

PRELIMINARY EXAMINATION OF THE REGULATORY REGIME TO ESTABLISH A FOUNDATION UNIVERSITY IN TURKEY

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ABSTRACT

The foundation and educational systems in Turkey experienced major reforms after the establishment of the Turkish Republic. The Civil Code and Foundation Law which governed both systems were unified under the Foundation Law 2008 for the betterment of both systems. Under this new unified law, a foundation can form a university, provided certain procedural requirements are satisfied. Hence, the main objective of this article is to examine the procedural requirements to establish a Foundation University. By applying the doctrinal approach, this study reviews several past studies and related several laws. Semi-structured interviews were conducted with several Turkish respondents in order to clearly examine the topic studied. Content analysis is used to analyze the data obtained. Finally, this study aims to promote a robust international benchmark for waqf (foundation) to be practiced in universities, including in Malaysia.

Keywords: Foundation, Law, Regulatory, Turkey, Universities.

INTRODUCTION

Foundations (waqf in Arabic, Vakıf in Turkish) first emerged in the 12th century and played a crucial role in social and economic development throughout the Ottoman Era by providing basic public services such as education and health (Zihnioglu, 2010). The term “*foundation*” is used interchangeably as “*waqf*” (vakıf) in Turkey (Sesli, 2010). Article 130 of the 1982 Constitution regulates the right to form a foundation. Foundations are defined in Article 101 of the Turkish Civil Code (Law No. 4721) as:

“Charitable groups under the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for definite and constant objectives” (Hatice, 2011).

It also refers to as non-governmental, non-profit organization, having a principal fund of its own, managed by its own trustees or directors and established to maintain or aid social, educational, charitable, and religious or other activities serving the common welfare (Barnhardt, 2017). Foundation is a non-profit organization that typically either donates funds and supports

other organizations or provides the source of funding for its own charitable purposes (Driver, 2010). It is formed by the allocation of sufficient assets and rights by real or legal persons, for specific and continuous purposes (Bulut & Sarikatipoglu, 2013). Two basic elements form the definition of a foundation: (1) dedicated assets; (2) the purpose to which those assets are dedicated. Since the existence of foundations is older than the Turkish Republic itself, within the Turkish legal system, there are two major types of foundations: (1) foundations established prior to the Turkish Civil Code; (2) foundations established as per Turkish Civil Code (Alias, 2011). Foundation can be formed provided it is not contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest; or with the aim of supporting a distinctive race or community (Article 101/IV) (Hatice, 2011).

LITERATURE REVIEW

Koc (2013) has thoroughly discussed the evolution of the role of foundation in higher education in Turkey. His discussion covers seven different periods as follows:

1. Seljuks Ottoman and early Ottoman period (1000-1300s).
2. Ottoman period between (1450-1600s).
3. Ottoman period between (1600-1920).
4. Early Republic era (1920-1950).
5. Intermittent Democratization Era of Republic (1950-1980s).
6. Era under the Higher Education Council (YOK) (1980-2007s).
7. Recent changes in YOK and emergence of foundation universities (2007-2012).

Koc (2013) further elucidated that the major modification of foundations occurred after the establishment of the Republic of Turkey in 1923. In this era, the *“Awqaf and Shariyya Ministry”* was eliminated and a legal body under the state was established known as *“Directorate General of Foundation”* (DGF). This body has taken control of all ancient foundations and newly formed foundations. Shafii et al. (2015) have explained on the roles of DGF as mentioned in Article 35 of Foundations Law 2008.

Furthermore, Hatice (2011) observed that the establishment of the Turkish Republic has reformed the foundation and educational systems. The Foundation Law 2008 became a new law to regulate and unify both systems. According to Hatice (2011), more foundations are expected to be formed under this new law as it provides detailed regulations regarding foundations. A well-known Turkish expert, Cizakca (2016) explored the development of waqf (foundation) in Turkey till the present and he confirmed that the Foundation Law 2008 grants full personality to waqf (foundations).

Bulut & Sarikatipoglu (2013) in their study explained the procedural requirements of how foundations could be established. They also illustrated the important of tax exemption laws to be enacted. The tax initiative should be given to foundations so that it will encourage more individuals to form foundations. However, for foundations to be tax exempted there are certain conditions to be fulfilled such as activities of the foundation should involve public at large and offer amenities which contribute to the State’s public service duty.

METHODOLOGY

This study adopts the doctrinal and fieldwork approaches. The first approach is a library-based research was conducted in respect of scrutinizing the secondary data from both primary and secondary sources. The primary sources include several Turkish laws which were reviewed apart from referring to the secondary sources such as books, thesis, articles published in journals, conference proceedings and so on as has been explained by (Yakin, 2007).

