

Cash Waqf Auction for The Establishment of Islamic Institution on The Perspective of Islamic Law and Positive Law (A Case Study on Trensains Islamic Institution, Sragen, 2018-2019)

Mar'atus Shalihah¹

(Corresponding Author)

University of Darussalam (UNIDA) Gontor

Email: marahasholihah@gmail.com

Eko Nur Cahyo²

University of Darussalam (UNIDA) Gontor

Email: eko.nurcahyo@unida.gontor.ac.id

Abstract

Waqf (endowment) is one of Islamic philanthropy that offers the basics of justice and benefit. It should be managed with innovative management such as cash and productive waqf that can contribute a positive impact on the socio-economic of society. In the context of waqf fundraising, cash waqf auction is one strategy to accumulate the funding. Cash waqf auctions can be used as a supporting instrument to support and to enhance the general public need and education. Besides, waqf is not limited to the utilization as zakat, therefore the community development programs such as streamlining Islamic school can be carried out through waqf auctions funds. This study is an attempt to clarify the implementation of waqf auction to finance the establishment of an Islamic institution. Then, it discusses the concept and practice of this waqf auction on the perspective of Islamic law and positive law. The methodology used is qualitative research that is using legal sociology and critical legal analysis, data collected through field research, a document study, and in-depth interviews. The documents studied were journals, books, papers, and relevant documents for this study. The finding of research reveals that Trensains Islamic Institution is implementing a similar practice of waqf in general. The uniqueness is introducing to the community the development

¹Alumni of Undergraduate Student of The Law of Islamic Economics Department, University of Darussalam (UNIDA) Gontor.

²Lecturer of The Law of Islamic Economics Department, University of Darussalam (UNIDA) Gontor.

of the waqf system by opening a service office. In the practice of waqf, the Treainsain Islamic Boarding School had previously purchased land using bank funds. While the repayment, Treainsain auctioned waqf by publishing waqf certificates of 300 per meter and announced using several media. The system of waqf is carried out together. The practice of waqf in Islamic boarding schools is valid according to the provisions of Islamic law. However, based on positive law, they have not met all the requirements. The problem is that the Treainsain Islamic Institution should immediately register the nadzir (manager) in the Minister of Religious Affairs and Indonesian Waqf Board.

Keywords: *Waqf, Auction, Islamic Institution.*

Introduction

Waqf or in another term is like philanthropy is one of the instruments in a modern economic system. It is one of the solutions to the issue of the inequitable of the social distribution of wealth which prevails due to the dominance of the doctrine of capitalism over the economic system in the national and global ranking, including the Islamic world. This sector is used by corporations, community institutions and individuals for handling various issues that involve the general benefit of society and the surrounding environment.³ Philanthropic practice in all its type illustrates Islamic civilization that teaches the fundamentals of justice and complete welfare. Islam recommends practicing the welfare of Muslim community is through *waqf*.

Basically, in the context of Indonesia, there have been many practices of *waqf*. However, the public's understanding of *waqf* has been limited. Understanding of *waqf* is still interpreted as immovable objects such as land, therefore, the community is not so easy to rendering *waqf*. Because they assume that to rendering *waqf* they must have landed first and another immovable object. Besides, the form of utilization is still limited to mosques, prayer rooms, plantations, medical centers, and other physical buildings.⁴ Meanwhile, the current need of the community is so huge that they need cash/money to improve their welfare. Based on the *waqf* principle, a cash *waqf* innovation product was made, which is not only property but *waqf*

³Wan Mohd Yusof Wan Chik, et.al., "Filantropi: Satu Sorotan dari Sudut Hukum Taklifi," *Asian People Journal (APJ)*, Vol. 1 No. 1, 2018, 12-13.

⁴Umi Chamidah, "Pengelolaan Aset Wakaf Tunai pada Lembaga Keuangan Syariah (Studi Pengelolaan Wakaf Tunai di Baitul Maal Hidayatullah Malang)," *Skripsi* (Malang: Universitas Islam Negeri (UIN), 2008), 19-20.

by funds (money) in cash.⁵ The effort to revitalize the element of *waqf* to provide various economic benefits requires a solution of thoughts about the concept which is following with the existing developments but does not contradict the element of *sharia* (Islamic laws).⁶

Cash *waqf* for Muslims in Indonesia is something new. The Indonesian Ulama Council (MUI) published a *fatwa* about *halal* cash *waqf* in mid-May 2002. While the legal foundation regarding the development of *waqf* in the form of legislation was published in 2004. Namely Law No: 41 of 2004 concerning *Waqf* and RI Government Regulation No: 42 of 2006 is concerning The Implementation and Regulation of The Minister of Religious Affairs No: 4 of 2009 is concerning The Administration of (Cash) Money *Waqf* Registration.⁷ Understanding the high potential of cash *waqf*, some foundations such as *pesantren* (Islamic institution) is benefitted by cash *waqf* funds to develop its institution. Accordingly, it should be in line with the statement of the intention of *waqif* (endower) in its utilization and it should be recorded transparently in accordance with the provision of Indonesian Republic Law No: 41 of 2004 concerning *Waqf* in an article 29.

The cash *waqf* which is implemented by Islamic education institutions such should be managed professionally and productively to enhance its institution's sustainability and to educate the Muslim scholars in the future. Some of the Islamic educational institutions that can survive and to provide the best educational services even scholarships to their students with professional management of *waqf* such as al-Azhar University in Egypt, Zaitunyah University in Tunis, University of Darussalam Gontor in Indonesia, and several other universities. This *waqf* movement has inspired many *pesantren* (Islamic education institutions) in Indonesia to try their best to manage such this system, *waqf* based education.

