

# *Arrangement Of Sharia Agreement In Hajj Funds Investment With Productive Waqf Schemes*

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**Abstract-** *The management of the Hajj fund by BPKH is still not optimal. Up until now, BPKH only invested the Hajj funds in the form of banking products and securities. Even though the Hajj Financial Management Act also mandates the placement of Hajj funds in the form of direct investment. On the other hand, productive waqf is the backbone of the country's economy because it can reduce social inequality. However, the waqf organizers (nazhir) have difficulty in finding funds to increase the utilization of waqf assets. Even though the Waqf Law mandates the management of waqf assets for the welfare of the people. Therefore, the authors conducted a study to examine how the regulation of productive waqf with Hajj funds can be synergized through the arrangement of Islamic contracts. The results of the study are that the placement of Hajj funds through productive waqf can be done legally. In addition, the management of the Hajj fund with the development of waqf is a combination that is synergistic because it has the same characteristics, principles and management objectives. Thus, BPKH is advised to collaborate with waqf institutions so that the optimization of hajj funds can be maximized and provide benefits to Muslims and Hajj pilgrims.*

**Keywords-** *Placement Of Hajj Funds; Productive Waqf.*

## I. INTRODUCTION

Waqf is double-dimensional worship; it is a social dimension of worship in addition to getting pleasure and merit from Allah. In history, waqf has been widely used for social purposes such as community empowerment, social security, education, health, and others.[1]

In 2017, according to data from the National Development Planning Agency (Bappenas) published by CNN Indonesia, Indonesia had a 4.3 billion square metres waqf land, and the amount of cash waqf was 22 billion rupiahs. Waqf if managed productively, can reduce poverty in Indonesia. It is because the value of the benefits of productive waqf can be given to those who need funds for livelihoods and schooling.

The management of waqf productively for the welfare of the community becomes a demand that

cannot be avoided anymore. Nazir waqf, as a manager, requires a partnership with various professional institutions.[2] The formulation of partnership cooperation must pay attention to Islamic principles/Islamic fiqh according to waqf, namely the principle of immortality (*ta'bidul ashli*) and the principle of benefit (*tashbilul manfaah*), which gives the consequence that there must be guarantees of waqf protection while increasing the productivity of waqf objects for the benefit of worship and welfare.

Even though productive waqf has great potential in improving people's welfare, Waqf Institutions such as the Indonesian Waqf Agency must seek significant funds to realise the construction of commercial buildings, whose income can be donated to the poor, on waqf land. However, it is tough for the Indonesian Waqf Agency to borrow funds from banks due to the need for collateral. According to the provisions of Waqf Law, waqf land is eternal and cannot be used as collateral, leased, transferred or traded, even to obtain a loan from a bank.[3]

In addition, there are also obstacles faced by productive waqf managers, namely the lack of knowledge of the surrounding community about productive waqf. Indeed, there are people who know that their business is in the form of productive endowments, but there are still not many people who know about the advantages or disadvantages of the business, and finally many of the consumers only use their services.[4]

On the other hand, the Hajj Financial Management Agency is mandated to manage the Hajj fund of Rp.105 trillion under Shariah principles, prudence, benefits, non-profits, transparency and accountability. In July 2017, President Joko Widodo planned to invest in the Hajj fund to finance the country's infrastructure. The instruction was

delivered through the presidential appointment of 14 (fourteen) BPKH managers. Discourse on the placement of Hajj funds for infrastructure financing has sparked criticism from various parties.[5] Since the Hajj fund is a deposit for the Ummah, the BPKH must be wise in managing the Hajj fund so that its use can generate benefits that can be felt by the Ummah, and it will be better to improve public welfare.

According to Article 5 of the Law on Waqf, Waqf functions to realise the potential and economic benefits of property for worship and to promote public welfare. Furthermore, Article 22 of the Waqf Law states that in order to achieve the goals and functions of waqf, waqf property can only be allocated to a. Facilities and activities of worship; b. Education and health facilities and activities; c. Assistance to the poor, neglected children, orphans, scholarships; d. Economic progress and improvement of the people and/or; e. Other public welfare advances that do not conflict with Shari'a and statutory regulations.

One example of a productive waqf management model with the Hajj fund is the Imara Wakaf Building in Kuala Lumpur, Malaysia, which was established on waqf land. In constructing the Imara Wakaf building, the Wilayah Persekutuan Islamic Council acted as the Nazhir in collaboration with Tabung Haji Foundation as a financier. The waqf tower was inaugurated in October 2011 and was fully leased by Bank Islam Malaysia Berhad. The income from the building is intended for *waqf mustahik* (entitled recipients).[6]

The Haji Financial Management Agency can imitate the waqf asset development such as commercial buildings or hotels on waqf land with the construction model of the Imara Wakaf Building so that the Hajj funds not only settle but can benefit the development and welfare of the people. As mandated in Article 34 of the 1945 Constitution: 'The state develops a social security system for all people and empowers people who are weak and incapable under human dignity'. Then the optimal management of productive waqf and Hajj funds is one of the strategic ways that can be used by the state to develop a social security system for the people of Indonesia.

