

WAQF AND ECONOMIC DISTRIBUTION JUSTICE: SUSTAINABLE POVERTY ALLEVIATION EFFORTS

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ABSTRACT

Waqf (endowment) is one of philanthropy in Islamic teachings that has a social dimension to provide broad benefits for improving the economic welfare of the community. It is interesting to study further how the implementation of waqf in order to create economic justice in society, especially in efforts to alleviate poverty. The virtue of waqf can be seen from two different sides. For recipients of the results (mauquf 'alaih), endowments will spread goodness to those who obtain waqf results and people who need help, such as the poor, orphans, disaster victims, people who have no business. Waqf also provide great benefits for the advancement of science, such as assistance for instructors and students, as well as various services for the benefit of other people. As for the apostle (wakif), endowments are good deeds that will never end. Because the items that are represented remain intact at any time.

Besides the whole item, it must be managed so that it is useful for the public interest.

Keywords: Waqf, Economic Welfare, Justice

INTRODUCTION

Poverty is one social problem that can disturb peace in society. This is because poverty can increase crime in society. Poverty alleviation efforts need to be done not only through plans to reduce poverty, but also and how to increase sustainable economic growth (Thamina, 2017). The effective and sustainable model is an effort to alleviate poverty with directed, targeted, sustainable programs, and not just charity activities that are only momentary.

Waqf is one of the pillars of Islamic economics, specifically related to distribution to improve the welfare of society. Waqf is an effort to realize economic justice according to Islam. The fact shows that waqf institutions have carried out a portion of the government's tasks (Wakaf, 2008). One of the government's tasks in the economic field is how to strive to improve welfare for its people, including efforts to create economic equality and alleviate poverty. Endowments have also been an alternative to Islamic teachings which can be used as an effort to alleviate poverty.

In the Islamic financial system, endowments are part of public financial instruments. This can be synergized with the task of the government in order to improve the welfare of its people. This is interesting to study further how this waqf concept can be developed in order to realize economic justice in society. This article will discuss how to implement the concept of waqf in realizing social economic justice in society and guarantee legal protection of waqf assets.

METHODOLOGY

The method used in writing this article is a method of normative legal research. This legal research is carried out by a legal approach. The writing of this article also uses a comparative approach about the development of productive endowments in several countries and is analytical descriptive in nature, to provide a comprehensive, in-depth description of a situation or development of waqf.

DISCUSSIONS

Definition, Principles and Elements of Endowments

Waqf (Endowments) is a mechanism for transferring of wealth from private to public ownership. In this sense waqf is the opposite of *ihya 'al-mawat* and *iqta* which transfers ownership from the public to individual ownership (Zakiyudin, 2007).

Unlike the welfare-based principle or utilitarianism that seeks to maximize the welfare of the community at the expense of other small groups, waqf institutions work with the logic of public interest (*al-mashlahāh*). That is, for the sake of the public interest, individuals are allowed to inherit their wealth with sincere sacrifice. In other words, individuals sacrifice for the welfare of society, not because of the welfare of the community the interests of individuals or small groups are sacrificed (Zakiyudin, 2007). So, waqf has a number of benefits related to the provisions of the needs and public welfare. While voluntary charity is done to meet temporal needs, endowments are designed for the purposes of enduring public utilities (Zakiyudin, 2007).

The meaning of waqf is *al-habs* (holding back). Whereas according to the term (*syara* ') what is meant by waqf as defined by the ulama among them according to Muhammad al-Syarbini al-Khatibas cited in (Hendi, 2010) said that waqf is the detention of assets that allow it to be used accompanied by the perpetual substance of objects by deciding (cutting) *tasharruf* (classification) in guarding the *mushrif* (manager) which is permissible.

