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The Applicability of Cash *Waqf* Linked Sukuk (CWLS) Through the *Tafriqus Sufqah Al-Khatib Al-Sharbini* Theory: An Approach to *Sharia* Compliance and Financial Innovation

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Abstract: This research examines the Cash *Waqf* Linked Sukuk (CWLS) within the framework of Islamic jurisprudence, focusing specifically on the *Tafriq al-Sufqah* theory as articulated by Al-Khatib Al-Sharbini. Drawing upon the guidance of DSN-MUI Fatwa No. 131/DSN-MUI/X/2019, the study investigates the *Sharia* compliance of CWLS a contemporary Islamic financial instrument that integrates the principles of *waqf* (charitable endowment) and *sukuk* (Islamic bonds) to support socio-economic development initiatives. The central aim is to evaluate the structural and operational dimensions of CWLS by disaggregating its composite elements in accordance with *Tafriq al-Sufqah*, a theory that emphasizes the separation of contracts to prevent ambiguity (*gharar*), gambling (*maysir*), and interest (*riba*). Through qualitative analysis of fatwa and relevant Islamic finance literature, this study explores the theoretical foundation of CWLS, assesses its adherence to *Sharia* principles, and analyzes its innovative integration of charitable giving and investment. The findings contribute to the growing body of Islamic finance scholarship by demonstrating how classical legal theories can be applied to contemporary financial products. Moreover, the study offers insights into the potential of CWLS as an ethical investment model and discusses the challenges involved in ensuring *Sharia* compliance in modern Islamic financial instruments.

Keywords: Cash *Waqf*-Linked *Sukuk*, *Tafriqus Sufqah*, *Sharia* Compliance, Financial Innovation

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Abstrak: Penelitian ini mengkaji Sukuk terkait Wakaf Tunai (CWLS) dalam kerangka hukum Islam, dengan fokus khusus pada teori *Tafriq al-Sufqah* yang dikemukakan oleh Al-Khatib Al-Sharbini. Mengacu pada pedoman Fatwa DSN-MUI No. 131/DSN-MUI/X/2019, penelitian ini mengkaji kesesuaian syariah CWLS instrumen keuangan Islam kontemporer yang menggabungkan prinsip waqf (wakaf) dan sukuk (obligasi syariah) untuk mendukung inisiatif pengembangan sosial-ekonomi. Tujuan utama adalah mengevaluasi dimensi struktural dan operasional CWLS dengan memisahkan elemen-elemen komposisinya sesuai dengan *Tafriq al-Sufqah*, sebuah teori yang menekankan pemisahan kontrak untuk mencegah ambiguitas (*gharar*), perjudian (*maysir*), dan bunga (*riba*). Melalui analisis kualitatif terhadap fatwa dan literatur keuangan Islam yang relevan, studi ini mengeksplorasi landasan teoretis CWLS, mengevaluasi kepatuhannya terhadap prinsip-prinsip Syariah, dan menganalisis integrasi inovatif antara pemberian amal dan investasi. Temuan ini berkontribusi pada perkembangan literatur keuangan Islam dengan menunjukkan bagaimana teori hukum klasik dapat diterapkan pada produk keuangan kontemporer. Selain itu, studi ini memberikan wawasan tentang potensi CWLS sebagai model investasi etis dan membahas tantangan dalam memastikan kepatuhan Syariah pada instrumen keuangan Islam modern.

Kata kunci: Cash Waqf-Linked Sukuk, *Tafriqus Sufqah*, Kepatuhan Syariah, Inovasi Keuangan

Introduction

The implementation and development of *Cash Waqf-Linked Sukuk* (CWLS) face several challenges and potential risks that must be carefully addressed to ensure their effectiveness. One of the primary obstacles is the limited public awareness and understanding of CWLS, which impedes its widespread adoption and optimal utilization.¹ A second major challenge lies in the areas of governance, regulation, and legal infrastructure. Establishing a robust and transparent governance structure, along with a comprehensive regulatory framework, is essential to ensure compliance with Islamic financial principles.² In addition, the scarcity of distribution partners and qualified *nadzir* (Islamic trustees), coupled with low levels of financial and religious literacy, hinders the development and dissemination of CWLS products.³ Another significant barrier

¹Rozaq Muhammad Yasin, "Cash Waqf Linked Sukuk: Issues, Challenges And Future Direction In Indonesia," *Jurnal Ekonomi Dan Bisnis Islam (Journal of Islamic Economics and Business)* 7, no. 1 (2021), p. 100.

²Izra Berakon et al., "Muslim Intention To Participate In Retail Cwls: The Test of Mediation And Moderation Effects," *Journal of Islamic Monetary Economics and Finance* 8 (2022), p. 17–52; Yasin, "Cash Waqf Linked Sukuk."

³Aam Slamet Rusydiana, Annisa Kartika Ocktavia, and Siti Salmah, "Cash Waqf Linked Sukuk (CWLS) In Indonesia: A Sentiment Analysis," *Tamkin Journal* 2, no. 1 (2023).

is the novelty of CWLS as a financial instrument, which may affect public perception, market confidence, and risk assessment.⁴ Addressing these multifaceted challenges is critical to unlocking the full potential of CWLS as an Islamic social finance mechanism.

