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SHARIA GOVERNANCE ANALYSIS CASH WAQF LINKED SUKUK (CWLS) PERSPECTIVE MAQASID SHARIA IBN ASHUR

Tri Inda Fadhila Rahma¹, Andri Soemitra², Asmuni³, Rifki Ismal⁴

¹Universitas Islam Negeri Sumatera Utara Indonesia, triindafadhila@uinsu.ac.id

²Universitas Islam Negeri Sumatera Utara Indonesia, andrisoemitra@uinsu.ac.id

³Universitas Islam Negeri Sumatera Utara Indonesia, asmuni@uinsu.ac.id

⁴Assistant Secretary General IFSB Malaysia, rifki@bi.go.id

Abstract. Cash *waqf* linked *sukuk* (CWLS) is an Islamic financial instrument issued by the government in the form of Sharia Securities (SBSN) as an investment alternative to government institutions for social funds, namely *waqf*. So it needs proper supervision both in terms of governance and sharia compliance. As a sharia financial instrument, it must comply with the guidelines on the DSN fatwa and view it from the maqasid sharia aspect. So the purpose of this study is to analyze sharia governance at CWLS and look at it from the perspective of *Maqasid Syariah* Ibnu Ashur. By using a descriptive qualitative research methodology. The results of the study show that CWLS has fulfilled the aspects of good sharia governance and realized the goals of maqasid sharia, namely that it has provided benefits to the community through programs that have been implemented from the results of the profits obtained from the management of CWLS funds. CWLS fulfills the 5 maqasid principles of Ibnu Ashur's sharia which consist of *Rawaj*, *Wadhuh*, *Hifzh*, *Tsabat* and *'adl*.

Keywords : Sharia Governance, Cash Waqf Linked Sukuk (CWLS), Maqasid Syariah, Ibn Ashur

INTRODUCTION

Efforts that can be made by the government to encourage the development of Islamic finance in Indonesia are through the diversification of Islamic financial products, one of which is Islamic government securities or known as *sukuk* (Heikal et al., 2018). Every year, the issuance of *sukuk* has increased in terms of quantity and quality. This shows that the role of *sukuk* to state finances is increasingly important, especially in the APBN financing post.

According to Law Number 19 of 2008 concerning State Sharia Securities (SBSN), the definition of *sukuk* is "state securities issued based on sharia principles, as evidence of the share of participation in SBSN assets, both in rupiah and foreign currency." The main purpose of issuing *sukuk* instruments is to cover the deficit STATE BUDGET.

Like *sukuk*, the Islamic philanthropy industry, especially cash *waqf*, has also recently become the government's concern. Seeing the strategic potential of these two instruments, the government through the Ministry of Finance together with the Indonesian Waqf Agency, Bank Indonesia, and the Financial Services Authority formulated an innovative Islamic financial product by combining cash *waqf* and state *sukuk* into one instrument called Cash *Waqf* Linked *Sukuk* (CWLS) or *waqf sukuk*.

CWLS is a sharia bond or *sukuk* based on cash *waqf*, where the funds collected are invested in state *sukuk*. So that it can help fiscal financing in a social context, such as in the fields of education,

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About the authors : Tri Inda Fadhila Rahma

Corresponding author- Email: triindafadhila@uinsu.ac.id

health, and development (Faiza 2019). Cash waqf is a solution for Micro, Small and Medium Enterprises (MSMEs) in alleviating poverty because it helps MSMEs in obtaining business capital (Ahmad, 2015).

Waqf is a typical form of Islamic economic instrument which bases its function on the elements of virtue (*birr*), kindness (*ihsan*) and brotherhood (*ukhuwah*). The main characteristic of waqf is that there is a shift in private ownership towards Muslim community ownership which is expected to be lasting and provide sustainable benefits. Through waqf, it is hoped that there will be a wider distribution of benefits for society, from private benefits to community benefits (social benefits) (Saefuddin, 2011). So Good Corporate Governance is needed in CWLS to give trust to the community in managing social funds, namely BWI as the fund manager. Governance in Islamic financial instruments is called sharia governance. The principles of corporate governance according to the OECD (2004) consist of accountability, responsibility, transparency, fairness and independence. And IFSB (2009) adds aspects of sharia compliance to Sharia Governance.

