

9WAQF AL-NUQŪD IN INDONESIA

(In Law Perspective)

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Abstract

This article aims to make an overview on the rule and significance of waqf al-nuqūd (cash waqf) in Indonesia as a new social tool to alleviate poverty. The author highlights that Cash waqf is introduced as a new concept of waqf to solve many social problems in Muslim society of Indonesia. The qualitative methodology is employed to analyze the issues and development of cash waqf in Indonesia. Findings indicate that the cash waqf has been legalized by both Islamic scholar and national law of Indonesia so that Muslims have a chance to maximize the utilization of their waqf through a well-organized endowment and waqf organization.

Keywords: *Waqf Al-Nuqūd; Law; Indonesia.*

A. INTRODUCTION

Amid 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.¹

The term of cash *waqf* is not so familiar in the Indonesian society. It can be seen from the understanding of Indonesian people who perceive *waqf* only limited to the provision of immovable property, such as land and buildings destined for places

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

of worship, graves, boarding schools, orphanages and education only. Utilization of *waqf* objects still revolves around things that are physical, so as not to give a significant economic impact on the welfare of the community. The number of *waqf* possessions that exist in Indonesian society has not been able to overcome the problem of poverty.²

Yet moveable objects, like money for example, is essentially also one of the forms of *waqf* instruments that are allowed in Islam. Currently among the public began to appear the term cash *waqf* pioneered by M. A. Mannan, an economist who came from Bangladesh. Cash *waqf* is seen as one of the solutions that can make *waqf* more productive. If the cash *waqf* can be managed and empowered by an institution professionally, it will be very helpful in prospering the economy of the people, fulfilling the rights of the community, and reducing the suffering of society.³

2 Anonymous, 2009, *Strategy Development of Endowments Money in Indonesia*, Jakarta.

3 Farid Wadjdy, 2008, *Endowments and Welfare of the Ummah (Nearly*

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 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.

The Act Republic of Indonesia 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

forgotten Islamic Philanthropy), Student Literature Press, Yogyakarta, p.79.

multiplier effect, especially in relation to the economic empowerment of Muslims.

However, the effort in that direction is definitely not an easy task. Indonesian Muslims for hundreds of years have already identified *waqf* with (in the form of) land, and movable objects of a long lasting nature. Thus, Act No.41 of 2004 on *Waqf* is projected as a means of social engineering, making changes in thoughts, attitudes and behavior of Muslims to breathe with the spirit of the Act.6, one of the new regulations in the *Waqf* Act is Endowment Money. This paper will discuss The Cash *Waqf* In The Act & Economic Perspective.⁴

B. DISCUSSION

1. Overview of Cash *Waqf*

In general, there is no Qur'anic verse that describes the concept of *waqf* in textual concrete. Endowments include *infāq fī sabīl li allāh*, then the basis used by scholars in explaining the concept of *waqf* is based on the announcement of

the verses of the Qur'an that explain about *infāq fī sabīl li allāh*. Among the verses are:

*"O ye who believe! Spend (in the way of Allah) some of your good deeds and part of what We have brought forth from the earth for you. And choose not what is bad, and spend of it, but ye will not take it save by blind eye. And know that Allah is Rich, Worthy of all praise."*⁵

Hadīth narrated by Muslim (d. 875) from Ibn 'Umar (d. 693):

"That Umar bin al Khattāb r.a. acquiring land in Khaybar, then he came to the Prophet S.A. to ask for guidance on the land. He said, "O Messenger of Allah, I have acquired land in Khaybar that I have never acquired a better treasure for me than the land; what do you command me about it? The Prophet S.A.W replied: "If you want, you hold the point and you make the result. Ibn Umar said, "So, 'Umar donates the land, requiring that the land is not sold, not given, and not inherited. He provided the result to fuqarā', relatives, riqābs, sabīl li allāh, ibn al-sabīl,

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

5 Q.S. *al-Baqarah* (2): 267.

and guests. It is innocent of the people who manage it to eat from the produce in *ma'rūf* and feed others.¹⁶

The scholars of the *Shāfi'iyyah* have also approved the existence of cash *waqf*, this is explained in the narrations of Imām al-Shāfi'i (d. 820):⁷

"Abu Thawr narrated from Imām al-Shāfi'i about permissibility of *waqf* dinar and dirham (Money)".

