

## **The Effective Management of Productive *Wakaf*<sup>1</sup> Fund**

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### **A. BACKGROUND**

The long economic crisis happened in Indonesia factually had multiplied the number of poor citizen from approximately 25 millions in the end of 1997 became about 100 million people in 1999. Various attempts had been done to solve this problem through JPS (Jaringan Pengaman Sosial) Program and also various domestic financial aids as well as foreign ones. The government its self seems finding difficulties to solve this financial problem regarding to the limited fund available in APBN (National Income and Outcome Fund). Besides, the big amount of foreign debts of our country (PLN), so the alternative PLN to solve this problem had become less of consideration.

One of the alternatives which still have hopes to solve this problem is the participation from non-government, which means society. Society, especially the upper class society, has ability to help and to reduce the pain of poor society. If the strength and potential of this upper class society can be organized, coordinated and managed well, so this can give alternative contribution of positive problem solving towards poverty problems. In Bangladesh, the attempts of non-government organization to solve this problem have been tried through an institution named: Social Investment Bank Limited (SIBL). This institution is collecting social fund, especially from cash wakaf fund, in order to be organized, which the result of this organizing fund is distributed to the poor society.

For Indonesia, the attempts which have been done by SIBL in Bangladesh, is an interesting alternative. With the majority of Moslem society, so wakaf fund colleting and organizing can be hoped to be appreciated by Moslem society, at least culturally.

On the other hand, the presence of syariah institutions (especially syariah banks) is an alternative institution which is suitable to organize the funds. Beside, the funds are also the sources of syariah banks which are also suitable with the principles of syariah banks.

### **B. THE CERTIFICATES OF PRODUCTIVE WAKAF FUNDS**

Generally we acknowledge wakaf in the forms of property like land and building, but nowadays it had been agreed by the scholars that one of the forms of wakaf is cash money. Generally the definition of wakaf is the donation of wakaf assets in the forms of money which cannot be moved beside for public importance which is not reduced or removed the main number of wakaf (essential substance of wakaf).

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Wakaf is property donated for religious or community use<sup>1</sup>

The certificate of cash wakaf is the endless fund which is given either individually or by Islamic institutions which the profit of the fund organizing will be used to reduce and solve the poverty problems and to develop the prosperity of poor society. Technically, the certificates of cash wakaf can be organized by an social investment board like in Bangladesh or can be a product of syariah institutions or banks.

For more clearly, the aims of certificate of cash wakaf are:

1. Supporting in social saving empowerment
2. Completing the banking services as the facilitators which create Cash Wakaf and helping wakaf organizing which can transform social saving becomes social capital.
3. The benefits are for the poor society
4. Creating awareness among upper class society about their social responsibility towards poor society
5. Supporting the development of social capital resources
6. Helping the development of the nation generally and creating a unique integration between social security and social peace.

### **The Definition and References of Syariah Cash Wakaf Certificates**

Wakaf is derived from Arabic ver: 'waqafa' which means 'to defend' or 'to stop'. In Islamic principle, wakaf means donating long lasting wealth to somebody or *nadzir* (wakaf administrator), either individually or groups, which the result or the benefits of zakat are used for certain thing which are suitable to Islamic principles. Wealth which has been given as wakaf is not the property of the donors anymore, not also the property of *nadzir*, but it becomes the property of Allah, on behalf of public rights.

The reference of wakaf is from the holy Quran, Sunnah (prophet saying) and Ijma (The agreement of Islamic scholars):

Allah says: *"By no means shall you attain righteousness unless you give (freely) of what you love; and whatever you give, of a truth Allah knows it well."* (Ali Imran {3}: 92)

Rosulullah says: *"If a man dies, his good deed will stop, except the three things: jariyah shadaqoh (charity), knowledge which is implemented or pious child."* (Told by Muslim). Some Islamic scholars defined the prophet saying: *jariyah shadaqoh* as wakaf, not the heritage of using wealth.