## II. PROBLEMS

Based on the things that the authors have explained, the authors see the management of the Hajj fund with waqf institutions can work together to optimise the Hajj funds that settle. Therefore, this study seeks to provide solutions for the management of Hajj funds through productive waqf schemes with normative juridical research based on the approach of Islamic law. This research can produce an alternative investment concept that can be used by the government to optimise the deposit of Hajj funds and productive waqf assets following the applicable laws and regulations.

## III. RESEARCH METHOD

Based on the problems examined by the authors, namely regarding the regulation in the management of the Hajj fund with the productive waqf scheme, this study, according to its form is juridical-normative research. Juridical-normative research is research that is focused on examining the application of norms in positive law. The approach used in juridical-normative research is a legislative approach that deals with research topics. The legislation referred to is the legislation that applies to Indonesia and other regulations relating to the topic of management of Hajj and waqf funds. This research is conducted by analysing literature, journals, and scientific articles which are related to the topics.

## IV. LITERATURE REVIEW

### WAQF

Waqf is a recommended means of worship because it contains benefits both spiritually and socially. Waqf has taken such an important role as a source of financing social welfare, besides aiming to draw closer to Allah SWT.[7] One day Umar bin Khattab got a productive plot of land in the land of Khaibar. He liked it very much and he then consulted the Messenger of Allāh about how to give the garden. Hearing this Rasulullah SAW recommended Umar bin Khattab to manage his garden by holding the principal and giving the results to the community.[8] This concept came to be known as the waqf system by Muslims.

According to Abdul Wahab Khallaf, the pillars of waqf consist of 4 (four) things, namely: a) People who endow themselves or are called wakif, namely property owners; b) Property represented or called *mauquf'bih*; c) *Mauquf 'alaih* or those who receive benefits; d) *Sighat* or endowment pledge is a statement from the endower to endow his wealth. [9] Waqf is carried out by fulfilling the elements of waqf. Based on Article 6 of the Waqf Act, the elements of waqf are as follows: [10]

1. Wakif is the party that makes the donation of their property, wakif can be in the form of individuals, organizations and legal entities. The law does not mention the word Muslim as a condition for wakif, so that non-Muslims can also become waqif. The Working Committee on the Discussion of the Waqf Bill has agreed to remove the "Muslim" requirement as a waqif. Because in the history of Islam and Hadith, endowments given by non-Muslim endowments are valid, meaning that endowments can be accepted. It's just that endowments given by non-Muslim endowments should be directed to matters relating to welfare, not to places of worship.
2. *Nazhir* is the party that receives the waqf property from the waqf to be managed and developed according to its purpose. In carrying out his duties, *Nazhir* has the right to receive rewards from the results of the management that does not exceed 10%. According to data from the Indonesian Waqf Board, as of July 2018, there was 192 Nazar waqf money registered with the Indonesian Waqf Board.
3. Property can only be represented if it has and is fully and legally controlled by the Wakif. The object that can be represented consists of two types, namely movable objects and immovable objects.
4. Pledge of endowment which is proven by making a pledge of endowment pledge as proof of the statement of the will of the endowments to endow their property to be managed by *Nazhir* in

accordance with the designation of endowment assets as outlined in the form of the deed.

5. Designation of waqf property, in order to achieve the goals and functions of waqf, waqf property can only be designated for: religious facilities and activities; educational and health facilities and activities; homeless child; orphan; scholarship; progress and improvement of the people's economy; and/or other advances in public welfare that are not in conflict with sharia and laws and regulations.
6. Duration of waqf. At present waqf can be given a period of time, namely the money waqf instrument.

According to Jaih Mubarak, productive waqf is a transformation of professional waqf management to increase or increase the benefits of waqf.[11] Earning Waqf can also be interpreted as the process of managing waqf objects to produce maximum goods or services with minimum capital. Meanwhile, according to Munzir Qahaf, productive waqf is moving assets from consumptive to productive and investment in the form of production capital that can produce and produce something that can be utilized in the future, both by individuals, groups and by the public. So productive waqf is an activity of saving as well as investing.

Productive Waqf has a very important role in building human civilization. Productive Waqf not only aims to develop social matters such as the construction of houses of worship, educational facilities, health facilities, cultural arts, waqf institutions also have an important role in improving the economy such as developing trade, offices, industry and so on.. [12]

The principles of developing productive waqf include the principle of the permanence of benefits, the principle of accountability, the principle of professionalism of management, and the principle of social justice.

- a. The Principle of Immortality Benefits  
Waqf is categorized as having the value of eternity of benefits or in other words, will get a reward that continues to flow because of its usefulness if the endowment has the following things.