One of the *waqf* fundraising innovation is cash *waqf* auction. In the context of Indonesia, *waqf* auction is widely used by Islamic education institutions such as the Tazaka Islamic Boarding School, Al-Isyraq Islamic Boarding School, and other Islamic institutions to

⁵Setiawan Budi Utomo, *Fiqih Aktual* (Jakarta: Gema Insani Press, 2003), 155.

⁶M. A. Mannan, *Sertifikat Wakaf Tunai Sebuah Inovasi Instrumen Keuangan Islam* (Jakarta: CIBER-PKTI-UI, t.t.h), 94.

⁷Muhammad Ahsanul Arifin, *Analisis Pengelolaan Wakaf Tunai pada Yayasan Wakaf al-Kaff Ninjai dengan Pendekatan Swot, Krips* (Medan: Universitas Sumatra Utara, 2017), 18.

support the development and construction of Islamic educational institution. This is because cash *waqf* auction can be carried out by all Muslims who possess money without waiting to become landlords. In addition, the implementation of *waqf* funds is more flexible than *zakat* funds, so that community development programs can be carried out using cash *waqf* auction funds.

Trensains Islamic Institution in Sragen, Indonesia, is one of the Islamic institutions which is built by the professional management of *waqf* fund. Trensains is an Islamic institution which is teaching the general sciences and charity that focus on aspects of understanding the *Qur'an*, natural science, and the interaction of religion and sciences. Trensain collaborates with Lazizmu in managing *waqf* fund professionally.⁸ In practice, Trensains Islamic Institution announces cash *waqf* auction through verbal announcements, banners, and official websites. The funding can be distributed through Islamic institution accounts or done directly. The fund is planned to be used to purchase land that will be used for the construction of the Trensains Islamic institution.

Research Method

A qualitative research, this study is examined the management of fundraising program of Trensains Islamic institution with *waqf* auction under the foundation Islamic law and legal structure in central Java. Using Islamic law and legal positive law to analyze methods, this study discussed the implementation of *waqf* auction program in Trensains Islamic institution through field research, a document study, and in depth-interview. The documents studied were laws, books, papers, and other relevant data to this research. Interviews were conducted with the informant obtained from the person in charge of this institution.

Waqf in Islamic *Fiqh* (Islamic Jurisprudence)

A. Definiton of *Waqf*

Waqf (plural: *awqaf*) could be defined as a perpetual endowment. The literal translation of the word is "to hold". The institution of *waqf* or *awqaf*, therefore, implies holding or setting aside certain

⁸<https://trensains.sch.id/> Accessed on March 29, 2019, at 16.12 am.

physical assets by the donor (*waqif*) and preserving it so that benefits continuously flow to a specified group of beneficiaries or community.⁹

In *syara'* terminology, *waqf* is a kind of distribution which is carried out by holding back (ownership) of origin (تحبس الأصل), then making the benefits generally accepted. The intended of (تحبس الأصل) is the one who holds the *waqf* goods, so it was not to be inherited, used in the form of being sold, donated, mortgaged, leased, lent, and so on. While the way of utilization was benefitted it in accordance with the wishes of the (*waqif*) *waqf* giver without compensation.¹⁰

The term, *waqf* (plural *ahbas*) and *habs* (plural *ahbas*), are *masdar* (verbal noun in Arabic), and literally, they both mean (*al-habs wa al-man*); to stop and to prevent. The word *tasbil* is also used in the same sense, (*fi sabil Allah*) "devoting to the way of Allah." In English, the term *waqf* is translated as "religious endowment," but this translation may not convey the sense of devotion and blessing that is associated with Islamic teaching. Although the terms of *waqf*, *habs*, and *tasbil* provide the same meaning, but several countries have used *waqf* as the term such as Lebanon, Israel, and The United Arab Emirates, while the term *habs* are more commonly used in North Africa. In Turkey, the term *vakif* (plural *evkaf*) is used, and in Malaysia, the term *waqf* is spelled as *wakaf* (plural *awkaf*). All these terms have the same meaning, which is the holding and preservation of a certain *sadaqah jariah*, a continuous charity with the intention of prohibiting any use or disposition of the property outside the specific purposes to which the property is dedicated and in a way that it cannot be bequeathed or sold (al-Zubidi).¹¹

B. Legal Basis of *Waqf*

The following are the verses of Qur'an that explain the *waqf*:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ¹²

"Never will you attain the good (reward) until you spend (in the way of Allah) from that which you love. And whatever you spend-indeed, Allah is knowing of it."

⁹Muhammed Obaidullah, *Awqaf Development and Management* (Jeddah: t.p.: t.th.),

13.

¹⁰Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab* (Jakarta: Lentera, 2011), 673.

¹¹Maghda Ismail Abdel Mohsin, *INCEIF* (New York: Palgrave, 2016).

¹²QS. al-Imran: 92

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ ۚ وَلَا تَيَمَّمُوا الْخَبِيثَ
مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ ۚ وَاعْلَمُوا أَنَّ اللَّهَ عَنِّي حَمِيدٌ ۝١٣

“O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth. And do not aim toward the defective therefrom, spending (from that) while you would not take it (yourself) except with closed eyes. And know that Allah is free of need and praiseworthy.”