Wakaf was begun to be implemented in Islamic society since Rosulullah period, which was done by Umar bin Khattab:

"It was told from Abdullah bin Umar, that Umar bin Khattab got a piece of land in Khaibar. Then Umar bin Khattab faced Rosulullah to ask his guidance about what to do with his land. Umar said to Rosulullah: *"O Rosulullah, I got a piece of land in Khaibar and I have never got a wealth which is better than that before, so that I ask your guidance about what I should do with that.* Rosulullah answered: *"If you want, give it as charity."*

Then Umar gave it as charity and ask that the land cannot be given as heritage. He gave the benefits from the land to poor people , his family, to free slaves, to people who struggle on behalf of Allah, to wayfarers, and to guests. The administrator of wakaf itself can use the benefit of wakaf as long as not too much. He can also feed others with the benefits from wakaf as long as he does not do it on behalf of the owner of wakaf. Some sources say that the wakaf whihc was done by Umar bin Khattab is the first wakaf in Islamic history. (Al-Malibary, Fathul Mu'in, bersama Syarahnya Al-Bakri, l'anatuththalibin, Kairo: Isa al-Halabi, III, hal. 158).

Imam Nawawi had concluded some important conclusions from the *hadits* above:

- a. This *hadits* becomes the reference of wakaf in Islam
- b. The wealth of wakaf cannot be sold or given as heritage
- c. The requirements of *wakif* (donator of wakaf) should be noticed
- d. The importance of giving charity through wakaf for Moslems
- e. The importance of discussion with scholars to state the use of wealth and how to organize it well

#### **The Determination and Requirement of Nadzir (Administrators of Wakaf)**

There are four requirements of wakaf, or they are also called as *rukun* of wakaf:

1. The *wakif* (donator of wakaf) is in mentally health condition and not being forced psychologically
2. The *maukuf* (the wealth of wakaf) must be certain in its form, and long lasting in term of its existence. It also means that the wealth will be existed after several uses. It should be long lasting as well as its benefits.
3. The mawkuf alaih (the receivers of wakaf) can be divide into two categories: *wakaf khairy* and wakaf dzurry. *Wakaf khairy* is a wakaf where the *wakif* does not limit the target of wakaf, but he intend to give it for public importance. Meanwhile the *wkaaf dzurry* is a wakaf where the *wakif* limits the target of wakaf for certain party, for example: his descendants.
4. The statement of giving wealth as wakaaf which is called *shigot*.

The next problem about who will take care, organize and mange the assets of wakaf, in *fiqih* is known *nadzir of wakaf* (administrator of wakaf) or *mutawalli wakaf* will be a crucial problem too. This is because the assets are the trusts from Allah which are on *nadzir's* responsibility. Consequently, *nadzir* is the most important person to the wealth of wakaf itself as well as the benefits, and also the developmet of it.

The programs of *nadzir* must be continuous and balance programs to distribute the benefits on behalf of *maukuf alaih* (the receivers of wakaf). The benefits which will be used by

the receivers of wakaf will be dependent on the *nadzir*, because on his hands, the continuity of wakaf will last forever.

Regarding to the importance of *nadzir* in wakaf, so that there are some requirements in becoming a *nadzir*: baligh (adult), credible, having skill and talent to organize and to manage wealth of wakaf.

### **The Jobs and Responsibility of Institution of Wakaf Administration**

The definition of institution of zakaf administration relates and unseparatable from the productive attempts of wakaf assets. The core of wakaf is not intended to keep the wealth of wakaf without distributing the benefit of it. The more benefits of wakaf used by people, the more merits which will be given to the *wakif* (the donators of wakaf). Regarding top that, from the side of *fiqh*, the development of wealth of wakaf productively is merely the responsibility of *nadzir* in term of it management.

In the book of *Mughnil Muhtaj* by Syams al-Dien Muhammad bin Ahmad al-Syarbaini stated that the responsibilities of wakaf administrators are: *"The responsibilities and jobs of wakaf administrators are: to establish, to rent, to develop it until it is developed and to distributed the result to the related parties, and the responsibility to keep the capitol of wakaf as well as its benefit"*.