Apart from having good governance, sharia financial instruments must also provide clarity on sharia principles in the instrument. The Indonesian Ulema Council (MUI) has issued a fatwa regarding cash waqf on May 11, 2002, namely DSN-MUI Fatwa No. 131/DSN-MUI/X/2019 concerning *Waqf Sukuk* as the legal basis for CWLS. CWLS has fulfilled the aspect of sharia compliance when applying the DSN fatwa. This will give confidence to the public in handing over funds to the waqf fund manager, in this case BWI as general *nazir*. According to Rahayu & Agustianto (2020) that in the perspective of Islamic economics, the implementation of CWLS management has been carried out in accordance with predetermined sharia principles.

However, the problem is that the standards for measuring the performance of Islamic maqasid-based financial institutions are still not legally structured, and the concepts that can be applied are also not fully integrated (Setyorini & Nurmahadi, 2018). Therefore CWLS must be viewed in terms of maqasid sharia.

Muhammad Thohir Ibnu Ashur divides maqasid sharia into two and defines both: first, *maqasid al tashri' al ammah* are hidden meanings and wisdom in all or the majority of laws, in which the substance of the law is not bound by specific legal space. Second, *maqasid al-khasah* are ways that shari' want to realize human benefit, or to maintain the general benefit in special deeds (Al Raisuni, 1992: 14).

Maqasid Sharia are the final goals that must be realized by the application of the Shari'a. *Maqasid asy Syariah* can be in the form of *maqasid Syariah al'ammah*, which covers all aspects of shari'a and *maqasid Syariah al-khasah* which is devoted to one chapter of the existing shari'a chapters, such as *maqasid al-Shariah* in the fields of economics, family law and others, or *maqasid Sharia al juz'iyah* which includes every shara' law such as the obligation to pray, the prohibition of adultery, and so on (Mawardi, 2010: 183). So the purpose of this study is to analyze the assessment of sharia governance by experts and to look at the maqasid aspect of sharia by Ibnu Ashur.

LITERATURE REVIEW

Sharia Governance

The concept of sharia governance is a unique and exclusive governance system for sharia financial institutions that functions to ensure sharia compliance in all company activities and operations (Zulfikar et al., 2019). Important elements that differentiate it from corporate governance in general are a number of institutional and organizational arrangements in the form of a Sharia Board, Internal or External Sharia Review Unit and Internal Sharia Compliance Unit to fulfill sharia compliance aspects in all aspects of business transactions and operations of Islamic financial institutions (Rama 2014, Khaddafi et al., 2018).

Sharia governance is governance that must exist in Islamic financial institutions, apart from consisting of elements of governance and control in general, Islamic financial institutions adjust their regulations in general by adjusting to aspects of sharia compliance or also known as sharia compliance so that it becomes a differentiator from general financial institutions another.

Maqasid Asy-Syariah

Maqasid asy-shari'ah is one of the important concepts in the study of Islamic law. The urgency of *Maqasid Shari'ah* has encouraged Islamic legal theorists to make it one of the criteria (besides other criteria) for a mujtahid who performs ijihad. The concept of *Maqasid Syari'ah* encapsulates the overall objectives of Sharia in a simpler and easier to understand form.

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In this study, it will link sharia governance in the management of Cash Waqf Linked Sukuk (CWLS) funds with *Maqasid Syariah* Ibnu 'Asyur specifically in the trade book or wealth turnover, which consists of five, namely: *ar-rawiaj* (distribution of ownership), *wadhuh* (transparency), *hifzh* (protection of property), *tsabat* (legal certainty of ownership), and *'adl* (just).