The emergence of Cash *Waqf*-Linked *Sukuk* (CWLS) represents a significant innovation in the integration of Islamic philanthropic principles with contemporary financial instruments. While the concept of *waqf* has historically served as a foundational mechanism for sustainable social welfare in Islamic societies, its fusion with *sukuk*, a modern Islamic capital market tool introduces both promising opportunities and complex challenges. Chief among these is the need to ensure rigorous *Sharia* compliance while also developing an operational framework that supports both financial sustainability and administrative efficiency. This study, therefore, seeks to analyze the structural components of CWLS and explore their implications for Islamic finance, with the aim of contributing to a deeper understanding of how traditional Islamic legal and ethical principles can inform the design of innovative financial solutions for contemporary socio-economic development.

The application of Cash *Waqf*-Linked *Sukuk* (CWLS) has been the subject of extensive scholarly investigation, with particular emphasis on its potential contributions to economic recovery, social welfare, and national development. Numerous studies conducted in Malaysia and Indonesia have explored the feasibility of CWLS, identifying key issues, challenges, and future prospects.⁵ Some research has specifically analyzed the role of CWLS as a tool for national economic recovery in the aftermath of the COVID-19 pandemic, highlighting its potential to support initiatives such as Indonesia's National Economic Recovery Program (PEN).⁶ In addition, several studies have examined the historical foundations and regulatory frameworks of *Sharia*-compliant financial practices dating back to the Islamic Kingdom era, assessing their relevance to the contemporary implementation of retail CWLS in Indonesia.⁷

Moreover, the viability of adopting CWLS within Malaysia's Islamic financial institutions has been explored in the context of existing legal and regulatory structures. Other research has focused on the use of CWLS based on *mudarabah* (trustee-partnership) contracts, evaluating its effectiveness as a source

⁴Banu M Haidlir et al., "Public Behaviour on Cash Waqf: Evidence from Indonesia," *JEJAK* 14, no. 2 (2021), p. 316–32.

⁵Sherin Kunhibava et al., "Viability of Cash Waqf-Linked *Şukūk* in Malaysia," *ISRA International Journal of Islamic Finance* 15, no. 4 (2023).

⁶Tanya Arisa Setyomurni and Muh. Nashirudin, "Analysis of The Cash Waqf Linked Sukuk (CWLS) Model As An Instrument of Post Covid-19 National Economic Recovery," *Islamic Banking : Jurnal Pemikiran Dan Pengembangan Perbankan Syariah* 9, no. 1 (2023), p. 167–84.

⁷Haris Maiza Putra et al., "Reconstruction of the Practice of *Siyasa Syar'iyah* During the Islamic Empire's Relevance to the Practice of *Sharia* Financing CWLS Retail in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (2023), p. 347.

of capital for micro, small, and medium enterprises (MSMEs). These studies underscore the potential of CWLS to facilitate economic empowerment and provide innovative financial solutions for the MSME sector.⁸

Another area of research has examined institutional investors' attitudes toward CWLS, offering valuable insights into their perceptions, behavioral tendencies, and investment considerations.⁹ In addition, a systematic literature review has been conducted to assess the scope of CWLS-related studies within Indonesian universities, helping to identify key gaps in the existing body of knowledge.¹⁰ Aufa, for instance, explored the potential of CWLS through crowdfunding-based securities in Indonesia, thereby contributing to the understanding of alternative Sharia-compliant financing mechanisms.¹¹

Despite these contributions, a notable gap remains in the literature concerning the ideal implementation of CWLS in accordance with Islamic law. While current research extensively addresses the implementation, potential benefits, and challenges of CWLS, comprehensive studies on its legal characterization—particularly its position as a hybrid contract—are still limited. Humaidi briefly addressed the contractual structure of CWLS but focused primarily on its linkage to *mudarabah* contracts, emphasizing the distinctiveness of this arrangement. Fadhil and Nurbalqis analyzed CWLS from the perspective of *Maqasid al-Shari'ah*, stressing the importance of aligning contract types with *Sharia* objectives.¹² Meanwhile, Lailatulailia et al. centered their study on the role of Islamic banks in managing CWLS SWR001, highlighting the necessity of sound governance practices. These findings suggest a persistent research gap regarding the specific legal and *Sharia* implications of hybrid contracts within the

⁸Muchtum Humaidi, Syamsuri Syamsuri, and Farah Khoirunnisa, "The Role of Cash Waqf Linked Sukuk Based on Mudarabah Contract (Trustee-Partnership) as MSME Capital Solution," *El Barka: Journal of Islamic Economics and Business* 6, no. 1 (2023), p. 108–31.

⁹Dida Nurhaida et al., "Investigating Institutional Investors' Behaviours toward Cash Waqf Linked Sukuk (CWLS) Using DTPB," *International Journal of Islamic Economics and Finance (IJIEF)* 6, no. 2 (2023), p. 247–80.

¹⁰Mahmud Yusuf, Abidir Rahman, and Parman Komarudin, "Bibliographi Cash Waqf Linked Sukuk (CWLS) Pada Perguruan Tinggi Di Indonesia: Analisis Systematic Literature Review," *Management of Zakat and Waqf Journal (MAZAWA)* 4, no. 1 (2022), p. 48–67.