The Indonesian *Ulama* Council (MUI) also allows cash *waqf*. MUI's *Fatwa* was issued on May 11, 2002. At that time MUI's *Fatwa* Commissions also formulated the definition of *waqf*, namely:

"Pressing treasures that can be utilized without the vanishing of his or her sources. Through not doing any illegal action against the object (selling, giving, or passing it), to be channeled (the result) to something legal existing"⁸

In the history of Islam, *waqf* is known since the time of Prophet Muḥammad (pbuh) because *waqf* is prescribed in the second year of *Hijriyyah*. There are two opinions that have developed among the jurists of Islam (*fuqahā'*) about who was the first to implement the *Sharī'ah*. According to some scholars it is said that the first to perform *waqf* is Prophet Muḥammad (d. 632) whose property was used to build a mosque. Some scholars claim that the first practice of *waqf* is 'Umar bin al-Khaṭṭab (d. 644). This opinion is based on the *ḥadīth* narrated by Ibn Umar (d. 693), as mentioned above.⁹

The *waqf* practice also expanded during the Umayyad Dynasty and the Abbasid Dynasty and subsequent dynasties, many people flocked to execute *waqf*, and *waqf* not only for the poor

6 Imām Muslim, 2001, *Ṣaḥīḥ Muslim*, Dahlan, Bandung.

7 Al-Mawardī, 1994, *Taḥqīq Maḥmūd Mathrajī*, Dar al-Fikr, Juz IX, Beirut, p.379.

8 Decision of the MUI's *Fatwa* Commission issued on May 11, 2002,

signed by K.H. Maruf Amin (as chairman) and Hasanuddin. (As secretary).

9 Mustafa Edwin Nasution and Uswatun Hasanah (Editor), 2005, *Waqf in Islamic Financial Innovation, Opportunities and Challenges in Achieving the Welfare of the People*, PKTTI-UI, Jakarta, p. 4344.

and poor, but *waqf* became the capital to build educational institutions, build libraries and paying staff salaries, teachers' salaries and scholarships for students. The enthusiasm of the community on the implementation of *waqf* has attracted the attention of the state to regulate the management of *waqf* as a sector to build the social and economic solidarity of society.¹⁰

In Indonesia, *waqf* activities are well known in line with the development of Islamic *da'wah* in Indonesia. Besides practicing Islamic propaganda, the scholars also introduced the teachings of *waqf*. This is evident from the many historic of mosques built on the land of *waqf*. This *waqf* teaching continues to flourish in Indonesia, both during precolonial preaching, colonial periods, and post-colonial periods in Indonesia.

This is evident from the fact that the institution of *waqf* originating from this Islamic religion has been accepted (perceived) into the customary law of the nation of Indonesia

itself. The period of colonial rule was the momentum of *waqf* activity. Because at that time, the development of religious organizations, schools, *madrasah*, boarding schools, mosques, were all self-reliant and stood on the land of *waqf*. However, the development of *waqf* later does not change significantly. *Waqf* activities are limited to religious activities, such as the construction of mosques, *muşallā*, *madrasah*, cemeteries, so that *waqf* activities in Indonesia are less economically beneficial to the people.¹¹

Although some rules have been made by the government related to the mechanism of *waqf*, such as PP No. 28 of 1977 on Ownership of the Land, but this rules only regulates the *waqf* of land only. This means not much different from the *waqf* model in the early period, synonymous with the *waqf* of land, and it is also limited to religious social activities, such as mosques, graves, traditional religious school (*madrasah*), and others.

10 *ibid.*, p. 6.

11 *Ibid.*, p. 8.

Because of the lack of regulation that regulates the *waqf*, it is not surprising if the development of *waqf* in Indonesia stagnated. The stagnation of the development of *waqf* in Indonesia began to show its dynamism in 2001, some Islamic economics practitioners began to make a new paradigm shift into the Indonesian society about the new concept of cash *waqf* management for the improvement of the welfare of the *ummah*. Apparently the concept is interesting and able to provide energy to move the stagnation of the development of *waqf*. Moreover, in 2002, the Indonesian Ulama Council (MUI) welcomed the concept by issuing a ruling (*Fatwa*) allowing Cash *Waqf* (*Waqf al-Nuqūd*) to be used.¹²

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* 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 2007-2010.¹³

In addition, the MUI has issued its *Fatwa* on cash *waqf* on May 11, 2002, stating that:¹⁴

1. Cash *waqf* (*Waqf al-Nuqūd*) is a *waqf* by a person, group, institution or legal entity in the form of the money;
2. Included in the sense of money are securities;

12 Directorate of Waqf. Op.cit., p.72.

13 *Ibid.*, p. 80.

