Towards the Improvement of Waqf Accountability in Indonesia: A Critical Review of the Act No 41/2004 on Waqf

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Abstrak

Wakaf merupakan aktifitas yang sangat signifikan peranannya dalam perkembangan masyarakat Muslim di masa lampau. Namun sangat disayangkan, dengan berjalannya waktu serta pengaruh kolonialisme, aktifitas wakaf menjadi menurun. Ironisnya, di beberapa negara Muslim harta wakaf tidak dikelola secara baik bahkan banyak yang hilang. Alasannya, pemerintah Indonesia baru saja membuat langkah besar dalam hal pemberdayaan wakaf, yakni melalui diundangkannya Undang-undang Republik Indonesia Nomor 41 tahun 2004 tentang wakaf. Meskipun sebelumnya telah banyak peraturan yang mengatur keberadaan harta wakaf di Indonesia, akan tetapi kebanyakan dari peraturan lebih terfokus kepada harta wakaf dalam bentuk tanah. Tulisan ini mencoba mereview sejauh mana undang-undang tersebut mendorong para pengelola harta wakaf (mutawalli) di Indonesia untuk lebih akuntabel dan transparan. Dengan hasil tersebut, beberapa rekomendasi diajukan untuk perbaikan pengelolaan wakaf di Indonesia.

Kata kunci: wakaf, akuntabilitas, undang-undang no 41 tahun 2004 tentang wakaf.

1. Introduction

Waqf (plural: Awqaf), used to be a significant element in the development of Muslim society. Kahf (2003) defines waqf as "...holding certain property and preserving it for the confined benefit of philanthropy and prohibiting any use or disposition of it outside its specific objective". Basically, it was laid down firstly by Prophet Muhammad (PBUH) and the sahabah (Prophet's companions). Later, during the period of Khilafah Islamiyah, waqf was still one of the important parts in Muslim's life. There were many famous awqaf created by kings and wealthy persons. For instance, Al-azhar mosque which is still being used to date is one of waqf property from the Fatimid Caliphate.

However, with the passage of time, waqf become less popular among Muslim society. Moreover, colonialism has made the situation become worse. Even though the activities are still there, it is not as widespread as it used to be. In some Muslim countries, waqf properties have been neglected as well as not much attention is paid to it. Therefore, it is not surprising if some of waqf properties are not recorded properly or even have gone missing. The main problem of waqf today is lack of management in most Muslim countries. Besides, the mutawallis (managers) who have the responsibility to manage waqf property have insufficient skills to handle them.

Fortunately the awareness of revitalization of waqf institutions had just emerged among Muslim countries in the last decade. For instance, the government of Egypt (Pioppi, 2004), Sri Lanka (Marsoof, 2004), Sudan (Mohsin, 2005), and Indonesia (Masyita, Tasrif and Talaga, 2005; Prihatini, Hasanah and Wirdyaningsih, 2005) realized the need for waqf revival in order to create a better society. They believed that waqf can be an effective institution for poverty alleviation which is currently faced by Muslim society (Sadeq, 2002). Therefore, those governments tried to re-administer waqf institutions as a part of their endeavors to promote socio economic development. Among those Muslim countries, the Indonesian government has made major reforms in revitalization of waqf institutions through the enactment of...
new *waqf* act to regulate *waqf* institutions in Indonesia.

This paper aims to review the new act on *waqf* in Indonesia and to examine how this act can improve the accountability and transparency of *waqf* management in Indonesia. To achieve that aims, this paper is organized as follows: the next section will discuss the history of *waqf* in Indonesia, followed by the review of the Act No 41/2004 on *waqf*. This paper concludes with some proposals for the improvement of *waqf* accountability and management in Indonesia.

2. A Brief History of *Waqf* in Indonesia

To some extent, the development of *waqf* in other Muslim countries has given the inspiration to some Indonesian *waqf* institutions in managing *waqf*. For instance, the model of *waqf* management in Al-Azhar, Egypt has motivated Badan Wakaf Pondok Pesantren Modern Gontor to adapt their system in managing *waqf* assets (Abubakar, 2005a). While, the successful launch of cash *waqf* in Bangladesh has encouraged Dompet Dhuafa to introduce cash *waqf* in Indonesia (Prihatini et al., 2005).