As for the second approach, the researchers precisely focused on the fieldwork for the collection of primary data. It involved face to face semi-structured interviews with four Turkish respondents from Prime Ministry Directorate General Foundation, in Ankara Turkey which was conducted on 9th February 2017. A semi-structured interview approach was employed because it gives the respondents a degree of freedom to explain their views and experiences as well as allows the researchers more flexibility to control over time, content, and the sequence of the interview (Siraj, 2012). Then, the data collected were analyzed using content analysis method. Nonetheless, due to the limitation of time and budget, the researchers were not able to collect the data from any Turkish universities established by foundations however, it will be considered in the future study.

RESULTS AND DISCUSSION

There are two types of universities in Turkey namely State University and Foundation University. These universities are controlled by the Ministry of National Education which are supervised by the Council of Higher Education (CoHE) (Hussin et al., 2016). However, this article only focuses on Foundation University which is considered having a similar nature to a waqf university in Malaysia based on a study conducted by (Mahamood & Rahman, 2015). Turkey has introduced a Foundation University since 1984 (Yalcintan & Thornley, 2007) and it then gradually increased up to 84 in the year of 2016 (Kayadibi et al., 2016). The number then further increased to 98 in 2017. Among them, there are two universities which are unique because they are Waqf Universities which are sustained from the historical waqfs of Ottoman State, namely Fatih Sultan Mehmet Waqf University and Bezmialem Waqf University. These two universities are administered by the General Directorate of Foundations (DGF) under the Prime Minister's Department in the Republic of Turkey (Davut Gazi Benli, personal communication, 9th February 2017). Foundation University is a private and non-profit higher education. There are certain legal procedures that need to be followed before the formation of a Foundation University, most importantly of which is that prior to the Foundation University establishment, there must be a foundation.

Procedural Requirements for Foundation Establishment

Bulut & Sarikatipoglu (2013) demonstrated that the procedural requirements to establish a foundation consist of the act of establishment, the legal competency of the founder and the registration of the foundation. The foundation must satisfy some pre-requisite conditions to stand on legal grounds. The purpose of a foundation establishment is freely decided by the founder if it is compatible with Turkish laws. It is observed that the procedures for approval do not take much time (Davut Gazi Benli, personal communication, 9th February 2017) depending on the quantity

of workload at the court (Adnan ER, personal communication, 9th February 2017). Adnan further added that the foundation establishment must be within the framework of the Turkish civil court.

The intention to establish a new foundation is declared in a “*trust deed*” (Bulut & Sarikatipoglu, 2013). Therefore, the foundation deed needs to be prepared beforehand. In the deed, there should be mentioned the aims, revenue, and properties of the foundation and others. The minimum amount of expenses for the foundation to start operating is 60 thousand TL. The deed should expressly specify that this foundation has the right to form a university. Without such stipulation, the DGF will not give the required permission to form a university (Gulsen Disli, personal communication, 9th February 2017). It is for the court to decide whether the foundation could be formed or not based on the report prepared by the Legal Advisory in DGF (Davut Gazi Benli, personal communication, 9th February 2017). In preparing the report, the Legal Advisory in DGF will determine whether the foundation’s written trust deed complies with Turkish laws. Upon compliance, the DGF will send the report to court for further action. The verdict of the court will determine whether the foundation is permitted to be formed or not. If no legal issue arises, the foundation can start to function. The foundation must be registered with the DGF according to Article 102 of the Turkish Civil Code numbered (Law No. 4721) (Bulut & Sarikatipoglu, 2013) and after the official gazette, the foundation can start to operate (Hacer Coskun, personal communication, 9th February 2017).

Procedural Requirements and Administrative Powers Related to Foundation University

After the foundation is legally formed, the next procedure for the foundation to establish a university is to apply to the Council of Higher Education (CoHE). The foundation should support its application with documents such as material, equipment, the adequate amount of money or any other economic value is allocated to meet the minimum 20% yearly expenditure of the institution (Additional Article 3 of Law No. 2547) for its stated purpose. If all the procedures are fulfilled, CoHE can allow a university to function within the framework of the Constitution and Higher Education Law (Law No. 2547) (Hatice, 2011).

It is important to note that foundation and university are two separate entities even though the university is formed by the foundation. Consequently, even if the foundation ceases, the university’s legal status remains. As such, all the assets, movable and immovable, allocated by the foundation to the university will be the university’s property. In addition, if the foundation later needs to be closed, the authority of the university will be relocated by the DGF to other foundations with similar objectives (Additional Article 15 of Law No. 2547).

Article 130 of 1982 Constitution provides that a university established by the foundation is subject to the provisions of Institutions of Higher Education in terms of the academic activities, recruitment of teaching staff and security, except for financial and administrative matters. According to the Constitution, the Council of Higher Education (CoHE) has specified that the academic staff contract in a Foundation University is an administrative contract, therefore, any disagreements arising from this contract should be settled in administrative courts (Division VIII of Council of State, Date: 04.02.2003, No. 2002/557-2003/561).

In addition, a Foundation University is governed by the administrative powers of the Trustee Board comprising of at least seven people (Arslan, 2013). They represent the legal body of the university. Members of the Trustee Board are chosen by the governing body of the foundation. The members should hold the necessary qualifications for public office. However,

there is no age limit for them if they comply with the qualification requirements for public services post. As well as, at least two-thirds of them should have a bachelor's degree. The Trustee Board selects a chairman among their members (Additional Article 5 I of Law No. 2547).

