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LEGAL ASPECT FOR MANAGING WAQF ASSETS THROUGH COMPANY MANAGEMENT: DEVELOPMENT OF SHARE WAQF

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Abstract: Waqf (endowment) in the history of Islam, is a social institution that has made a very significant contribution in the development of Islamic societies, both in the economic, social and cultural fields. The management of assets waqf can be integrated by company productive activities. This article will discuss how the legal aspect for managing waqf through company management. The method used is normative juridical. Research specifications are analytical descriptive. The management of aset waqf through company indicates the ownership of capital in favor of social interests. The benefit of ownership of the company is not only for the owner or but also for others, especially those who are economically living in poverty. This ownership structure is expected to reduce economic inequality in society. Waqf shares can be a development of cash waqf schemes, and have been successfully implemented in several countries and provide great benefits not only for worship, but also education, health, economic welfare, and other social contributions. The management of assets waqf through company in addition to not conflict with the provisions of the applicable legislation and principles of Shariah (Islamic Law).

Key words: Waqf assets, Company management

1. Introduction

Waqf (endowment) as a form of philanthropy in Islam has contributed greatly to improving the welfare of society. The institution of waqf has performed much of the tasks of the government ([Ministry of Religion Republic Indonesia, 2008](#)). One of the government's tasks in the economic field is how to strive to improve the welfare of its people, including efforts to create economic equality and poverty alleviation. Waqf has also been an alternative to Islamic teachings that can be used as an effort to alleviate poverty. Waqf is one form of poverty alleviation efforts that have the characteristics for a long and sustainable.

Islamic finance has become incredibly popular among the major global development organisations for its ability to promote: (1) financial inclusion, particularly among the rural poor; (2) financial stability; and (3) economic development. The rise of Islamic finance in the development community is best understood in the context of these claims. The development of legal reforms regarding waqf from each country shows a wide variety and influence of the past colonial government. Indonesia has shown advanced developments regarding waqf and can be an example for other countries. India, Pakistan, and Bangladesh share the same origin, in laws enacted during the undivided British India, but they have introduced reforms in varying degrees since achieving their independence. A high degree of commonality therefore exists in their laws.

According to the provisions of Indonesian waqf law, waqif surrenders his property for a certain period of time or forever for the purpose of worship or welfare of the people according to Islamic law. The purposes of Waqf not only for worship but

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also for education, health, and to serve and realize the potential economic to promote the general welfare.

According to Indonesian Waqf Law, immovable and movable objects can be waqf. Shares as movable goods are deemed capable of stimulating results that can be dedicated to the benefit of the common people. Shares will actually contribute a large enough compared with other types of commodity trading. Dividends are the benefits derived from share investments. This investments increase along with the growth of the company. This article will discuss Legal Aspect for Managing Waqf Assets through Company Management.

2. Literature Review

as-Syarikah (company) in Islamic jurisprudence is divided into 2 (two) types of property companies (*Syariah amlak*), and contract companies (*Syariah Aqad*). *Shirkah amlak* is a partnership of two or more ownerships of a good without *syirkah* transaction. *Syirkah Milk* or *syirkatul amlak* is a company of property rights, it's a company to a substance, such as a company in a substance inherited by two persons, or a purchase of them, or a grant given to them, or another ([An-Nabhani, 1996](#)). *Shirkah* property rights is divided into two: 1) *Shirkah ikhtiyar* (voluntary), namely *shirkah* born to two parties who allied. For example there are two people who cooperate to buy goods, or two who get grants or testaments, and both receive it, so that both become allies in property rights, 2) *Shirkah Jabar* (Forced), the fellowship that occurs between two people or more without as willing they are, for example, two people who get an inheritance, so that the inherited goods belong to the two persons concerned ([Az-zuhaili, 2011](#)).

Shares are certain ownership rights over the wealth of the individual or a portion of ownership in a network of business the company ([Redmond, 2000](#), [Sundar & Al Harthi, 2015](#), [Fadahunsi & Barake, 2018](#)). Shares is the amount of money invested by investors in a company. On investment is generally shareholders (*aandelhouder*, share holders) have benefit ([Harahap, 2011](#), [Willy, 2017](#)).

In fiqh Muamallah, the corporate based on shares is part of *syirkah 'inan*. *Shirkah 'inan*, which is a partnership of two persons to utilize joint property as capital for trading and profit divided for them. The scholars agree that this *shirkah* law is permissible. *Syirkah Musahamah* as part of *syirkah 'inan* is the most important type of capital company, the company whose capital is divided into the same small parts. Each small part is called a share that can not be divided again. This shares can be traded. Each shareholder is responsible for the par value of the shares ([Az-zuhaili, 2011](#)).