The two verses above suggest the Muslim spend some of their effort to proceed with the goods and some of what was provided by Allah the almighty from the earth. Among the good deeds which were conducted by Muslim regarded as good is *waqf*.¹⁴ Furthermore, Dr. Hamka explained that Allah is the richest, remember this when you give anything to others, so that the Muslims should choose the good ones to be given to those who deserve to be given or the poor. Allah is the most praised because He always helps you by giving good fortune. The perfect praise to Allah, choose the best one and give it to those who deserve to be given. Therefore when you give the needy one they will praise Allah and pray for you, may you be given more fortune from Allah.¹⁵ In addition, the verse generally explains us the meaning of *infaq* for the purpose of goodness. *Waqf* is spending the wealth for good purpose.¹⁶

عن ابن عون قال: أنبأني نافع عن ابن عمر رضي الله عنهما: أن عمر بن الخطاب أصاب أرضا بخيبر، فأتى النبي صلى الله عليه وسلم يستأمره فيها فقال: يا رسول الله، إنني أصبت أرضا بخيبر لم أصب مالا قط أنفس عندي منه، فما تأمر به؟ قال: إن شئت حبست أصلها وتصدق بها. قال: فتصدق بها عمر أنه لا يباع ولا يوهب ولا يورث، وتصدق بها في الفقراء وفي القرى و في الرقاب و في سبيل الله وابن السبيل والضييف، لا جناح على من وليها أن يأكل منها بالمعروف ويطعم غير متمول. قال: فحدثت به ابن سيرين فقال: غير متائل مالا. (راجع: ٣١٣٢)

“Narrated Ibn ‘Ummar رضي الله عنهما Umar bin Al-Khattab got some lands in Khaibar and he went to the Prophet صلى الله عليه وسلم to consult him

¹³QS. al-Baqarah: 267

¹⁴Abdurrohman Kasdi, *Fiqh Waqaf (dari Waqaf Klasik hingga Waqaf Produktif)* (Yogyakarta: Idea Press, 2017), 22-23.

¹⁵Hamka, *Tafsir al-Azhar, Juz 1* (Jakarta: Gema Insani, 2015), 538.

¹⁶*Ibid*, 273.

about it, saying, "O Allah's Messenger I got some land in Khaibar better than which I have never had, what do you suggest that I do with it?" The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ said, "if you like you can give the land as endowment and give its fruits in charity." So 'Umar gave it in charity as an endowment on the condition that it would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the kith and kin, for freeing slaves, for Allah's cause, to the travelers and guest; and that there would be no harm if the guardian of the endowment ate from it with *ma'ruf* (according to his labor with good intention), and fed others without storing it for the future."¹⁷

The substance of the *hadith* (prophetic tradition) above is very clear explanation about *waqf* for two things. *Firstly*, Prophet has advised Umar to hold back the subject and give the results, this is the essence of *waqf*. *Secondly*, this *hadith* is closed to the description of *nadzir* (manager) rights who may get income from the profit in a good way or feed others without intending to accumulate property. There is no doubt that the two provisions above are *waqf*'s characteristics.¹⁸

C. The Pillar of *Waqf*

There are four types the pillar of *waqf*, *waqf* provider (*wakif*), *waqf* goods (*mauquf*), *waqf* receiver (*mauquf 'alaih*), and contract (*shighat*). Each pillar has its own requirements.¹⁹ The validity of *waqf* will be perfect by fulfilling the requirements. The pillar of *waqf* explanation is the following below.

1. *Waqif*

The legality of *waqf* from *waqif* or *waqf* giver according to *syara* when fulfilling the following requirements: (a) *Waqf* statements are valid (acceptable); (b) Ability to endow; (c) Possessing the volition.²⁰

2. *Mauquf*

The *waqf* goods (*mauquf*) requirements as follow: (a) The *mauquf* must be clear in the form of their virtue; (b) *Waqf* good (*mauquf*) must be owned by *waqif* which can be moved, useful and utilized; (c) The

¹⁷t.n., *Shahih Bukhari*, Terj. Muhammad Muhsin Khan (Kingdom of Saudi Arabia: Darussalam Publisher and Distributor, 1997), 540.

¹⁸Miftahul Huda, *Mengalirkan Manfaat Wakaf (Potret Perkembangan Hukum dan Tata Kelola Wakaf di Indonesia)* (Bekasi: Gramata Publishing, 2005), 33.

¹⁹Wahbah Zuhaili, *Fiqh Imam Syafi'i* (Jakarta: Almahira, 2010), 344.

²⁰*Ibid*, 834-838.

benefit of *mauquf* must durable; (d) The benefit of *waqf* good must be permitted advantageously, it is not being forbidden or prohibited by the law.

3. *Waqf Provider (Mauquf 'Alaih)*

The purpose of the *waqf* is to maintain the perpetuity of *waqif* merit. Therefore *waqf* must be utilized within the appropriate limits and allowed by Islamic law. Because *waqf* was basically a charity that brings humanity closer to God, then the human approach to Allah SWT and its perpetuity were the subjects of *fiqh* scholar discussion in reviewing the terms and requirements of *mauquf alaih*: (a) *Mauquf 'alaih* is the person who has goodness oriented. Because the *waqf* prescribed based on the worship to get closer to Allah; (b) *Mauquf 'alaih* must be evolved by the *waqf* perpetuity (the management was uninterrupted); (c) *Mauquf 'alaih* do not return to *waqif*.²¹

4. *Shighat*

Waqf was related by unilateral desire which is manifested in the form of contract with four requirements: (a) The *shighat* was directed straight to the *waqf*; (b) *Shighat* should be binding; (c) Donated the ownership rights forever; (d) *Waqf* must be pronounced.²²

D. The Type of *Waqf*

The giving of *waqf* should be prioritized to the needy and the poor. This type of *waqf* was named of the family *waqf* (*al-waqf al-ahli*) or prosperity *waqf* (*al-waqf ad-dzuri*). Sometimes, *waqf* was donated to charitable institutions. This type of *waqf* was called virtue *waqf* (*al-waqf al-khairi*).²³ In *Muamalat Fiqh* book written by Prof. Dr. Abdul Rahman Ghazaly explained that *waqf* is divided into two as follows:²⁴

1. *Waqf Dzuri*

Waqf dzuri (family) also called special *waqf* and *ahli* means was *waqf* intended for certain people either *waqif* family or other people. This *waqf* was legal and the person who can benefit where only certain people.

