Amorti: Jurnal Studi Islam Interdisipliner
Vol. 5, No. 2 April 2026, pp. 1615-1621
http://journal.amorfati.id/index.php/amorti | | ISSN 2962-9209

Interdisciplinary Scope of Contemporary Islamic Studies • Interdisciplinary Islamic Education • Interdisciplinary Islamic Law, Ethics, and Fatwa Studies • Interdisciplinary Islamic Economics, Finance, and Philanthropy • Islam, Society, and Culture • Islam, Politics, Governance, and Public Policy • Islam, Gender, Family, and Human Rights • Islam, Media, Communication, and Digital Da'wah • Islam, Health, Environment, and Sustainable Development • Islam, Science, Technology, Artificial Intelligence, and Digital Transformation

Legal Protection for Wakif in Cash Waqf through Digital Platforms in Indonesia

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ARTICLE INFO

Article history
Received:
25 January 2026
Revised:
19 February 2026
Accepted:
25 March 2026
Available online:
28 April 2026

Keywords
Cash Waqf; Digital Platform; Legal Protection; Wakif

ABSTRACT

The digital transformation of cash waqf management in Indonesia has increased accessibility for wakif through the use of financial technology (fintech) platforms and nazhir websites. However, digitalization also creates legal risks related to personal data protection, transparency and accountability in fund management, and the legal certainty of Electronic Waqf Pledge Deeds (AIWE). This normative legal research aims to analyze the forms of legal protection available to wakif and the legal liability of nazhir in digital cash waqf transactions in Indonesia. This study employs a statute approach and a conceptual approach by examining relevant laws, regulations, and legal concepts. The findings indicate that preventive legal protection for wakif is supported by electronic system requirements under Law No. 1/2024 on the ITE Law, Law No. 27/2022 on Personal Data Protection, and Indonesian Waqf Board (BWI) Regulation No. 1/2020. Meanwhile, repressive legal protection is available through dispute resolution mechanisms in the Religious Courts and regulatory supervision by BWI. The study recommends the development of specific technical regulations governing digital platforms involved in cash waqf collection to strengthen legal certainty and protection for wakif.

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Introduction

Cash waqf is an Islamic economic instrument with considerable potential to empower Muslim communities in Indonesia. Along with the rapid digitalization of the economy, the Indonesian Waqf Board (BWI) and various institutions managing religious social funds have begun using digital platforms to facilitate the collection of cash waqf. Mobile applications, the Quick Response Code Indonesian Standard (QRIS), and crowdfunding have transformed cash waqf collection practices and increased public access to participation in waqf activities.

However, this convenience has also raised new legal issues concerning the status and protection of wakif (waqf donors) in digital cash waqf transactions. Wakif may face risks such as system failures, misuse of personal and financial data, uncertainty regarding evidence of the waqf declaration, and insufficient transparency in the management and distribution of funds by the nazhir (waqf manager). Law No. 41 of 2004 concerning Waqf provides a legal basis for the implementation of waqf, but its application in the digital ecosystem must also be examined alongside provisions governing electronic transactions and personal data protection. This situation raises the question of how far the existing legal framework can provide legal certainty

and adequate protection for wakif conducting cash waqf transactions through digital platforms.

Waqf practices in Indonesia have developed significantly, shifting from waqf commonly involving immovable assets such as land and buildings to the use of movable assets in the form of money. Cash waqf received legal recognition through the 2002 Fatwa of the Indonesian Ulema Council (MUI) on Cash Waqf, which was subsequently reinforced by Law No. 41 of 2004 concerning Waqf. The development of information technology has further encouraged cash waqf collection through various digital ecosystems, including financial technology (fintech), digital Islamic banking, and crowdfunding websites.

Digitalization not only facilitates fundraising but also creates several legal issues that require attention. First, questions arise regarding the validity of a digital waqf declaration, particularly when the waqf process is conducted through electronic forms and acceptance of terms and conditions. Second, risks arise concerning the protection of wakif's personal and financial data because digital transactions may involve third parties, such as payment gateways. Third, concerns exist regarding the transparency and accountability of waqf fund management, particularly wakif's access to information about how the nazhir manages and distributes the funds. These issues demonstrate that waqf digitalization is not merely a matter of transaction convenience; it also requires legal certainty concerning the rights, obligations, and responsibilities of all parties involved.