- 1) Waqf can be used by many people.
- 2) The Waqf gives more tangible value to the waqf itself.
- 3) The benefits of waqf immaterial are greater than the material benefits. In other words, the extrinsic value of waqf objects is more than the intrinsic value. This is because the emphasis is more on the function of waqf for others than the object itself.
- 4) Waqf does not a direct danger to others or waqif.

b. Principle of Liability

Waqf is a legal act that has double dimensions. Waqf will be accounted for in the world and in the hereafter. The form of this responsibility is the management of endowments seriously based on the following.

- 1) Responsibility to Allah SWT for his behavior and actions, whether it is in accordance with or contrary to His provisions.
- 2) Institutional responsibility. This means that responsibility to those who give authority, namely higher institutions in accordance with the level of the organization.
- 3) legal liability. That is the responsibility carried out based on applicable legal provisions.
- 4) Social responsibility. Namely, responsibilities related to the morals of society. *Nazhir* waqf in taking action must be morally accountable to society that his actions do not harm the social norms prevailing in the society.

c. Management Professionalism Principle

The Prophet Muhammad (PBUH) had taught Muslims about management in the compulsory nature of the Prophet namely *Amanah* (trustworthy), *Shiddiq* (honest), *Fathanah* (intelligent/brilliant), and *Tabligh* (conveying). So that in managing waqf must be done by following the characteristics possessed by the Prophet in

order to achieve what are the ideals and goals (*Maqashid As-Sharia*).

d. Principle of Social Justice

Waqf occupies an important position in creating justice and prosperity in society.[13] The principle that underlies waqf worship is to realize the social conditions of society formed by equal rights and obligations as God's creatures. Social justice emphasizes the existence of a reciprocal balance and eliminates social inequality. The implementation of waqf worship is a concrete example of a sense of social justice that is by donating assets for the public interest.

Management of the implementation of productive waqf is done by three main methods, namely the collection (fundraising), investment, and distribution of benefits endowments.

1. Collection of waqf property

The collection of waqf assets in an effort to collect waqf assets from the community. According to the Directorate of Waqf Empowerment, there are two types of methods in collecting waqf assets from the community, namely the direct method and the indirect method. The direct method involves the participation of the waqif directly so that in this method the interaction process with the waqif can be directly carried out for example by electronic mail or direct presentation. Whereas in the indirect method, fundraising is not done by accommodating interactions with the waqf directly. For example, currently various types of crowdfunding applications have been developed to collect endowments.

2. Investment

In Article 45 paragraph (1) PP No. 42 of 2006 concerning the Implementation of the Waqf Law states that managers (Nazir) are required to manage and develop waqf property in accordance with the designation stated in the Deed of Endowment Pledge. So based on that article, Nazaf waqf is permitted to manage waqf property in any form as long as it uses lawful means.

Waqf property investment can be done directly or indirectly both with the principle

of profit-sharing (*mudharabah* and *musyarakah*) or rent (*Ijarah*).<sup>[14]</sup> Direct investment for example managers can invest waqf assets directly in projects such as the construction of apartments, livestock businesses, plantations, and other productive forms of business. Whereas in indirect investment, *Nazhir* invests waqf assets in products available in Islamic financial institutions.

### 3. Distribution of benefits

As regulated in Article 12 of the Waqf Law, before the proceeds of the investment in waqf property are distributed, Nazir may enjoy a maximum investment return of 10% of the entire proceeds of waqf investment. While 90% of the investment returns must be channeled to those who need it (*mauquf'alaih*) in accordance with the designation stated in the Deed of Endowment Pledge.

## V. HAJJ FUNDS

### 1. Principles of Hajj Financial Management in Indonesia

According to Law No. 34 of 2014 concerning Financial Management of the Hajj, the pilgrimage financial management goal is to improve the quality of the Hajj, improve the rationality and efficiency in using BPIH, as well as increasing the benefits for the benefit of Muslims. The financial management of the pilgrimage is based on the following.

- a) Sharia principles, meaning that all and every financial management of the pilgrimage is based on Islamic principles which are kaffah or comprehensive.
- b) The principle of prudence, namely hajj financial management is carried out carefully, thoroughly, safely, and in an orderly manner and taking into account financial risk aspects.
- c) Benefits, namely the financial management of the pilgrimage must provide benefits or benefits for the pilgrims and Muslims.
- d) Non-profit, meaning that the management of hajj finances is carried out through business management that prioritizes the use of the results of the development of funds to provide maximum benefits for the hajj pilgrims and the

benefit of Muslims, but with no dividend distribution for their management.

e) Transparent, i.e. financial pilgrimage management must be carried out openly and honestly through the provision of information to the public, especially to hajj pilgrims about the implementation and results of hajj financial management.

f) Accountable, meaning that the financial management of the pilgrimage must be done accurately and can be accountable to the community, especially to the pilgrims.

