

Micro Waqf Bank in Indonesia Analysis of The Constitution Concept According to The Maqashid Sharia

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Abstract

Waqf is a legal act of wakif (endower) for separating and transferring part of their wealth either permanently or for a specified period in accordance with their interests for purposes of worship and the general welfare according to sharia. Islamic law have two characters, it is normative (muhkamat) so that Islam have a unity of mind, feeling, and behavior for the people and make the people united, and temporal (mutashabihat) to open up the difference by space, time, and the condition of each with regard to the purposes of syara'. Waqf is a legal act of wakif (endower) for separating and/or transferring part of their wealth either permanently or for a specified period in accordance with their interests for purposes of worship and/or the general welfare according to sharia. Waqf or endowments often directed to unmovable objects, while waqf on moving objects is being developed lately. The idea to explore and develop the concept of waqf in Indonesia was began when Mustafa Edwin Nasution translating paper written by M. Abdul Mannan that revealed the practice of cash waqf (SIBL) in Bangladesh. The government try to do innovation in order to boost the Muslim's Economy particularly for those who are considered as a poor. The role of shariah bank and BWI and regulations is also considered ineffective, then the Government innovate by establishing institution called Micro Waqf Bank. Micro Waqf Bank is believed to increase financial inclusion, particularly in the public and small and micro businesses (SMEs) to have the easy capital. These agency is not allowed to take deposits from the public because it has focused in communities empowerment through financing with business mentoring.

Keywords: *Muhkamat, Mutashabihat, Endowments, Micro Waqf Bank, SMEs.*

Introduction

Contained in the decision of fatwa MUI (Indonesian Ulama Council) on money endowment (*waqf*), money endowment (*cash waqf/waqf al-nuqud*) is endowment that done by a person, group, institution or legal entity in the form of cash. Included in the definition of money is stock. Ulama agree that money endowment (*cash waqf*) is legal (*jawaz/allowed*). Cash *waqf* have some characteristics, it should only be distributed and used to the things allowed by *sharia*, it principal amount should be guaranteed or should remain the same, should not be sold, assigned, or inherited.¹

Waqf is a legal act of *wakif* (endower) for separating and/or transferring part of their wealth either permanently or for a specified period in accordance with their interests for purposes of worship and/or the general welfare according to *sharia*.² *Waqf* or endowments often directed to unmovable objects, while *waqf* on moving objects is being developed lately. Among the endowment moving objects that massively discussed lately is *waqf* in term of money known as cash *waqf*. Cash *waqf* is a *waqf* done by a person, group of persons or legal entities and institutions in the form of cash/money.

The idea to explore and develop the concept of *waqf* in Indonesia was began when Mustafa Edwin Nasution translating paper written by M. Abdul Mannan that revealed the practice of cash *waqf* (SIBL) in Bangladesh. As a continuation of the policy endowments agenda, it organized for the first time a national seminar on *waqf* money with the theme “*Innovation Cash Waqf Islamic Finance: Opportunities and Challenges in Realizing People’s Welfare*,” on November 10, 2001.³

Looking at the phenomenon that is endowments growing rapidly, Indonesia facilitate the establishment of Bank Wakaf Indonesia two years ago. Reporting from MUI official website, according to Deputy Commissioner Supervisory Non-bank Financial Industry (IKNB), Edy Setiadi said that the government has set up this programs to alleviate the poverty gap between the rich and the poor. Earlier, Ventura Waqf Bank was having problems because of the debate about banks profiteering and endowments are not allowed.

¹Keputusan Fatwa Majelis Ulama Indonesia, *Tentang Wakaf Uang* (Jakarta: Ditetapkan, 11 Mei 2002).

²UU RI No. 41 Tahun 2004 Tentang Wakaf.

³Badan Wakaf Indonesia, *Profil Badan Wakaf Indonesia Periode 2007-2010* (Jakarta: BWI, t.th.), 108.