Cash Waqf Linked Sukuk (CWLS)

Cash Waqf Linked Sukuk is a form of social investment in Indonesia where cash waqf collected by the Indonesian Waqf Agency as Nazhir, through distribution partners as Islamic Financial Institutions Receiving Cash Waqf (LKSPWU) will be managed and placed in State Sukuk instruments or SBSN (Securities State Sharia) issued by the Ministry of Finance (Ministry of Finance). (Ministry of Finance, 2021)

The government will issue a special "SW" series of State Sukuk which also has special features including: a tenor of less than 5 years, is non-tradable (non-tradable), payment of interest is discounted and a fixed rate of return is paid periodically. The government will use the results of the issuance of the SW series of State Sukuk to finance the state budget, including to finance the development of public service projects such as the construction of educational infrastructure and religious services. Yields or coupons from cash waqf placed in State Sukuk ser SW will be channeled to mauquf 'alaih. (Anggraini, 2019)

CWLS has several advantages including: (Yaumuddin, 2008)

1. There is facilitation for cash waqif so that it can be used for productive activities;
2. Cash waqf is placed in a safe and risk-free instrument, namely state sukuk;
3. All or 100% of the funds will be paid back to waqif when due;
4. The proceeds from the waqf sukuk investment will be utilized for the formation of new waqf assets and financing for social activities;
5. Waqif candidates with a certain amount of cash waqf can propose projects or social activities to be carried out and financed;
6. The Indonesian Waqf Board is exempt from taxation so that investment returns are obtained competitively.

METHODOLOGY

This research was compiled using a qualitative methodology as a research procedure that produces descriptive data in the form of words and language (Moleong, 2013, p.4), with a descriptive method that aims to make descriptions, drawings or drawings systematically (Nazir, 2013, p.54) by analyzing the assessment of sharia governance according to experts as many as 100 respondents. Data was collected by survey (questionnaire), then processed by editing and organizing data, then the analysis process was carried out by deduction method. The analysis process took place from the beginning to the end of the study, in order to construct a descriptive concept about maqasid sharia in CWLS.

RESULT AND ANALYSIS

Akuntabilitas (*accountability*)

CWLS fund managers are responsible for the success obtained by providing accurate information to waqifs as investors and the public who become waqif candidates.

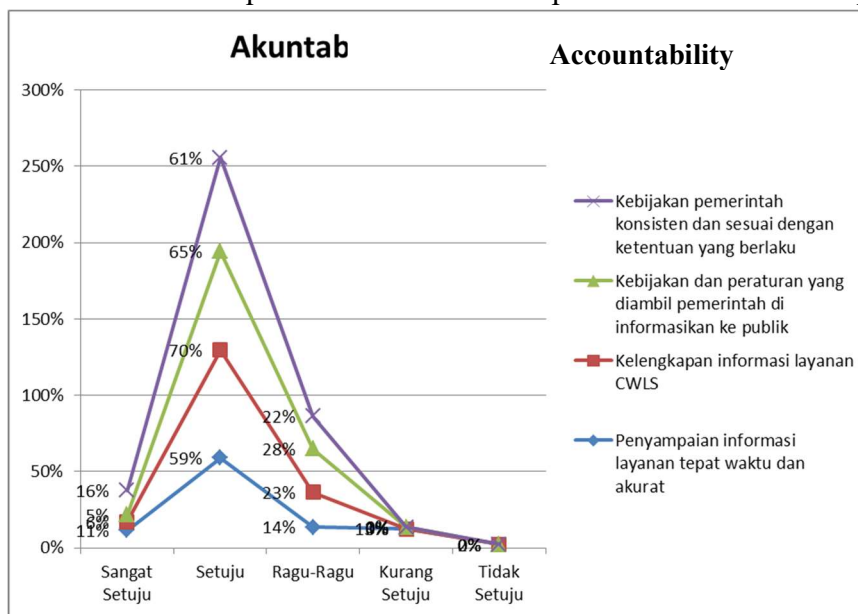


Figure 1. Accountability

The picture above shows that accountability to CWLS respondents agree above 70% except for the third indicator, namely "Policies and regulations taken by the government (the ministry of finance, the ministry of religion or BWI) are informed to the public". This shows that CWLS needs information from the public or waqif about policies and regulations carried out by the Government, namely the Ministry of Finance, Ministry of Religion and BWI.

Responsibility

Responsibility in this study refers to the CWLS fund manager must have responsibility in carrying out its activities. In managing the funds generated, it must be able to carry out programs that are the targets or achievements of the manager, so the CWLS fund manager must be able to carry out the social programs that have been planned.