Hajj finance includes income, expenses and wealth. Hajj financial receipts include general or special BPIH deposits, the value of Hajj financial benefits, the efficiency of the Hajj, the endowment of the Ummah or other legal and non-binding sources. Article 7 paragraph (1) of the Financial Management Act for Hajj states that the deposit of Hajj Operational Cost (BPIH) and/or special BPIH is entrusted to the pilgrimage for Hajj. The Elucidation of this Article states that the funds deposited by the Hajj Pilgrims are funds that are not recorded in the state budget.

In carrying out hajj financial management, BPKH must do it cooperatively and non-profit. Corporate means the principle of financial management which is based on the pattern of exploitation as carried out by a company or corporation, prioritizing efficiency and effectiveness in the use of resources and results. While non-profit means the management of hajj finances is done through business management that prioritizes the use of the results of the development of funds to provide maximum benefits for pilgrims and benefit of Muslims, but with no dividend distribution for managers

Based on Article 46 paragraph (1) of the Hajj Financial Management Act, Hajj financial management is conducted at Sharia Commercial Banks and / or Sharia Business Units. Then according to Article 46 paragraph (2) of the Hajj Financial Management Act, Hajj finance can be placed or invested. Placement of the pilgrimage fund must meet the security aspects, the value of benefits, liquidity and the precautionary principle with the following explanation.

- a) The security aspect, which means that the financial management of Hajj must be carried out by prioritizing the anticipation of the risk of loss of hajj financial

management to ensure the financing of the implementation of the hajj pilgrimage. In addition, in investing it also considers the risk of default, reputation, market and operational risks.

- b) The value of benefits is a portion of Hajj funds can be placed and/or invested with Islamic principles and consider risk factors and are liquid.
- c) Liquidity is to consider the ability and smoothness of payment in the context of the implementation of the current and future pilgrimage services.
- d) The prudential principle means that the management of hajj finances is carried out carefully, thoroughly, safely and in an orderly manner and taking into account financial risk aspects

Furthermore, according to Article 48 of the Hajj Financial Management Act, the placement and/or investment of hajj finance can be carried out in the form of banking products, securities, gold, direct investments, and other investments in accordance with sharia principles by considering the aspects of security, prudence, value of benefits and liquidity. In addition to meeting security, prudence, value of benefits, and liquidity aspects, Hajj financial investment must be carried out by optimizing risk management.

- a) Placement of Hajj Funds in Banking Products  
Islamic banking products in the placement and investment of Hajj finance include current accounts, time deposits, and savings. [15] With Islamic banking products, we can use the *mudharabah mutlaqah* and *mudarabah al-muqayyadah* schemes. The *mudarabah mutlaqah* scheme is a collaboration between the owner of the fund that provides capital and gives full authority to the Islamic bank in determining the type and loss divided according to the initial agreement.[16] Whereas the *al-muqayyadah mudarabah* scheme allows fund owners to use Islamic banks as an extension to invest in certain business sectors.

However, during the 3 (three) years since BPKH was formed the placement in sharia banking products was at most 50% of the total hajj financial placements and investments. After three years, the pilgrimage financial

expenditure in the form of sharia banking product placement is at most 30% of the total hajj financial placement and investment. The remainder of the total pilgrimage financial placement must be allocated for investment. This means that from 2017 to 2020 BPKH must invest 50% of hajj funds, whereas after 2020 BPKH must invest 70% of hajj funds with various schemes such as Islamic securities, Syariah shares, *Sukuk*, and other investments.

- b) Placement of Hajj Funds in the Form of Securities

Hajj financial investments in the form of securities include state sharia securities issued by the central government, sharia securities issued by Bank Indonesia, and sharia securities regulated and supervised by the Financial Services Authority, including a) sharia shares listed on the stock exchange; b) *Sukuk*; c) Islamic mutual funds; d) Islamic asset-backed effect; e) sharia real estate investment funds; f) other sharia effects

- c) Hajj Fund Placement in Gold

Hajj financial investment in gold can only be done in the form of certified gold bars produced or sold domestically or in the form of gold accounts managed by Islamic financial institutions that are regulated and overseen by the Financial Services Authority. Investment in the form of a maximum of 5% of the total financial pilgrimage.

- d) Placement of Hajj Funds in the Form of Direct Investment

Hajj direct investment is carried out by owning a business, equity participation, investment cooperation, and other direct investments. Direct investment can be done in the form of cooperation between BPKH and business entities or institutions at home and abroad. Hajj financial direct investment is maximal 20% of the total placement or hajj financial investment.

- e) Placement of Hajj Funds in Other Forms of Investment

Other investments are determined by BPKH with a maximum of 10% of the total placement or financial investment for the pilgrimage. Wherever the pilgrimage fund is placed, it must be in accordance with

Islamic principles and meet the investment objectives of the Hajj fund namely increasing the benefits for the benefit of Muslims.

Related to the management of hajj funds, there is a Cooperation Agreement between the Directorate General of Hajj and Umrah of the Ministry of Religion, and the Receiving Bank for BPIH Deposits regarding the receipt and payment of BPIH using a *wakalah* contract. The contractual agreement is signed by every prospective pilgrim when paying the initial deposit of BPIH. Through *wakalah* contract, prospective pilgrims as Muwakkil give power to the Ministry of Religion as a Representative to receive and manage BPIH initial deposit funds that have been deposited through the Deposit Recipient Bank in accordance with applicable laws and regulations.