²¹*Ibid*, 57-65.

²²*Ibid*, 51-152.

²³Sayyid Sabiq, *Fiqh Sunnah* (Depok: Fathan Media Prima), 295.

²⁴Abdul Rahman Ghazaly, *Fiqh Muamalat* (Jakarta: Prenadamedia Group, 2010), 179-180.

2. *Waqf Khairi*

This kind of *waqf* is intended for public interest and was not specific to certain people. *Waqf khairi* is the essential *waqf* which the reward will continue until the *waqif* dies by the provision that the advantage was worthwhile. Based on the time limit time, the *waqf* is divided into:²⁵ (a) *Waqf mu'abbad* (forever), i.e. if the *waqf* in the form of eternal goods such as land and buildings with its land, or movable property determined by the *waqif* as an eternal and productive *waqf*, where the profit distributed according to the *waqf* purpose, while the balance was used for taking care and the damage compensation cost; (b) *Waqf mu'akkat* (temporary time), if the *waqf* goods are easily damaged when used, without giving a requirement of changing the damaged part. The cause of temporary *waqf* was *waqif* pretension to give a time limit for *mauquf*.

Cash *Waqf*

A. Definition of Cash *Waqf*

Cash *Waqf* is a legal action to separate and or transfer part of the money used on perpetually temporary or for certain a period of time which is appropriated by its objectives to worship and or general welfare according to *sharia*.²⁶ Meanwhile, in line with the MUI (Majelis Ulama Indonesia/ Indonesian Assembly Scholar) *fatwa*, cash *waqf* (*waqf an-nuqud*) is a *waqf* by a person, group of people, institution, or legal entity in the form of cash.

B. The Pillar of Cash *Waqf*

According to Indonesian Law No: 41 of 2004 which was concerning *waqf*, the elements (pillars) of *waqf* are six, that is *waqif*, *nadzir*, *waqf* property, the pledge of *waqf*, allocation of *waqf* property, and the period of *waqf*.²⁷

²⁵Abdurrohman Kasdi, *Fiqih Waqaf dari Waqaf Klasik hingga Waqaf Produktif* (Yogyakarta: Idea Press 2017), 87-88.

²⁶Pasal 1 angka (1) Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

²⁷Pasal 6 Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf.

1. *Waqif*

Waqif is the party that endows his own property.²⁸ The *waqif* requirement based on the explanation of Article 8 of the Republic of Indonesia Law No: 41 of 2004 that concerns *waqf* as follows:²⁹ (a) The individual *waqf* requirements are required in the following points, adult, sensible, not deterred from carrying out of legal actions, and the legitimate owner of *waqf* property; (b) Organization *waqif* requirements, the *waqif* organization is the organization fulfills its requirements to endow of *waqf* property which is belonging to the organization in accordance with the calculation of association of the organization; (c) Legal entities of the legal requirement, a legal entity can do *waqf* with the ability to fulfill the provisions of legal entity to donate the legal entity property in accordance with the statutes of legal entity concerned.

2. *Nadzir*

According to the Republic of Indonesia Law No: 41 of 2004 that concerns *waqf*, *nadzir* is a party that receives *mauquf* from *waqif* to be managed and developed in accordance with its designation.³⁰ The requirement for the *nadzir* based on Part Five of Article of Law No: 41 of 2004 concerning *waqf* is as follows: (a) Individual *nadzir* requirements, as follows, Indonesian citizens, muslim, adult, trustful, having a physical and spiritual ability, and not deterred from carrying of legal actions; (b) Organization *nadzir* requirements, as follows, the organization management should meet the requirements of individuals *nadzir*, the organization should engage in social, education, and or Islamic religious fields; (c) Legal entities requirements, that is the legal entity management should meet the requirements of the *nadzir* individual which intended in paragraph (1), Indonesian legal entities formed in accordance with prevail law and regulation. The legal entities engaged in social, education, and or Islam religiousness fields.

3. *Waqf Property*

Waqf property is an object that long-term durability and or long-term benefits and has an economic value in reliance on *sharia*

²⁸Pasal 1 angka (2) Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

²⁹Pasal 7 angka (1-3) Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf.

³⁰Pasal 1 angka (4) Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

which was represented by *waqif*.³¹ Based on the explanation in Part Six Article 15 of Indonesia Law No: 41 of 2004 concerning *waqf* that *waqf* property can only be endowed if the property was owned and managed by *waqif* legally.

4. *Waqf* Pledge

Waqf pledge is a statement of *wakif's* that should be recited verbally or be recorded in front of the *nadzir* to endow his property.³²

(a) *Waqf* pledge is held by *waqif* to *nadzir* in front of PPAIW (*Pejabat Pembuat Akta Ikrar Waqf/Officials Maker of the Waqf Pledge Deed*) officer witnessed by 2 (two) witnesses. (b) *Waqf* pledge as referred in paragraph (1) is stated verbally and or verbal in the deed of *Waqf* pledge.