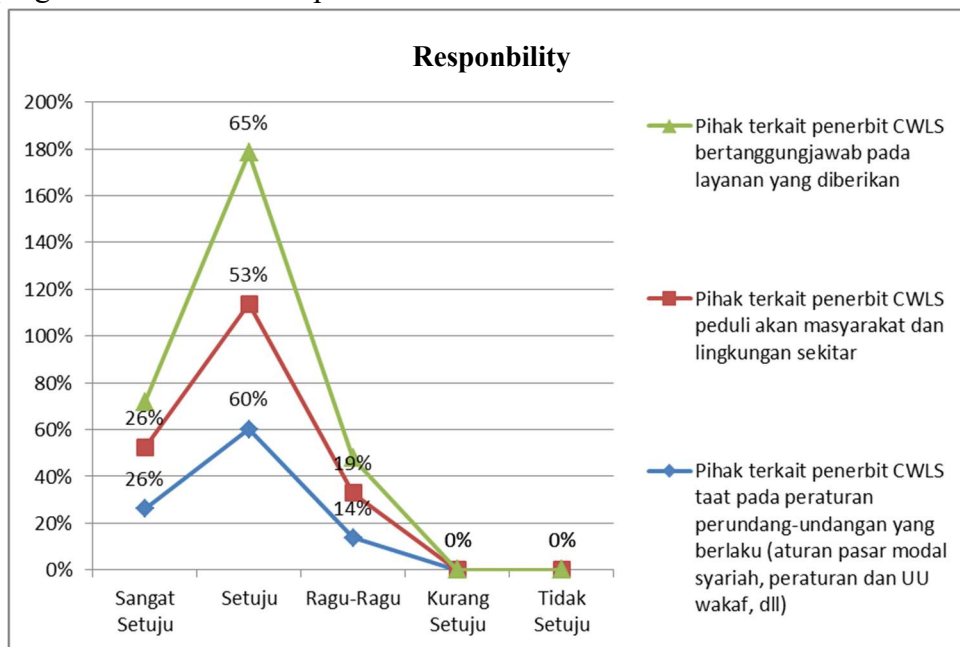


Figure 2. Responsibility

The figure above shows that on the CWLS accountability indicator more than 80% and above stated that they agreed, while 33% were neutral and no respondents stated that they did not agree.

Transparency

Openness to the management of CWLS funds where managers can provide accurate and clear information about the use of CWLS funds.

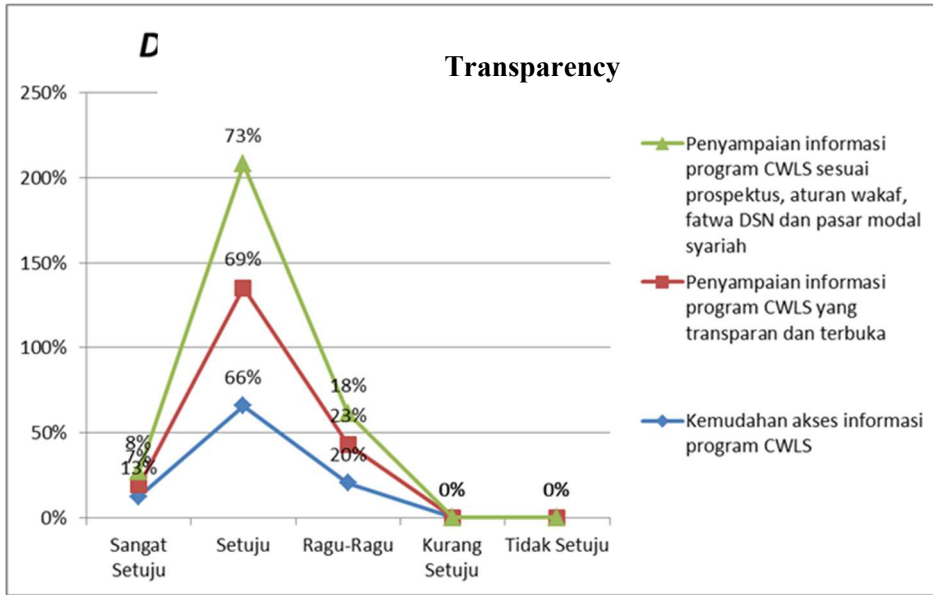


Figure 3. Transparency

The picture above shows that the aspects of openness indicators in CWLS have been fulfilled. However, among them there are doubts from the public in assessing the openness of the management of CWLS funds with an average of 20%. And 80% agree that CWLS issuers have been open or transparent in conveying information regarding implementation programs from the results of CWLS fund management.

