

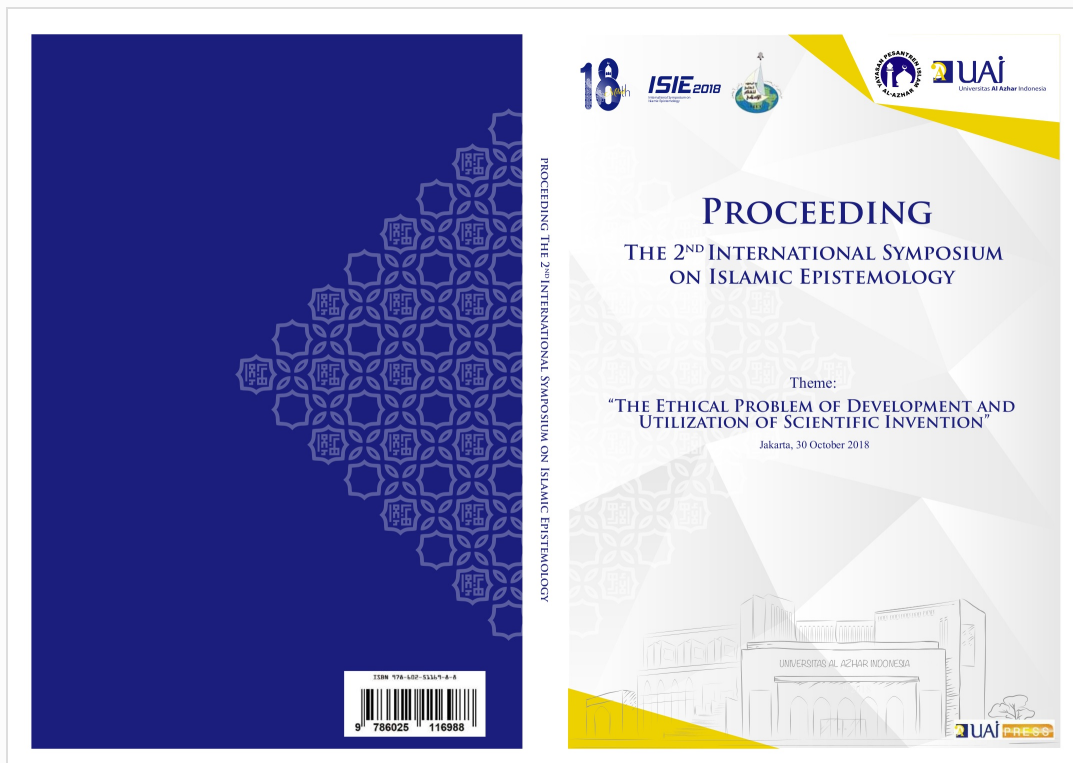


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# CONSISTENCY OF WAQF ARRANGEMENTS IN INDONESIA

*by* Suparji Ahmad

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PROCEEDING THE 2<sup>ND</sup> INTERNATIONAL SYMPOSIUM ON ISLAMIC EPISTEMOLOGY

# PROCEEDING

## THE 2<sup>ND</sup> INTERNATIONAL SYMPOSIUM ON ISLAMIC EPISTEMOLOGY

Theme:

“THE ETHICAL PROBLEM OF DEVELOPMENT AND  
UTILIZATION OF SCIENTIFIC INVENTION”

Jakarta, 30 October 2018



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International Symposium on  
Islamic Epistemology



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Universitas Al Azhar Indonesia

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## PREFACE

First of all, we would like to thank to Allah SWT. as we all know, this 2<sup>nd</sup> International Symposium on Islamic Epistemology (ISIE 2018) has been held on 30 October 2018 in the Auditorium Arifin Panigoro University Al-Azhar of Indonesia, located at Jakarta, Indonesia.

This Second International Symposium on Islamic Epistemology is conducted through the cooperation between Center for Islamic Integration on Scientific Paradigm, University of Al-Azhar Indonesia (PII-MKU) and the International Institute of Islamic Thought (IIIT) with the basis of similar mission in developing Islamic epistemology into scientific paradigm. The first symposium which has also been conducting through the cooperation of PII-MKU and IIIT as the first program and it has used the theme Islamic epistemology from the perspective of modern scientific paradigm.

We have received more than 30 abstracts. The paper selection process was based on full paper submissions. We thank to all authors who have contributed and participated in presenting their works at this symposium. We also gratefully acknowledge the important review supports provided by the scientific members of the program committee. Their efforts were crucial to the success of the symposium.

More than 250 persons from Indonesia, Thailand, and Malaysia have been participated in this symposium. About 19 presentations including 6 invited talks were presented during the symposium. From 26 abstracts submitted during the symposium, 19 papers were accepted for publication after peer reviews.

We would like to express our deepest gratitude and honor to Dr. Habib Chirzin as the co Chairman of IIIT Indonesia Chapter. Also we would like to express our respectful appreciation to all speakers, particularly to Keynote Speakers, Prof. Dr. Pakorn yakorn from Halal Center of the Chulalongkorn University at Bangkok Thailand, and Prof. Dr. Irwandi Jaswir from International Islamic University Malaysia at Kuala Lumpur Malaysia who has presented "Integration of Knowledge, Bio Ethics and Halal Industry", and also to the speaker, Dr. Kamaluddin Zarkasie, DVM., Ph.D from IPB Shigeta Animal Pharmaceutical Inc, Bogor, Indonesia who has presented "Bioethics Problem on the Processing of Vaccine Production" and also to host Speaker Hidayat Yorianta Sasaerila, Ph.D who has presented under the topic "Biotechnology in the 21<sup>st</sup> century: The Role of Islamic Morality and Ethics to the Future of Mankind".

Finally, we also deliver our gratitude to all who have supported this symposium. Thank to all sponsors, all participants, our Rector, all of civitas academica UAI and to all of committees who have assisted the success of this symposium.

