged in 2019 is one of several forms of productive waqf development after cash waqf which first developed in Indonesia. The management of this waqf asset uses capital market instruments from Sharia stocks. Stocks that can be donated are only stocks listed on the Indonesia Stock Exchange, especially Sharia stocks listed in the Indonesian Sharia Stock Index (ISSI), so that not all stocks in the capital market can be waqfed [9]. Various stocks classified in the Sharia index are issuers whose business activities are in accordance with Sharia provisions. The procedure for the inclusion of Sharia stocks into the Sharia index is through the Sharia selection stage, the value of the transaction volume, and capitalization [10].

In practice, the parties involved in stock waqf are: (1) Investor (wakif), (2) waqf manager (nazhir), (3) SOTS Exchange Member, (4) Beneficiary (mauquf 'alaih), and (5) The Official Making the Waqf Pledge Deed. Investors are parties who endow part or all of their Sharia stocks that have been registered on the Indonesia Stock Exchange to Nazhir

as waqf manager through the Shariah Online Trading System (SOTS). SOTS is a virtual Sharia stock transaction system service and meets the qualifications in Sharia principles in the capital market. This means that investors who can provide stocks in the form of waqf are only those who have a securities account with one of the Exchange Members who provide Shari'ah Online Trading System (SOTS) services which also provide stock waqf facilities [11]

The Waqf Manager (Nazhir) is the recipient of the waqf property from the wakif to be used according to its designation, so that its management has a positive impact on many people. Article 14 of the Waqf Law states that Nazhir must be registered with the Minister and the Indonesian Waqf Board (BWI) in order to carry out coaching. Regarding the stock waqf, the nazhir in question is the Waqf Management Institution which is affiliated with the Shariah Online Trading System (AB SOTS) Exchange Member as the recipient and manager of the stock waqf.

Currently in Indonesia there are four SOTS members (out of a total of fourteen members) who can facilitate stock waqf. The fourteen SOTS members in Indonesia include:

TABLE 1: SOTS members in Indonesia [12].

No	SOTS	No	SOTS
1.	BNI Sekuritas (e-Smart Syariah)		Mirae Aset Sekuritas (HOTS Syariah)
	BRI Danareksa Sekuritas (D'ONE Syariah), and Phintraco Sekuritas (PROFITS Syariah)		MNC Sekuritas (MNC Trade Syariah)
	FAC Sekuritas (FAST Syariah)		Panin Sekuritas (POST Syariah)
	HP Sekuritas (HPX Syariah)		Samuel Sekuritas Indonesia (STAR Syariah)
	Indo Premier Sekuritas (IPOT Syariah)		Phillip Sekuritas Indonesia (POEMS Syariah)
	Maybank Sekuritas Indonesia (KE Trade Syariah)		RHB Sekuritas (RHB Trade Smart Syariah)
	Mandiri Sekuritas (MOST Syariah)		

AB SOTS will provide stock waqf facilities and serve as representatives of nazhir when waqf pledges with wakif, as well as AB SOTS as well as representatives of wakif in the process of giving waqf objects to nazhir. The implementation of the stock waqf will be assisted by a securities company whose role is to transfer stocks from the investor's portfolio to the portfolio of the waqf institution (nazhir), then the stocks that have been waqf will be managed by the nazhir and the profits from the stock investment will be distributed to the mauquf 'alaih. Meanwhile, currently there are 5 (five) securities companies along with 4 (four) waqf institutions that provide facilities for waqf stocks, namely: [13]

MNC Securities in collaboration with Badan Wakaf Indonesia (BWI) dan Rumah Zakat;
 BNI Securities in collaboration with Global Wakaf;
 Phillip Securities in collaboration with Dompot Dhuafa;
 Panin Securities in collaboration with Dompot Dhuafa;
 Samuel Securities in collaboration with PPPA Daarul Qur'an [14].

More about mauquf 'alaih. It is common knowledge that law is very important for economic growth [15]. The party appointed to benefit from the allotment of property is based on the statement of wakif's desire in the Waqf Pledge Deed. Meanwhile, to realize the function and purpose of waqf property can only be intended for the poor, assistance for orphans, assistance for abandoned children, worship activities, educational activities, scholarships, economic improvement and for the welfare of the people, and the advancement of other general welfare. According to the provisions of Sharia and the prevailing laws and regulations.

TABLE 2: Comparison between movable and immovable objects.