¹¹Imtiyaz Wizni Aufa, Anugrah Muhtarom Pratama, and Umi Khaerah Pati, "Cash Waqf Linked Sukuk Through Securities Crowdfunding in Indonesia," *Jambura Law Review* 5, no. 1 (2023), p. 98–117.

¹²Rahmatul Fadhil and Nurbalqis, "Analisis Cash Waqf Linked Sukuk (Cwls) Dalam Perspektif Maqâshid Asy-Syari'ah," *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam* 5, no. 2 (2021), p. 1–18. Arbanur Rasyid, Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari'a, *Jurnal Ilmiah Peuraden: The Indonesian Journal of the Social Sciences*, Vol. 12, No. 2, 2024, p. 767. Abdi Widjaja, et al., The Implementation of E-Commerce Consumer Option Rights (Khiyar) in Realizing Transaction Justice: A Study of Maqasid Al-Shariah, *Al-Manâhij: Jurnal Kajian Hukum Islam*. Vol. 17. No. 1. 2023, p. 3.

CWLS framework. Consequently, further research is required to explore this dimension in greater depth.¹³

In particular, applying Al-Khatib Al-Sharbini's *Tafriq al-Sufqah* theory to CWLS is increasingly pertinent for evaluating its Sharia compliance. The theory's emphasis on the separation and clarity of contractual agreements is especially relevant in the context of complex financial instruments that integrate multiple contract types into a single structure.¹⁴ This issue becomes particularly significant in the context of Cash *Waqf*-Linked *Sukuk* (CWLS), where balancing philanthropic objectives with the need to develop financially viable investment instruments demands a mature and nuanced approach. This study not only investigates the *Sharia* compliance of CWLS, but also examines how the *Tafriq al-Sufqah* theory can inform the design and development of innovative Islamic financial products that are both ethically grounded and responsive to contemporary challenges. By doing so, the research offers fresh insights into the structuring and operation of *Sharia*-compliant financial instruments, emphasizing the potential of Islamic finance to evolve while maintaining fidelity to its foundational principles. Viewed through the lens of CWLS, this study contributes to the broader discourse on sustainable and ethical finance, demonstrating how Islamic finance can adapt and innovate without compromising its adherence to *Sharia* law.

The research adopts a qualitative methodology centered on an analysis of DSN-MUI Fatwa No. 131/DSN-MUI/X/2019, which serves as a key reference for understanding Islamic *Waqf*-Based Securities (Islamic WBS) from a *Sharia* perspective. By applying the *Tafriq al-Sufqah* theory to Islamic WBS, this study investigates the ways in which Islamic legal principles are embedded in contemporary financial innovations. The objective is twofold: to fill a critical gap in the literature and to offer practical guidance for the development of Islamic financial instruments that align with modern economic realities. Through this theoretical framework, the research underscores the importance of integrating Islamic ethical values into financial innovation, thereby promoting the creation of an inclusive, sustainable, and socially responsible financial ecosystem. In this way, the study positions Islamic WBS as a potential new paradigm in Islamic finance, one that effectively reconciles economic returns with social benefit.

¹³Dian Lailatullailia, Arin Setiyowati, and Abdul Wahab, "The Role of Sharia Banks as Nazhir Partners in the Management of CWLS Retail SWR001 Investment Products," *Perisai : Islamic Banking and Finance Journal* 5, no. 1 (2021), p. 95.

¹⁴Rizqi Ibnu Athoillah, "Pemikiran Al Katib Al-Syarbini Tentang Akad Tafriqus Sufqah Dan Relevansinya Terhadap Hybrid Contract Pada Lembaga Keuangan Syariah Di Indonesia" (Ponorogo, IAIN Ponorogo, 2019).

***Tafriqus Sufqah* Al-Khatib Al-Sharbini**

Al-Khatib Al-Sharbini's interpretation of the *Tafriq al-Sufqah* agreement presents a nuanced approach to transactions that combine both *halal* and *haram* elements within a single contractual framework. From a *Sharia* perspective, Al-Sharbini classifies *tafriq al-sufqah* contracts into three categories,¹⁵ The first involves transactions in which both lawful (*halal*) and unlawful (*haram*) items are sold together. According to Al-Sharbini, such contracts are only valid with respect to the *halal* components, provided that the respective values of each item can be clearly determined. This principle reflects a broader legal concern in Islamic jurisprudence that the inclusion of *haram* elements must not override the permissibility of *halal* goods, particularly when their values are distinguishable. The ruling underscores the prohibition of ambiguous or mixed transactions lacking transparency in valuation, aligning with the *Sharia* emphasis on clarity and the avoidance of *gharar* (uncertainty).

The second category pertains to sales involving goods that become damaged prior to delivery. In such cases, Al-Sharbini asserts that the contract becomes invalid concerning the damaged items, while remaining valid for the unaffected goods. The buyer is thereby entitled to choose whether to continue or rescind the contract, with any payment obligations adjusted in accordance with the value of the valid items. This perspective reinforces key principles of fairness, justice, and accuracy in Islamic commercial transactions, ensuring that parties are not unjustly burdened by partial contract failure due to unforeseen damage.