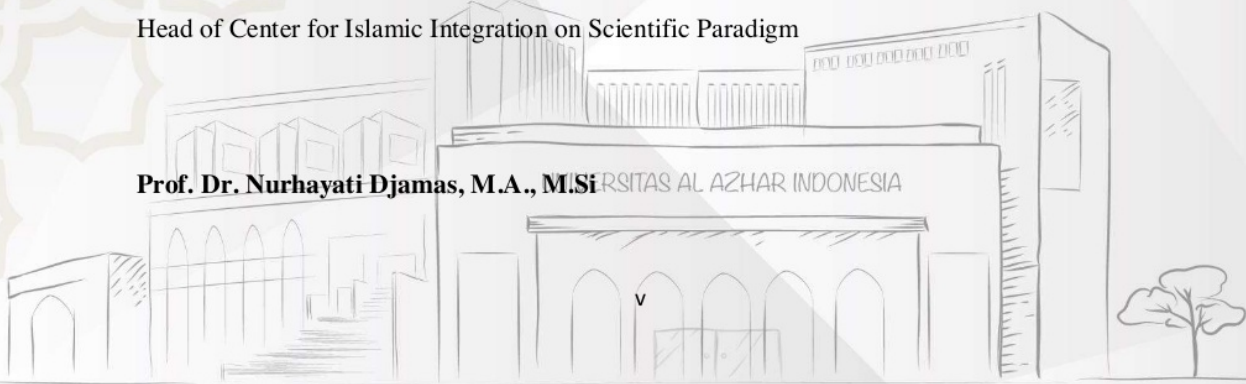
Billahi taufiq wal hidayah.

Wassalaamu'alaikum warahmatullahi wabarakatuh,

Head of Center for Islamic Integration on Scientific Paradigm

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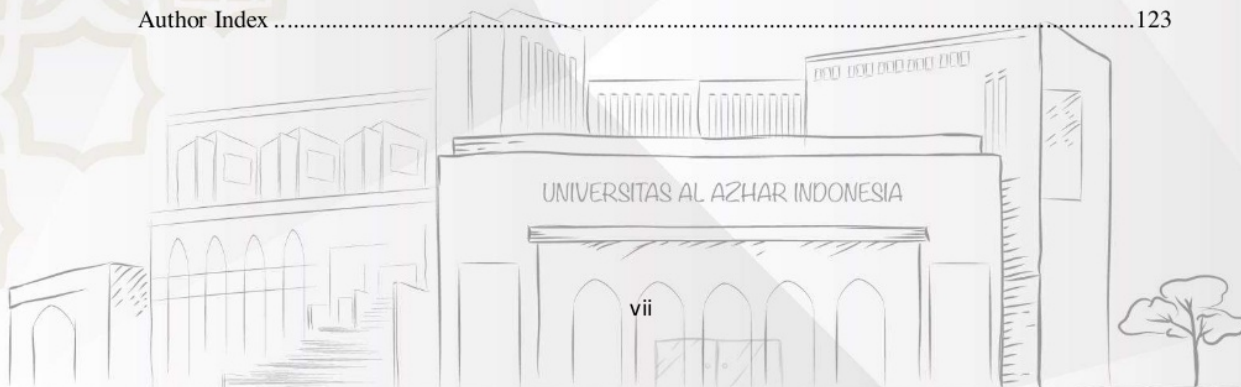
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## CONSISTENCY OF WAQF ARRANGEMENTS IN INDONESIA

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### Abstract

Waqf are the surrender of the wakif assets to nadzir to be used for the benefit of people both permanent and temporary. Where this waqf can be one of the resources that can be used for poverty alleviation through the distribution of benefits to mustafa alaih/beneficiaries, but the role of waqf in the welfare of the nation has not been maximized because of the lack of optimal use of waqf due to the management of waqf due to limited financial access and lack of knowledge in management of waqf and the unsynergy between the parties concerned has not been maximized.

The problem statement in this study is, first, how the consistency of waqf arrangement in Indonesia after the government issued government regulation No. 25 of 2018 and Government Regulation No. 42 of 2006 as executor of Law No. 41 of 2004 concerning waqf.

Second, how is the implementation of waqf arrangements in accounting reporting at the Al Azhar Waqf Agency.

The method used in this study is normative juridical, where the author conducts an analysis based on the laws and regulations associated with the related legal theory. Which are welfare state theory and the economic analysis of laws

From the results of the study, it was concluded that the implementation of waqf management was carried out consistently, this was due to the emergence of new regulations, namely Government Regulation No. 25 of 2018 instead of replacing Government Regulation No. 42 of 2006 but complementary and the two regulations are mutually reinforcing in order to increase the potential for more productive waqf management, because with the Government Regulation No. 25 of 2018. The reporting of waqf accounting can be more accountable with the release of DE PSAK Syariah No. 112 special waqf, although the implementation due is in 2021.

**Keyword:** Accountability, Consistency, Waqf Laws

### A. INTRODUCTION

Statistics Indonesia announced gini ratio by March 2018 is at 0.387. This number represents distribution of wealth and welfare across classes is moderate. The number needs to be reduced to be closer to zero, which would answer the inclusivity of development in Indonesia to her people. Productive waqf appears to be one of key solutions that can help the matter. However, the aspect of collecting, endowing, and the effective use of waqf is insofar not close from productive and is typically aimed to properties such as land or building. Aside to that its use has also been specified for funeral purpose, which in itself is consumptive and under spiritual dimension. The amount of waqf in Indonesia rests at the highest position

worldwide, along with the number of human resources.<sup>1</sup>

Land waqf potential by 2014 is 2.050 trillion with 500.000IDR price per square metre in in size of 4.1 billions square metres or 19.4% GDP.<sup>2</sup> According to Indonesian National Land Office, the percentage of land certification is at 65.9%. This percentage becomes the basis of the calculation; therefore the real potential is presumably much larger. As stated in Government Regulation 42 of 2006 and 25 of 2018, Badan Wakaf Indonesia (Indonesian Waqf Agency) is entitled to help land certification process funded by state. In this way, the beneficiary is paved with easier

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<sup>1</sup> Lubis, Suhrawardi, Wadji Farid, *Hukum Wakaf Tunai*, Bandung: Citra Aditya Bakti, Bandung, 2016

<sup>2</sup> Nizar, Muhammad afdi, "Pengembangan Wakaf Produktif di Indonesia", *Potensi dan Permasalahan, Bunga Rampai 2.indd*, (2017): 232, (accessed July 24, 2017)

routes to process her waqf asset. It needs to be socialized to the beneficiary in order to build database containing size of lands. With the database, information about the land size becomes transparent in order to develop more productive waqf. Other than the inalienable lands for social and religious purpose, unproductive land—due to its unstrategic location has given chance to be exchanged with more productive land by requesting permission to the leader of regional office, granted that the size reaches 5.000m<sup>2</sup> (Government Regulation 25 of 2018, chapter 49-53).