The program is a program initiated by President Jokowi to reduce inequality and poverty, even the President is the highest person in charge of the Ventura Waqf Bank.⁴

And further, this institution continues to appear in some areas, and recently it appears in the news that Jokowi promised to evaluate his programs for boarding schools during his tenure in the last five years. One of it is the Micro Waqf Bank (BWM) and training centers (BLK) for boarding school. Currently, he said, BWM program is a new program that has been running in 33 boarding schools. In fact, in Indonesia there are 28 thousands boarding schools.⁵

It should be understood that Islam is positioning economic activities as one important aspect to get the glory (*falah*), and hence the economic activities need to be controlled to made it in accordance with the Islamic teachings as a whole. As for *falah* will only be obtained if Islamic teachings are fully implemented.⁶

Based on the explanation above, many parties say that *cash waqf* institutions is a positive thing and should be supported by all Indonesian people, as it has goals for the welfare of the people. There are also several parties see that the institution has some things that need to be corrected, specially regarding the institutional concept. Thus, the author tries to analyze some factors that make this institution can not be accepted as a whole? Whereas Islam teaches to be *kaffah* in life and need to be concerned with the public interest.

In order to answer the questions above and then we can assess the institution, the author will explain the concept of *cash waqf* and the basic principles of Islamic economics derived from *maqashid sharia*, then explain some researches regarding Waqf Bank in Indonesia, the history of the Waqf Bank in Indonesia, then processed based on the theory, which ends with a conclusion.

⁴News MUI, *OJK Akan Meluncurkan Bank Wakaf Ventura Akhir Juni*, Source: <http://mui.or.id/id/berita/ojkakanmeluncurkanbankwakafventuraakhirjuni/>, Accessed on April 17, 2018, at 8:58 pm.

⁵Andi Nur Aminah, *Jokowi Janji Bangun 1000 Lebih Balai Pelatihan di Pesantren*, Source: <https://www.republika.co.id/berita/dunia-islam/islam-nusantara/18/10/21/pgyejz384-jokowi-janji-bangun-1000-lebih-balai-pelatihan-di-pesantren>, Accesed on November 18, 2018, at 9:15 pm.

⁶Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI) Universitas Islam Indonesia, *Ekonomi Islam* (Jakarta: Rajawali Pers, 2008), 16.

The Theory of Cash Waqf

Some scholars have different opinions regarding understanding of endowments. There are 4 opinions according to four jurisprudence schools (*madzhab*). *The first*, Shafi, endowments is to resist the treasures that can be useful as well remains, and avoiding to use the object except its utilization in the sake of Allah SWT.⁷ Then, according to Imam Nawawi, endowment is a treasure detention that can be used while maintaining the integrity of the goods, regardless of intervention *wakif* or another, and the result is distributed for the benefit solely to *taqarrub* (getting closer) to Allah.⁸

Second, according to the Hanafi school, endowments is holding an object which legally the ownership of the object is remains or still owned by *wakif* and the benefits are donated for charity.⁹ *Third*, according to the Maliki school, endowments is to make the benefits of a property owned (although ownership by way of lease) to be given to people who are entitled to a contract (*shighat*) within a specified period in accordance with the wishes of *wakif*.¹⁰ *Fourth*, according to the Hanbali school, it defines endowments with simple statement, which is to hold the origin of the property (land) and donating its benefits.¹¹ Thus the definitions of *waqf* according to Ulama'.

Sayyid Sabiq explained that both movable and immovable objects, such as furnitures, books and vehicles may become *waqf* object. Besides, the object which able to be traded and utilized (with eternal utility) may also be the object of *waqf*. Further, he explained that damaged goods and the goods that can not be sold because of its substance such as dogs and pigs should not be the object of *waqf*.¹² At least from that scholars opinions, the authors conclude that one of the arguments in the development of *waqf* productively as *waqf* money and others, is inspired by the Hanafi, that focuses on immortality benefit from the *waqf* property, no matter it is movable or immovable properties like money, investment, services, and others.