Third, Al-Khatib Al-Sharbini addresses transactions that combine two distinct contracts with differing legal implications, such as *ijarah* (leasing) and *bay'* (sale and purchase), or *ijarah* and *salam* (advance payment for future delivery). He maintains that such composite contracts are permissible, provided the value of each contractual element can be clearly determined and no legal conflicts arise between them. However, he also highlights that discrepancies in contract conditions, such as the timing provisions in an *ijarah* agreement that could potentially invalidate a concurrent *bay'* contract, illustrate the inherent complexity in merging contracts with different *Shariah* rulings. Al-Sharbini's perspective underscores the critical importance of legal clarity, mutual fairness, and strict adherence to *Sharia* principles in the structuring of composite financial transactions.

In his comprehensive examination of *tafriq al-sufqah* contracts, Al-Khatib Al-Sharbini articulates a detailed legal taxonomy grounded in classical Islamic jurisprudence. He outlines three principal categories of permissible *tafriq al-sufqah* arrangements.¹⁶ (1) the sale of *halal* and *haram* goods within a single transaction, which is valid only for the *halal* goods if their respective values are

¹⁵As Syarbini, *Mughni Al Muhtaj*, vol. 2 (Damaskus: Dar Al-Marefah, 2007).

¹⁶As Syarbini, *Mughni Al Muhtaj*.

clearly identified; (2) the sale of multiple goods where one becomes damaged prior to delivery, thereby invalidating the transaction only for the damaged item and preserving the buyer's right to accept or reject the remaining goods with corresponding price adjustments; and (3) the combination of two contracts with differing legal consequences, such as *ijarah* and *bay'*, which remains valid as long as there is no contradiction in their terms and each can be independently valued. The legal foundations of Al-Sharbini's classification are supported by scriptural and prophetic sources. These include Surah al-Mā'idah (5:1), which stresses the obligation to fulfill contracts; Surah al-Nisā' (4:29), which advocates for fair and consensual economic transactions; and a hadith narrated by Jabir ibn 'Abdillāh, which affirms the permissibility of contractual conditions that do not legalize the *haram* or prohibit the *halal*. Together, these sources reinforce the principle that contractual clarity, fairness, and compliance with Sharia are essential in the formulation of legitimate financial agreements.

Conversely, Al-Khatib Al-Sharbini also identifies several categories of *tafriq al-sufqah* contracts that are impermissible under Sharia. These include the combined sale of *halal* and *haram* goods in such a way that the entire transaction is rendered void, transactions involving damaged goods where the buyer is not granted the option to either annul or continue the contract, and the merging of two contracts that carry contradictory legal consequences. Al-Sharbini supports these prohibitions with textual evidence, including a hadith narrated by Ibn 'Abbas, which holds that the inclusion of a *haram* item in a transaction nullifies the presence of any *halal* item. Additionally, he cites the Prophet Muhammad's (peace be upon him) prohibition of executing two contracts within a single transaction, which serves as a key legal basis for rejecting such practices.¹⁷

Al-Sharbini's analysis reflects a deep commitment to preserving the integrity and Sharia compliance of financial transactions, while also offering precise legal distinctions between permissible and impermissible contractual arrangements. His categorization underscores the principles of fairness, transparency, and mutual consent core values in Islamic commercial jurisprudence. As such, Al-Sharbini's framework for evaluating *tafriq al-sufqah* contracts offers a vital foundation for ongoing discourse on the application of classical Sharia principles to modern financial practices. His insights remain particularly relevant for contemporary Islamic finance, where increasingly complex contractual structures demand rigorous legal scrutiny to ensure continued alignment with Sharia law.

¹⁷Athoillah, "Pemikiran Al Katib Al-Syarbini Tentang Akad Tafriqus Sufqah Dan Relevansinya Terhadap Hybrid Contract Pada Lembaga Keuangan Syariah Di Indonesia."

Islamic Jurisprudential Framework for Cash *Waqf*-Linked *Sukuk* (CWLS)

Within the Islamic jurisprudential framework concerning Cash *Waqf*-Linked *Sukuk* (CWLS), the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has emphasized, in Fatwa No. 131/DSN-MUI/X/2019, the significance of developing Sharia-compliant capital market products integrated with *waqf*. This initiative aims to optimize the utilization of *waqf* assets alongside *sukuk* returns to support both religious obligations and broader societal welfare in accordance with Sharia principles.¹⁸

Fatwa No. 131/DSN-MUI/X/2019 offers detailed definitions and regulatory provisions. *Sukuk*, as a central concept, is defined as *Sharia*-compliant securities that serve as certificates or proof of ownership over underlying assets. These assets are characterized as equal and indivisible (*musya*), representing ownership shares after the *sukuk* issuance, subscription period closure, and commencement of fund deployment according to the intended objectives. The assets underlying *sukuk*, referred to as *Sukuk Assets (Ashul al-Shukuk)*, encompass a diverse range, including tangible assets, benefits derived from tangible assets, services, assets related to specific projects, and assets associated with particular investment activities.