	Moving Objects	Immovable Objects
Object type	land rights according to the provisions of the laws and regulations in force in Indonesia Other things that are closely related to land HMRS (Apartment property rights) Buildings, plants or other objects that become part of the land Other fixed objects according to the applicable laws and regulations	Objects in the form of money, securities, vehicles, precious metals, intellectual property rights, rental rights, and other fixed objects that apply and according to Sharia provisions
PPAIW	Head of Religious Affairs Office (KUA);atau Other officials who organize waqf affairs	Islamic Financial Institutions (LKS); Head of Religious Affairs Office (KUA); Other officials appointed by the Minister Notary

The party involved in the stock waqf is AIW Builder Officer (PPAIW). The transfer of waqf property from wakif to nazhir must be carried out before the Waqf Pledge Deed Official (PPAIW), so that the transfer of ownership becomes clear and has legal force for the parties. PPAIW is an official who has the authority determined by the Minister in terms of making the Waqf Pledge Deed.

Waqf Pledge Deed, hereinafter abbreviated as AIW, is a document containing a wakif statement relating to his will to waqf his assets orally or in writing to be managed by Nazhir in accordance with the objectives that have been stated in the form of a written statement. After the creation of the AIW, Nazhir will issue a waqf certificate and then give it to the Wakif.

Regarding the authority of a Notary in Indonesia, it refers to the UUJN, which in addition to having the authority prepare authentic deeds regarding all legal actions,

agreements, and applications according to the laws and regulations in force in Indonesia, Notary are also authorized to carry out other authorities according to the applicable rules. "Other authorities regulated in the legislation" referred to is the authority to certify legal acts in the form of making waqf pledge deeds, aircraft mortgage guarantee deeds, and making other deeds carried out electronically/cyber notary.

The role of a notary in making AIW is further clarified in the PP Waqf, namely Article 37 paragraph (4) which reads "that it does not close the opportunity for a notary to make AIW". The provisions in the article are the new authority of the Notary to make a deed in which contains the pledge of the will of the wakif related to the transfer of the property to be waqf to Nazhir. In addition to PP No. 42 of 2006, the role of a notary in making AIW was also strengthened by the Minister of Religion Regulation no. 73 of 2013 concerning Procedures for Waqf of Non-permanent and Non-Fixed Objects Other than Money. Article 27 states that "Notary are appointed as AIW Maker Officer by Ministerial Decree".

Not all notary in Indonesia can become PPAIW, because only notary who meet the requirements can become PPAIW. Notary qualifications as PPAIW are regulated in that they are Muslim, trustworthy, and have a waqf education certificate from the Minister of Religion. After the requirements are met, it is then submitted to the Minister by a Notary so that he can be appointed as the Official Making AIW.

The provisions in Article 27 paragraph (1) of the Regulation of the Minister of Religion concerning the procedures for waqf of movable objects other than money explicitly explain that "The authority of a Notary to become an Official Making AIW requires the basis of authority from a Ministerial Decree to be used as a guide before the Notary exercises its authority". When compared to cash waqf, PPAIW's basic authority has been contained in the Minister's decision Number 93 of 2008 concerning the stipulation of PT Bank Muamalat Indonesia Tbk to act for and on behalf of Islamic Financial Institutions as Recipients of Cash Waqf, so that in its implementation it has begun to develop well in Indonesia.

The Ministerial Decree that stipulates a Notary as PPAIW is very necessary, considering that this is the basis for the Notary's authority to make AIW. Although Article 37 paragraph (4) of PP Waqf mentions the opportunity for a Notary to make an AIW, this will have the potential to become a dualism of authority between KUA and a Notary to prepare AIW in the process of transferring stock waqf.

With the stipulation of the basis of the Notary's authority as PPAIW, this is the problem with the legal vacuum of the uncertainty of the role of the Notary in making AIW, especially for stocks. Even though administratively, the position of a Notary as PPAIW is very strategic and crucial. The need for the Minister of Religion to issue such a stipulation

is to secure the waqf assets from the legal aspect, especially to avoid all legal problems and of course avoid the actions of other parties who cannot be accounted for.

The existence of the Waqf Pledge Deed in the Transfer of Stocks through the Waqf Mechanism after the covid-19 pandemic

The Covid-19 lockdown began on 23 March 2020 and even though this had anticipated [16]. it describes the conditions of real world phenomena regarding the COVID pandemic crisis [17]. It is undeniable that since the discovery of Covid-19 appeared in many countries, this pandemic has given serious thought to many socio-cultural aspects such as health recovery and socializing [18]. including Indonesia, the Covid-19 pandemic has had a direct impact on every sector, especially in the capital market sector. However, because Indonesia is currently entering a new phase of economic recovery after the acceleration of vaccination accompanied by positive policies from the government, this provides new hope for investors who wish to waqf stocks. factors in the ups and downs in the stock market have been reviewed in several scientific papers in several countries [19].