Every shareholder in a company whose capital is divided into shares or *shirkah musahamah* responsible according to the amount of capital respectively. In *Shirkah Musahamah*, the Director of the Company and its employees is considered a hired worker for shareholders. They get a certain salary, whether they participate in planting shares or not. The director of the company shall not owe on behalf of the company that exceeds the amount of its capital. If he does, then he has to guarantee it. There is no guarantee for the owners of capital except for the limited number of its shares. The company's profit is divided according to the ratio of the number of shares ([Az-zuhaili, 2011](#)).

Transfer of shares in Indonesia for the purpose of waqf in accordance with the provisions of law 40 of 2007 must be adjusted to the provisions of the articles of association of the company. Besides, it is also based on the provisions of the

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Indonesian Waqf law, the intended shares must meet the provisions of Islamic shares.

3. Methodology

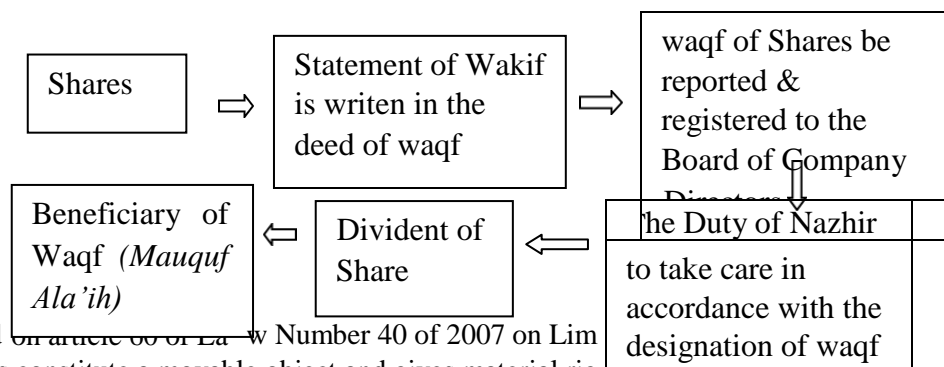
The methodology of normative juridical is used to analysis this article. This article will discuss more about the management of waqf through companies, specifically applicable legal regulations and Islamic legal principles. This study uses descriptive analytic research specifications that illustrate the implementation of the rule of law and the practice of waqf management through companies both in Indonesia and in several other countries to obtain a complete and comprehensive analysis.

4. Results and Discussion

Integrating Waqf and company management based on shares Waqf in Indonesia

Based on Article 16 on Indonesian Waqf Law, the shares can be waqf object. Through this share waqf, is one of the entry points for the integration of waqf and corporate. Automatically, the increase in waqf assets is managed in conjunction with the line of business carried out by the company. Management of cash waqf can also be used as capital to manage a business through the establishment of business entities, both in the form of legal entities or not. However, it is advisable to manage cash waqf through the establishment of a legal entity. This is so that there is a separation of the assets of the business entity sourced from the cash waqf and assets of the management of the company.

Waqf of shares must be registered. The Board of Directors of the Company shall hold and maintain a list of shareholders. Based on the provisions of article 50 of Indonesian Company Law, waqf of shares be reported and registered to the Company, including nazhir's name and address, time, and classification of shares. Nazir is the party mandated to manage endowments. Waqf of shares follow this bellow scheme.



Based on article 50 of Law Number 40 of 2007 on Limited Liability Company, Shares constitute a movable object and gives material right to their owner. The right can be maintained against everyone. The position of shareholder to the company only limited involvement having participation in the Shareholder General Meeting held by the company and entitled to dividend. There is no general rule regarding the formalities and forms of deeds of transfer of rights necessary for the transfer of rights to shares on behalf of, only that the deed of transfer of such rights shall be submitted in writing to the company to record the date and day of the transfer of such rights in the List of Shareholders or Special List provided for it.

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The deed of the shares waqf is a proof of Wakif's declaration of intention to donate his share and will be registered on the name of nazhir. However, Based on Article 3 Paragraph (2) of Government Regulation on Waqf paragraph (2), it is stated that the register of waqf on behalf of Nazhir does not prove Nazhir's ownership. The Competency of Nazhir is very needed to develop Share Waqf. The utilisation of *waqf* of shares could include the goals which are related to the objectives of economic empowerment of the people. The dividends of shares as *waqf* based on waqf law could be used as capital for the economic empowerment of the people. Ultimately it is expected that improve the social welfare and poverty reduction in society.

Practises of Waqf corporate in some countries

The practice of shares waqf in some countries is basically a development of the practice of cash waqf. Magda Ismail conducted research on the role of cash waqf in several countries. There are some the creations of cash waqf from each Muslim country (Mohsin, 2013). According to the authors the creation of cash waqf, which is directly related to the establishment of a company based on shares waqf is The company's waqf scheme (Mohsin, 2013).