Waqf is defined as a legal act undertaken by a *waqif* (endower) to dedicate or transfer a portion of their assets for purposes of worship or public welfare in accordance with *Sharia*, either for a specified period or perpetually.¹⁹ Building upon this concept, *sukuk waqf* is structured to optimize the utilization of *waqf* assets and allocate the resulting returns for the benefit of the community, fully aligned with *Sharia* principles. Central to this discussion are the *waqf* assets themselves, the objects of *waqf*, and the benefits derived from the use of these assets.

The *nazhir*, as the custodian or manager of *waqf* assets, assumes responsibility for their administration and development in accordance with the *waqif*'s stipulated objectives. In addition, the concept of *ijarah*, referring to a long-term lease agreement on land or *waqf* assets designated for development or commercial purposes, is incorporated within this framework. Through Fatwa No. 131/DSN-MUI/X/2019, the National *Sharia* Council of the Indonesian *Ulema* Council delineates a comprehensive regulatory structure for the implementation and governance of *waqf sukuk*, thereby reaffirming its commitment to advancing Islamic finance products that are fully compliant with *Sharia* law.

¹⁸“Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia No: 1 3 1/DSN-MUI/2019 Tentang *Sukuk Wakaf*” (DSN-MUI, 2019).

¹⁹ Awwaluddin Marza, et, al., *The Role Of The Indonesian Waqf Agency in the Implementation of Nazir Supervision of Land Waqf (Study at Badan Wakaf Indonesia of Lhokseumawe City)*, *Syariah: Jurnal Hukum dan Pemikiran*, Vol. 22, No.2, 2022 p. 187. Achmad Siddiq, et., *Reconstructing Waqf Share Policies: A Maqashid Sharia Approach with Insights from Indonesia*, *El Maslahah*, Vol. 15 No. 1, 2025, p. 84.

Legal provisions governing the issuance of *Waqf Sukuk* explicitly prohibit the use of *waqf* assets themselves as the direct underlying basis for issuance. This restriction aims to preserve the sanctity and integrity of *waqf* assets in accordance with *Sharia* principles and to ensure their prudent management. Conversely, the economic benefits derived from *waqf* assets and the business activities conducted on them are permitted to serve as the basis for *Sukuk* issuance. This approach enables the productive utilization of *waqf* assets without compromising their original ownership, thereby facilitating effective development and management of *waqf* assets. Such efforts support community development initiatives within an ethical and sustainable framework, consistent with *Sharia* values that emphasize in the issuance of *Sukuk Waqf*, the choice of contract compliant with *Sharia* principles is a critical factor in ensuring adherence to the Islamic law. Various contract types, such as *mudharabah* (profit-sharing partnership), *ijarah* (leasing), *wakalah bi al-istitsmar* (investment agency), and *musyarakah* (joint venture) offer flexible frameworks for business partnerships, leasing arrangements, investment representation, and capital cooperation. Each contract is grounded in principles of fairness, transparency, and the avoidance of *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling). This contractual flexibility enables *Sukuk* to support projects that contribute to both economic development and social welfare, while concurrently strengthening the Islamic financial system. The role of the *nazhir* as the manager of *waqf* assets is also pivotal in the *Sukuk* issuance process, with the *nazhir* potentially serving as the issuer or entering into *Sharia*-compliant agreements with other parties. This highlights the essential function of the *nazhir* in ensuring compliance with *Sharia* principles throughout the transaction lifecycle.



Figure 1. Concept of *Waqf Sukuk* Issuance

This approach reflects a balance between flexibility and discipline in the management and issuance of *Sukuk Waqf*, ensuring that operations remain ethical

and fully compliant with Sharia principles. In the issuance of *Sukuk* based on the *Mudharabah* contract, a cooperative partnership is established between the investor (*Shahib al-mal*) and the business manager (*Mudharib*). The *Nazhir* may assume the role of *Mudharib* or delegate this function to a third party acting as the *Sukuk* issuer. When the *Nazhir* acts as the issuer, they may lease the benefits of the *waqf* assets to the *Mudharabah* entity, thereby ensuring the productive utilization of *waqf* assets in accordance with Sharia law. Liability for any losses arising from the management of *waqf* assets by the *Nazhir* is confined to the returns generated from asset development, without diminishing the original value of the *waqf* assets. This mechanism effectively safeguards the sanctity of the *waqf* assets within the *Mudharabah* framework.



Figure 2. Cooperation structure in the issuance of *Sukuk Mudharabah*

Alternatively, when *Sukuk* issuance is conducted by a third party, entering into an *Ijarah* contract with the *Nazhir* demonstrates the contractual flexibility afforded by *Sharia* to accommodate specific issuance needs. The deployment of *Sukuk* funds must adhere strictly to *Sharia* principles, with clearly defined profit-sharing ratios between the *Shahib al-mal* and *Mudharib* to ensure transparency and equitable treatment. The *Shahib al-mal*'s entitlement to profit sharing is guaranteed, while the *Mudharib* bears the responsibility of returning the principal capital at the conclusion of the contract.²⁰ Any matters not explicitly stipulated

²⁰“Mengikuti Fatwa DSN-MUI Nomor: 33/DSN-MUI/IX/2002 Tentang Obligasi Syariah Mudharabah” (DSN-MUI, n.d.).

are governed by DSN-MUI Fatwa No. 33/DSN-MUI/IX/2002 on Sharia-compliant *Mudharabah* bonds and Fatwa No. 115/DSN-MUI/IX/2017 on *Mudharabah* contracts,²¹ both of which provide a robust legal framework for the governance of Sukuk *Mudharabah* within Islamic finance.