In the case of *waqif* who is not able to express the *waqf* pledge verbally or unable to attend the implementation of *waqf* pledge for the reasons justified by law, *waqif* can appoint his proxy with a power of attorney which was strengthened by 2 (two) witnesses. To be able to implement the *waqf* pledge *waqif* or his attorney submit a letter and or proof of ownership of *waqf* asset to PPAIW.³³

Based on the explanation in the seven-part Article 20 of Indonesia Law No: 41 of 2004 related to *waqf* states that the witness of the *waqf* pledge must meet the following requirements: (a) Adult; (b) Muslim; (c) Healthy mind; (d) Not obstructed from carrying legal actions.

5. *Waqf* Allocation Object

In order to achieve the goals and the function of the *waqf*, the property of *waqf* can only be allocated for the following points: (a) The facilities and activities associated with *ibadah* or worship; (b) The facilities of education and health services; (c) To support the poor, abandoned children, orphans, and to provide the scholarship; (d) The advancement and economic improvement of *ummah*; (e) The development of another general welfare which is not contradicted to the *sharia* and legislation.

³¹Pasal 1 angka (5) Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

³²Pasal 1 angka (3) Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

³³Pasal 18-19 Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

C. Management of Cash Waqf

D. In the *waqf* system, managers of *waqf* (*nadzir*) need good management in carrying out their duties. This management is used to manage *waqf* management activities such as fundraising the money of *waqf* and preserving the good relations between *nadzir*, *waqif*, and community. For this reason, it is very important to elaborate on its management and its principles.³⁴

Economically, the development of cash *waqf* has great potential in Indonesia. Through the funding of cash *waqf* concept, the coverage mobilization should be spread evenly to the society in need compared to the traditional-conventional *waqf* concept, it is in the form of physical assets that are carried usually by families who were capable and wealthy.³⁵

In its operational implementation, cash *waqf* which uses the concept and strategy of the perpetual fund can issue the certificate of cash *waqf* with a different nominal according to the ability of the target and object. The excellence and effectiveness of cash *waqf* will able to reach various segments of a heterogeneous society. By these concepts and strategies, there are at least four benefits as stated as follows: (a) The total and the magnitude of cash *waqf* have different variations according to the ability so that the *wakif* applicant who have limited fund able to donate the property according to their level of ability; (b) The unproductive *waqf* assets in the form of vacant land should be managed and utilized by the model of the construction of the educational building, hospitals, and public facilities; (c) Cash *waqf* could be allocated to the various parties who need by performing scale of needs verification in a concrete and valid manner, so it is appropriate on target in line with the principle of the benefits and needs that consist of the values or *maslahah* (benefits); (d) The fund of cash *waqf* which is managed professionally, it can emerge the independence of Muslims to cope with their problem occurred around them without having a high dependence on state or foreign aid fund.³⁶

The concrete efforts which can be made of cash *waqf* for developing, be familiar, be pervade, and practiced by the large community, which need to be considered are: (a) The concepts and

³⁴Rozalinda, *Manajemen Wakaf Produktif* (Jakarta: Rajawali Press, 2015), 72. Faisal Haq, *Hukum Perwakafan di Indonesia ...*, 68.

³⁵Pasal 22 Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf. *Ibid*, 68.

³⁶*Ibid*, 69.

strategies of fundraising, it means that how to mobilize the cash *waqf* maximally through introducing Cash *Waqf* Certificate product which the amount is appropriate with the target of aid segmentation; (b) The management of cash *waqf* should consider the aspects of productivity, expediency, and sustainability by taking account into the level of visibility and investment security, either direct investment in productive real sector activities or deposits in Islamic Bank, capital investment through ventura capital companies and other portfolio investments; (c) Result distribution to beneficiaries can be classified according to the urgent needs of the community on a priority scale in line with the orientation and *wakif* purpose in the form of charity, empowerment, human investment, and infrastructure investment. The choices are noticed by fund availability from the cash *waqf* profit which is managed.

E. The Procedures for Cash *Waqf*

In Article 28 The Law on *Waqf* is stated that *waqif* can donate the movable objects in the form of money via Islamic Financial Institutions that is recognized by the Minister of Religious Affairs. Then the Article of 29 paragraph (1) states that the movable *waqf* in the form of money as referred in Article 28, it is carried out by *waqif* with a volition statement which is not recorded. In paragraph (2) in the same article was stated that the object of movable *waqf* in the form of money (cash) which is intended in the paragraph (1) was issued in the form of money *waqf* certification. While, in the paragraph (3) cash *waqf* certificate is regulated as intended in the paragraph (2) is issued and submitted by Islamic financial institution to *waqif* and *nazhir* as the proof of handover of *waqf* property. The stipulation that concerns the movable *waqf* in the form of money (cash) is regulated in Article 22 of Government Regulation Number 42 of 2006 concerns on *waqf* implementation.³⁷

In article 29 of Law No. 41 of 2004 is concerning on *waqf* was stated, that *waqf* of movable objects in the form of money (cash) is carried out by the *waqif's* volition that is written.³⁸ Meanwhile, *waqf* pledges were carried out by *waqif* to *nadzir* in front of officials of Islamic Financial Institution as cash *Waqf* Recipient (LKS-PWU) or notary which is appointed by PPAIW and witnessing by 2 (two)

³⁷*Ibid*, 37-38.