In Islamic law, a trust for charitable purposes is a waqf [20]. As a form of worship, the management of productive waqf assets, namely stocks, will be distributed for the benefit of those in need/mauquf alaih. So that stock waqf also aims to help improve people's living standards in the economic field, especially in the era of new conditions after the current covid-19 pandemic, coupled with public literacy about waqf that is starting to build. This can be seen from the growth of waqf in philanthropic institutions which is starting to increase. Waqf is a concrete illustration to make the field of philanthropy within the authority of the state [6]. The transfer of waqf property to mauquf alaih in accordance with Indonesian law is described according to the following chart:

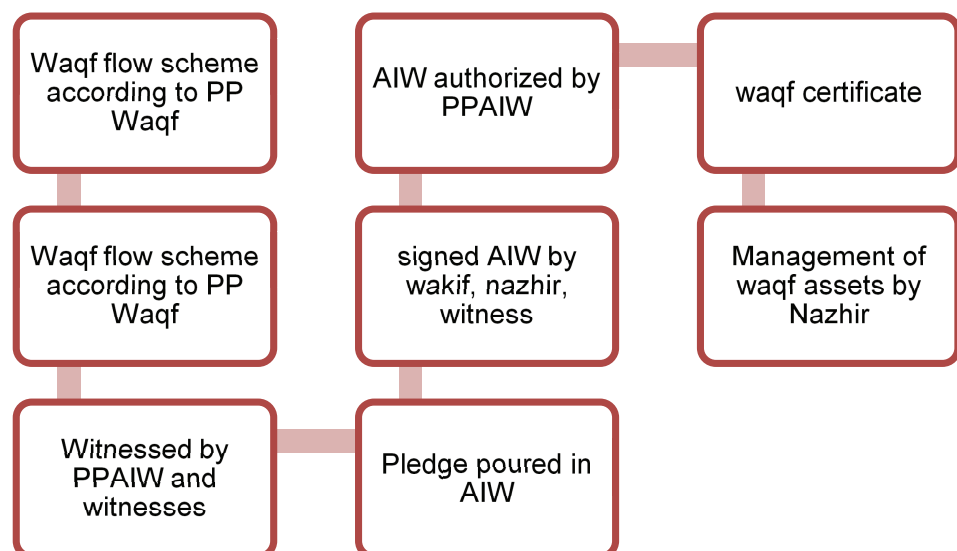


Figure 1: Waqf flow scheme according to PP Waqf.

As one of the most important elements in the waqf process, AIW contains information regarding the will of the wakif to distribute his assets through the waqf mechanism. In the past, the world of fiqh did not know about the Waqf Pledge Deed (AIW), even more so regarding the official who made the AIW. In fiqh, people who want to do waqf only need to verbally pronounce their waqf pledge in front of people they trust, such as Kyai, community leaders, mosque priests, or an ustadz. The conventional method of pledge is currently no longer sufficient, because the evidence in civil law that has perfect proof power is written evidence or letters in the form of an authentic deed. In addition, an authentic deed can better ensure the sustainability of a waqf object even though it has changed generations on the part of the wakif, nazhir and his witnesses.

Article 1868 BW which reads, "a deed whose form is determined by regulations and drawn up by or in front of an authorized public official at the location where the deed is made according to its authority "; contains the requirements for a deed to be considered authentic. Notary is a veritable public officer [21] which is a profession that is attached to a person to carry out the goals of the state, namely ensuring order, legal protection, and legal certainty by making written evidence, namely an authentic deed [22].

Within the scope of civil law, a notary is one of the classic legal professions, in addition to judges, prosecutors, and advocates [23]. The transfer of waqf assets as in PP Waqf which requires waqf pledges to be made in front of PPAIW, is in line with notary obligations in reading the deed in front of the parties. The reading of the deed by a notary is a requirement the perfection of the contents of a deed as regulated in Article 16 UUJN. This provision is reaffirmed in Article 44 of the UUJN, that after the deed is read, the deed must be immediately signed by the parties, witnesses, and a notary. The provisions for reading and signing are an integral part of the inauguration of the deed.