## 2. The responsibilities of the Hajj Financial Management Agency (BPKH) in the Placement or Investment of Hajj Funds

The establishment of the BPKH is mandated by the Law on Hajj Financial Management. BPKH is an independent body and is responsible to the President through the Minister.[17] According to Article 6 of the Hajj Financial Management Act, BPIH deposits are paid into an account in the name of BPKH in its position as the legal representative of the Hajj Pilgrims on Cash Hajj through BPS BPIH (Bank Receiving Hajj Operations Cost Deposit). What is meant by his position as a legal representative is to use the term *Qualitate Qua* or 'qq' so that the account in the name of BPKH in his position as the legal representative of the hajj pilgrims in banking can be abbreviated to 'account on behalf of BPKH qq Pilgrims Pilgrimage'.

In carrying out its duties, BPKH carries out the functions of planning, implementing, controlling and controlling in terms of hajj receipts, development, and financial expenditures as well as the reporting and accountability functions of the implementation of hajj receipts, developments and expenditures. While the authority of BPKH includes: a. placing and investing the pilgrimage finance in accordance with sharia principles, prudence, security, and benefits value; b. cooperating with other institutions in the context of managing pilgrimage finances.

According to Article 25 of the Hajj Financial Management Act, BPKH has the right to obtain

operational funds for organizing the Hajj financial management program which is sourced from the value of Hajj financial benefits. The amount of BPKH operational expenditure is at most 5% of the previous year's value of benefits. Whereas BPKH's obligations include:

- a) manage Hajj finances transparently and accountably for the maximum interests of the Hajj congregation and the benefit of the Muslim Ummah
- b) provide information through the media about performance, financial condition, as well as wealth and the results of its development on a regular basis every 6 (six) months
- c) provide information to pilgrims about the benefits of BPIH and/or special BPIH through virtual accounts for each pilgrim
- d) bookkeeping in accordance with applicable accounting standards
- e) reports the implementation of hajj financial management, regularly every 6 (six) months to the Minister and the Parliament
- f) periodically pay the value of BPIH and/or special BPIH deposit benefits to the virtual account of each pilgrim
- g) returning the difference between the deposit balance of BPIH and/or BPIH specifically determining BPIH and/or BPIH for the current year to the Hajj Pilgrims.

The authority of BPKH in managing the funds for prospective pilgrims is based on the *wakalah* agreement. According to the *fuqaha*, *wakalah* means the granting of authority/power to other parties about what to do and he (the recipient of the power) sharply becomes a substitute for the authorizer for a specified time limit. The contractual agreement is used by BPKH because BPKH's role is as a representative of the pilgrims in managing funds and must be approved at the beginning of the contract. As a hajj financial manager, BPKH is obliged to ensure that hajj finances are managed as well as possible based on the principles set out in the Act. So that the pilgrimage financial management is the responsibility of BPKH which must be run professionally.

The Hajj Financial Management Law Article 45 to Article 49 regulates the Hajj financial management mechanism. The procedures for the financial management of hajj by BPKH include:

- a) BPKH prepares a strategic plan for a period of 5 (five) years.
- b) Hajj finance must be managed in a Sharia Commercial Bank and/or Sharia Business Unit
- c) BPKH must manage and provide Hajj finance which is equivalent to the needs of 2 (two) times the cost of organizing the Hajj
- d) Hajj financial placement and/or investment can be done in the form of banking products, securities, gold, direct investments and other investments
- e) Hajj financial placement and / or investment is carried out with the approval of the supervisory board

## VI. DISCUSSIONS

### 1. Optimisation of Hajj Funds with Productive Waqf

In Government Regulations No. 5 of 2018 on the Management of Hajj Finances, Article 26 states that expenditures for Hajj financial investment can be in the form of securities, gold, direct investment and other investments. Direct investment can be done whereby the Hajj financial investment has its own business, equity participation, investment cooperation and other direct investments with a maximum of 20% of the total placement of financial pilgrimage. In the Hajj Financial Management Agency Regulation Number 5 of 2008 Article 5 paragraph (3), different forms of direct investment in Hajj finance may include: 1) business ownership, characterised by the participation of non-public Islamic companies where BPKH has a majority stake; 2) capital participation in the form of shares in non-public Islamic companies where BPKH does not become a majority shareholder; 3) investment cooperation, namely all forms of business cooperation that are not in the form of equity participation; 4) other direct investments, which are all forms of direct investment not mentioned above.

Based on the provisions of the above regulations, the placement of the Hajj funds in the form of waqf is not explicitly mentioned. However, Hajj funds placement with waqf schemes is not in the form of shares, hence the management of Hajj finances with productive waqf schemes can be categorised under the third direct investment mentioned above, namely business cooperation that is not in the form of equity participation.