³⁸Pasal 29 Undang-Undang No. 41 Tahun 2014 tentang Wakaf.

witnesses. The *waqf* pledge should be conducted after *waqif* deposit cash *waqf* to the LKS-PWU. LKS-PWU officials or notaries issue *Akta Ikrar Wakaf /AIW* (Endowment Pledge Deed) which contains at least data; *waqif* name and identity; name and *nadzir* identity; name and identity of witnesses; nominal amount; the origin of money; allocation and period of *waqf*. The format and specification of the AIW form were determined by the decision of the general director.³⁹ Then who take in charge as PPAIW for cash *waqf* is PWU-LKS who is appointed by Ministry of Religious Affair.⁴⁰

Cash Waqf Auction in Trensains Islamic Institution

A. Waqf Auction

Waqf is an Islamic charity in the form of fixed assets, such as land and buildings. Despite of its development, there is an implementation of *waqf* which is called as “cash” applied during the Ottoman Caliphate. *Waqf* by “cash” system opens an unique opportunity for the creator of investment in the fields of religions, educations, and social services. Savings from high-income citizens can be utilized through the exchange of cash *waqf* certificates, while the income earned from cash *waqf* operation can be benefitted for various *maslahah* (public interest) and the prosperity of society.⁴¹

The movable *waqf* in the form of money/cash was issued in the form of cash *waqf* certificates. *Waqf* certificates are issued and collected by *sharia* financial institutions to *waqif* and *nadzir* as proof of surrender of *waqf* property.⁴²

B. Cash Waqf Auctions in Trensians Islamic Institution

Trensains Islamic Institution was officially opened for the first time on the 1st Muharram 1435 H / 5 November 2013 in the central of Sragen city. Hence, the development of different fields was carried out in Dawe village, Banaran, Sambongmacan, Sragen, Central Java, Indonesia. The first milestone is done on a land area of 1 (one) hectare which is purchased by loan funds from the bank because the Islamic

³⁹Pasal 2 Peraturan Menteri Agama Republik Indonesia Nomor 4 Tahun 2009 tentang Administrasi Pendaftaran Wakaf Uang.

⁴⁰Pasal 37 Peraturan Menteri Agama Republik Indonesia Nomor 4 Tahun 2009 tentang Administrasi Pendaftaran Wakaf Uang.

⁴¹Faisal Haq, *Hukum Perwakafan di Indonesia ...*, 63.

⁴²Pasal 29 Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf.

Institution Trensains did not have *waqf* land.⁴³

For repayment of funds which are from debt money of the bank, Trensains was used several methods as fundraising program. The methods used are *zakat* (alm), *infaq* (gift), and *shadaqah*. From these, it was used alms and *infaq* structures. This is because of *infaq* and alms can be used for infrastructure development, helping for *dhu'afa* (weak people), and used for the needy. While, *zakat* is impossible to be used for infrastructure development because of the *mustahik* (one who deserves/deserver) for receiving it must be 8 (eight) *asnaf* (group of people worthy receiving of *zakat*) which have been explained in the Qur'an including the destitute, poor, *riqab* (slave), *gharim* (people who have lots of debt), converts to Islam (*muallaf*), *fisabilillah* (fighters in the way of Allah), *ibn sabil* (overseas students), *amil zakat* (those assigned to perform all activities related to *zakat* matters, from the collection to the distribution level).⁴⁴

Subsequently, the concern of Trensains was focused on *waqf*. Since they have conducted a deep learning about *waqf* comprehensively from Modern Tazakka Islamic Institution, Trensains concluded that *waqf* is the most potential way that can be used for purchasing the lands, infrastructure developments, and developing the Islamic institution facilities.⁴⁵

Fundraising of *waqf* has rules if it is related to large funds, this is what underlies the establishment of *Lembaga Amil Zakat Infaq Shadaqah Muhammadiyah/LAZIZMU* (*Zakat Infaq Shadaqah Agency for Muhammadiyah*) which is integrated with the Institute of *Zakat, Infaq, and Shadaqah* owned by Muhammadiyah. This program was officially established in 1439 H. LAZIZMU owned by Trensains was not a branch of LAZIZMU owned by Muhammadiyah, but its official service associated with LAZIZMU in Sragen area.⁴⁶

The endowments that obtained by LAZIZMU of Sragen will be used entirely for financing the operational of Trensains Islamic Institution. Meanwhile, the amount of money earned and its spending will be reported in the form of report data to the central LAZIZMU. The focus of LAZIZMU is a *zakat, infaq* and *shadaqah* institution and it is excluded of the endowments. Therefore the endowments system

⁴³Quoted from the interview with Nurul Hakim Zanky (a staff who is in charge of Lazizmu Trensains), on 18 of February 2018.

⁴⁴*Ibid.*

⁴⁵*Ibid.*

⁴⁶*Ibid.*

in Trensains is using a combination system.⁴⁷

Fundraising uses *waqf* auction carried out to make *waqf* auction certificates worth 300 thousand *rupiahs*/IDR per meter. Fundraising *waqf* auctions are not only announced through banners or the official Trensains website, but also through door to door method or by personal notification as well. Furthermore, Trensains also opened a stand-in Jakarta prior to the service office was designated beyond the belief that money revolves in big cities and coincides with the month of Ramadhan the booth was opened in one of the malls on Blok M. At that time there were two charity stands, one was for *waqf* auctions and other the charity for construction of a mosque in Tolikara Papua, Indonesia which was burned-out. From the results obtained, it turns out that people prefer to do charity, *infaq*, and *waqf* for the construction of mosques which have managed to collect 4 billions in one week. This is because society is more happy with emergency projects (misery). Another example of emergency projects that is helping the victims of earthquakes, tsunamis, volcanic eruptions, and so on. Realizing the lack of public interest in the communit development program, Trensains compiled a program to carry out *waqf* based education to make the community of Indonesia more understood about *waqf* auctions to shape the civilization.⁴⁸