Waqf (Endowments) are declared valid if the pillars have been fulfilled and the conditions. Pillars of waqf are 4 (four), namely (Sofri et al., 2016)

- a. Wakif (donor/people who inherit property);
- b. Mauquf (property/goods or assets that are represented);
- c. Mauquf 'Alaih (party who is given waqf/beneficiary);
- d. Sighah (declaration/ statement or pledge of wakif as a will to inherit part of his property)

In relation to objects that are objects of endowments, based on article 15 Law No 41/2004 on Waqf, it can only be represented if owned and controlled by Wakif. Waqf Objects Property includes immovable and movable property. Immovable properties such as land, buildings, and plants. Meanwhile movable property such as money, and movable objects other than money, which as far as possible is harmonized with the conception of the law of objects in civilization and other related laws and regulations. Movable objects other than money are arranged according to categories commonly known in civil law, namely movable objects because they can move or be moved or because of statutes.

The importance of developing waqf as an institution in Islam in an effort to realize the benefit and legitimacy can be concluded from the many verses of the Qur'an which implicitly explain it. The Qur'an Al-Ali Imran [3]: 92 which states:

"You never get to the (perfect) virtue before you spend some of the assets that you love, and anything that is you spend, and then verily Allah knows ".

Likewise the Prophet Muhammad also said in Hadis narrated by Muslim:

"If the son of Adam (human) dies, his charity is broken, except for three charity cases, useful knowledge, and prayers of pious children who pray for their parents." In the Hadist, according scholars, that waqf are categorized as charity (Manan, 2001). As a social concept that has a dimension of worship, waqf is also called charity *shadaqah jariyah*, where the reward obtained by *wakif* (the person who inherits wealth) will always flow as long as the asset is still available and useful. The assets have been released from ownership of the wakif and their benefits are the rights of the recipients of the waqf (Ministry of Religion of the Republic of Indonesia, Directorate General of Islamic Guidance and Hajj Organization 2003). Thus the waqf property becomes the mandate of Allah to a person or legal entity (who has status as *Nazir*) to manage and operate it (Ministry of Religion of the Republic of Indonesia, Directorate General of Islamic Guidance and Hajj Organization, 2003).

The principle of waqf as stated by the Prophet Muhammad when giving directions to Umar bin Khatab ra, who wanted to surrender a piece of land in Khaibar for the sake of sabilillah. There are two principles that frame of 'waqf, namely the principle of immortality (ta'bidul) and the principle of benefit (manfah) inherent in waqf, also contains consequences for protecting endowments related to their ownership status and benefits. The principle of eternity of waqf objects directs waqf to become public assets. Public assets that are the property of all people or groups of people, and their utilization rights can be enjoyed by all of them without monopoly or unilateral exploitation for personal gain (Husain, 2005).

Endowments to Realize Economic Distribution Justice

Property ownership in Islam according to al-Maududi as cited in (Ministry of Religion of the Republic of Indonesia, 2003) as quoted by Imam Suhadi, must be accompanied by moral responsibility. This means that everything (property) that is owned by a person or an institution, morally must be believed theologically that there are some of these assets become rights for other parties, namely for the welfare of others who are economically less or unable, such as the poor, orphaned stray, neglected children, and social facilities.

Waqf is a form of economic distribution that has the potential to be developed. Waqf is a mechanism whereby individual transfers wealth from private ownership to a collective ownership (Hossein & Zamir, et al., 2015). The allocation of waqf not only be used solely for worship and social purposes such as health and education financing, but also can be used for the economic empowerment of the people, and can be done by anyone, without being limited by the Nisab wealth as zakat.

According to Syafi'i Antonio as cited in (Euis, 2009) Islam basically has two main distribution systems, namely commercial distribution and following market mechanisms, as well as a distribution system that relies on aspects of social justice. The first is commercial by economic process, and social dimension to create a balance of economic distribution. Considering that not all the people able to be involved in the economic process, because of his condition which naturally cannot work optimally like humans in general, for example the condition of his body that is handicapped, or a young orphan who has not been able to meet his life needs naturally. For that Waqf can be one solution.