In the book Syarh Muntaha al-Adaab by Manshur bin Yunus al-Bahuty (page 504-505) explained: *The jobs of nadzir is to preserve the wealth of wakaf, to establish, to rent, to plant the land, to develop it until growing the maximum renting result, the benefit of agriculture and the benefits of state."*

Dr. Idris Khalifah, the chief of science forum in Tethwan Magribi, in his study named: *"Istitsmar Mawarid al-Awqaf"* explained ten responsibilities of nazir (wakaf administrator) as follow:

- a. Preserving the wealth of wakaf
- b. Developing the wealth until producing benefits
- c. Doing the requirements of *wakif* (donators of wakaf) which are suitable with Islamic principles
- d. Distributing the benefits to people who deserve it on the right time
- e. Paying the responsibility which comes up from organizing wakaf
- f. Improving the broken assets of wakaf until can be use again
- g. Renting the movable wealth of wakaf, like building and land with the suitable prices
- h. Investing the wealth of zakat to add the benefits
- i. *Nadzir* (wakaf administrators) are responsible for the broken wealth of wakaf which is caused by his carelessness and he can be fired from his position

### **The Contemporary management of Productive Wakaf Fund**

There are two kinds of wakaf: **Wakaf Mutlak** and **Wakaf Muqoyyad**. Wakaf Mutlak is a kind of wakaf which the *wakif* (wakaf donator) fully trusts the management of wakaf without limitation. Meanwhile *wakaf muqoyyad* is a kind of wakaf which *wakif* limits the distribution and management of wakaf to certain groups.

In the practical term of *wakaf mutlak*, *nadzir* can be freely to do certain productive attempts so the benefit of wakaf can be gained optimally. Historically, the attempts which are suitable with *fiqh* books are by renting the wealth of wakaf. This is suitable with the facts that the vast majority of wakaf wealth are in the form of *al-i'qaq* (non-moveable thing like land and building).

Ada beberapa bentuk penyewaan yang terdapat dalam konsep fikih:

The forms of renting out which are available in the concept of *fiqh* are:

1. Usual renting (*ijarah*). Regarding to the consideration of well-organized wakaf, the Islamic scholars had agreed to rent out the wealth of wakaf, even they have different concept in several things.
2. The double renting (*aqad al-ijaratain*). This *aqad* is done to deal with the lack of capital to build the building on the land which is given as wakaf. To get capital, there is renting contract with someone for long term, with double renting. The first renting is paid earlier to support the process of building. Meanwhile the second renting is monthly payment with cheaper payment during using the building. The second payment is needed to avoid claim from the renter that he has owned the building.
3. *Al-Hikru*, a contract of renting for long term, and give the right to the renter to use and plant the land and also give him right to lengthen the contract as long as he still can pay the renting fee.
4. *Al-Marshid*, is an agreement with the renter-candidate which is ready to lend *nadzir* an amount of money to develop the building of wakaf as a debt, which will be paid with the renting fee itself.
5. The development of wealth of wakaf by buying him a productive thing, for example by buying him a building which can be rented out.
6. By cooperation in organizing land of wakaf beside renting out it to the people who have capital, and also with *muzara'ah* cooperation.

### **Wakaf with Money**

The legalization of wakaf with money is a contradictive problem among Islamic scholars. As explained above, the usual way by society in developing wakaf wealth is by renting out it. Because of it, so some Islamic scholars find it hard to accept the legalization of wakaf with money which was legalized by wakaf with *dirham* and *dinar*.

The most difficult thing for them to be accepted is that the general pattern of wakaf management is by renting it out. With money as the asset of wakaf, so the utilization of it will be dealt with *riba*.

In the book *'Al-Is'af fi Ahkam al-Awqaf*, Al-Tharablis said: "Some classical scholars feel strange when they heard a decision which was stated by Muhammad bin Abdullah al-Anshory, a student from Zufar, a friend of Abu Hanifah, about the possibility of giving wakaf by dirham and dinar, and in the form of measurable commodity, like grain."

