

LAW DEVELOPMENT OF WAQF AL-NUQUD (CASH WAQF) TOWARDS ELECTRONIC WAQF (E-WAQF) BASED ON PUBLIC WELFARE

Ong Argo Victoria; Esmi Warassih Pujirahayu¹; Akhmad Khisni²

Researcher of National Taiwan Normal University and Student's Doctor of Law, Sultan Agung Islamic University in Semarang, email: argovictoriaupin@gmail.com

Abstract

The modern era is identified with the era of the technology and the digital society. Every human activity will be driven through a series of digital technology system. For example everything is use electronic through the internet system such as identification number Electronic Identity Card (E-ID), Card payment toll road electronic (E-Toll), ATM, Personal Identification number (PIN), etc. all using the digital system. No exception waqf management innovation has also been happening in Islamic countries including Kuwait, Qatar, Emirates, Jordan, Saudi Arabia, Egypt, Turkey, Bangladesh, Malaysia, Singapore, and even Europe and America. Among the endowments with a paradigm shift arrangements progressive approach fairly fundamental law, among others, first, in the case of an asset in waqf no longer confined to immovable property, but also against movable property. Evidence used to reinforce this view, as formulated in Article 16 Paragraph (1) of Act No. 41 of 2004 on Endowments or Waqf, which reads " the treasure can be used in waqf is immovable and also moving objects", so it open the opportunity that te electonical waqf (E-Waqf) which use

¹ Professor in law and the Promoter, Sultan Agung Islamic University in Semarang.

² Co-Promoter, Sultan Agung Islamic University in Semarang.

technology system can be applicated. This article aims to make an overview on the developing of law on waqf al-nuqud towards electronic waqf (e-waqf) to realize the public welfare especially for people of Indonesian country.

Keywords: *Law Development; Waqf Al-Nuqud; E-Waqf; Welfare.*

1. Introduction

Technology showed the phenomenon in society as impersonal and autonomous transform every aspect of human life into a technical scope. Human interaction is driven by an all-digital technology: computers, internet, ATM machines, telephones, mobile phones, and so on, all of them driven digitally. We can buy something simply by swiping an ATM card and PIN pressing a few numbers, such as hotel rooms to pay bills, buy tickets, and so on. Remittances can be done in seconds with just a few digits of the value of money to be sent and multiple-digit account number. Not the money sent, but only a series of numbers that move from one account to another. Connected with the social problems of Indonesian society and the demand for economic prosperity in recent years, the existence of money or cash *waqf* has become very strategic. Besides as one aspect of Islamic teachings that have spiritual dimension, cash *waqf* is also a teaching that emphasizes the importance of economic welfare (social dimension) and welfare of the people.³

Effective management of cash *waqf* for the welfare of society is an inevitable demand. Especially in this time Indonesia experienced an economic crisis that requires the participation of many parties. The birth of the Act of the Republic of

³ Directorate of *Waqf* of Islamic Community, 2008, *New Waqf Paradigm in Indonesia*, Jakarta, p.1.

Indonesia No. 41 of 2004 on *Waqf* directed to empower *waqf* which is one of the instruments in building the socio-economic life of Muslims. The presence of *Waqf* Law is a momentum of *waqf* empowerment productively, because it contains a comprehensive understanding and management pattern of potential empowerment of *waqf* in a modern way use E-*Waqf*.

2. Research Method

This is the Socio-Legal research with progressive and hermeneutics approach, which is based on legal norms and the theory of the existing legal enforceability.⁴ Reviewing the juridical law from the standpoint of sociology and Hermeneutics as the Interpretation Understanding.⁵

3. Result and Discussion

a. Overview of Cash *Waqf*

The Act RI No. 41 of 2004 on *Waqf* covers immovable and movable property, including *waqf* of money (Cash *Waqf*) which is very wide use, not limited to the establishment of places of worship and social religious. Such a legal formulation, obviously a very revolutionary change and if it can be realized will have a multiplier effect, especially in relation to the economic empowerment of Muslims.⁶

The MUI's *Fatwa* was then reinforced by the presence of Act No.41 of 2004 about *Waqf* stating that *waqf* is not only immovable objects, but also movable object, like money. In addition, the regulated *waqf* policy in Indonesia, ranging from the formation of *nadzir* (manager) to the management of *waqf*

⁴ Alimuddin, Applications Legal Reform in the Theory of Socio Legal Studies, Director General of Courts, www.badilag.net, Accessed December 26, 2018. (IIUM Malaysia)

⁵ Esmi Warassih 2005, *Institution Law: A Sociological Assessing*, Suryandaru Utama, Semarang, p. 23-24.