Fairness

All transactions must be fair in nature which does not concern one party, which is called fairness.

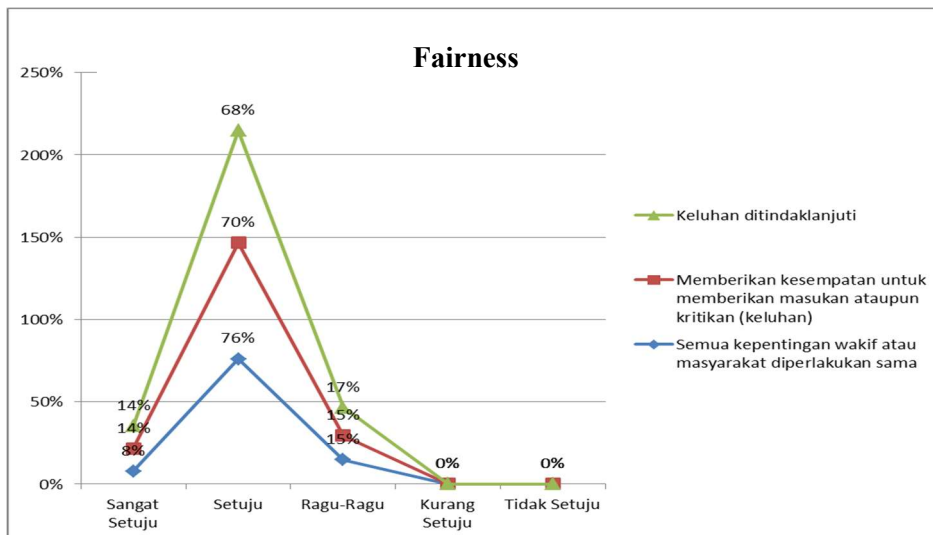


Figure 4. Fairness

The picture above shows that the indicators of fairness have been fulfilled in CWLS. However, among them there are doubts from the public in assessing the management of CWLS funds with an

average of 16%. And 84% agree that the assessment of Sharia Governance is on the Fairness indicator in the management of Cash Waqf Linked Sukuk (CWLS) funds.

Independency

The management of CWLS funds must be independent, namely where the CWLS fund manager in managing must guarantee the full return of waqf funds and make decisions with an objective attitude not because of unilateral interests.