The official service of Trensains implemented an endowments based education aimed to the neighbouring community, student guardian and bachelors who will indirectly become agents to introduce Trensains and its programs to families and communities. Having implemented this program, some people have converted their assets in large enough quantities to *waqf*.⁴⁹

This *waqf* based education program was used by Trensains to explain about endowments comprehensively to the community. This explanation was concerning about the types of *waqf* that people may recognize by them merely is land *waqf* all this time. Therefore, in the recent time, they came to know there was another type of *waqf* that called as cash *waqf*. This is a productive endowments, people could conduct a joint ventures to build mosques, the purpose of this is to turn people's money into production. Another type of *waqf* is professional endowments and endowments for transferring the

⁴⁷*Ibid.*

⁴⁸*Ibid.*

⁴⁹*Ibid.*

rights.⁵⁰

Trensains has three payment methods for *waqf* auction funds, namely paying by cash, credit cards, and *waqf* savings. The *waqf* savings is illustrated such this explanation that Muslim who wants to carry out an auction of *waqf* as much as 100 million. But he did not have as much as 100 million at that time. Then he committed to pay an endowments monthly as much as five million to 20 months, finally his intention to convert 100 million was achieved.⁵¹

To carry out a fundraising program, Trensains must have an attraction and commitment. In this case, the Trensains make a card that contains an amount of money to be paid in installments monthly in line with the *waqif* ability.⁵²

Contracts in *waqf* auctions conducted in the congregation were not carried out in a spoken manner (directly one by one). The questions and statements stated in the *waqf* certificate and *wakif* signatures have been considered as valid agreements and valid contract.⁵³

C. The Implementation of The Cash *Waqf* Auction at Trensains Islamic Institution

Trensains Islamic Institutions employs fundraising with cash *waqf* auction for the construction of Institution infrastructures in the form of purchased land for the construction of student's dormitory building, construction of teacher homes, purchasing vehicles, and for providing the goods that needed by students.

The implementation of the cash *waqf* auction in the Trensains Institution is appropriate with the *waqf* practice carried out by several Islamic Institutions in Indonesia. As matter of fact, there are several fundraising methods from cash *waqf* auctions implemented. Furthermore, the institution was conducted some ways to achieve wider recognition from the community such as spreading the announcement related to its *waqf* auction programs to the muslim community in the surrounding mosques, formulating the *waqf* auction certificates, sticking the *waqf* auction banners, uploading a notification of its program via institutional official Website, and applying endowments education to the people in the purpose of

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵²*Ibid.*

⁵³*Ibid.*

building their broader understanding about the *waqf* auction.

The following points are an overview of several methods which were implemented by Trensains Islamic Institutions on disseminating its *waqf* auctions program in the small and large scales are:⁵⁴

1. Fundraising Program with The Parents of Students

On Sunday 11 Muharram 1439/01 October 2017, it was held a program called as "*Recitation of Guardian of Students and Fundraising*" in the Dawe Sragen Trensains Hall where the funding was collected as follows: (a) Cash is amounted to IDR 21.085.000,-; (b) Via Transfer is amounted to IDR 102.350.000,-; (c) *Infaq* savings is amounted to IDR 5.225.000,-

The total funds obtained were amounted to IDR 128.660.000,-. The results of the endowments will be used for the construction of the second-floor female dormitory which has been commenced its construction on the end of the year 2017.⁵⁵

2. Trensains Charity Night Program "*The Glorify Universe*"

This program was conducted on Tuesday, October 10, 2017 at the Merapi Hotel Grassia Ballroom, Semarang. It was attended by Opick (the populer Indonesian muslim singer) who sang "*Tombo Ati*", Mr. Ganjar Pranowo (the Governor of Central Java), Director of Lazizmu Center, chief of the PWM, Kiai Tafsir, and Gus Pur (the initiator of Trensains). In this occasion, Trensains has raised the funding program related to *waqf* auction with the final result that it has been collected IDR 684.882.000,-. Hence, the funds will be used for land acquisition at the end of 2017.⁵⁶

3. Fundraising Programs Conducted by Students

Another fundraising program is designated by students with the program called as "*Collecting the Donations during Mid-Semester Holidays*". It was occurred within 7 days, October 1-8, 2017. The collected funds was amounted to IDR 118.330.600,- innitiated as a *waqf* contract. Thus, the funds will be allocated for purchasing the land and its acquisition for the construction of Trensains facilities.⁵⁷

⁵⁴*Ibid.*

⁵⁵*Ibid.*

⁵⁶*Ibid.*

⁵⁷*Ibid.*

D. The View of Islamic Law and Positive Law on The Implementation of Cash *Waqf* Auction in Trensains Islamic Institution

From the above elaboration, it can be seen that the implementation of Cash *Waqf* Auction in Trensains Islamic Institution according the perspective of Islamic Law and Positive Law can be concluded as below:

1. *Waqif*

The requirements for *wakif* at Trensains Islamic Institution are legal in the view of Islamic Law because they meet requirements such as the statement is valid (acceptable), able to donate, and on the correct track. While, the *waqif's* requirements at Trensains Islamic Institution are legal in the view of Positive Law. This is because the *wakif* have fulfilled the endowment requirements as determined, such as adult, having a sound mind, not deterred from carrying out legal actions, and legal owners of *waqf* property.

2. *Mauquf*

Mauquf requirements at Trensains Islamic Institution are legal in the view of Islamic Law because it meets requirements such as: (a) The asset of *waqf* is clear in its form of virtue; (b) *Waqf's* property was owned by the *waqif* which can be moved, useful, and spent; (c) The durability of benefits of *waqf property*; (d) The benefits of goods of *waqf* are permitted and not prohibited.