Waqf could be an alternative handout that facilitates the eradication of poverty and the increase of economic growth. Recently in UN forum on 23 April 2018, Zainulbahar Noor, SE., M.Ss stated Ziswaf is one of the solutions for global socioeconomic problem, which is mandated in national Sustainable Development Goals (SDG). As known already, some of the courses of SDG is eradication of poverty, hunger, the flourish of health and welfare, clean water and sanitation, affordable and clean energy, etc.<sup>3</sup>

The condition of developing and endowing waqf in Indonesia at present is problematic to great extent (e.g. proper understanding about the law of waqf, beneficiary agency, management, etc.) Fundamental problems in waqf endowment certainly requires serious attention and resolution. So far these problems remain, waqf institution is restricted in lending benefit to mauquf'alaih as it is the main objective. Moreover, the problems would as well hinder the beneficiary in endowing waqf.

The major potential from waqf assets and human resource does not quantitatively and automatically move the beneficiary into developing the program that generates the result of waqf. Occurred in many occasions, the potential of waqf asset becomes problematic due to its unproductive nature.

Aside from that, cash waqf potential opens window of opportunity to business

investment in religious domain, education, social and the other commercial domains so to lend wealth and welfare for society.

Cash waqf potential in Indonesians by 2014 at the minimum is rated 2,36 trillions per year or 197 billions per months (see the following table).

Potensi Wakaf Skenario Rendah (Rp.ribu)

No	Provinsi	Dase + Kota		Jumlah
		Middle Income	High Income	
1	Aceh	4.109.680	3.2.008	4.123.688
2	Sumatera Utara	11.827.310	56.472	11.886.782
3	Sumatera Barat	4.727.192	30.560	4.757.752
4	Riau	5.784.160	41.727	5.825.887
5	Jambi	2.846.900	5.919	2.852.828
6	Sumatera Selatan	5.999.805	58.780	6.058.575
7	Bengkulu	1.475.993	6.408	1.482.399
8	Lampung	5.977.242	50.806	6.028.048
9	Kepulauan Bangka Belitung	1.301.943	11.808	1.313.751
10	Kepulauan Riau	1.819.158	45.155	1.864.313
11	DKI Jakarta	9.308.735	705.782	10.014.517
12	Jawa Barat	35.800.000	426.919	36.226.919
13	Jawa Tengah	22.800.000	85.274	22.885.274
14	DI Yogyakarta	2.759.965	37.948	2.797.913
15	Jawa Timur	28.300.000	163.146	28.463.146
16	Banten	10.104.303	130.404	10.234.705
17	Bali	3.665.634	45.613	3.711.247
18	Nusa Tenggara Barat	3.270.372	15.947	3.286.319
19	Nusa Tenggara Timur	2.678.992	2.423	2.681.415
20	Kalimantan Barat	3.702.603	21.348	3.723.951
21	Kalimantan Tengah	2.400.958	16.083	2.417.041
22	Kalimantan Selatan	3.511.994	26.430	3.538.424
23	Kalimantan Timur	3.810.285	44.318	3.854.603
24	Sulawesi Utara	1.759.876	18.742	1.778.618
25	Sulawesi Tengah	2.222.589	11.047	2.233.636
26	Sulawesi Selatan	5.083.140	37.705	5.120.845
27	Sulawesi Tenggara	1.462.843	17.555	1.479.898
28	Gorontalo	685.469	3.675	689.144
29	Sulawesi Barat	750.180	5.114	755.294
30	Maluku	1.145.559	4.527	1.150.086
31	Maluku Utara	940.104	1.454	941.558
32	Papua Barat	683.075	12.794	695.869
33	Papua	2.422.430	6.396	2.428.826
Wakaf/Bulan		154.823.764	2.377.645	157.201.409
Wakaf/Tahun				2.368.016.908

Source : Nizar, Muhammad Afdi (2017)

This situation sets challenge to waqf endowment agency or the beneficiary. Clearly, any agency requires funding in developing the organization that includes the beneficiary itself. Due to that matter the establishment of beneficiary is crucial to strengthen and develop waqf continuously to lend the benefit for mauquf 'alaih (i.e. beneficiaries of waqf).

In relation the important aspects of waqf endowment, there are challenges and obstacles in developing waqf, specifically in collecting waqf assets from public in general, investment or the productivity of waqf asset acquired for employing the its benefit. For that matter, it is required efforts and programs which would accurately develop waqf.<sup>4</sup>

The development of waqf is part of understanding economic foundations, wherein businessman and society are joining together to take control economic power as accordingly to Iqbal in the following:

<sup>3</sup> Amanda, Gita, *Baznas Dim 12 Menerangkan ZIS dan Wakaf di New York*, <http://www.8publika.co.id/berita/dunia-islam/wakaf/18/03/25/p65epa423-baznas-diminta-menerangkan-zis-dan-wakaf-di-new-york>, (accessed March 25, 2018)

<sup>4</sup> Huda, Miftahul, *Arah Pembaharuan Hukum Wakaf di Indonesia*, In *Ulumuna Jurnal Studi Keislaman*, Volume 16 Nomor 1, 2012 (accessed August 24, 2017)

“Ummat (society) has advanced market system that ever taken down Jewish market in Madinah in less than ten years. If Islamic market system, which nature is *falaa yuntaqoshonna wa laa yudrabanna* (let loose from restriction and obstacles) and supervised by market watchdog (Muhtasib) grows within society, they would have the vehicle that moves them into welfare. If market is vehicle driven by society, therefore the following welfare wagons that would be production of goods and services that fulfills their needs. If market is under their control, then capital would flourish by itself.”