Productive waqf has two concurrent visions, namely, destroying unequal social structures and providing fertile land for the welfare of Muslims.[18] According to Kahaf, the purpose of developing waqf assets is to help general or special education foundations, professional groups, Islamic foundations, public or special libraries; keeping orphans, widows and weak people; maintaining elderly people and building foundations for providing services to them; protecting children, mothers and families that are weak; helping the poor and all families with low income; providing public services such as water and electricity, health services, crossings and others, both in the city and in the village of residence; provide financial assistance with mild conditions to small entrepreneurs who need additional capital; helping mosque priests, sermons and people who guard the mosque; building mosques and providing equipment, and filling them with the Koran and the books, and also giving information for mosque needs; helping health development projects and sick people; and improving roads both in the city and in the village. As a government project, this can be achieved optimally.[19]

Meanwhile, the Hajj Financial Management Act Article 45 to Article 49 has regulated the mechanism of Hajj financial management. The procedures for the financial management of Hajj by BPKH include:

- a) BPKH prepares a strategic plan for five years.
- b) Financial Hajj must be managed in a Shariah Commercial Bank and/or Shariah Business Unit.
- c) BPKH is obliged to manage and provide financial Hajj, which is equivalent to the need for two times the cost of organising the Hajj.
- d) Hajj financial placement and/or investment can be done in the form of banking products, securities, gold, direct investment and other investments.
- e) Placement and/or Hajj financial investment is done with the approval of the supervisory board.

Placement of Hajj funds is very appropriate when synergised with productive waqf projects. Based on Article 22 of the Hajj Financial

Management Act, the Hajj Financial Management Agency has the authority to place and invest Hajj finance based on Shariah principles, prudence, security; and the value of benefits and to cooperate with other institutions. Based on these provisions, BPKH is required to manage Hajj funds under Shariah principles. This principle is also embraced by Indonesia's representative office, which as per Article 43 of the Waqf Law, states that the management of each waqf asset must be under Shariah principles. Furthermore, the proceeds from an investment in the Hajj fund obtained through the management of productive waqf can be used to improve the quality of the Hajj operation but also to the benefit of Muslims. This is in line with the provisions of Article 3 of the Hajj Financial Management Act which mentions that the management of Hajj finance aims to improve the quality of Hajj services, rationality and efficiency of the use of BPIH (Hajj costs), and the benefit that such services bring to Muslims. For this reason, the placement of Hajj funds for the development of waqf assets is the right synergy because it has the same principles and goals.

## 2. Investing in Waqf as an Alternative Placement for Hajj Funds

The Waqf Law mandates waqf property managers to develop and utilise waqf assets in halal ways. Article 5 of the Waqf Law stipulates that waqf functions realise the potential and economic benefits of waqf property for the benefit of worship and public welfare. These provisions indicate that waqf assets need to be managed optimally and productively in order to generate economic benefits. Because of the increased need for the management of waqf assets, such assets presently result in higher benefits to the community. Thus, waqf management can provide a significant contribution to the realisation of social welfare in society. Management and development of waqf assets are regulated in Article 43 of the Waqf Act as follows.

1. Management and development of waqf property by Nazhir is carried out under Shariah principles.
2. Management and development of waqf property is carried out productively, including in collection, investment, production, partnerships, trade, agribusiness, mining, industry, technology development, construction of buildings,

apartments, flats, supermarkets, shops, offices, educational facilities or health facilities, and businesses that do not conflict with the Shariah.

3. If the management and development of waqf property is needed by the guarantor, then the Shariah Insurance Agency (LPS) is used.

## VII. FINDINGS

The development and management of waqf assets are done by increasing the number of assets or capital through various investment methods. The waqf investment method includes direct waqf investment, direct cash waqf investment method, waqf investment through financing methods, financing methods based on shared contracts and methods of financing from the community. [20] Here are the analysis if BPKH use each method in investing the Hajj funds.

### *The Direct Waqf Assets Investment Method*

Direct waqf investment can be done by leasing, namely through an *Ijarah* agreement, *al-Hukr* agreement or *al-Ijaratain* agreement. It can also be done by *Istibdal*, which is an attempt to make other goods as substitutes for the initial waqf assets that have been sold. In essence, the *Istibdal* does not make changes to the type of assets and does not add value to the waqf property, but instead replaces the efforts to use it for something new.

This method involves investing in fixed waqf assets. This method may be challenging to implement because BPKH acts as the *muwakkil* (representative) of the pilgrims to manage the Hajj funds, and not as a waqf organiser (*Nazhir*) property manager. Hajj funds will be difficult to disburse if they change into permanent assets since the Hajj fund is a deposit that must be returned to prospective pilgrims to finance the organisation of the Hajj. Whereas if the Hajj fund is represented in the form of a fixed asset then the BPKH as Nazhir, BPKH can only collect a 10% profit from the management of the waqf property. The rest of the profits, which are equal to 90% of the total, are given to *mauquf' alaih* (entitled recipients). Even where a temporary waqf contract (*mu'aqqat*) is used, selling waqf assets to refund prospective pilgrims may be difficult if the period has expired.