⁷Taqiyuddin Ibn Abi Baker al-Husairi, *Kifayah al-Akhyar* (Semarang: Usaha Keluarga, t.th.), 319.

⁸An-Nawawi, *Tahrir min Alfâzh at-Tanbîh* (Damaskus: Dar al-Qalam, 1988), 288.

⁹Ibn Humam, *Fath al-Qadir* (Beirut: Dar al-Kutub, t.th.), 37.

¹⁰Syams al-Din al-Syaikh Muhammad al-Dasuqi, *Hasyiyah al-Dasuqi 'ala al-Syarh al-Kabir* (Beirut: Dar al-Fikr, t.th.), 187.

¹¹Ibn Qudamah, *Al-Mughni wa al-Syarh al-Kabir* (Beirut: Dar al-Kutub al-'Arabi, 1972), 185.

¹²Al-Sayyid Sabiq, *Fiqh as-Sunat* (Beirut: Dar al-Fikr, 1983), 382.

It is not much difference in the pillars, the authors cite the opinion of al-Ramli which stated that pillars of *waqf* is four pillars, as well as his statement in his book titled *Nihayul al-Muhtaj Ila Syarh al-Minhaj*, namely: *waqf object (mauquf)*, *waqf manager (mauquf alaih)*, *sighat (ijab qabul)*, and *endower (wakif)*.¹³

Basic Principles of Islamic Economy

Islamic law have two characters, it is normative (*muhkamat*) so that Islam have a unity of mind, feeling, and behavior for the people and make the people united, and temporal (*mutashabihat*) to open up the difference by space, time, and the condition of each with regard to the purposes of *syara'*. Law in this case can be changed according to the situation and conditions with the aim of achieving human welfare (*maslahah*). Both characteristics of Islamic law that made it remain original and stay in line of human civilization that modern and complex. *Sharia* laws that prescribed to mankind are for their own benefit in the world and hereafter. The purpose *sharia* or so-called *maqashid sharia* is to achieve goodness, benefits for humans and avoid dangers and damage on themselves.¹⁴

Ika Yunia in her book explains the opinion of Imam al-Syathibi, that in realizing welfare and avoid damage in the world and the hereafter, it is necessary to develop the concept in realizing it, he divided it into three, first, *dharuriyah*, which covers five main areas: preservation of religion (*hifzh al-din*), preservation of the soul (*hifzh al-nafs*), preservation of sense (*hifzh al-aql*), preservation of offspring (*hifzh al-nasl*), and preservation of property (*hifzh al-mal*). Second, *hajiyyah* defined as fulfilling the secondary or complementary needs. Third, *tahsiniyah* which could be interpreted as tertiary, or identical to the needs that are approaching luxury.¹⁵ Thus, fulfilling the needs of the most important is the first or the major, the *dharuriyah*. Because if *dharuriyah* is not met can bring damage to humans.

Thus, the implementation of the cash *waqf* that is not ignore the *shariah* principles (*maqashid*) is an excellent effort and in accordance with the spirit of Islamic law. According to Ibn al-Qayyim al-Jawziyya

¹³Ar-Ramly, *Nihayul al-Muhtaj ila Syarh al-Minhaj*, Juz. 5 (Beirut: Darul 'Ilmiyah, 2003), 359.

¹⁴Ali Rama dan Makhilani, "Basis Maqasid Syariah," *Harian Republika*, Jum'at, 7 September 2012, Opinion Column, 4.

¹⁵Ika Yunia Fauzia and Abdul Kadir Riyadi, *Prinsip Dasar Ekonomi Islam: Perspektif Maqashid al-Syariah* (Jakarta: Kencana, 2015), 66-68.

Islamic law is built on the principles of wisdom and human welfare in the world and the hereafter.¹⁶ In this case cash *waqf* is in accordance with the principles of welfare and happiness of mankind in the world that can lead them to happiness in the hereafter.