Shares waqf have been implemented by Johor Corporation Berhad (JCorp) in Johor - Malaysia. It is executed by a subsidiary of JCorp namely Waqaf An-Nur Corporation Berhad (WANCorp) which is a company with JCorp own guarantee. WANCorp was established to take care of the assets and shares of JCorp group represented in addition to the role of '*Maukuf Alaihi*' (beneficiary of waqf). Based on the Agreement between JCorp and the Johor State Islamic Religious Council (MAIJ) on 4 December 2000, the MAIJ agreed to inaugurate WANCorp to exercise power and duties as a Nazir based on the Enakment of the Religious State of Islam of Johor. The agreement also allows JCorp to continue to waqf its shares of the company following the corporate waqf's wahaf. All shares will be registered as waqf with MAIJ on behalf of WANCorp. As a Nazir, WANCorp will be responsible for taking care of all matters relating to these shares and simultaneously channel the benefits as contained in the pledge of waqf (Borham, 2011).

JCorp's corporate executed waqf RM200 million of shares in disseminated subsidiaries and RM50.27 million of shares in subsidiaries not listed in Malaysia Stock exchange. On June 29, 2009, WANCorp has used the *istibdal* principle of Johor Land Berhad. This reimbursement was made with a share unit in Al-'Aqar KPJ REIT, another subsidiary of JCorp listed in Malaysia Stock Exchange. WANCorp is responsible for channeling based on the waqf goals in which as much as 70% to JCorp as Original Investment, 25% to WANCorp for Fisabilillah and 5% submitted to MAIJ (Borham, 2011).

In Mesir, to develop waqf, nazhir cooperate with companies like companies iron, steel, sugar and others. In addition there are also nazhir who develop waqf by buying stocks and bonds from important companies. In this way, waqf can generate funds, and be used to maintain other non-consumptive waqfs such as mosques, madrassas, helping children who have no school fees and other social interests (Nafis, 2013, Kraipakorn, 2018)

As a comparison material in various countries whose representatives have been well developed, they generally have a Waqf Board or an equivalent institution with a Waqf Board. For example Egypt, Saudi Arabia, Sudan, and others. Waqf Board in Egypt has been established since 1971. Waqf Board in Egypt is under the

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Ministry of waqf or *Wizaratul Auqaf*. The main task of Egypt's Waqf Board is to address various waqf issues and develop them productively in accordance with the regulations. Besides, the Egyptian Waqf Board is also obliged to investigate the problematic waqf, distribute the results of waqf and carry out all the activities that have been established.

As a country that has experience in handling waqf issues, waqf is maintained by professionals in their respective fields. To facilitate its activities, Egypt's Waqf Board also invites professionals outside of those who are already administrators. Egyptian Waqf Board has the authority to manage and distribute the results of management to those who are entitled to the best, so that waqf can serve to welfare ummah. The important activity of Egyptian Waqf Board is to develop productive waqf. In this case they work with companies, hospitals, banks, or developers to manage waqf assets. In addition, Waqf Board also buys stocks and bonds from big companies. All activities of Waqf Board in Egypt are regulated with adequate legislation.

In Singapore, under the supervision and responsibility of the Islamic Council of Singapore (MUIS), all the waqf land was settled in 2000. It established a commercial institution called Warees Investments Pte Ltd in 2002, which serves to manage and develop MUIS assets efficiently and professionals in the field of business. In Singapore, all wakaf properties are managed by Warees Investments Pte Ltd, a 100% owned real estate company owned by MUIS. Warees managed to build 20 housing units of Waqf Kassim, following a commercial building and educational institution Wisma Indah in Changi Road. Endowment Kassim annually benefits from the rent of Wisma Indah S \$ 300,000.- In addition Warees also managed to raise cash waqf funds from 200,000 Singapore Muslim workers. Every month their income or salary is deducted directly through their respective employers. All the collected endowments are used by MUIS for the construction of 23 large mosques in Singapore which cost at least S \$ 140 million ([Budiarto, 2012](#)).

The establishment of the Company Warees Investments Pte Ltd in Singapore shows an example of the overall management of waqf assets integrated with the company. Basically, the capital used is waqf money which is then synergized with waqf objects. Like the establishment of commercial buildings on waqf land funded from cash waqf.

5. Conclusion

Shares Waqf is one of the entry points for the integration of waqf and corporate. Automatically, the increase in waqf assets is managed in conjunction with the line of business carried out by the company. Shares waqf integrated with the activity of corporate is the right pattern to integrate the concept of development of waqf through modern, professional, and transparent management. Based on the Indonesian Company Law, the Company issued shares on behalf of the owner. The Company has authority to set the terms of ownership of shares in the articles of association in accordance with the provisions of the legislation. The type of personal shares previously which will be transferred as waqf also be adjusted with the articles of association of the company, whether including the type of shares that can be transferred or not. Besides, it is also type of shares which not contrary to principles of Shariah (Islamic Law).

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