Figure 1  
Sources of financial support



Source: Iqbal<sup>5</sup>

Economic development requires financial support in its operation. There are three sources of support from social context, namely Ziswaf, accidental support (i.e. impacted condition by disaster), bankruptcy. These sources are pertained by conception rooted in society (e.g. *aaqilah*, *ta'awun*, etc.), and commercial transactions in form of *syirkah*, *mudharabah*, *qirad*, and other forms of *syirkah* transaction. Given those sources of financial support are activated by relevant legal agencies or institutions, it seems plausible to imagine empowerment of economic activity among society will occur so to enhance its economic level (see figure 1).

Waqf has great potential and strength to increase society welfare in Indonesia. The country is accrued with vast areas that possess the largest number of Moslem population in

the world. According to Waqf Empowerment Division in Ministry of Religion, the potential of land waqf by 18 March 2016 is 4.359.443.170,00 m<sup>2</sup> with economic potential rated 450 trillion Rupiah.

Next to that, based on Bank of Indonesia of 2016, waqf land in Indonesia covers 4.359.443.170 m<sup>2</sup> consisting 435.768 locations with 287.160 are certified and 148.447 incertified.

Public understanding about law of waqf is not yet distributed holistically, because there are members of society in remote area that still consider waqf is associated merely to two things. Firstly, the object of waqf is immovable objects of wealth, and that its uses is for the purpose of social and religious activity. That understanding persists despite the fact Indonesian fundamental constitution law, 41 of 2004 chapter 16 articulates waqf can take the form of cash, and other movable objects such as gold\*, legal letters\*, intellectual rights\*, renting rights. Also, waqf can be functioned for granting scholarship to the have nots, health services, and scientific researches, other than social and religious activity.

Granted the importance of employing waqf for society welfare requires supervision from state representation, here, Ministry of Religion. The acting representation of state here supervises and guides the way waqf regulation and activity are implemented (e.g. the involvement of Office of Religious Affair in waqf transaction, recording waqf treasury and guiding the beneficiaries, and issuing necessary revision on waqf property when needed).<sup>6</sup>

This religious system has great potential and benefit, thus it requires effective and efficient management which is pertaining to society welfare. The warrant in according to this suggestion is Waqf Regulation 41 of 2004 article 4, 5, and 13.

The ground for implementing the fore mentioned regulation is the necessity of

<sup>5</sup> Iqbal, Muhaimin, 2013, *9 x 3 KPI : Intisari Ekonomi Umat .... Entrepreneurship*, In Gerai Dinar di unduh: 2013, Accessed December 28, 2017)

<sup>6</sup> Prihatna Andy Agung, Bamualim S. Chaidar, Abubakar Irfan, Helmanita Karlina, Al Makassar Ridhwan, Kamil Sukron, Najib A. Tuti, *Wakaf, Tuhan dan Agenda Kemanusiaan, Studi tentang Wakaf dalam Perspektif Keadilan Sosial di Indonesia*, In *Center for the Study of Religion and Culture (CSRC)*, UIN Syarifhidayatullah Jakarta. 2006



rule that explains the purpose of the regulation. The following is statements that regulates waqf:

1. Registration waqf property is stated in The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation 239 2017
2. Constitution 5 of 1960 about Basic rule of Agrarian Principles (Indonesian Republic Gazette of 1960 Number 104, Additional Gazette of Indonesian Republic 5252);
3. Constitution Number 20 of 2011 about Flats (Indonesian Republic Gazette of 2011 Number 108, Additional Indonesian Republic Gazette 5252).
4. Government Regulation 24 of 1997 about Land Registration (Indonesian Republic Sheet Number 24 of 1997, Additional Indonesian Republic Sheet Number 3696).
5. Government Regulation 42 of 2006 about Waqf (Indonesian Republic Sheet about Number 105 of 2006, Additional Indonesian Republic Gazette 3696).
6. Indonesian Republic Presidential Regulation 17 of 2015 about Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Indonesian Republic Gazette of 2015 Number 18).
7. Indonesian Republic Presidential Regulation Number 20 of 2015 about Badan Pertanahan Nasional (Indonesian Republic Gazette of 2015 Number 21)
8. Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation 3 of 1997 about Terms of Ministerial Regulation Implementation
9. Government Regulation 24 of 1997 about Land Registration as amended by Kepala Badan Pertanahan Nasional Regulation 8 of 2012 about the Amendment of Ministerial Regulation of Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 3 of 1997 about Terms of Implementation Government Regulation 24 of 1997 about Land Registration.
10. Government Regulation 25 of 2018 about Amendment on Government Regulation 42 of 2016 on

Implementation of Constitution 41 of 2004 about Waqf.

Waqf endowment is under Constitution 42, 43, and 44 Constitution 41 of 2004 about Waqf. It states as follows:

- a. Obligation to endow and manage waqf object as accordingly to the stated purpose, functions, and uses.
- b. Endowment and development of waqf by the beneficiary has to be conducted as accordingly to syariah principle.
- c. Endowment and development waqf property is obligatorily conducted in productive way.
- d. In terms of endowment and development of waqf property requires guarantee from syariah institution.
- e. In terms of endowing and developing waqf property, it is restricted to change the uses of waqf property except as otherwise given stated permission from Indonesia Waqf Agency.