Most previous literature has focused on optimizing digital cash waqf collection, technological developments in waqf management, and the institutional effectiveness of nazhir. In contrast, studies specifically examining legal protection for wakif in cash waqf transactions through digital platforms—particularly those connecting waqf law, electronic transactions, and personal data protection—remain limited. The novelty of this study lies in its integrated analysis of preventive and repressive legal protection for wakif and the legal liability of nazhir within Indonesia's digital cash waqf ecosystem. Accordingly, this study aims to analyze the forms of legal protection available to wakif and the mechanisms for establishing nazhir's legal liability in cash waqf transactions through digital platforms in Indonesia.

Method

This study is normative legal research (doctrinal legal research) that aims to analyze legal protection for wakif in the implementation of cash waqf through digital platforms in Indonesia. It employs two approaches: the statute approach and the conceptual approach. The statute approach is used to examine Law No. 41 of 2004 concerning Waqf, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions, Law No. 27 of 2022 concerning Personal Data Protection, and Indonesian Waqf Board Regulation No. 1 of 2020. The conceptual approach is used to analyze the concept of legal protection, particularly the thought of Philipus M. Hadjon, the doctrine of legal certainty, and the principles of Islamic contract law relevant to digital waqf transactions.

The legal materials consist of primary and secondary legal sources. Primary legal materials include legislation concerning waqf, electronic transactions, personal data protection, and regulations issued by the Indonesian Waqf Board. Secondary legal materials include scientific journal articles, law books, previous research findings, and relevant Indonesian Ulema Council fatwas on cash waqf and digital transactions. All materials were selected based on their relevance to the issue of legal protection for wakif and the legal responsibilities of nazhir in digital cash waqf management.

The legal materials were analyzed qualitatively using a prescriptive method. The analysis began by identifying and inventorying relevant legal provisions, examining the relationship between waqf regulations and provisions on electronic transactions and personal data protection, and then interpreting those provisions through the concepts of legal protection and legal certainty. The results were subsequently compared with legal issues arising in the implementation of cash waqf through digital platforms to identify forms of preventive and

repressive legal protection for wakif and the legal responsibilities of nazhir. Based on this analysis, the study formulates legal arguments and prescriptive recommendations to strengthen legal protection for wakif in Indonesia's digital cash waqf ecosystem.

Results and Discussion

1. Operational Framework for Digital Cash Waqf

Under Article 28 of Law No. 41 of 2004 concerning Waqf, cash waqf is conducted through an Islamic Financial Institution Receiving Cash Waqf (LKS-PWU). The use of digital platforms has made waqf collection easier and faster. Nevertheless, digitalization does not change the legal status or responsibilities of the parties involved in implementing cash waqf.

Several parties perform different functions in digital cash waqf transactions:

a. First, the wakif, who contributes money to be endowed as waqf.
b. Second, the digital platform or payment system, which supports transaction processing and information management.
c. Third, the LKS-PWU, which receives cash waqf in accordance with applicable regulations.
d. Fourth, the nazhir, who is responsible for managing and developing waqf assets in accordance with their designated purpose.
e. Fifth, the Indonesian Waqf Board (BWI), which provides guidance and oversight for waqf administration.

hus, the legal relationship in digital cash waqf is not limited to the wakif and the nazhir; it involves several interconnected parties. The digital platform serves as a transaction channel, while the receipt and management of waqf funds must continue to comply with the legal provisions governing cash waqf.

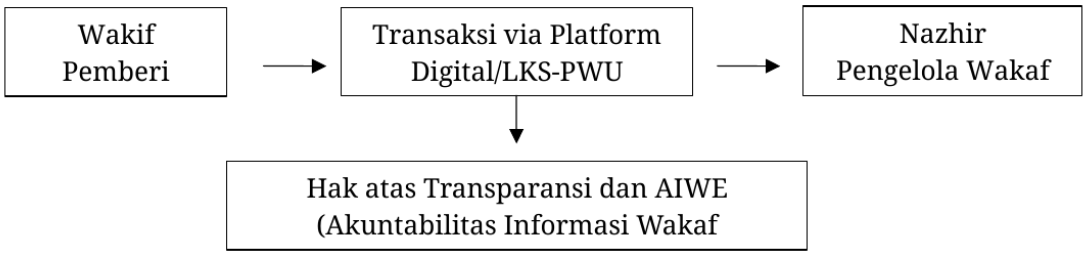


Fig. 1. Legal Relationship Framework for Digital Cash Waqf

Digitalisasi Digitalization also raises issues concerning the waqf declaration (shighat). The use of electronic forms, transaction confirmations, and electronic documents must be considered within the frameworks of waqf law and electronic transaction law. Therefore, electronic consent alone cannot serve as the sole basis for determining the validity of digital waqf. Its validity and legal consequences must be assessed as a whole under the provisions governing cash waqf and electronic information and transactions.