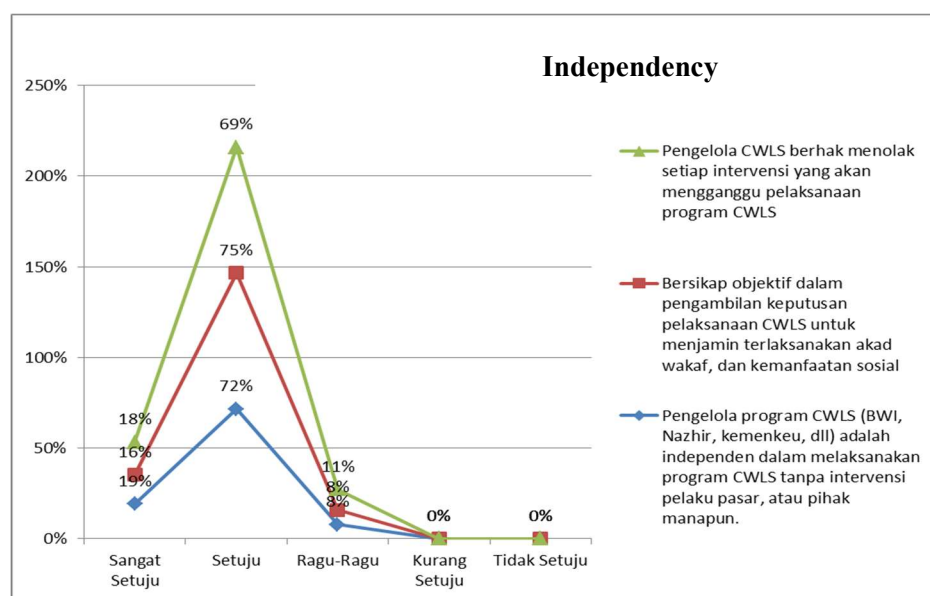


Figure 5. Independency

Figure 5 shows that the aspects of independence indicators in CWLS have been met. However, among them there are doubts from the public in assessing the openness of the management of CWLS funds with an average of 16%. And 84% agree that the Sharia Governance assessment has met the independence indicators, that the CWLS fund manager has been able to guarantee the full return of waqf funds and make decisions with an objective attitude that is not only concerned with unilateral interests. CWLS is invested in Surat Berharga Syariah Negara (SBSN) which are used by the Government in managing APBN funds and the government guarantees returns with assets owned by the State so that returns on CWLS funds can be guaranteed along with rewards or wages or fees given to managers for the realization of social programs.

Sharia Compliance

Sharia compliance is an obligation to comply with sharia principles in carrying out operations or managing CWLS funds that must be met.

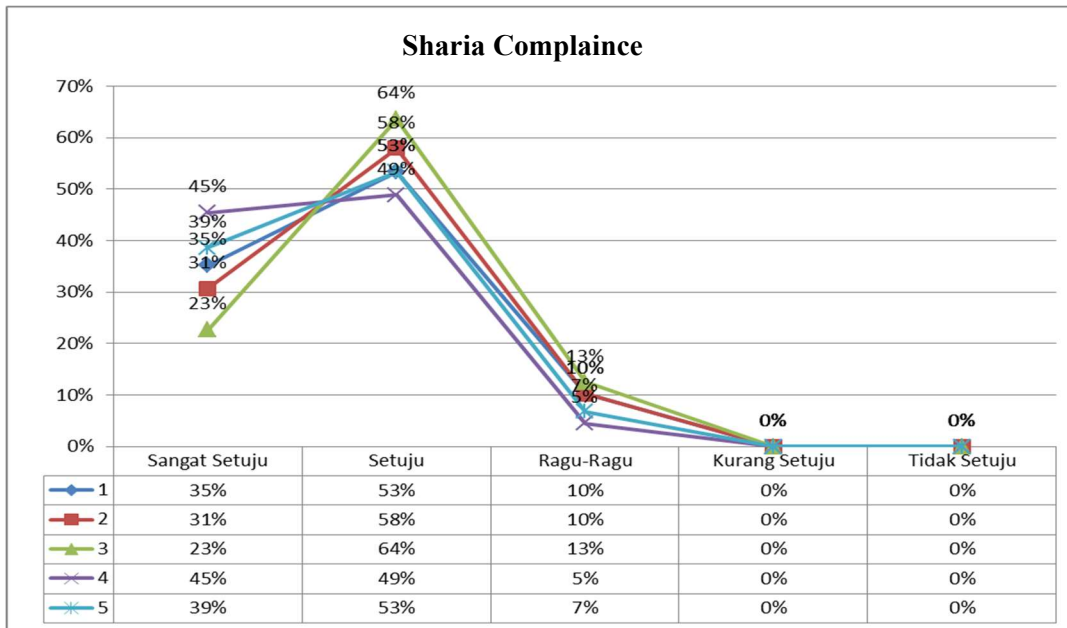


Figure 6. Sharia Compliance

Sharia compliance assessed by the respondents in this study fulfilled several aspects including more than 90% of respondents agreeing. This shows that the respondents agree that the management of CWLS funds has met the sharia compliance aspects, so that in carrying out its operational activities CWLS has fulfilled the sharia aspects. CWLS products do not contain Riba, Gharar or maysir in the transaction process. CWLS as a sharia financial product, in managing its funds, manages social funds, so it needs to be assessed as a trustworthy institution in carrying out its duties. Thus the public as waqif candidates and investors who have become waqifs themselves can trust the issuers and CWLS fund managers.