Permission mentioned in act (1) can only be issued under condition that the waqf property is unable to be used accordingly to the precedent stated function in the transaction ikrar wakaf (Hasan, 2010).<sup>7</sup>

However, in point (e), under the consideration of the amended Government Rule 25 of 2018, the transaction of waqf object requires permission from relevant ministerial office and Provincial Waqf Agency supposed the transacted land size covers 5.000 m<sup>2</sup>. In this case, the relevant ministerial office gives mandate to regional office to state permit of the transaction, whereas before the permission is stated by regent or mayor.

In Mubarak<sup>8</sup>, one of the purposes and benefits of waqf is to generate welfare for Muslims, based on Islamic principles. The contribution of waqf Muslims is stated as follows:

<sup>7</sup> Aris, Muhammad Abdul, Mujiyati dan Setyowati, Eni. *Model Aplikasi Pengelolaan Wakaf Pada Lembaga Amil Zakat Ihsan Di Surakarta*, In *Seminar Nasional dan Call For Paper Program Studi Akuntansi-FEB UMS*, ISBN: 978-602-70429-2-6, June 25, 2014, (accessed August 23, 2017)

<sup>8</sup> Mubarak, Zaki Halim, *Peranan Wakaf dalam Membangun Identitas Muslim Singapura*, 2014, (accessed August 24, 2017)

1. Availability of job vacancies for Moslems
2. Availability of financial support for social and religion activity
3. Availability of educational facility, health and social services
4. Availability of support for Dhuafa (i.e. people in poverty) dan yatim (i.e. fatherless children)<sup>9</sup>;
5. Availability of Ummat Economis Enhancement Facility
6. Availability of Public Welfare facility

In 2018, Government Regulation 25 of 2018 is released to amend the precedent Government Regulation 42 of 2004, wherein the necessity of revising the regulation to accommodate the shorthand in the latter regulation, in order to emphasise the guarantee of legal consistency so to reduce potential of conflicts. The result of waqf endowment grants positive impact to Moslem community in making available Islamic education and ritual facility.<sup>10</sup>

Badan Wakaf Indonesia (BWI), or Indonesia Waqf Agency as independent institution is established under the mandate of Constitution 41 of 2004 about Wakaf holds major role and responsibility in developing waqf affair in Indonesia (Constitution Article 47). With the Constitution 41 of 2004 about waqf, Government Regulation 42 of 2006 and 25 of 2018 chapter 53 about the implementation of Constitution 41 of 2004, Indonesia Waqf Agency is expected to be an independent and professional institution for realizing the mandate as regulator and operator of waqf (the beneficiary or nazir).

Accountability is a process wherein an institution considers itself openly responsible to the activity it is committed or not committed into. Technically, accountability is realized by reporting, involving, and responding.

Accountability generates public trust to the committed institution. Therefore, it is an essential trait which would influence the legitimacy to the institution that endows waqf. Thereby, accountability is not merely related to reporting financial account or designed programme. It is but as well

associated with the matter of legitimacy from public.<sup>11</sup>

Accountability is an attribute crucial to possess in management as form of responsibility submitted to public, thus trust from public would be conceived to particular institution under the commitment. In line with the level of public trust is well-functioned management of institution, which in itself is beneficial to stakeholder.

Prof. Dr. Ahmad Rofiq, MA, a professor of Islamic Law Syariah Faculty IAIN Walisongo asserts that the standard guideline to the principle of accountability of waqf is not yet established. This assertion is based on the regulated matter of waqf generated by Islamic principles. In relation to this matter, Musthafa Ahmad Zarqq' states the regulation in accordance to the entire waqf affair is a matter of *ijtihad*iyah, therefore in its operation it is possible to have innovations in terms of the conception as well as practice of waqf. The room of *ijtihad* in waqf is made possible by the limitless nature of the teaching of Islam.

Holy Koran does not explicitly govern, whereas al-Hadith, despite the narrative of waqf that involves Mohammed followers, Al-Qur'an tidak mengatur secara eksplisit, has not explicit regard to procedural aspects of waqf. Therefore, the technical aspect of waqf endowment has spacious degree of freedom in terms of how to formulate and to comply.<sup>12</sup> In this sense, Moslems are demanded to function waqf responsibly for enhancing welfare of ummat, despite the inexistence of explicit instruction in Holy Koran and Al Hadith.

In relation to waqf fine quality endowment Munir states that managerial and professionalism of nadzir or waqf beneficiary primarily requires (a) credibility ensured by honesty, (b) professionalism by capability, and (c) compensation by empowerment as implication to professionalism.

Moreover, the uses of waqf asset. The possibility to shift the use and reconsideration of functioning waqf object needs to take account the development of waqf as purpose.

<sup>11</sup> Huda et. all, 2014, Op. Cit

<sup>12</sup> Budiman, Achmad Arief *Akuntabilitas Lembaga Pengelola Wakaf*, In *Walisongo, Volume 19, Nomor 1*, Mei (2011): 88

<sup>9</sup> Prihatna, Andy Agung, et all, 2006, Op cit

<sup>10</sup> Mubarak, Zaki Halim, 2014, Op. Cit

This purpose is affected by market mechanism which under influence of the needs of enhancing productivity in using waqf asset.

In Government Rule 25 of 2018, regulated in Articles 49 and 50, act (1) that the value and the benefit of the substituent property as in accord to Article 49 established by Chief Office, under the recommendation of team in charge of the establishment, precedent to Government Rule 42 of 2004, that the value of substituent object to waqf object is stated by Article 49 act (3) to be calculated under certain considerations:

- a. Substituent property is in possession of Selling Value of Taxed Object (i.e. Nilai Jual Objek Pajak) that rates higher to, or at least, equivalent to the Selling Value of Taxed Object attributed to the already given waqf object.
- b. Substituent property is located in areas that are strategic and easy to be developed.