In practice, in conducting stock waqf, the provisions regarding AIW by PPAIW have not been implemented. In accordance with the stock waqf platform provided by AB SOTS, the stock waqf process is illustrated in the following chart:

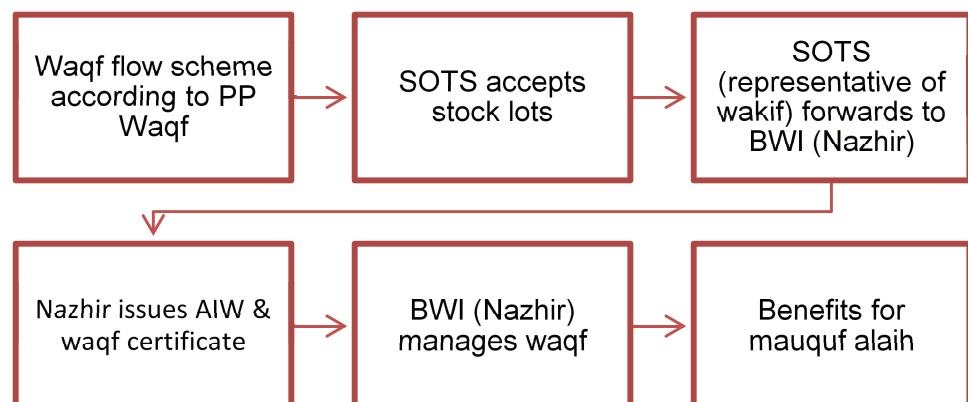


Figure 2: Stock waqf flow scheme in practice [24].

The contradictions depicted through the scheme chart of the stock waqf process according to PP Waqf and according to the practice of its implementation make one of the most important elements in waqf, namely AIW, blurry. The existence of AIW in practice is still raised as a form of condition for having a stock waqf, but it is not made by PPAIW as a party determined by the Minister and authorized to make AIW.

As a form of productive waqf that currently makes it easier for endowment investors, it does have a positive impact on the mauquf over in terms of the utilization of their waqf assets, but the PPAIW not making AIW will result in difficulties in the proving process when there is a dispute, for example regarding the allocation or distribution of dividends on the stocks or Problems can also occur. When a wakif who is a stockholder in a certain company waqf some or all of his stocks, it is certain that AIW must be made in that company for stocks. State law governing contractual agreements, corporate law, securities law, and banking law are important determinants of shareholders [25]. The release of rights to stocks by making AIW in front of PPAIW is the right step to avoid legal problems in the future.

In the previous discussion, it has been mentioned that only a notary who meets the requirements can become PPAIW. These requirements include being Islamic, trustworthy, and have a certificate of competence in the field of waqf from the Ministry of Religion. However, considering the legal aspects of the highly developed capital market, requirements to become a notary a PPAIW for stock waqf need to be supplemented with evidence of the Notary's ability to master capital market law. With the PPAIW qualification, the existence of AIW as one of the authentic notary deeds is getting clearer and provides legal certainty for all parties involved in stock waqf.

4. CONCLUSION AND RECOMMENDATION

First, stocks are one of the movable objects that can be donated. As a means of worship, stock waqf has the aim of improving the standard of living of the community and the country's economy in the stock capital market sector, so that in the implementation of the transfer of waqf a legal basis is needed regarding the Official Making AIW who is authorized to make AIW as a document containing a statement of the transfer of waqf assets by the wakif. . The Ministerial Decree that stipulates a Notary as PPAIW is very necessary, considering that this is the basis for the Notary's authority to make AIW. In addition to providing certainty, this legal basis also aims to prevent dualism of authority between KUA and Notary to prepare AIW in the process of transferring stock waqf.

Second, there are still contradictions between the stock waqf procedure according to PP Waqf and according to its implementation practice. This right makes one of the most important elements in waqf, namely AIW, blurred. One of the reasons for the blurring of

AIW's existence is the PPAIW not having made an AIW with certain qualifications. In the event that PPAIW is a Notary who meets the requirements according to PP Waqf and has qualifications in the capital market, it will make the existence of AIW as an authentic notary deed clearer and provide legal certainty for all parties involved in stock waqf.

Based on the conclusions put forward, there are several recommendations given to the problems in this study, namely:

1. It is recommended that the regulation regarding the Official Making the Waqf Pledge Deed for movable objects, especially stocks and other securities, is immediately ratified. In order to avoid the potential dualism of authority that might arise.
2. Additional requirements are needed for PPAIW who transfer stock waqf with qualifications apart from having received a certificate of expertise from the Indonesian Waqf Board (BWI), but also having attended Professional Education in the Capital Market sector from the Financial Services Authority (OJK). This is to clarify the existence of the Akaf Pledge Deed made by PPAIW with good qualifications.