14 *Ibid.*

3. *Waqf* the *jawāz* is legal (allowed);
4. Cash *Waqf* may only be channeled and used for *syar'iyah* permitted matters;
5. 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.¹⁵

Based on the above description, with the arrangement of *waqf* in the form of law in Indonesia, the *waqf* sector can be more functioned towards improving socio-economic welfare of the people. From this it is clear how the importance of social welfare strongly influences the regulatory process in the field of *waqf*. The spirit of potential empowerment of *waqf* productively and professionally *waqf* legislation is for the benefit of the welfare of mankind in the field of economy, education, health, and other religious social fields.¹⁶

2. Cash *Waqf* in Indonesia in Law Perspective

Cash *waqf* opens unique opportunities to create investments to provide religious, educational, and social services. The savings of the rich can be utilized by redeeming them with the Cash *Waqf* Certificate. The

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

16 *Ibid*.

results of the *waqf* development obtained from the certificate can be utilized for various purposes such as the ends of endowments themselves. Another usefulness of Cash *Waqf* Certificate is that it can change old habits in which *waqf* opportunities seem to be for rich people only.¹⁷

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:¹⁸

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 500,000 (five hundred thousand rupiahs) Rp10.000.000,00 (ten Million rupiahs) can be calculated as follows: The explanation from the table above is:¹⁹

17 Directorate of Bimas Islam and Haj Administration, 2003, *Fiqh Waqaf*, p.90.

18 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), p.4.

19 *Ibid.*

Table of Potential Cash Waqf in Indonesia

Level of Income / month	Number of Muslim	Tariff Waqf/month	Potential Cash Waqf / month	Potential Cash Waqf / year
Rp 500.000	Rp 4 Million	Rp 5.000	Rp 20 Billion	Rp 240 Billion
Rp 1 Million – Rp 2 Million	3 Million	Rp 10.000	Rp 30 Billion	Rp 360 Billion
Rp 2 Million – Rp 5 Million	2 Million	Rp 50.000	Rp 100 Billion	Rp 1,2 Trillion
Rp 5 Million- Rp 10 Million	1 Million	Rp 100.000	Rp 100 Billion	Rp 1,2 Trillion
Total				Rp 3 Trillion

1. If the Muslims who earn Rp500.000,00 4 Million people and each year each *waqf* Rp60.000,00 then each year accumulated Rp 240 Billion
2. If people who earn Rp1.000.000,00- Rp2.000.000,00 totaling 3 Million people and each year each Rp120.000,00 each time accumulated funds amounting to Rp 360 Billion
3. If people who earn Rp2.000.000,00- Rp5.000.000,00 a total of 2 Million people and each year each with Rp600.000,00 then each year accumulated funds as much as Rp 1,2 Trillion
4. If people who earn Rp5.000.000,00- Rp10.000.000,00 a total of 1 Million people and each year

each with Rp1.200.000,00 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.

The potential of cash *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. 270.000.000.000.²⁰

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 Agency.

The above institutions have created many programs to realize social justice resulting from the investment of *waqf* funds collected from the community, such as the establishment of hospitals, schools, and farming villages that have the potential to develop cash *waqf* to build the welfare of the wider community and sustainably. The programs launched by *waqf* institutions in

Indonesia by managing cash *waqf* in this form are in the effort to make *waqf* assets more expanding their economic and social benefits. For example, the collection and management of cash *waqf* funds on the Endowment Fund of Indonesia whose management is channeled into the field of education, economy, and social fields. In addition, the management results obtained by the Indonesian *Waqf* Agency are channeled to education and health.²²

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 Indonesia:²¹

1. The poverty rate in Indonesia is still high, which needs attention and concrete steps
2. High gap between rich and poor society
3. Indonesia has the largest number of Muslim population, so *waqf* has great potential to be developed

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

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

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.

In principle, in order to achieve the purpose and function of *waqf* to be more productive, cash *waqf* also can be allocated for:

1. Means and religious activities;
2. Education and health facilities;
3. Assistance to the poor, abandoned children, orphans, scholarships;
4. Progress and improvement of the people's economy; and/or
5. Other general welfare programs which do not contrary with *shari'ah* and regulations.

C. 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. It is even possible that cash *waqf* can be an alternative way to remove the nation's dependence from multilateral creditor institutions as well as to stimulate the economic growth of Indonesia, especially the Islamic economics. As a predominantly Muslim country, the existence of these *sharia* instruments has a good and bright prospect and will be highly accepted by the people of Indonesia so that the cash *waqf* is expected to contribute greatly to the acceleration of development in Indonesia.

Management of cash *waqf* through Act No.41 of 2004 is a means of social engineering, to make changes in thoughts, attitudes and behavior of Muslims to breathe with the spirit of the Act. Based on the consideration of the MUI's *Fatwa* mentioned that the cash *waqf* has the flexibility and the great benefit that is not owned by other objects.

To manage and develop the cash *waqf* properly, it takes a trusty human resources, professional, economic

perspective, diligent and strong commitment. Therefore, cash *waqf* institutions have a very strategic role for the realization of productive *waqf* in Indonesia, it is necessary guidance to the

manager of *waqf*, continuous socialization by academics, scholars, practitioners of the *sharia*, either through seminars, training, lectures and writing in social media.

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