The management of wealth in Islam, there is recognition of individual ownership, but on the other hand there are social obligations for their wealth, such as the obligation of zakat if they have arrived at Nisab, or alms/endowments. Those Efforts to achieve individual and social well-being in Islam. Through the mechanism of zakat and waqf, balance can be realized in society. Because in essence it is related to the basic principle of ownership in Islam, that property may not only be present and rotate in one a certain group of people which causes economic inequality in society.

Waqf as a social dimension of worship has very broad benefits for the public interest. Although the position of waqf in Islamic Law is not a compulsory worship as zakat, but this social worship is highly recommended because it has enormous benefits for the benefit of the people and covers a broad dimension that can be developed. In the provision of zakat, the recipient is only limited to certain asnaf groups, and the obligation to pay tithe is only on assets that have arrived at the Nisab. Meanwhile on the waqf, there is no limit regarding the amount and to whom the endowment is intended as long as it does not violate the principles of Islamic Law. Besides that, the development and management of waqf objects can continue to develop for economic investment activities, because basically waqf does have to grow or increase in value so that the benefits provided are also greater. So that it can be concluded that basically between zakat and waqf are very synergic in realizing social welfare, where zakat can meet the primary needs of groups who really need it, while waqf can be developed to improve their living standards better, not even reaching certain groups only.

Practice of Productive Waqf Management in Some Countries

The practice of productive endowments as an example has gone well in Egypt. Legislation and waqf administration in Egypt have also been well implemented and carried out by a separate Ministry, namely the Ministry of Waqf Affairs (Awqaf). With productive waqf in various forms, many benefits can be made from the results of the waqf (Waqf in Singapore and Egypt, 2011). Famous universities in Cairo, namely al-Azhar University since 970 AD until now are financed by the management of endowments (Waqf in Singapore and Egypt, 2011). Students from outside Egypt, who number in the thousands and study at the university also receive scholarships from the endowments.

The Warees Investments Pte Ltd Company in Singapore which develops specialists in the field of management and administration of waqf, as well as this facility has developed into a well-established and rapidly growing company. Unlike other companies, the company that was founded in 2001 has a social mission and consistently contributes its profits to the education sector and other social fields that are in accordance with their needs. This company has successfully developed its business in the field of real estate which includes the construction of residential areas, trade areas, and offices. Some of Warees's portfolios are management of waqf and asset assets worth 250 million US dollars consisting of religious, commercial, residential and educational buildings. The uniqueness of Warees's business is that land as a property base that they manage constitutes waqf land. While business management and development are derived from traditional management that functions as a business manager as well as channelling funds from proceeds for religious, commercial, housing and educational activities (Waqf in Singapore and Egypt, 2011).

Likewise as a comparison material about waqf in Malaysia this experienced a fairly rapid development. The development of waqf in Malaysia has increased from time to time as well as the existence of a special state body, the State Islamic Religious Council (SIRCs) appointed to regulate the management of waqf assets. At present the latest developments in the implementation of waqf in Malaysia include new cash waqf instruments, sukuk waqf, waqf shares and stock waqf. Some Countries that have implemented share waqf in Malaysia namely Johor, Selangor, Pahang, and Melaka. Arrangements regarding waqf (including stock waqf), in Malaysia are regulated by each state. The forms of supervision of waqf assets in Malaysia are carried out by the Religious Council and experts (families, especially when the wakif has passed away). Terms of Waqf include Wakaf Enactment in Selangor No. 7 of 1999. The latest development in the form of waqf in Malaysia is the implementation of corporate endowments carried out by Johor Corporation Berhad (JCorp). Issuance of Waqf Shares by several countries such as Johor, Melaka and Selangor. This was done in accordance with the decision of Majma 'Fiqh Islam on November 24, 2005 (Cholil, 2010). To guarantee the management of money waqf in this country, Takaful Wakaf was formed by Syarikat Takaful Malaysia Berhad which was established in 1997. Syarikat Takaful is operated based on the mudhârabah principle. Profits from investments in the Shari'ah financial portfolio are the sum of four portfolios, namely Shari'ah banking deposits, Shari'ah bonds and the Islamic capital market. Profits will be combined with other portfolio benefits and then distributed to the poor.