References

- [1] Mujieb MA. Kamus Fikih. Jakarta: Pustaka Firdaus; 2001.
- [2] Hanna S. "Wakaf Saham dalam Perspektif Islam." Mirzan J. Ilmu Syariah. 2015 Jun;3(1):99–124.
- [3] Masruchin. "Wakaf Produktif dan Kemandirian Pesantren: Studi tentang Pengelolaan Wakaf Produktif di Pondok Modern Darussalam Gontor Ponorogo," Universitas Islam Negeri Sunan Ampel Surabaya, 2014.
- [4] Gauri V. Customary Law and Economic Outcomes in Indonesia. Hague J Rule Law. 2010;2(1):75–94.
- [5] Rachmatullah LR. Prinsip Hukum terhadap Kewenangan Notaris dalam Pembuatan Akta Ikrar Wakaf, no. September 2019. Jember: Digital Repository Universitas Jember, 2021.
- [6] Joseph S. Waqf in Historical Perspective: Online fatāwā and Contemporary Discourses by Muslim Scholars. J Muslim Minor Aff. 2014;34(4):425–37.
- [7] Abdullah P, Studies I, Conference P. "EXPANDING A FORMAL ROLE FOR ISLAMIC LAW IN THE INDONESIAN LEGAL SYSTEM: THE CASE OF MU ' AMALAT Alfitn Contemporary conflicts over efforts to expand the role of Islamic law in the national legal system of Indonesia are so intense that they undermine reas," vol. 202, 2006.
- [8] D. F. amir Sup, "Wakaf Kontemporer di Indonesia dalam Perspektif Hukum dan Fatwa," J. Huk. Ekon. Syariah 2021;4(2): 237–256. [Online]. Available:

- <http://www.jurnalnasional.ump.ac.id/index.php/JHES/article/view/11093>
<http://www.jurnalnasional.ump.ac.id/index.php/JHES/article/download/11093/4413>
- [9] Hana KF. Efektifitas Literasi Melalui Game Nabung Saham Go Terhadap Keputusan Membeli Saham Syariah. *Equilib. J. Ekon. Syariah*. 2019;7(2):367.
- [10] Aditya W. Saham Syariah Sebagai Objek Wakaf (Studi di MNC Sekuritas Medan). Universitas Muhammadiyah Sumatera Utara Medan; 2019.
- [11] Badan Wakaf Indonesia. “Wakaf Saham itu Apa?” 2021. <https://www.bwi.go.id/7431/2021/11/02/wakaf-saham-itu-apa/> (accessed Jul. 16, 2022).
- [12] Republika, “BEI targetkan semua AB SOTS Luncurkan Wakaf Saham Tahun Ini,” 2019. <https://www.republika.co.id/berita/prfil3370/bei-targetkan-semua-ab-sots-luncurkan-wakaf-saham-tahun-ini> (accessed Jul. 16, 2022).
- [13] Koran Jakarta. “BEI Siapkan Tiga AB Sediakan Wakaf Saham,” 2019. <https://koran-jakarta.com/bei-siapkan-tiga-ab-sediakan-wakaf-saham?page=all> (accessed Jul. 16, 2022).
- [14] idx islamic, “Anggota Bursa Penyedia Sistem Online Trading Syariah.” <https://idxislamic.idx.co.id/investor-syariah/daftar-ab-sots/> (accessed Jul. 16, 2022).
- [15] Zhang Z. Law and Economic Growth in China: A Case-Study of the Stock Market. *Asian J Law Soc*. 2018;5(2):333–57.
- [16] Kargbo P. Surviving the Covid-19 Pandemic Lockdown: a Case Study. *Leg Inf Manag*. 2020;20(4):227–30.
- [17] Siems M. Mapping a causal scheme of indicators in the COVID-19 crisis. *Int J Law Context*. 2021;17(2):235–48.
- [18] Permal S. Cascading effect of COVID-19: de-globalisation and its impact on global governance. *Aust J Marit Ocean Aff*. 2021;0(0):1–9.
- [19] Claessens S. Klingebiel, “The Future of Stock Exchanges: determinants and Prospects.” *Eur Bus Organ Law Rev*. 2002;;3.
- [20] Morrison S. The social and legislative history of the Islamic trust (waqf) in Mauritius. *Commonw Law Bull*. 2016;42(1):59–83.
- [21] Recent F. “The Latin-type Notary and the process of European Unification *.” 1994; 1(3):18–23.
- [22] Dewi TG, Martana NA. Tanggung Jawab Notaris Dalam Penyimpanan Akta In Originali Sebagai Minuta Akta. *Acta Com*. 2020;5(2):221.
- [23] Shaw G. Notary in England and Wales: modernising a profession frozen in time. *Int. J. Leg. Prof*. 2000;7(2):141–55.