The results of the s assessment can be concluded that sharia compliance is the highest rating compared to other indicators. Thus the community and wakif agree that CWLS does not contain elements of usury, gharar and maysir, CWLS is halal, and can carry out mandates that can be trusted by the community and wakif, because there is supervision by the Sharia Supervisory Board (DPS) which is effective and trustworthy in managing social funds . CWLS is carried out by adjusting aspects of sharia compliance based on the Fatwa of the Dewan Syariah Nasional (DSN) – Majelis Ulama Indonesia (MUI) No. 131/DSN_MUI/X/2019 concerning Waqf Sukuk, the fatwa is used as a DPS guideline as supervisor of operational activities carried out by CWLS managers.

The results of this study are in line with research conducted by (Wardayati, 2011) that sharia compliance is the most dominant indicator compared to other indicators in implementing sharia governance in Islamic banking. Research conducted by (El Junusi, 2012) that sharia compliance is the biggest contribution compared to other indicators.

Of all the indicators, accountability is the lowest rating. In this case the manager of the CWLS fund has responsibility for the success obtained by providing accurate information to the public and wakif as investors. Nazhir, who manages social funds, and the Government as a user of funds, need to be more precise in informing the public and providing easy information services to the public and

wakifs, so that the public and wakifs receive timely and accurate information. Issuers and managers need to take advantage of digitization by creating a special CWLS platform that is more comprehensive in a hand-to-hand manner so that information can be received directly by waqifs.

The results of this study support the stakeholder theory, that managers in operating their activities must be able to provide benefits to their stakeholders. In this case CWLS must be able to provide benefits to people in need and can be utilized from the targets of the programs to be implemented. And the results of this study also support the Sharia Enterprise Theory (SET), that the more awareness there is in managing funds for the sake of Allah, the better the management of funds is carried out in accordance with sharia compliance principles. One of the principles in sharia governance is the existence of trustworthiness in the application of sharia governance to sharia financial products, where this characteristic will later bring trust to the manager. In this case Allah says in surah Al-Mu'minin verse 8 that:

﴿وَالَّذِينَ هُمْ عَنْ آلِهِمْ وَنَسَبِهِمْ حَرَجٌ لِمَنْ يَدْعُوا إِلَيْهِمْ إِنْ دَعَوْهُمْ إِلَيْكُم فَاذْكُرُوا لَهُمْ كَمَا كُنْتُمْ تُذَكَّرُونَ﴾

“And who are shepherds of their pledge and their covenant” [23]: 8).
and Allah SWT says:

﴿وَالَّذِينَ هُمْ عَنْ آلِهِمْ وَنَسَبِهِمْ حَرَجٌ لِمَنْ يَدْعُوا إِلَيْهِمْ إِنْ دَعَوْهُمْ إِلَيْكُم فَاذْكُرُوا لَهُمْ كَمَا كُنْتُمْ تُذَكَّرُونَ﴾

“Lo! Allah commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly. Lo! comely is this which Allah admonisheth you. Lo! Allah is ever Hearer, Seer.” (4: 58)

In the interpretation of Al-Misbah it is explained that Allah SWT commands to convey all the mandates of Allah and other people to those who are entitled to them fairly. And CWLS which is a social fund that is placed on people who are trustworthy or trustworthy.

If the research results are implemented in maqasid sharia, it can be seen from the following aspects. i, on the Rawaj that assets can be distributed in a legal way from one hand to another and not only in certain circles. As is the case with CWLS, the results of the management are utilized by people who need it and are intended for the interests of God's cause, namely the benefit of the people. In order for waqf funds to be maintained with their full value, then waqf funds must be channeled into halal investments, one of which is investment instruments offered by the government, besides being useful for the social development of the State it is also beneficial for the results to be channeled into programs needed by the community.

Second, in *wadhuh*, that the assets that are the object of wealth can be clearly identified and defined, so as to avoid disputes caused by other parties' claims to the assets in question. In the program implemented by CWLS, the manager has planned the target social program to be implemented, and then it is realized from the results of the rewards obtained for the benefits of using waqf funds, so it must be clear in order to avoid negative perceptions from the public.

Third, on *hifzh* that protects assets/goods from bad behavior, such as exaggerating in a transaction without a clear purpose (*isrof*) or wasting wealth/goods without clear boundaries (*tabdzir*). Judging from the management of CWLS funds from the aspect of sharia compliance, the manager must be trustworthy in maintaining the value of his waqf so that it remains intact and carry out social programs from the results of managing these funds that are beneficial for the benefit of the people.