In Indonesia, According to Waqf Law No. 41/2004, regulates that the benefits waqf is not only for the religious and social facilities, but also for economic activities to encourage society welfare. This regulation encourages the implementation of an equitable economic distribution according to Islam. Financing of productive waqf is also related to the provisions of Article 43 of the Waqf Law which must be in accordance with sharia principles. In this case the development of productive waqf can be carried out by Nazirs themselves through fundraising activities or through cooperation with related partners including Islamic finance companies. Sharia principles according to Article 2 provisions of the Supreme Court of the Republic of Indonesia Number 14 Year 2016 concerning Procedures for Settling Sharia Economic Disputes are the Principles of Islamic Law in sharia economic activities based on fatwas issued by institutions that have the authority to implement sharia fatwas. The principle that must exist in sharia economics is the

rabbaniyah principle, namely in its economic activities based on intentions that are in accordance with the divine nature so that it cannot rely on profit oriented as well as morality which is based on religious norms. Besides, of course, it still adheres to the requirements of the common humanity (Amran, 2017).

Related to Islamic financing activities, as determined in the Provisions of Article 3 POJK No. 31/POJK.05/2014 divided into 3 (three) as follows:

1. Buy and Sell Financing, which is financing in the form of supply of goods through buying and selling transactions in accordance with sharia financing agreements agreed upon by the parties.
2. Investment financing, namely financing in the form of capital provision with a certain period of time for productive business activities with profit sharing in accordance with a sharia financing agreement agreed by the parties.
3. Service Financing, namely the provision/provision of services in kind providing benefits for an item, lending (bailout) and/or providing services with and/or without payment of compensation (ujrah) in accordance with a sharia financing agreement agreed by the parties.

In the operation of developing this waqf asset, Nazhir is the spearhead for safeguarding these waqf assets to be protected and increase in yield. For this reason, in the development of waqf objects, the types of professional endowments, Nazhir empowered land for commercial building development based on Article 11 of the Waqf Law to administer, manage and develop waqf property in this case waqf land in accordance with the purpose, function and designation, including supervising and protecting the waqf property, and reporting the implementation of tasks to the Indonesian Waqf Agency. The benefits of commercial building management are given to mauquf aih alaih (recipient of waqf) in accordance with waqf pledges.

In an effort to carry out the government's duty to improve social welfare, the role of the community is also highly expected to make it happen. Waqf which basically aims to realize social justice in general, especially to improve economic welfare in particular, is very synergic to achieve the country's goals in order to create social welfare for its people. In this case the type of waqf khairi or general waqf that is most in accordance with Islamic teachings that are intended for public interests or benefits is very closely related to the goal of the country to create social welfare for the community. The benefits of khairi waqf or public waqf are not only for the sake of ritual worship alone, but also can be used for social purposes such as education, health, and increasing economic empowerment of the people.

CONCLUSION

As a public financial instrument Waqf can be utilized in various matters related to public benefit, because Islamic law does not regulate the use of waqf in detail such as zakat which can only be distributed to 8 (eight) Asnaf (receiver of zakat) (Nurul et al., 2012). Through public participation, the burden of alleviating poverty and achieving economic prosperity equitably is lighter and easier. Through this waqf it will also create good synergy between the state and the community to eradicate poverty.

Waqf can create justice for economic distribution to realize people's welfare. Waqf is a gift which is carried out by holding (ownership) of origin (tahbi sul ashli) and making the benefits generally accepted. The eternal nature of endowments guarantees the legal protection of waqf objects, so that their management can be economically sustainable (sustainable) and the benefits provided are not only momentary. Endowments as one of the patterns of economic distribution in Islamic teachings can be done by many parties, not limited by one's status, rich or poor, or without having to be bound by ties due to family factors. Likewise the allocation of waqf is not only for the sake of ritual worship alone, but also for social activities, health, education, including also for the economic empowerment of the people. Types of waqf khairi or general waqf according to Islam are intended for general interests or benefits.

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