In the *Sukuk Ijarah* scheme, whether the *Nazhir* acts as the issuer or a third party is involved, a structured framework governs transactions in accordance with Sharia principles. When the *Nazhir* serves as the issuer, an *Ijarah* contract is established with the investor concerning the usufruct of the waqf assets, with the *ujrah* (rental payment) agreed upon at the inception of the contract. This payment may take the form of money or other assets and can be made flexibly, either upfront, at the end of the contract term, or in installments. This arrangement grants investors the right to benefit from the *waqf* assets, including income generated from their use, while also allowing the transfer of asset development responsibilities to a third party under a subsequent *Ijarah* contract approved by the *Nazhir*. This demonstrates considerable flexibility in the management and development of waqf assets.

When a third party acts as the issuer instead of the *Nazhir*, the contract similarly adheres to *Sharia* principles, involving an *Ijarah*-type agreement. Both the *Nazhir* and the third-party issuer retain the discretion to structure *ujrah* payments flexibly, according to the contractual terms. This underscores the necessity of explicitly defining the *ujrah* amount and contract duration to ensure clarity in *Ijarah* transactions²² These processes are reinforced by DSN-MUI Fatwa No. 4/DSN-MUI/III/2004 concerning *Sharia Ijarah Bonds* and DSN-MUI Fatwa No. 112/DSN-MUI/IV/2017 regarding *Ijarah Contracts*,²³ which provide comprehensive guidance on applying *Ijarah* principles in *Sukuk* issuance, thereby ensuring *Sharia* compliance while promoting fairness, transparency, and accountability in *waqf* asset management.

²¹“Fatwa DSN-MUI Nomor: 115/DSN-MUI/IX/2017 Tentang Akad Mudharabah” (DSN-MUI, 2017).

²²“Fatwa DSN-MUI No: 4/DSN-MUI/III/2004 Tentang Obligasi Syariah Ijarah” (DSN-MUI, n.d.).

²³“Fatwa DSN-MUI No: 112/DSN-MUI/IV/2017 Tentang Akad Ijarah,” n.d.

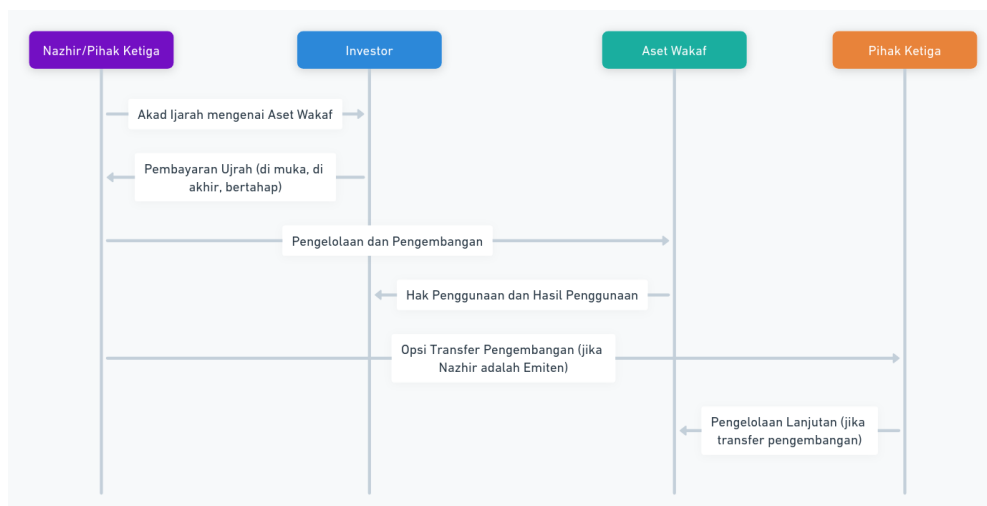


Figure 3. *Sukuk ijarah* scheme

In the *Sukuk Wakalah bi al-Istitsmar* scheme, the investor (*Muwakkil*) appoints an agent (*Wakil*), who may be the *Nazhir* or a third-party *Sukuk* issuer, to manage and invest funds in business ventures aimed at optimizing the benefits of *waqf* assets in accordance with Sharia principles. The *Wakil*, endowed with full authority from the *Muwakkil*, is responsible for the development and investment of assets to achieve the specified investment objectives. When the *Sukuk* is issued by the *Nazhir*, the *waqf* assets may be leased to the *Sukuk* entity, enabling the *Nazhir* to utilize the assets within an investment scheme. Notably, any losses arising from the *Nazhir*'s mismanagement are limited to the returns generated from asset development and do not diminish the original value of the *waqf* assets themselves.