Endowment and development waqf object can be excuted in various ways. <sup>35</sup>ductive category leads to collecting, investment, capital investation, production, partnership, trade, agribusiness, mining, industry, tech development, building constructions (e.g. apartment, houses, flats, supermarket, shops, offices), facilities (e.g. healthcare, education), or business establishment consonant to law of syaria.<sup>13</sup>

We are fully aware that productivity of waqf endowment is hindered by multiple factors, one of which is the traditional system of waqf endowment, the condition of uncertified waqf asset due to the budgeting restrain in the beneficiary part. Support from Indonesia Waqf Agency to process waqf land certification, as grounded in Government Regulation 42 of 2006, Article 53, that the agency is entitled right to help waqf certification; thdoes not really optimize the use of waqf. Relationship between capital owner, industrial agents, and waqf beneficiary is often not well harnessed.

Solution to waqf affair includes numerous aspects, such as regulation, and nadzir (i.e. waqf beneficiary). The condition of employing the benefit of waqf is, however, far from optimized especially in lifting economy of Indonesia. That is because the three mentioned aspects are not operating well. This becomes problem when one considers those aspects run the course to accountability, thus waqf endowment can be characterized as professional. Professionalism in waqf endowment carries three philosophical points (1) management pattern has to be in an integrated project, (2) foregrounding the welfare of the beneficiary as accordingly to its rights and obligations, (3) the inclusion of three aspects of accountability and transparency.

Other than the three aspects above, it is necessary to have strategy of accomplishment by creating synergy with relevant parties and optimization of waqf database, as well as innovations and expansions of waqf management. In that way, waqf can play its part as an alternative to flourish welfare in a particular country.<sup>14</sup>

It is worth noting that according statistical data a lot of waqf beneficiary has not yet reported its financial account routinely. This hampers the building of aspect of accountability and aspect of transparency as subsequently lowers public trust to institution of waqf affair. At the same time, there has not been any convention as to filing the report in waqf affair. This alone is a problem by its own ri<sup>38</sup>s. So far the waqf accounting report uses Statement of Financial Accounting Standard syaria 109 for infaq, zakat, and sadaqoh. Due to this drawback, it should be noted that ZIS principle is different to waqf. This, then, necessitates formulation of Statement of Financial Accounting Standard Syariah specifically for waqf endowment, which takes into account waqf principle that prohibits lowering the value of waqf asset, permanently or temporarily, as includes waqf in form of cash.

Consistency in implementing and improvising regulation to accommodate the needs to realize fine quality of waqf

<sup>13</sup> Murnir, Akhmad Sirojudin Munir, *Optimalisasi Pemberdayaan Wakaf Secara Produktif*, In *Jurnal Ummul Qura* Vol VI, No 2, September 2015, (accessed August 23, 2017)

<sup>14</sup> Op.cit, Huda et. all , 2014,



endowment. This need is considered fundamental in order to guarantee waqf endowment, which would be beneficial to stakeholder (i.e. waqif, nadzir, Indonesia Waqf Agency, government, and public in general). From the explanation above, there seems to be a strong correlation between endowment and accountability of waqf in enhancing social welfare, especially Moslems in this case. Therefore, this study proposes a title "CONSISTENCY OF WAQF ARRANGEMENTS IN INDONESIA".

## B. PROBLEM STATEMENT

- How is the consistency of Waqf Regulation in Indonesia?
- How is the Implementation of Waqf Regulation in financial report in Indonesia?

## C. PURPOSE OF STUDY

- To draw insights regarding the consistency in regulating waqf in Indonesia
- To understand the way waqf regulation in terms of financial report in Indonesia Waqf Agency is implemented

## D. THEORETICAL REVIEW: ECONOMIC ANALYSIS OF LAW

The theory of economic analysis of law is a relatively new theory which participation influences civil law in Indonesia, which as well orients itself into economic domain (i.e. cost and benefit analysis). In operating law in utilitarianist perspective, Prof Posner, Jeremy Bentham and John Stuarth, something (i.e. esse) has to possess utility value (i.e. utilities) for the other esse, such social welfare. In Ronald Coase (1960) dan Posner, the idea of economic analysis of law takes scope transaction cost of economy, economy institution, dan public choice. Transaction cost of economy is associated with the efficiency of law regulation, which in majority taps into privat law. Economy Institution refers to action of human individual as included to formal law, informal custom, tradition, and social norm. Public

Choice is related with the process of making decision in democratic way, which considers microeconomy method and its activity, via economic principle, for increasing efficiency of law in escalating the level of social welfare.<sup>15</sup>

### D.1 Efficiency Principle—Wealth Maximization

In regards to the theory of economic analysis of law, Richard A Posner stresses on Efficiency Principle—Wealth Maximization. Posner defines efficiency as conditions in which resources are allocated thus maximize their value. In economic analysis, efficiency is focused with social decision-making, which taps into regulating social welfare.

The efficiency is, by no means, a condition of zero sum game. It is more into the increases of individual wealth without causing loss to other parties. Wealth maximization, or in Posner term, "Kaldor-Hics" in this context sees particular side of justice that includes more than distributive and corrective justice. Posner puts stress on "pareto improvement" wherein, the purpose of regulation of law brings valuable contribution to justice and social welfare.

### D.2 Good law/ Liberal law – Future Consideration

Todd J. Zywicki and Anthony B. Sanders, in his article "Posner, Hayek, and the Economic Analysis of Law" emphasize the matter of future which Posner highly regards in his theory of law. Posner is convinced through economic systems, future consideration on social welfare would be greater.

Law regulations, included with theories of law, should be able to be understood and explained by judges for the sake of good establishment of law system. Basically, Posner sees future as an optimist, and trusts the judges would create good law or liberal law, granted they can absorb social and external changes. The purpose for that matter is straightforward, decree efficiency.

<sup>15</sup> Qohar, H. Adnan, H. *Teori Hukum Richard A Posner dan Pengaruhnya bagi Penegakan Hukum di Indonesia*, 2018

### D.3 Behaviorial Law and Economy

The illustration of economic perspective of law in Posner view gives advent to behavioural law or behavioural economy. Transactional cost is adopted into legal rules. Subsequently, rule of law is a necessary substance that ensures legal certainty and conserves social justice among society. These rules appear in form of contract, or regulations that restricts ownership and rights of ownership. Indeed, they are at the course to achieve social welfare.