### *The Direct Cash Waqf Investment Method*

To realise the purpose of waqf funds, BWI manages and develops money waqf through LKS-PWU. LKS-PWU is an LKS officially designated by the Minister as a Shariah Financial Institution Receiving Waqf money.[21] In developing and managing waqf money, the bank does not act as *Nazir*, it is only in charge of receiving money waqf. *Nazir* has to open a bank account to collect money from the community waqf deposited through the LKS-PWU.

Similar to the direct waqf investment method, the direct money waqf investment method can be complicated during implementation because BPKH acts as the representative of the pilgrims to manage the Hajj funds, and not as *Nazir*. If this method is used, the BPKH will grant the Hajj funds for a specific period through the PWU LKS. *Nazir* manages the money, and 10% of the profits belong to the *Nazir*, and the rest is for the entitled recipients. The purpose of the financial management of the Hajj funds by BPKH is not only to realise the benefits for the people but also to improve the quality of the Hajj pilgrimage, rationality and efficiency of the use of BPIH (Hajj costs).

### *Method Of Waqf Investment Through Financing*

Waqf investment through financing means obtaining financing in part or in full from other parties to be used as waqf capital. The contracts that can be used in this method are *Murabahah*, *Istishna'*, *Ijarah Thumma Bay*, *Ijarah Thumma Tamlik* and *Mursod* [22]

This method is also inappropriate for use in managing Hajj funds through productive waqf schemes. Because in this method the agreement that occurs is for the transfer of goods that will be used as Waqf assets between the buyer and the owner of the goods through a sale-purchase agreement, buying and selling with orders and leasing land. Whereas BPKH is the representative who manages the Hajj funds in ways that have been determined in the legislation. BPKH is a Hajj fund manager, not a provider of goods and services.

### *Financing Method With A Sharing Contract Of Cooperation*

The production sharing contract is in the form of a *Mudharabah* and *Musyarakah*. According to Zarqa, waqf institutions can use *Mudharabah* contracts in the management and development of waqf assets. For example, waqf institutions allow financial institutions to construct buildings on waqf land and then rent the buildings to other parties. Furthermore, waqf institutions give allocations for sharing the leasing profits. The waqf institution can then use these benefits for participation in buildings and distribution to those in need (*mauquf'alaih*). Whereas with the *musyarakah* contract development, a waqf institution can offer developers to construct buildings on waqf land. The price of waqf land and buildings must be determined when the contract is carried out so that the working capital can be adjusted to account for the value of the waqf land and the building.

The method of waqf investment with a sharing contract is the most appropriate method to be used by BPKH in placing Hajj funds through productive waqf schemes. The *Mudharabah* contract can be used, with a *mudharib* as the *Nazhir* as *mudharib* (manager), who receives funds from BPKH, which is the representative of the pilgrims who are in this contract as *Shahibul Maal* (provider of funds). The funds are used to establish commercial buildings on waqf land managed by *Nazir*. In this case, the profit-sharing ratio is based on the business activities carried out and the results of the utilisation of the waqf land. For example, the profits may be shared as 60% and 40% of the utilisation proceeds to the BPKH and the *Nazhir* respectively. The ratio received by *Nazhir* has then divided between the *Nazir* and the *Mauquf'alaih* (entitled recipients) at 10% and 90% respectively.

In placing Hajj funds with the waqf property investment method with profit-sharing cooperation contracts, the parties need to consider the feasibility of the project following the 5 C principles (Character, Condition, Capital, Capacity, Collateral) and 3 P (People, Purpose, Payment).

### *Investment Through Financing From The Community*

The method of financing from the community involves raising funds from the community to support the management and development of waqf assets. This method can be executed in two ways, namely public offering (shares) and *Sukuk* (Shariah

*bonds*). According to Kahf, the issuance of shares of waqf assets is one way of obtaining funds for waqf assets through public offering activities. In this case, the *Nazir* manages waqf projects from the community financing funds. Then shareholders are entitled to obtain a certain percentage of income from business activities (Maria, et al., 2019).

This method can be used by BPKH to place Hajj funds through productive waqf schemes. With this method, BPKH as a representative buy shares or *Sukuk* issued by Nazir. If BPKH places funds in the form of shares, BPKH will become a shareholder and will receive dividends from the profits of the management of waqf assets. Whereas if the BPKH places the Hajj funds in the form of *Sukuk*, the profits obtained are based on the portion of asset ownership.