In cases where *Sukuk* are issued by a third party, a contract analogous to *Ijarah* may be established with the *Nazhir*, thereby ensuring the allocation of *Sukuk* proceeds towards Sharia-compliant investments or business activities. The profits generated from these investments are attributed to the *Muwakkil*, while any returns exceeding the target may be allocated to the *Wakalah* (Islamic agency) as an incentive. The *Wakalah* is obligated to return the principal capital to the *Muwakkil* as stipulated in the agreement or upon the conclusion of the contract term. Any matters not explicitly addressed within this framework shall be governed by DSN-MUI Fatwa No. 127/DSN-MUI/VII/2019 concerning *Sukuk Wakalah bil Istitsmar*²⁴ and Fatwa No. 10/DSN-MUI/IV/2000 concerning *Wakalah*, thereby ensuring that all transactional management adheres strictly to the prescribed Sharia principles.²⁵

²⁴“Fatwa DSN-MUI No: 127/DSN-MUI/VII/2019 Tentang Sukuk Wakalah Bil Istitsmar” (DSN-MUI, n.d.).

²⁵“Fatwa No: 10/DSN-MUI/IV/2000 Tentang Wakalah” (DSN-MUI, 2020).



Figure 4. *Sukuk Wakalah bi al-Istitsmar* scheme

In scenarios where a third party acts as the issuer instead of the *Nazhir*, the contract is still conducted in accordance with Sharia principles, involving a contract analogous to *Ijarah*. Both the *Nazhir* and the third-party issuer retain the discretion to determine flexible *Ujrah* payments in line with the contractual agreement. This underscores the critical importance of explicitly defining the *Ujrah* amount and contract duration in *Ijarah* transactions. The process is further supported by provisions set forth in DSN-MUI Fatwa No. 4/DSN-MUI/III/2004 concerning Sharia *Ijarah* Bonds and DSN-MUI Fatwa No. 112/DSN-MUI/IV/2017 regarding *Ijarah* Contracts, which provide comprehensive guidance on the application of *Ijarah* principles within the context of *Sukuk*, thereby ensuring adherence to Sharia law and promoting fairness, transparency, and accountability in the management of *Waqf* assets.

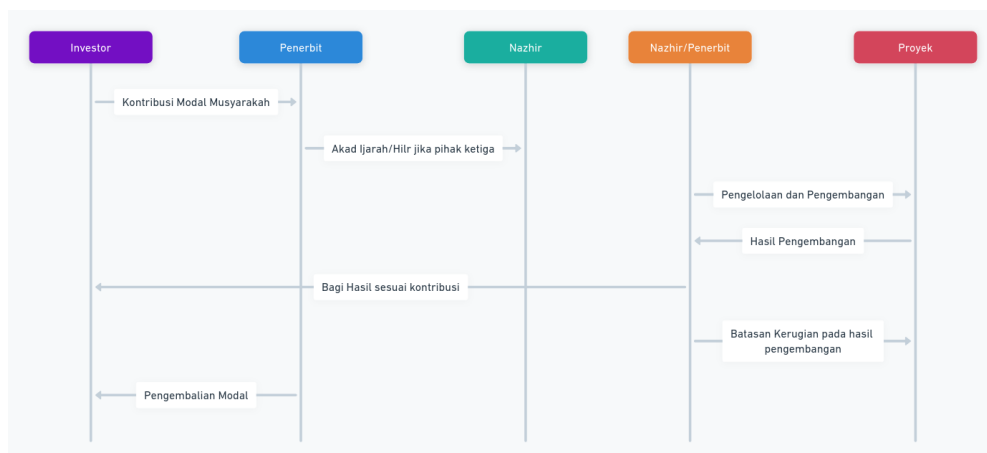


Figure 5. *Musyarakah sukuk* scheme

The liability of the *Nazhir* for losses arising from improper business management is confined solely to the funds generated from the development of *Waqf* assets, without diminishing the principal value of those assets. This limitation underscores the significance of accountability and risk management within the framework. The profit-sharing ratio must be explicitly established at the inception of the contract to ensure an equitable distribution of profits aligned with the capital contributions of each *Sharia* shareholder. *Sharia* shareholders are entitled to receive profits proportionate to their respective contributions, while the *Sukuk* issuer bears the responsibility of repaying the *Musharakah* capital upon the conclusion of the contract period or as mutually agreed. Additional provisions, not detailed herein, will adhere to DSN-MUI Fatwa No. 114/DSN-MUI/IX/2017 concerning the *Syirkah* contract,²⁶ thereby providing a comprehensive legal framework for the implementation of *Musharakah* in *Sukuk*. This framework ensures that all transactions are conducted with transparency, fairness, and in full compliance with *Sharia* principles.

Sharia Compliance of Cash Waqf-Linked Sukuk (CWLS) in *Tafriqus Sufqah*

Sharia compliance in Cash Waqf-Linked Sukuk (CWLS), as guided by the *Tafriqus Sufqah* framework developed by Al-Khatib Al-Sharbini, exemplifies how contemporary Islamic financial instruments can be harmonized with classical Islamic *fiqh* principles to devise innovative and *Sharia*-compliant financial solutions. The *Tafriqus Sufqah* principle, which mandates a clear separation between the various elements of a transaction to prevent potential legal conflicts and ensure transparency, holds particular significance within the CWLS structure. This requirement is critical because the CWLS framework demands a distinct

²⁶“Fatwa DSN-MUI No: 114/DSN-MUI/IX/2017 Tentang Akad Syirkah” (DSN-MUI, 2017).

separation between the utilization of *waqf* assets and the economic benefits derived from them, with such benefits being allocated exclusively for purposes consistent with Sharia principles. The DSN-MUI, through Fatwa No. 131/DSN-MUI/X/2019, has articulated comprehensive guidelines governing the issuance and management of CWLS, thereby safeguarding the adherence to these principles. This ensures that investment activities supported by *waqf* assets are conducted in a manner that preserves both the integrity and intended purpose of the *waqf* assets.