From this perspective, a digital platform should be understood as an instrument that facilitates waqf, not as a party that replaces the functions of the LKS-PWU or the nazhir. Clarifying the legal status of each party is important for determining responsibility in the event of transaction errors, data misuse, or problems in waqf fund management.

2. Preventive Legal Protection for Wakif

Preventive legal protection is intended to prevent disputes, negligence, and violations of rights before a transaction takes place. Forms of preventive protection for wakif include

the following:

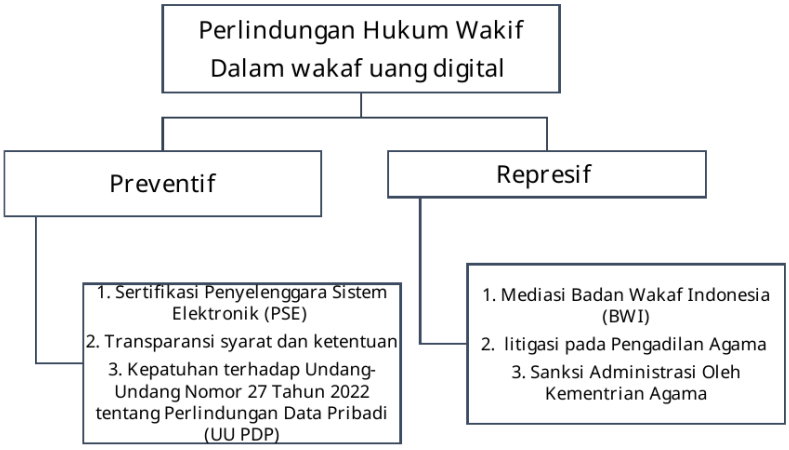


Fig. 2. Framework for Legal Protection of Wakif in Digital Cash Waqf

a. Legality and Clarity Regarding the Status of Each Party

Legalitas The legal status of the parties involved is essential to providing legal certainty for wakif. Wakif need to know to whom the waqf funds are transferred, through which institution the transaction is conducted, and which party is responsible for managing the funds.

Law No. 41 of 2004 is the principal legal basis for cash waqf, particularly regarding the receipt and management of cash waqf through the LKS-PWU and the nazhir. Meanwhile, the use of electronic systems in transactions must comply with the provisions of the Electronic Information and Transactions Law (ITE Law).

Accordingly, preventive protection concerns not only digital system security but also the clarity of legal status and the relationships among the digital platform, LKS-PWU, and nazhir. Such clarity can assure wakif of which party receives and manages their waqf funds.

b. Transparency and Transaction Evidence

Transparency is an important element of protecting wakif because they need to know that their transactions have been successful and that the funds have been received by an authorized party.

In digital transactions, payment receipts, transaction histories, and electronic documents may form important parts of waqf documentation. The ITE Law provides a legal basis for recognizing electronic information and documents as evidence.

Therefore, digital platforms used to collect waqf should provide wakif with clear transaction information, including the amount, transaction time, recipient, and purpose or designation of the waqf where such information is available. This transparency not only gives wakif greater confidence but can also help prevent future disputes.

c. Protection of Wakif's Personal Data

Digital waqf transactions may involve wakif's identity information and transaction data. Consequently, personal data protection is an important component of preventive legal protection.

Law No. 27 of 2022 concerning Personal Data Protection establishes a legal framework for processing personal data, the rights of personal data subjects, and the obligations of parties that process such data. In digital waqf, parties that control or process wakif's data must ensure that it is used for legitimate purposes and is not misused.

Personal data protection therefore involves more than preventing data breaches; it also includes transparency about how data is collected, used, stored, and, where necessary, shared with other parties. This is important because digital transactions may involve several parties, including payment service providers.

3. Repressive Legal Protection and the Liability of Nazhir

Unlike preventive protection, repressive legal protection is needed when a violation or dispute has already occurred. In digital cash waqf, such issues may include misuse of waqf funds, management inconsistent with the designated purpose, negligence in fulfilling entrusted duties, or misuse of wakif's personal data.