Fourth, on the *tsabat* aspect that the legal force of the transaction is intended to protect the exclusive right of the owner of the property to utilize and take advantage of the property which is the object of wealth, guaranteeing the freedom concerned to legally manage and empower the property to obtain the desired benefits and advantages. As well as ensure that the exclusive rights and freedom to manage referred to do not fall or change hands without permission, unless it harms other parties or the public interest. According to Syafi'i and Hambali, waqf is ownership of property that has moved from private ownership to the ownership of Allah SWT and used for purposes in the way of Allah, both for the benefit of the people, as well as CWLS. So that the legal power of the CWLS waqf funds is clear.

Fifth, *'Adl* (Justice) that the acquisition of assets does not harm other parties and the public interest, whether the acquisition is in the form of a reward for a work done, or compensation for the property given. So in the aspect of sharia compliance it is clear that CWLS transactions do not contain elements of usury, gharar and maysir and generate halal profits and contain benefits that avoid losses. In accordance with the legal basis for waqf sukuk, namely the word of Allah QS An-Nisa verse 29 as follows.



“O ye who believe! Squander not your wealth among yourselves in vanity, except it be a trade by mutual consent, and kill not one another. Lo! Allah is ever Merciful unto you.” (2 : 29).

According to Jalalain's interpretation by Jalaluddin al-Mahalli & Jalaluddin as-Suyuthi that the purpose of consuming your neighbor's wealth in a vanity way is a path that is unlawful according to religion such as usury, *ghasab* or seizing and ways that harm other people. as the Prophet said,

" Verily, the blood, wealth and honor of your neighbors are forbidden to you, just as it is forbidden on this day in your country and in this month of yours. ". (Muhammad bin Ismail al-Bukhariy, Sahih al-Bukhariy, 1997)

Therefore, in transactions, CWLS avoids this in order to comply with sharia compliance in managing its funds. And from the presentation of all aspects of maqasid sharia by Ibnu Asyur, it can be concluded that the results of this study are in line with aspects of maqasid sharia, both in *Rawaj*, *Wadhuh*, *Hifzh*, *Tsabat* and *'adl*.

The results of this study are in line with research conducted by Riska Delta Rahayu (2020) which in her research stated that the implementation of CWLS has also fulfilled the required pillars and in the management of waqf funds allocated for halal activities and according to sharia principles. *Sukuk* Related to Cash Waqf has the potential for economic and social development in society because it aims to achieve the benefit and welfare of society in general.

The purpose of *maqasid sharia* is *maslahah* that must be achieved, namely providing benefits, goodness and pleasure for humans and avoiding or preventing damage and evil. It can be seen that the programs implemented from the profits of CWLS are one of the programs that have been implemented by the Indonesian *Waqf* Agency (BWI), namely Salman's *Waqf* which originates from CWLS series SWR001 yields worth more than IDR 27,000,000, Salman's *Waqf* was given to the Salman Rasidi Mosque to procure community needs at the mosque. Provision of an ophthalmoscope derived from the SWR002 series CWLS yield. Thus the presence of CWLS achieves the goal of maqasid sharia, namely *maslahah*.

CONCLUSION

Cash waqf linked sukuk (CWLS) has met the aspects of good sharia governance and provides benefit to society by achieving the goal of *maqasid sharia*, namely *maslahah*. CWLS fulfills 5 *maqasid sharia* principles according to Ibn Ashur, namely on the principle of *rawaj* that profits from CWLS are used for the community's needs, and the source of funds comes from people who have excess funds so that wealth distribution is achieved. The principle of *wadhuh* is that the CWLS manager has set targets for social programs that will be implemented and realized from the profits not from the waqf value so that the waqf value remains intact. Thus the *wadhuh* principle is achieved. CWLS also fulfills the *hifzh* principle, namely because CWLS is managed by a trustworthy BWI so that the value of the waqf is maintained not to decrease. CWLS fulfills the *tsabat* principle, namely waqf owned by Allah whose designation is clear. While the principle of *'adl* in CWLS is the achievement of sharia compliance assessment, it ensures that CWLS is halal and contains benefits and avoids losses.

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