Mauquf's requirements at Trensains Islamic Institution are legal in the view of Positive Law because it meets requirements such as *waqf* objects, they were movable or immovable objects, money has the endurance that is not only disposable and is worth for enhancing and developing the teachings of Islam. This object is mentioned in Article 217 (3), it is required to be a property which is free from all charges, ties, confiscations, and disputes.

3. *Nadzir*

In the view of Islamic Law that the requirements of *nadzir* at Trensains Islamic Institution are legalized because they have met several provisions and conditions as follows: *First*, the party entrusted with *waqf* is a party that is oriented towards virtue. *Second*, recipients of continuous endowments (uninterrupted in their management). *Third*, the assets that have been represented did not return to *wakif*. *Fourth*, the recipients of legal conversions to own and control *waqf* assets.

On another hand, of *nadzir* requirements are met however based on the positive law, there are some provisions that have not been fulfilled as mentioned in the Law of The Republic of Indonesia Number 42 of 2006 Article 7 paragraph 1 which states "*Nazhir of the organization must be registered with the Minister of Religious Affairs and BWI through the Office of Local Religion*".

4. *Sighat* (Pledge)

Based on Islamic law *sighat* cash *waqf* auction at the Trensains Islamic Institution has fulfilled the requirements. Even though *waqf* pledges are not conducted verbally but the form of *waqif* agreement that is recorded can be considered as a valid.

However, *waqf* pledges in Trensains Islamic institution do not fulfill the requirements of positive law which requisites as follows: (a) *Waqf* pledge is held by *waqif* to *nadzir* in front of PPAIW witnessed by 2(two) witnesses; (b) *Waqf* pledge as referred in paragraph (1) is stated verbally and or verbal in the deed of *waqf* pledge.

Conclusions

The launching of the *waqf* auction in Trensains Islamic Institution, Sragen was conducted through filling out the cash *waqf* auction certificate provided by LAZIZMU Trensains. In this case, the *waqf* is in the form of cash and it is used to purchase land at prices determined in the *waqf* auction certificate for 300 per meter. The *wakifs* are having free options to purchase it depends on their abilities. The payment of *waqf* auction is applied by cash or by transferring the funds to the account number of the bank that has been determined by the institution. The implementation of cash *waqf* auction at Trensains Islamic Institutions is legal according to Islamic law by fulfilling the terms and conditions. However, if it is viewed from the positive law, the implementation of this cash *waqf* auction might not fulfill the overall pillars and conditions. This is because some of *nadzir* have not been officially registered to the Minister of Agriculture and BWI through the Office of Religious Affairs, and *waqf* pledges are not carried out in front of the competent authorities.

References

- Arifin, Muhammad Ahsanul. *Analisis Pengelolaan Wakaf Tunai pada Yayasan Wakaf al-Kaff Ninjai dengan Pendekatan Swot*, Krips. Medan: Universitas Sumatra Utara, 2017.
- Az-Zuhaili, Wahbah. *Fiqh Imam Syafi'i*. Jakarta: Almahira, 2010.
- Chamidah, Umi. *Pengelolaan Aset Wakaf Tunai pada Lembaga Keuangan Syariah (Studi Pengelolaan Wakaf Tunai di Baitul Maal Hidayatullah Malang)*. Skripsi. Malang: Universitas Islam Negeri (UIN), 2008.
- Chik, Wan Mohd Yusof Wan, et.al. "Filantropi: Satu Sorotan dari Sudut Hukum Taklifi." *Asian People Journal (APJ)*, Vol. 1 No. 1, 2018.
- Ghazaly, Abdul Rahman. *Fiqh Muamalat*. Jakarta: Prenadamedia Group, 2010.
- Hamka. *Tafsir al-Azhar, Juz 1*. Jakarta: Gema Insani, 2015.
- Haq, Faisal. *Hukum Perwakafan di Indonesia*. Jakarta: Rajawali Press, 2017.
- <https://trensains.sch.id/> Accessed on March 29, 2019, at 16.12 am.
- Huda, Miftahul. *Mengalirkan Manfaat Waqaf (Potret Perkembangan Hukum Data Kelola Waqaf di Indonesia)*. Bekasi: Gramata Publishing, 2015.
- Kasdi, Abdurrohman. *Fiqh Wakaf (Dari Wakaf Klasik Hingga Wakaf Produktif)*. Yogyakarta: Idea Press Yogyakarta, 2017.
- Mannan. *Sertifikat Wakaf Tunai Sebuah Inovasi Instrumen Keuangan Islam*. Jakarta: CIBER-PKTI-UI, t.th.
- Mohsin, Maghda Ismail Abdel. *INCEIF*. Kuala Lumpur: The Global University of Islami, 2016.
- Mughniyah, Muhammad Jawad. *Fiqh Lima Mazhab*. Jakarta: Lentera, 2011.
- Obaidullah, Muhammed. *Awqaf Development and Management*. Jeddah: t.p.: t.th.
- Peraturan Menteri Agama Republik Indonesia Nomor 4 Tahun 2009 tentang Administrasi Pendaftaran Wakaf Uang.
- Rozalinda. *Manajemen Wakaf Produktif*. Jakarta: Rajawali Press, 2015.
- Sabiq, Sayyid. *Fiqh Sunnah*. Depok: Fathan Media Prima, t.th.

t.n. *Shahih Bukhari*. Terj. Muhammad Muhsin Khan. Kingdom of Saudi Arabia: Darussalam Publisher and Distributor, 1997.

Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang *Waqaf*.

Utomo, Setiawan Budi. *Fiqih Aktual*. Jakarta: Gema Insani Press, 2003.