Furthermore, the application of the *Tafriqus Sufqah* principle within the Cash *Waqf*-Linked *Sukuk* (CWLS) underscores a commitment to fairness and sustainability in Islamic finance. By clearly distinguishing between asset ownership and the entitlement to the resulting benefits, the CWLS exemplifies how financial instruments can be structured to promote social and economic development while maintaining strict adherence to *Sharia* compliance. The implementation of CWLS in accordance with DSN-MUI guidelines facilitates the productive utilization of *waqf* assets, ensuring that the proceeds are allocated to fulfill both religious obligations and broader public welfare objectives. This approach not only reinforces the legal framework governing the management and issuance of *Sukuk Waqf* but also affirms core *Sharia* values, transparency, accountability, and fairness offering a compelling demonstration of how classical Islamic jurisprudence can be effectively adapted to address the complexities and demands of contemporary society.

The application of *Tafriqus Sufqah* within the context of Cash *Waqf*-Linked *Sukuk* (CWLS) exemplifies a meticulous and systematic approach to ensuring adherence to *Sharia* principles, particularly in the management of *waqf* assets. The DSN-MUI fatwa, which underscores the distinction between the direct utilization of *waqf* assets and the exploitation of the economic benefits they generate, reaffirms this classical principle in a contemporary setting. By restricting direct use of *waqf* assets while permitting the use of their economic returns, the principle of *Tafriqus Sufqah* is upheld, thereby guaranteeing that the assets are employed sustainably and in alignment with the original objectives of *waqf* namely, the support of religious activities and public welfare.

The selection of contractual arrangements within the CWLS framework such as *Mudharabah*, *Ijarah*, *Wakalah bi al-Istitsmar*, and *Musyarakah* illustrates the practical application of *Tafriqus Sufqah* to ensure that *waqf* asset transactions and management occur within a *Sharia*-compliant framework. Each contract governs cooperation, leasing, representation, or partnership in a manner that promotes fairness, transparency, and the avoidance of *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling). This highlights the critical importance of selecting contractual structures that not only align with the investment and development goals of *waqf* assets but also conform strictly to *Sharia* mandates, thereby reinforcing the integrity of Islamic finance.

The practical implementation of Cash *Waqf*-Linked *Sukuk* (CWLS) exemplifies how classical *fiqh* principles, such as *Tafriqus Sufqah*, can be effectively adapted to address the demands of contemporary society while maintaining strict adherence to Islamic law. This approach bridges the gap between tradition and innovation, facilitating the development of Islamic financial instruments that not only promote socioeconomic progress but also operate within clearly defined *Sharia* boundaries.²⁷ Consequently, CWLS serves as a compelling example of how Islamic finance can contribute meaningfully to social development and public welfare, in accordance with *Sharia* values and principles.

The alignment of CWLS with Al-Khatib Al-Sharbini's concept of *Tafriqus Sufqah* underscores the necessity of a prudent and responsible approach to the management of *waqf* assets. By situating *waqf* assets and their derived benefits within a framework that ensures *Sharia* compliance, CWLS provides a model for sustainable and productive *waqf* asset management. This highlights the significant potential of Islamic finance to support ethical and sustainable development initiatives, yielding benefits not only for the present generation but also for those to come. Through its application of *Tafriqus Sufqah* principles, CWLS stands as a testament to the capacity of Islamic finance to innovate while remaining faithful to its foundational tenets.

Conclusion

Cash *Waqf*-Linked *Sukuk* (CWLS), as conceptualized within the framework of *Tafriqus Sufqah* Al-Khatib Al-Sharbini, illustrates the meticulous efforts undertaken by the National *Sharia* Council of the Indonesian Ulema Council to ensure that this financial instrument adheres not only to general *Sharia* principles but also rigorously applies transaction segregation to preserve the sanctity of *waqf* assets. This approach reflects a profound commitment to advancing Islamic finance through innovative means while maintaining a strong foundation in Islamic jurisprudence, thereby enhancing trust and ensuring compliance with *Sharia* in the practices of the Islamic capital market.

²⁷ Fathurrohman Ghozalie, et, al., Reformulation of Allah's Ownership on *Waqf* (Theoretical Analysis Toward Syāfi'i School), *Syariah: Jurnal Hukum dan Pemikiran*, Vol. 20, No.2, 2020, p. 411. Afridawati, History, Typology, And Implementation Of Islamic Law in Indonesia: A Combination of *Sharia* and *Fiqh* or the Result of Historical Evolution? *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol. 21 No. 1, 2021, p. 35.

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