The nazhir plays an important role because received waqf funds must be managed in accordance with the objectives and designated purposes of the waqf. If misuse occurs or the funds are managed contrary to waqf regulations, the nazhir's liability must be assessed under the applicable waqf laws.

Based on the analysis, the issues and legal grounds relevant to the protection of wakif can be mapped as follows:

Tabel 1. Matrix of Violations, Relevant Legal Bases, and Protection Mechanisms

Issue	Relevant Legal Basis	Protection/Mechanism
Misuse or embezzlement of waqf funds	Misuse or embezzlement of waqf funds	Misuse or embezzlement of waqf funds
Law No. 41 of 2004 concerning Waqf	Law No. 41 of 2004 concerning Waqf	Law No. 41 of 2004 concerning Waqf
Oversight and sanctions in accordance with applicable laws and regulations	Oversight and sanctions in accordance with applicable laws and regulations	Oversight and sanctions in accordance with applicable laws and regulations
Management of funds inconsistent with the designated purpose of the waqf	Management of funds inconsistent with the designated purpose of the waqf	Management of funds inconsistent with the designated purpose of the waqf

The table shows that legal protection for wakif in digital cash waqf spans multiple regulatory frameworks. The Waqf Law provides the basis for waqf implementation and management, the ITE Law governs electronic transactions and documents, and the Personal Data Protection Law protects wakif's personal data.

Accordingly, the nazhir's responsibilities in the digital ecosystem cannot be separated from those of the other parties involved in the transaction. If an issue concerns the management of waqf funds, waqf law provides the primary basis. If it concerns the processing of personal data, personal data protection provisions apply. If it concerns electronic transactions and documents, the ITE Law forms part of the applicable legal framework.

Electronic transaction evidence, such as payment histories and electronic documents generated during the transaction, is also important when a dispute arises. Such evidence can help demonstrate that a transaction occurred and provide a basis for interested parties to trace the transaction process.

4. Analysis of Wakif's Personal Data Protection

Personal data protection is an important issue in the implementation of cash waqf

through digital platforms. During a transaction, wakif may provide identity and transaction information to a system or party processing the payment. As more parties become involved in a digital system, it becomes increasingly important to clarify who is responsible for processing that data.

Under Law No. 27 of 2022 concerning Personal Data Protection, wakif are personal data subjects when their personal data is processed in digital transactions. Therefore, parties acting as data controllers or processors are obliged to process the data in accordance with applicable law.

Data protection in digital waqf includes at least three elements. First, transparency in data collection: wakif should know what data is collected and for what purposes it will be used. Second, data security: parties processing the data must take appropriate measures to prevent unauthorized access or use. Third, purpose limitation: wakif's data should not be used for purposes beyond the legitimate purposes for which it was processed.

This issue is especially important because users of digital platforms often agree to terms and conditions without fully understanding how their data is processed. Legal protection therefore requires not only regulation but also transparent information and education for wakif about their rights as personal data subjects.

Thus, legal protection for wakif in digital cash waqf can be understood as an integrated form of protection based on waqf law, electronic transaction law, and personal data protection law. This integration is necessary to ensure that the convenience of digitalization does not undermine legal certainty or the protection of wakif's rights.

Conclusion

Legal protection for wakif in cash waqf conducted through digital platforms in Indonesia is supported by several interconnected legal instruments governing waqf, electronic transactions, and personal data protection. The findings indicate that preventive protection can be provided through clear identification of the legal status of the parties involved, transaction transparency, the provision of electronic evidence or documents, and protection of wakif's personal data. Repressive protection is needed when there is misuse of waqf funds, mismanagement of waqf, personal data violations, or disputes involving digital transactions.

This study also demonstrates that waqf digitalization does not eliminate the legal responsibilities of the parties involved. Digital platforms serve as supporting channels for transactions, while the implementation and management of waqf must continue to comply with applicable waqf law. Therefore, clear legal relationships among wakif, digital platforms, Islamic Financial Institutions Receiving Cash Waqf (LKS-PWU), and nazhir are essential to provide legal certainty and determine responsibility when problems arise in digital waqf transactions.

Based on these findings, regulations and oversight mechanisms for cash waqf conducted through digital platforms should be strengthened, particularly in relation to transaction security, transparency in fund management, and the protection of wakif's personal data. Platform operators should also improve the transparency of information and provide clear transaction records so that wakif can understand the status and management process of the funds they have endowed. In this way, the digitalization of waqf can make participation more convenient without reducing legal certainty or the protection of wakif's rights.

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