One thing that made them feel strange is because it is impossible for them to rent it out, so they ask them how to utilize the cash? Based on this question, Muhammad bin Abdullah al-Anshory said: "We can invest the money by *mudharabah* and the benefit can be distributed to the poor people. We can sell the grain, the price can be used in *mudharabah* contract and we can distribute the benefits."

In the popular community of *Malikiyah*, the argument of possibility to give wakaf with cash which can be read in the book *al-Majmu* by Imam Nawawi (15/325) who said: "And our friends are contradictive with the decision of giving wakaf with dinar and dirham. Those who allow rent out dinar and dirham, they are allowed to give wakaf with them, and those who do not allow to rent out them, are not allowed to give wakaf with them."

*Syaikhul Islam Ibnu Taimiyah* in his book *al-Fatawa* (31/234-235) said that one of the assumptions in the community of *Hanabilah* who allow to give wakaf with cash is same as told by *Ibnu Qudamah* in his book *Al-Mughni* (8/229-230).

Beside the allowance of wakaf with money, there are also some assumptions which forbid giving wakaf with money. Their reasons are:

1. Money will not last forever. Meanwhile the core of wakaf is the continuity of the benefits, therefore the wealth of wakaf should last forever
2. Money like *dinar* and *dirham* are created as a mean of exchange in trading, not to be rented out.

### **The Attempt of Extensification of Wakaf Sources**

The existence of assumption of allowance to give wakaf with cash shows the continuous attempt to maximize the source of wakaf. The more source of wakaf is collected, the more merit will be given to the donators of wakaf. So that, the assumption of scholars who allow giving wakaf with money, opens the chance for assets of wakaf to follow various investment like *syirkah* and *mudharabah*.

Various assumptions delivered by scholars shows the carefulness of them to give decision about the legalization of wakaf. This is because that the wealth of wakaf is a trust from Allah and a responsibility of *nadzir* (wakaf administrators). Based on this consideration, if we choose the assumption about the allowance of giving wakaf with cash, we should think one

thing which is important about how to avoid the loss of asset of wakaf which will threat the existence and continuity of the assets.

### **Wakaf as Long Lasting Fund Source**

The aim of wakaf is *ra'i* (the benefits of wakaf). Al-malibary said that: "*The distribution of benefit of wakaf is the aim of wakaf.*" So wakaf is productive benefit, which is called *ra'i*. The definition of *ra'i* is: "*all benefits from wakaf like renting fee, milk from the cattle and twig which always be cut.*"

If the aim of wakaf is the benefits of wakaf wealth, so the essential substance of wakaf is the systemic attempt of the long lasting fund accumulation in society (which the benefits are for society). The basis of this conclusion is the two principles:

1. The wealth should be a long lasting asset  
The aim of wakaf is the long lasting fund source. This will not be happened except to the long lasting wealth too.
2. The wealth cannot be sold, given as heritage and merely given as *hibah*  
This is the requirement which should be applied to the wealth of wakaf. The prohibition of selling out, bequeathing, and giving it is for preventing the change of status of wakaf wealth from public property into private property, so that wakaf will be the long lasting fund resource of society in general.

### **The Procedures and Allocation of Wakaf**

Islam had ruled the implementation of wakaf through the simple procedures as follows:

- a. Statement of wakaf  
The starting point of wakaf is the statement from *wakif* (wakaf donators) that they are willing to giving their wealth as wakaf.
- b. *Kabul* (Allocation and acceptance of wakaf)  
There are two recipients of wakaf: general recipient and specific one.
- c. Long lasting asset.
- d. The benefit of the asset can be gained
- e. *Nadzir* (wakaf administrator)

### **Wakaf as Public Fund**

The management of wakaf fund must be realized as the public fund management which will be distributed to people, so the management should not only be professional, but also must be transparent and accountable.

The importance of this culture is because on one side, the right of *wakif* (wakaf donator) had moved, so that the professional, transparent, and accountable management, so several rights of the *wakif*, like:

- a. The right of correct, honest and clear information about the wealth of wakaf
- b. The right to be heard about his idea and complaints on the wealth of wakaf
- c. The right to get consumer guidance and education at least can be fulfilled.

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