Maqashid sharia is the heart of *usul fiqh*. Therefore, *maqashid sharia* has a very important position in Islamic economy, creating banking products and Islamic financial. Without *maqashid sharia*, then all the understanding of Islamic economy, financial and *sharia* banking will be narrow and rigid. Without *maqashid sharia*, a *sharia* economic experts and practitioners will always misunderstood in understanding Islamic economy. Without *maqashid sharia*, banking and financial products, regulations, fatwa, fiscal and monetary policies, will lose its *sharia* substance. Without *maqashid sharia*, *fiqh muamalah* and banking regulation and finance that need to be formulated will be rigid and static, consequently *sharia* banking and financial institutions will be hard and slow to develop.¹⁷

Waqf Bank According to the Scholars

According to Gusva Havita, et. al, in his article offers the concept of *waqf* banks that considered relevant to Indonesia. *Waqf* is an Islamic economy instrument that has not been empowered optimally in Indonesia. Then, the endowment bank will obtain funding from the public and not just for the rich class. Further, the existence of the endowment bank is under BWI which receive operating funds from the government which is charged to the state budget through the budget of the Ministry of Religious Affairs. So that it is clear that the report of this *waqf* bank is to BWI which will be responsible also for the report to the Minister of Religious Affairs frequently.¹⁸

According to Fahmi Medias, the establishment of endowment bank is considered to be very precise in giving promising answers in achieving social welfare and help to overcome the economic crisis.

¹⁶Ibn al-Qayyim al-Jauziyyah, *Ilam al-Murwaqqi'in 'an Rabb al-Alamin* (Kairo: Dar al-Hadist, t.th.), 5.

¹⁷Ana Syahidah, *Maqashid Syariah dalam Ekonomi, Keuangan dan Perbankan Syariah*, Source: <https://www.islampos.com/maqashid-syariah-dalam-ekonomi-keuangan-dan-perbankan-syariah-84636/>, Accessed on 18 November 2018, at 11:19 pm.

¹⁸Gusva Havita, et. al., "Model Bank Wakaf di Indonesia dalam Potensinya untuk Mengembangkan Wakaf Uang dan Mengatasi Kemiskinan," *Prosiding Elektronik PIMNAS, PKM-GT*, 2013, Source: <http://artikel.dikti.go.id/index.php/PKMGT/article/view/142>, Accessed on 17 November, 2013.

Indonesia should follow the some of the successfull Muslim countries like Bangladesh in managing cash *waqf* through Social Islamic Bank Limited (SIBL) as a source of social funds and the main instrument in the economic and social empowerment. *Waqf* bank presence in Indonesia, is expected to make the *waqf* money instrument more productive and provide benefits to the socio-economic development of Indonesia.¹⁹

According to Gustani and Suhada, assume that the *waqf* bank in Indonesia is a solution in the current economic empowerment. *Waqf* bank establishment is an idea and a breakthrough initiated by the President together with the Association of Indonesian Muslim Intellectuals and Bank Indonesia is considered very precise in giving a promising answers in achieving social welfare and help to overcome the temporary economic crisis of Indonesia.²⁰

Micro *Waqf* Bank is believed to increase financial inclusion, particularly in the public and small and micro businesses (SMEs) to have the easy capital. These agency is not allowed to take deposits from the public because it has focused in communities empowerment through financing with business mentoring. The organization also existed as a microfinance institution of *shariah* that are licensed and supervised by the OJK.²¹

The Establishment of Waqf Institution in Indonesia

The the idea of *waqf* bank began in the end of 2014, ICMI propose a model of *waqf* bank, such as described in the online news Republika writes that the deputy chairman of ICMI said Indonesia should have a *waqf* ank, because the majority of its population are Muslim and would be better economically if it has a bank that focus on economic development. Banks raise people without reinstated, then the assets will grow continually. This is the different between

¹⁹Medias, Fahmi, "Bank Wakaf: Solusi Pemberdayaan Sosial Ekonomi Indonesia," *Indonesia Journal of Islamic Literature and Muslim Society*, Vol. 2 No. 1, 2017, 81.