### E. RESEARCH METHODOLOGY

This study uses primary data directly obtained from data source, and secondary data from sources relevant to the matter in question. The data will be used in order to carry law and regulation analysis related to waqf. The analysis holds on to juridical dimensions, so to approach the question using normative juridical. The data obtained from literature studies and juridical studies of legislation and interviews with resource persons

## F. DISCUSSION RESULT

### F.1 Consistency of Waqf Regulation in Indonesia

The consistency of implementing rule of law is fundamental in order to guarantee the effectivity and the efficiency certainty of law. According to Constitutions 41 of 2004 Waqf is a lawful action stated orally and textally to Nadzhir (i.e. waqf beneficiary), mediated by **6** and Deed Official, to set apart owned property that has long lasting durability or long term benefit, to be permanently or temporarily used accordingly to the purpose of religious worship or general welfare under syariah principle.

Constitution 41 of 2004 and Government Regulation 42 of 2004 regulates the implementation of Waqf, and is refined by Government Regulation 25 of 2018 which purpose is to increase security, effectivity, efficiency, and accountability of waqf property endowment. This is also adjusted with Cosntitution rules that regulate land procurement for development and general purpose. Thus, the already applied

Government Regulation 25 of 2018 idoes not necessarily indicates inconsistency of implementation of Constitution 42 of 2006. Rather, it is issued to fill in gaps in the precedent Government Regulation, by affixating articles unaccommodated by the precedent Government Regulation 42 of 2006.

Noted already waqf endowment has not yet stepped fowrad from collecting assets, and authorization waqf asset has not yet oriented to utilizing waqf property. It is, therefore, requiring redefinition, reactualization in building commitment between government, Moslems, and waqf beneficiary. The hampering factor in developing waqf property does not rest at its legal aspect, but the paradigm rooted within society. Waqf is more commonly associated with social and religious matter, and that waqf object is stereotypically immovable object despite the admittance to movable object is guaranteed by constitution.

Waqf endowment and management is not maximized. In effect, there has been waqf properties that are neglected and, unfortunately untracked. This urges the necessity to set out modern management in which new regulation that secures waqf object is decreed. Such decree is exemplified by Government Regulation 25 of 2018.

Productive waqf endowment is implemented traditionally or institutionally. In traditional waqf there are five models of financing the reconstruction of waqf property:<sup>16</sup>

1. Generating new waqf to complement the precedent one (Government Regulation 42 of 2006, Article 49, transaction based on the recommendation issued by assessment team (act 4) is amended into Government Regulation 25 of 2018 article 50 act 1: recommendation is issued by team in charge of making the statement.
2. Loan to cover the operational cost of waqf property and maintainance in order to take the function of waqf as the stated purposed.
3. The permission to request substituent waqf property, which in this case does not

<sup>16</sup> Lubis, Suhrawardi K, Wadji Farid, 2016, Op. Cit : 25

- provide the same serve or profit without respect to the purpose stated by waqf (Government Regulation 25 of 2018 article 49)
4. Financing Hukr (long term rent with expensive lump sum in advance). This point is meant to secure the possibility of selling waqf property, which allows waqf beneficiary to sell the right periodically with particular rate statement (Constitution 41 of 2004 article 40).
  5. Financing Ijaratain (twice payment rent)

The consistency in implementing Constitution 41 of 2005, and Government Regulation 42 of 2006 and 25 of 2018 as the legal standing of waqf is complementing each other in nature. This has been operating until present momen in order to accomplish justice and welfare for society. As well, this is in line with law theory of economyand maximization wealth, or "kaldor hics" in Kosner term, of certain individual without causing deprivation to any parties.

## F.2 Implementation of Waqf Regulation in Financial Report in Indonesia

There are five principles carried by corporation management (Saepudin, 2010:1)<sup>17</sup>, they are Transparency, Accountability, Responsibility, Independency dan Fairness. In acronym they are known as TARIF. The following describes their explanation:

1. Transparency implies all entities are expected to provide sufficient information with accuracy and compliance to timelines to stakeholders.
2. Accountability implies comprehensible function, structure, system, and responsibility in management.
3. Responsibility implies corporation adherence to rule of law.
4. Independency implies the management of corporation is professional that is to say, it does not have conflict of interest and operates without presure or

intervention from any parties which are unadmitted by rule of law.

5. Fairness implies treatment that is equitable in fulfilling the rights of stakeholder under the rule of law.
- Good Corporate Governance principle in the eye of organization for economic cooperation and development only contains four principles they are transparency, accountability, responsibility and fairness.<sup>18</sup>

Aris, et al (2014: 98)<sup>19</sup> states in glorious period of Islam the endowment of waqf is not untouched by government hand. In history of Islamic civilization government takes active role to endow and develop waqf property. In Indonesia waqf endowment is implemented by the beneficiary party to be used accordingly to the stated purpose.

### F.2.1 Financial Report, Report Standard, Internal and External Audit.

Alim (2011: 155-156) suggested syaria accounting has different conception with conventional accounting. Imam al Ghozali, a Hujattul Islam, fiqh and tasawuf expert claimed every knowledge from Islamic teaching is rooted to syaria Maqashid syariah. This covers faith conservation or increase faith (Agama), protection to mind and soul, inheritance, and property. Faith is the main purpose to all knowledge and activity (worship and muamalah) (Chopra 1999), while protection to property is the the final purpose that derives the increase of faith, protection of mind and soul. This also includes accounting conception, nonetheless, as part of muamalah. Therefore, it has to be rooted to the mentioned syaria Maqashid.

The development of syaria accounting, ontologically speaking, has shown its existence and its distinct characteristic compared to conventional accounting. With its development syaria accounting has turned in evidence that accounting is attached with value or neutral as propagated by the positive mainstream accounting.