⁶ Achmad Djunaidi, 2009, *Towards Waqf Productive*, Mumtaz Publishing, Depok, p.90.

property. In order to carry out its function, this Law still requires other tools, namely Government Regulation and Minister of Religious Regulation concerning *Waqf* of Money which will be the operational guideline in implementation, and the existence of Indonesian *Waqf* Institution (BWI) which will serve as central *nadzir* of *waqf*. After going through a long process, at the end of 2006 issued Government Regulation No. 42 of 2006 On the Implementation of *Waqf*. After that, in July 2007 promulgated the Act of Presidential Decree of the Republic of Indonesia No. 75 of 2007 which decided and raised the membership of BWI period 2007-2010.

In addition, the MUI has issued its *Fatwa* on cash *waqf* on May 11, 2002, stating that: 1) Cash *waqf* (*Waqf al-nuqud*) is a *waqf* by a person, group, institution or legal entity in the form of the money; Included in the sense of money are securities; *Waqf* the *jawāz* is legal (allowed); Cash *Waqf* may only be channeled and used for *syar'iyah* permitted matters; and The basic value of Cash *Waqf* must be guaranteed to be sustainable, not to be sold, granted and/or inherited.

The birth of Act No.41 of 2004 about *Waqf*, *Fatwa* of The Indonesian Ulama Council and its derivative regulation are the starting point of increasing the potential of *waqf* in Indonesia to a more productive direction within the framework of Indonesian *fiqh*. Act No.41 of 2004 about *Waqf* also a momentum of *waqf* empowerment productively because it contains a comprehensive understanding and management pattern of potential empowerment of *waqf* in a modern way. In the new *waqf* legislation the concept of *waqf* contains a very wide dimension. It includes immovable property, as well as movable, including cash *waqf* whose use is very wide, not

limited to the establishment of places of worship and religious social.⁷

b. Cash *Waqf* in Indonesian Law Perspective

In Article 16, paragraph 3, of Act No. 41 of 2004 on *Waqf*, which can endowment Moving Bodies, namely⁸: 1) Money; Precious metal; Securities; Vehicle; Intellectual Property Rights; Rental Rights; and Other moving objects in accordance with the provisions of sharia and legislation in force. Furthermore, regarding the position of the treasure after endowment in progressive paradigm can be seen from the definition of *waqf* contained in Article 1 Paragraph (1) of Act No. 41, 2004. The article states that the endowment is a legal act *wakif* to separate and / or hand over part of their wealth either permanently or for a certain period in accordance with their interests for purposes of worship and / or the general welfare according to sharia.

Conceptually, the cash *waqf* has a unique opportunity to create investments in religious, educational, and social services. Savings from people with middle to upper income can be utilized through exchange with the Cash *Waqf* Certificate (CWC), while income derived from cash *waqf* management can be spent for various purposes, including for the maintenance and management of the *waqf* of land. Mustofa Edwin Nasution describes how to exploit the potential of CWC excavated in Indonesia, namely:⁹

7 Agustianto, 2010, *Endowments of Welfare and Improvement of People's Welfare*, published in August.

⁸Budi, Faith Setya, Revitalization Endowments as Community Economic Activator, in journals: *Al-Iqtishadiyah Islamic Economics and Law Journal of Islamic Economics*, Volume: II, Number II. June 2015

⁹ Muhammad Syafii Antonio, *Islamic Banking as Waqaf Fund Manager (Workshop International Paper, Empowerment of People's Economy through Productive Waqaf*, at Wisma Haji Batam, 7-8 January 2002), p.4.

- 1) The scope of the money-donor's audiences can be very broad compared to the usual *waqf*.
- 2) Cash *Waqf* Certificate can be made various kinds of fractions, tailored to the segment of Muslims that allows to arouse the spirit of charity (*ṣadaqah jāriyah*), for example Rp. 10.000,- and Rp.25.000,-

Mustafa Edwin Nasution once assumed that the number of middleclass Muslim population in Indonesia is 10 Million with average monthly income between Rp 5000 (five hundred thousand rupiahs) Rp10.000.000 (ten million rupiahs) can be calculated as follows: The explanation is if the Muslims who earn Rp500.000 4 Million people and each year each *waqf* Rp60.000 then each year accumulated Rp 240 Billion:

- 1) If people who earn Rp1.000.000-Rp2.000.000 totaling 3 Million people and each year each Rp120.000 each time accumulated funds amounting to Rp 360 Billion
- 2) If people who earn Rp2.000.000-Rp5.000.000 a total of 2 Million people and each year each with Rp600.000 then each year accumulated funds as much as Rp 1,2 Trillion
- 3) If people who earn Rp5.000.000-Rp10.000.000 a total of 1 Million people and each year each with Rp1.200.000 then each year accumulated funds as much as Rp 1,2 Trillion

Consequently, *waqf* accumulated for one year amounting to Rp 3 Trillion Based on the example of the above calculations, it is evident that the success of the institution to mobilize *waqf* funds will greatly determine the benefits of a *waqf* institution, which is a problem, the money cannot be directly granted to *mawqūf 'alayh*, but *nadzir* (manager) must manage and develop it first.

c. Law Development Of *Waqf Al-Nuqud* (Cash *Waqf*) Towards Electronic *Waqf* (E-*Waqf*) Based On Public Welfare

The potential of cash *waqf* especially use E-*Waqf* is huge if it can be managed properly. Especially if the funds are handed over to professional managers and invested in productive sectors so that such funds can be used for productive and economic activities in order to assist the people and interests of the people. Thus the amount of cash *waqf* will not decrease, but increase and continue. If cash *waqf* is deposited at Islamic Banking and every year is awarded 9% *profit sharing*, then at the end of the year will be obtained investment fund Rp. 270.000.000.000.¹⁰

As a follow-up from the birth of Act No.41 of 2004 on *Waqf*, currently in Indonesia many Islamic Banking and *Waqf* Management Institutions launched products and facilities that collect money from cash *waqf* from society. Like *Bait al-Mal Muamalat* who launched Cash *waqf Muamalat*, “*Dompot Dhuafa Republika*” which launched the Indonesian *Waqf* Fund, and a National *Waqf* Institution formed based on the Act on *Waqf* in 2007 that is Indonesian Endowment Agency²².

In the view of the purpose and contribution that can be given by the institution of cash *waqf*, the existence of cash *waqf* in Indonesia becomes very crucial. At least there are some things that lead to the importance of cash *waqf* in Indonesia¹¹:

- 1) The poverty rate in Indonesia is still high, which needs attention and concrete steps
- 2) High gap between rich and poor society

10 Indonesian *Ulama* Council (MUI), 2002, *Fatwa on Endowment of Money of 2002*, MUI, Jakarta.

11 *Waqf In Indonesia*, Financial Statements of 2001-2009

- 3) Indonesia has the largest number of Muslim population, so *waqf* has great potential to be developed
- 4) A number of disasters that occur, resulting in a deficit APBN (National Budget), so it takes the independence of society in the procurement of public goods.

4. Conclusion

The inclusion of cash *waqf* in the legislation of the Republic of Indonesia through Act No.41 of 2004, is a fresh breeze and a new opportunity for Indonesian Muslims to manage and develop a potential fund of large enough people with productive and professional in improving the economic welfare of the Muslims and release Muslims from poverty to get the public welfare.

5. References

- 1) Directorate of *Waqf* of Islamic Community, 2008, *New Waqf Paradigm in Indonesia*, Jakarta.
- 2) Alimuddin, Applications Legal Reform in the Theory of Socio Legal Studies, Director General of Courts, www.badilag.net, Accessed December 26, 2018. (IIUM Malaysia)
- 3) Esmi Warassih 2005, *Institution Law: A Sociological Assessing*, Suryandaru Utama, Semarang.
- 4) Achmad Djunaidi, 2009, *Towards Waqf Productive*, Mumtaz Publishing, Depok.
- 5) Agustianto, 2010, *Endowments of Welfare and Improvement of People's Welfare*, published in August.
- 6) Budi, Faith Setya, Revitalization Endowments as Community Economic Activator, in journals: *Al-Iqtishadiyah Islamic Economics and Law Journal of Islamic Economics*, Volume: II, Number II. June 2015

- 7) Muhammad Syafii Antonio, *Islamic Banking as Waqaf Fund Manager (Workshop International Paper, Empowerment of People's Economy through Productive Waqf, at Wisma Haji Batam, 7-8 January 2002)*.
- 8) Indonesian Ulama Council (MUI), 2002, *Fatwa on Endowment of Money of 2002*, MUI, Jakarta.