### VIII. CONCLUSIONS

Placement of Hajj funds through waqf property investment is the right synergy because both have the same goal, which is to manage assets for the increased benefit of the people. Based on the authors' analysis, BPKH can use profit-sharing collaboration contract (*Mudharabah*) or *Sukuk Waqf* schemes in placing Hajj funds with productive waqf schemes. Then the results of the placement of the Hajj funds are channelled to those in need (*mauquf'alaih*) and also for the development of the Hajj facilities. BPKH needs to consider waqf investment (productive waqf) as one of the alternatives for Hajj fund placement in the direct investment category, and collaborate with waqf institutions such as BWI to prepare competent *Nazhir* (waqf organisers).

### REFERENCES

- [1] M. N. R. A. Arif. "Efek Multiplier Wakaf Uang dan Pengaruhnya terhadap Program Pengentasan Kemiskinan" *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum* Vol. 46 No. 1, Jan-Jun., pp. 297-314, 2012.
- [2] T, Hasan. "Istibdal Harta Benda Wakaf", *Al-Awqaf* Vol. II No. 3, Augst, pp. 1-16, 2009.
- [3] L. H Nova. "Pengaturan Wakaf dan Perkembangannya di Indonesia Menurut Undang-Undang Wakaf Nomor 41 Tahun 2004 tentang Wakaf.", *Al-Awqaf*, Vol. 8, No. 1, Jan., pp. 92-104, 2015.
- [4] V. A. Qurrata, B. S. Narmaditya, L. Seprillina, and N. E. B. Hussain, "The Implementation And Development Of Productive Waqf In Indonesia: Case At Malang Islamic Hospital", *oaihssr*, vol. 7, no. 4, Sep, pp. 533-537, 2019.
- [5] M. Z. Abidin. "Analisis Investasi Dana Haji dalam Pembiayaan Infrastruktur dan Peningkatan Kualitas Penyelenggaraan Ibadah Haji", *Jurnal Harmoni*, Vol. 15, No. 2, May-August., pp. 152-164, 2016.
- [6] H. N. Lita. "Pemanfaatan Dan Tabungan Haji untuk Pengembangan Wakaf Produktif [Studi Perbandingan Pembangunan Commercial Building Diatas Tanah Wakaf – Gedung Imara Wakaf Di Kuala Lumpur]". *Al-Awqaf*. Vol. 10 No. 2, Dec, pp. 134-141, 2017.
- [7] M. D. Ali. *Sistem Ekonomi Islam Zakat dan Wakaf*. Jakarta: UI-Press, 2006.
- [8] A. Ibrahim, "Fiqh Law on Waqf," *AL-AWQAF Special Edition*, Sep., pp. 1-19, 2011.
- [9] Said, M. Siraj and Hilary Lim, *Waqf (Endowment) and Islamic Philanthropy*. United Kingdom: University of East London, 2005.
- [10] F. Prihatini, U. Hasanah, and Wirdyaningsih. *Hukum Islam Zakat dan Wakaf: Teori dan Prakteknya di Indonesia [Islamic Law of Zakat and Waqf: Theory and Practice in Indonesia]*. Depok: Papas Sinar Santi, 2005.
- [11] J. Mubarak. *Wakaf Produktif*. Bandung: Rafika Offset, 2008.
- [12] V. R. Zainal. (Januari 2016). "Pengelolaan dan Pengembangan Wakaf Produktif [Productive Waqf Management and Development]". *Al-Awqaf* Vol. 9 No. 1, Jan., pp. 1-16. 2016.
- [13] A. Kasdi. *Fiqh Wakaf*. Yogyakarta: Idea Press, 2017.

- [14] D. R. Donna. “Penerapan Wakaf Tunai pada Lembaga Keuangan Publik Islami”, *Journal of Islamic Business and Economics* Vol. 1 No. 1, Dec., pp. 85-99, 2007.
- [15] Ascarya. *Akad & Produk Bank Syariah*. Jakarta: Raja Grafindo, 2007.
- [16] A. A. Basyir. *Asas-Asas Hukum Mu’amalat*. Yogyakarta: UII Press, 2000.
- [17] E. F. Primadhany. “Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) Dalam Melakukan Penempatan Dan/ Atau Investasi Keuangan Haji” *Jurnal Hukum dan Syariah* Vol. 8 No. 2., pp. 125-141, 2017.
- [18] A. Hakim, “Manajemen Harta Wakaf Produktif dan Investasi dalam Sistem Ekonomi Syari’ah” *Riptek* Vol. 4, No. 2, pp. 21-28, 2010.
- [19] M. Qahaf. *Manajemen Wakaf Produkti*. Jakarta: Khalifa, 2008.
- [20] [1] D. Maria, et. al. *Akuntansi dan Manajemen Wakaf*. Jakarta: Salemba Empat, 2019.
- [21] U. Kencana. “Pengembangan Wakaf Uang di Indonesia Studi Kritis Peraturan Perundang-undangan Wakaf Dalam Rangka Kemashlahatan Masyarakat Yang Berkelanjutan”, *Al- Awqaf* Vol. 9 No. 2, July., pp. 93-112, 2016.
- [22] F. Djamil. *Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah*. Jakarta: Sinar Grafik, 2012.