<sup>18</sup> Hermiyetty, *Corporate Government, Bahan Kuliah Tatakelola Perusahaan*, 2013

<sup>19</sup> Aris, Muhammad Abdul, Mujiyati dan Setyowati, Eni, *Model Aplikasi Pengelolaan Wakaf Pada Lembaga Amil Zakat Ihsan Di Surakarta*, In *Seminar Nasional 34, in Call For Paper Program Studi Akuntansi-FEB UMS*, ISBN: 978-602-70429-2-6, 25 JUNI 2014, (accessed August 23 Agustus, 2017)

<sup>17</sup> Saepudin, *Prinsip Good Corporate Governance (GCG) dan 10 Prinsip Good Governance, Good Corporate Governance (GCG) Peran BPKP dalam Pengembangan GCG*, <https://saepudinonline.wordpress.com/2010/11/27/prinsip-good-corporate-governance-gcg-dan-10-prinsip-good-governance/>, (accessed October 2, 2017)



Development of syaria accounting is an alternative from positivist approach that relies on rationalism and empirism. By rationalism it refers to "true by definition" and empirism "observable". According to Chua (1986), accounting research using the positivist approach is doable granted independency of objective reality with subject.<sup>20</sup>

The form of financial report of zakat is adopted for waqf (kustiawan et all (2012:28) explained in the following:

- The amount and nature of asset, liability and result of waqf
- Type and amount of cash flow in and out within certain period and the relation between them
- Nazhir method in earning and spending treasury, as well as the other factor related to liquidity
- Nazhir compliance to syaria term and information of income that is idssonant to syaria term, if any, and how nazhir earn income and makes expenses
- Level of endowment and development of waqf acquired.

Types of information is presented routinely and audited in forms of financial report are (kustiawan, et all, 2012:32) adalah:

1. Account balance report
2. Change of funding that is report of waqf funding change, funding of nazhir, and non-halal fundingeither from the earning or collecting waqf benefit
3. Change of managed asset report, that is the change of managed report from unproblematic asset, problematic asset, or asset reduction and growth, balance in the earliest and the latest.
4. Cash flow report, that is the information for user of financial report in generating cash or equivalent, and the needs of nazhir to use the cash flow. Cash flow report includes the expenses and income of entire operational activity, investment, and funding in a period.
5. Notes on financial report, that is annotations to present financial report in detail about nazhir, financial policy of

nazhir, and explanations about important posts and the effort to develop human resources.<sup>21</sup>

Financial report is issued as following the Statement of Financial Report Standard, though still under the version 109, is sufficient to help nazhir in answering its responsibility. However, this requires supervision by authority to nazhir, especially in relation to the shcema and the mechanism.

Supervision schema by authority needs to be integrated. This sould involve aspects of assembly, investment, managerial and profit distribution, as including as well methodology to asses risks by syaria standpoint. Management system in optimizing waqf asset is guided by question whether waqf beneficiary adheres syaria and rule of law.

Authorization to use framework in assessing process monitors the analysis on waqf asset, that covers:

1. Financial report analysis
2. Syaria compliance analysis
3. Assembly model analysis
4. Investment model analysis
5. Asset and fund management analysis
6. Waqf endowment analysis

Moreover, the authority to evaluate internal auditor performance in identifying strategic area nad appointing external auditor to ensure objectivity.

Waqf financial accounting report still uses Statement of Financial Report Standard 109 about zakat, infaq, and sadaqo. The standard can be regarded inaccurate, considering principle of zakat, infaq, and sadaqo is different to waqf. Thereby, Statement of Financial Report Standard specifically for syaria can be urged to be issued. This is important as one of the accountability indicator is the financial report of nadzhir.<sup>22</sup>

<sup>16</sup> Alim, Mohammad Nizatul, *Akuntansi Syariah Esensi, Konsepsi, Epistimoloji, dan Metodologi*, in *Jurnal Investasi*, Vol. 7 No. 2 Desember (2011): 154-161, (accessed September 24, 2017)

<sup>21</sup> Muljawan, Dadang, Sukmana Radytia, Yumanita Diana, *Wakaf: Pengaturan dan Tata Kelola yang Efektif*, In *Seri Ekonomi dan Keuangan Syariah*, Bank Indonesia, 2016

<sup>22</sup> Wibisana, MJusuf, *Standar pelaporan wakaf memang belum pernah terbit dan masih dalam pembahasan antara DSN dan IAI Kompartemen Syariah dan Bank Indonesia serta Badan Wakaf Indonesia*, In *Seminar Internasional sekaligus memperingati HUT IAI ke 60*, Semarang, December 14-15, 2017.

The differentiating characteristic of zakat, infaq, sadaqoh to waqf is that the first three refers to mandatory allocation of wealth owned by Moslem individual in accordance to religious teaching, given to those entitled (Constitutions 38 of 1999, Article 1, act 2 about Zakat Endowment). On the other hand, waqf is a lawful action of waqif to separate and/or surrender partially its wealth or property to be used permanently or temporarily, in accord to the purpose of worship and/or general welfare admitted by syaria (Constitution 41 of 2004, article 1 act 1).

The differences are pertaining to distinctive accounting treatment. Waqf accounting is conducted as long-term obligation for permanent or temporary waqf. Whereas in zakat, it obligates distribution at least once in a year to mustahik. Accounting in nadzir financial record should be conducted inalienably. In nadzir accounting the result of using waqf should be distributed.

## G. CONCLUSION

It is expected that the existence of Government Regulation 25 of 2018 provides empowering space to escalate productivity of waqf, considering the regulation governs the changes of waqf assets that are unproductive.

Implementing the standard of accounting for waqf still uses the Statement of Accounting Report Standard 109 about zakat, infaq, and sadaqoh, irrespectively to the differences between zakat and waqf. Despite the drawback, the standard is at least usable to ensure accountability of nadzhir (i.e. waqf beneficiary) in operating good governance.

With good governance that accomplishes transparency, accountability, responsibility, independency, and fairnes (TARIF), entity endowment is governed professionally without conflict of interest, pressure, or intevention from any parties, which characterize violations of rule of law.

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