- [24] Badan Wakaf Indonesia. “Proses Wakaf Saham,” 2020. <https://www.bwi.go.id/5007/2020/06/19/mari-berwakaf-saham-begini-cara-mudahnya/> (accessed Jul. 17, 2022).
- [25] Ahmed H. Islamic Law, Investors’ Rights and Corporate Finance. *J. Corp. Law Stud.* 2012;12(2):367–92.



Digital Receipt

This receipt acknowledges that Turnitin received your paper. Below you will find the receipt information regarding your submission.

The first page of your submissions is displayed below.

Submission author: Artikel 7
Assignment title: Radhityas Kharisma Nuryasinta
Submission title: The Role of Indonesian Notary in the Transfer of Stock Through...
File name: Stock_Through_the_Waqf_Mechanism_After_the_Covid-19_Pan...
File size: 584.84K
Page count: 13
Word count: 5,375
Character count: 27,684
Submission date: 09-May-2025 09:46AM (UTC+0700)
Submission ID: 2670797203

 INCLAR
3rd International Conference on Law Reform (3rd INCLAR)
Volume 2022

 Knowledge E
enriching | engaging | empowering

Conference Paper

The Role of Indonesian Notary in the Transfer of Stock Through the Waqf Mechanism After the Covid-19 Pandemic

Radhityas Kharisma Nuryasinta, Yaris Adhial Fajrin, Kukuh Dwi Kurniawan*,
Yohana Puspitasari Wardoyo, Nu'man Aunuh

Law Faculty, University of Muhammadiyah Malang

ORCID
Radhityas Kharisma Nuryasinta: <https://orcid.org/0000-0002-3774-1465>
Kukuh Dwi Kurniawan: <https://orcid.org/0000-0002-4883-9716>

Abstract.
Since the Covid-19 cases appeared in several countries including Indonesia, it had a direct impact on every sector in Indonesia, especially in the capital market sector. However, because Indonesia is currently entering a new phase in economic recovery after the acceleration of vaccination, accompanied by positive policies from the government, this provides new hope for investors who wish to waqf stocks. This study discusses the role of the Notary as the Official Making the Waqf Pledge Deed in the Transfer of Stock Waqf after the Covid-19 Pandemic. The new role of the Notary as stated in the explanation of Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of a Notary (UUJN), especially in the explanation of Article 15 paragraph (3) that Notary have other authorities regulated in laws and regulations, one of which is to make a Deed of Waqf Pledge. This is related to the provisions of Article 37 paragraph (4) of Government Regulation Number 42 of 2006 concerning the Implementation of the Waqf Law (PP Wakaf), which states that a Notary has the opportunity to make a Waqf Pledge Deed. As the most important element in the transfer of stock waqf, the Waqf Pledge Deed requires an official who has competence in making a deed containing the Waki's desire to surrender his assets to be used by Nazhir. This study aims to clarify the authority of a notary who is still foreign in making a waqf pledge deed, especially the object of stock waqf. This type of research is normative-judicial research. The results of this study obtained answers to existing problems related to the authority of a Notary as a PPAIW, namely that until now the regulations regarding the requirements of a Notary as a PPAIW that have been mandated in the provisions of Article 3 paragraph (5) of PP Wakaf have not yet been stipulated by the Minister of Religion.

Keywords: notary, waqf, stock, Indonesia, Covid-19

 OPEN ACCESS

How to cite this article: Radhityas Kharisma Nuryasinta, Yaris Adhial Fajrin, Kukuh Dwi Kurniawan*, Yohana Puspitasari Wardoyo, Nu'man Aunuh, (2022), "The Role of Indonesian Notary in the Transfer of Stock Through the Waqf Mechanism After the Covid-19 Pandemic" in 3rd International Page 479 Conference on Law Reform (3rd INCLAR), KNE Social Sciences, pages 479-485. DOI: 10.30605/kns.v3i1.1210