²⁰Gustani dan Suhada, *Bank Wakaf sebagai Lembaga Intermediasi Sosial (Suatu Inovasi Pemberdayaan Wakaf Tunai untuk Meningkatkan Kesejahteraan Umat*, (Research, Juni 2016), 11-17, Source: <https://www.researchgate.net/publication/303994772>, Accessed on 9 April 2018, at 9:32 pm.

²¹Ani Faujiah, "Bank Wakaf Mikro dan Pengaruhnya Terhadap Inklusi Keuangan Pelaku Usaha Kecil dan Mikro (UKM)," *Proceedings: Annual Conference for Muslim Scholars, Kopertais IV*, 2018, 379.

the conventional banks, *sharia*, and endowments.²² Further, ICMI see obstacles in act *waqf* that only legitimize management institution of *waqf* foundation, but there is no legal innovation for the company.²³

This program is ICMI's program, which will be called the Ventura *Waqf* Bank. Over time in 2017, chairman of the group Zainul Bahar Noor explained that the president responded positively and support this plan. The main target of this institution is the entrepreneur in small and medium enterprises, as it is considered as the largest contributor to GDP in Indonesia, as well as in employment.²⁴ The target to run this program was in 2017, with capital source of entrepreneurs and CSR. If it already run, the concept of this institution is not only as a endowments collector, but can also serve as *nadzir*, by providing financing capital for public.²⁵

According to the Minister of Religious Affairs Lukman Hakim, it needs to do a study on the legality of *waqf* bank whether it is in the category of financial institutions *sharia* or not. This process will involve Islamic organizations. Therefore, he invited the businessmen to donating at this institution.²⁶ Hadad also give an advice, that the model of this institution should be in the form of venture capital institutions, or we can call it joint venture *sharia* principled.²⁷

So, it is set up as a pilot project, it have the permit amounted to 20 institutions, the name of the institution is "Micro *Waqf* Bank". These early institutions are placed in boarding school institutions, specially in the area of Java. The first place operated and inaugurated

²²Erdy Nasrul, red. *Republika Online, Umat Islam Butuh Bank Wakaf*, Sumber: <http://khazanah.republika.co.id/berita/duniaislam/islamnusantara/14/12/11/ngeqqiumatislambutuhbankwakaf>, Accessed on 18 April 2018, at 10:56 pm.

²³Tim redaksi, *ICMI: Kami Akan Fokus Kembangkan Sistem Ekonomi Wakaf*, Source: <https://icmi.or.id/blog/2016/02/icmi--kami-akan-fokus-kembangkan-sistem-ekonomi-wakaf>, Accessed on 14 October 2018, at 00:54 pm.

²⁴Tim redaksi, *ICMI Berencana Bentuk Bank Wakaf Ventura: Jokowi Beri Respon Positif*, Source: <http://icmi.or.id/blog/2017/01/icmi-berencana-bentuk-bank-wakaf-ventura-jokowi-beri-respon-positif>, Accessed on 14 October 2018, at 9:42 pm.

²⁵Idealisa Masyrafina, Nur Aini, *ICMI Matangkan Konsep Bank Wakaf Ventura*, Source: <http://www.republika.co.id/berita/ekonomi/syariahekonomi/17/01/24/oka9xn382icmimatangankonsepbankwakafventura>, Accessed on 18 April 2018, at 11:12 pm.

²⁶Dessy Suciati Saputri, Andi Nur Aminah, *Pendirian Bank Wakaf Masih Dikaji*, Source: <http://www.republika.co.id/berita/ekonomi/syariahekonomi/17/01/25/okc95x384pendirianbankwakafmasihdikaji>, Accessed on 18 April 2018, at 11:10 pm.