Besides, they also appoint a director of the university upon the approval of the CoHE. Another function of the Trustee Board is to make or terminate the contracts of the other administrators and academic staff and other employees. They also oversee the budget of the university. In the same way, the Trustee Board needs to carry out other functions regulated by law. In carrying out their functions, the Trustee Board can delegate some powers, which they think reasonable, to the administrators of the university (Additional Article 5 II of Law No. 2547).

The Rector is determined by the Board of Trustees (Article 13a of Law No. 2547) and must be made a member of the Board of Trustee and is empowered to execute the decision of the board. However, in practice, this system has been criticized, because of the possibility of the Board of Trustees may interfere in the Rector's business. Therefore, it is recommended that the Rector should be appointed by the President of the Republic as well as state universities and should be the authorizing officer of the university.

CONCLUSION

Having discussed all the procedural requirements above, the researchers believe that this study will promote a robust international benchmark for waqf practiced in universities, including in Malaysia especially in terms of laws regulating the formation of a Foundation University. The standard procedures stipulated by laws for the establishment and running of a Foundation University would become a good guideline to be followed by the individual who intends to form the foundation. Besides, legal compliance will protect the status of the Foundation University as well as other stakeholders involved. Furthermore, the researchers opine that the standard procedures regulated by the Turkish government display their seriousness in ensuring the sustainability of Foundation Universities in the future.

REFERENCES

- Alias, T.A.R.M. (2011). *Unleashing the potential of the waqf as an economic institution in Malaysia: Policy, legal and economic reforms*. International Centre for Education in Islamic Finance: Kuala Lumpur.
- Arslan, H. (2013). Effectiveness of board of trustees in university governance. *European Journal of Research on Education*, 1(3), 6–13.
- Barnhardt, C. (2017). Philanthropic foundations social agendas and the field of higher education. In B. Michael (Eds.), *Higher education: Handbook of theory and research* (pp.181–258). Iowa USA: Springer International Publishing.
- Bulut, I., & Sarikatipoglu, A. (2013). *The establishment of foundations and the tax exemption according to Turkish law*.
- Cizakca, M. (2016). Current development of waqf properties in selected countries and their socioeconomics roles. In M.I.A. Mohsin, Z. Iqbal, J. Sultan, & M. Asutay (Eds.), *Financing the development of old waqf properties classical principles and innovative practices around the world* (pp.37–220). New York: Springer Nature.
- Driver, C. (2010). Funding resources. In *Guidelines for writing successful grant proposals for nonprofit organizations* (pp.152–162). United States of America.
- Hatice, K. (2011). *Impacts of waqf law on the educational system in modern Turkey*.
- Hussin, R., Rashid, R.A., & Yaakub, N.I. (2016). Exploratory study on waqf implementation in Malaysian public

- and private Universities: With special reference to Turkish universities. *International Journal of Business, Economics, and Law*, 9(4), 399–409.
- Kayadibi, S., Maulan, S., Haneef, M.A., & Alimova, S. (2016). The relationship marketing strategy to establish waqaf in higher education institutions: Turkey's experiences. In *International Symposium on Waqf and Higher Education (ISWHE 2016) Istanbul, Turkey* (pp.40–45).
- Koc, M. (2013). Role of foundations (awqaf) in education in Turkey: An analysis of past and present. *The Islamic waqf and the charitable trust: A comparative perspective istanbul workshop, Istanbul, Turkey*.
- Mahamood, S.M., & Rahman, A.A. (2015). Financing universities through waqf, pious endowment : Is it possible? *Emerald Insight Humanomics*, 31(4), 430–453.
- Sesli, F.A. (2010). Foundation administrations and foundation landownership in Turkey from past to present. *African Journal of Business Management*, 4(9), 1769–1777.
- Shafii, Z., Iqbal, Z., & Tasademir, M. (2015). *Governance regulatory framework for waqf in selected countries*. Retrieved from <http://www.tkbb.org.tr/Documents/Yonetmelikler/Governance-Regulatory-Framework-for-Waqf-in-Selected-Countries-Zurina-Shafii-Zamir-Iqbal-Mustafa-Tasdemir-2015.pdf>
- Siraj, S.A. (2012). *An empirical investigation into the accounting, accountability, and effectiveness of WAQF management in the State Islamic Religious Councils (SIRC) in Malaysia*. Cardiff University. Retrieved from <http://orca.cf.ac.uk/46875/>
- Yakin, A. (2007). *Legal research and writing*.
- Yalcintan, M.C., & Thornley, A. (2007). Globalisation, higher education and urban growth coalitions: Turkey's foundation universities and the case of Koc University in Istanbul. *Environment and Planning C: Government and Policy*, 25(1), 822–843.
- Zihnioglu, E. (2010). *Philanthropy and fundraising in Bogazici University Foundation*.