²⁷Fabian Januarius, *OJK Anjurkan Lembaga Keuangan Wakaf Berbentuk Modal Ventura*, Source: <https://nasiona.kompas.com/read/2017/01/25/20334411/ojk.anjurkan.lembaga.keuangan.wakaf.berbentuk.modal.ventura>, Accessed on 1 May, 2018, at 11:56 pm.

by Jokowi is in Cirebon in October 2017, then the second one is in Surabaya on March 9, 2018, and the third is in Serang on March 14, 2018.²⁸

A few weeks later, the director of the Mayapada Group, Dato 'Sri Tahir summoned to meet Secretary of State Pratikno. His coming is in the context of the issue of Dato 'Sri Taher contributions in order to participate in this endowment program.²⁹ It has led to problems, such as Ustadz Tanjung (BWI) said regarding such donations by Taher Foundation, it was not the endowments, as it is as Bill Gates did that provide a third of his income to humanity fund.³⁰ Then, Wimboh Santoso (OJK) affirms it is right that Dato' Sri help, he said thanks to Dato' Sri Taher in front of the pers, he also said that the donation of Dato 'Tahir was distributed through the Amil Zakat National Institution (LAZNAS) and assisted by Bank Mandiri *Sharia* in its management.³¹

Based on the above data, the authors conclude that the agency is clearly problematic and not *sharia*-compliant as it violating the basic principles of *sharia* particularly the source of capital. Then it has violated the basic provisions of *maqashid sharia*. In addition, Micro *Waqf* Bank also declared as a brand name only,³² so it is not related to endowments but use the name of *waqf*.

Conclusion

The government try to do innovation in order to boost the Muslim's Economy particularly for those who are considered as

²⁸Siaran Pers OJK, *Siaran Pers OJK Keluarkan Izin Dua Puluh Bank Wakaf Mikro*, Source: <https://www.ojk.go.id/id/beritadankegiatan/siaranpers/Pages/SiaranPersOJKKeluarkanIzinDuaPuluhBankWakafMikroAnNawawiTanara.aspx>, Accessed on 18 April 2018, 16:45 pm.

²⁹Redaktur Kompas, *Bos Mayapada Siap Bantu Jokowi Wujudkan Program Wakaf*, Source: <https://nasional.kompas.com/read/2017/08/07/23074831/bos-mayapada-siap-bantu-jokowi-wujudkan-program-wakaf>, Accessed on 1 May 2018, at 11:53 pm.

³⁰Rasnawati Avin, *Ustadz Tanjung Sebut Ada Masalah pada Bank Wakaf Mikro*, Source: <https://www.halallifestyle.id/finance/ustadz-tanjung-sebut-ada-masalah-pada-bank-wakaf-mikro>, Accessed on 11 May 2018, at 14:26 pm.

³¹Denza Perdana, *OJK Targetkan 40 Bank Wakaf di Indonesia, Dato Sri Tahir Sudah Jadi Donatur*, Source: <http://www.suarasurabaya.net/mobile/ekonomibisnis/detail/2018/200481-OJK-Targetkan-40-Bank-Wakaf-di-Indonesia,-Dato-Sri-Tahir-Sudah-Jadi-Donatur>, Accessed on 20 October 2018, at 15:28 pm.

³²Tim Redaktur, *Bedanya Bank Wakaf Mikro dengan Badan Wakaf Versi OJK*, Source: <https://www.liputan6.com/bisnis/read/3431132/bedanya-bank-wakaf-mikro-dengan-badan-wakaf-versi-ojk>, Accessed on 18 May 2018, at 15.15 pm.

a poor. The role of *shariah* bank and BWI and regulations is also considered ineffective, then the Government innovate by establishing institution called Micro *Waqf* Bank. But somehow the process turned out to be problematic, especially regarding the establishment of institutional lines, both sources of funds violates the pillars of *waqf* and the name of institution considered as the brand only, it means that the institution is not a *waqf* institution but only *waqf* branded without endowments application. Thus, the authors hope that this phenomenon can be corrected, by the Government and Jokowi as chairman, in order to be able to declare which one is right and which one is wrong. Further, authors realize that this paper is not perfect, but at least this writing can enhance an academic passion, especially Muslims in Indonesia to be sensitive to the provisions of *sharia* in Indonesia.

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