Although currently there are many *waqf* assets in Indonesia, it cannot be said that the development of *waqf* has been successful. For example, up to 2003 the Ministry of Religious Affairs of Indonesia recorded that the area of *waqf* land in Indonesia was 379,353.71 acres and spread in 362,471 locations (Setiawan, 2004). However, most of those lands are unproductive and are not used optimally to solve many social problems such as poverty in Indonesia. So far, the main usage of *waqf* properties is addressed for religious purposes such as mosques, schools and graveyard. Suhadi (2002) provides evidence that up to 97% of *waqf* land in Bantul, Yogyakarta was used for religious activities. Only 3 % was occupied to support the socio-economic aspect of Muslims. Indeed, if those assets were utilized properly, it can help the poor and the needy as well. Hasanah (2003) points out that this phenomenon is due to lack of skill of the *mutawalli*. Prihatna (2005) agrees that the failure of *waqf* in solving many problems in Indonesia is not because of the diminishing or lack of *waqf* assets, but rather, due to the improper management and unskilled *mutawalli*.

Actually, *waqf* activities in Indonesia came a long way. Previous studies show that the history of *waqf* in Indonesia has been reviewed briefly by Gofar (2002), Suhadi (2002), Prihatini et al. (2005) and Prihatna (2005). According to Gofar (2002) the earliest trace of *waqf* in Indonesia dated back to the middle of thirteenth century, when Islam came for the first time to the country. This evidence is supported by Suhadi (2002) and Prihatna (2005) where they identified that *waqf* deeds had been practiced by the kings of Islamic kingdoms at that time such as in Aceh and Mataram. Based on a documentation made by ministry of religious affairs, during 1500 to 1600 there were *waqf* land in East Java (about 20,615 M²). Over the time, the number of *waqf* assets had improved gradually along with the proselytization of Islam in Indonesia, even though most of them were still limited to land and rice field. Later on *waqf* assets spread to mosques and religious schools and houses for the orphans.

Although for more than three hundred years Indonesia was occupied by the Dutch, it did not make *waqf* activities become stagnant. Gofar (2002) and Prihatini et al., (2005) review that in this stage of *waqf* history; the Dutch government had issued several *waqf* regulations to control *waqf* activities in Indonesia. For instance, in the *Bijblad op het Staatblad* No 6196/ 1905 it was stated that any establishment of *waqf* should be authorized by the Dutch government. However, none of them was really effective in regulating *waqf*. Gofar points this out because the Islamic community considered all regulations issued by the Dutch government tended to restrict their religious activities. Prihatna (2005) adds...
the evidence that during colonialism, philanthropic activities i.e. zakat, sadaqah and waqf were used as means by many ulama to fight the colonialism. Therefore, Islamic community did not want to follow the colonial laws. Furthermore, those regulations were still used by the Japanese colonizers during their occupation to control waqf assets in Indonesia.

After independence, the Indonesian government attempted to issue some regulations and acts relating to waqf. However, those acts were not specifically addressed to waqf administration; rather it was mixed with other subjects, such as marriage and heritage. For example, the regulation for waqf was embedded in the Act No 5/1960 on Agrarian Matters. Whilst, waqf was regulated in the Act No 7/1989 on Islamic Court, where it was mentioned that any matters relating to marriage, heritage, waqf and sadaqah should be settled by the Islamic Court. Beside those acts, the Indonesian government also issued several regulations pertaining to waqf on land such as the regulation no 6 /1977 pertaining to the registration of waqf on land. Yet, those regulations and acts were still limited waqf assets on land. Gofar (2002) criticizes that the previous waqf regulations were no longer effective in regulating waqf in Indonesia, because it did not encourage mutawalli to manage the waqf asset properly. Therefore, Gofar suggests that there was a call for renewal of waqf regulations to be positive law i.e. specific act relating to waqf. Similarly, Suhaidi (2002) points out that waqf regulation in Indonesia needs to be renewed. He opines that the previous waqf regulation was not addressed to improve the prosperity of Muslim society in Indonesia.

In line with Gofar and Suhaidi, Prihatini et al., (2005) agree that previous waqf regulations were not sufficient to regulate waqf in Indonesia. Even though any matters relating to waqf on land have been regulated, Prihatini et al., realize that there are a lot of waqf assets besides land such as mosques, universities as well as cash waqf which need to be administered properly. In addition, the previous regulations were not addressed to improve the role and responsibility of mutawalli. Hence, it is not surprising if there are a lot of unproductive waqf assets found all over the regions of Indonesia.

Fortunately, the above criticisms and suggestion did not have to wait long to be answered. At the end of 2004, the Indonesian government enacted The Act No 41/2004 on Waqf. Prihatini et al., (2005) note that this act has been awaited by many academicians and practitioners who are concerned with waqf in Indonesia. The current act has given a new hope for the improvement of waqf management in Indonesia. Prihatini et al., review that the new act regulates some crucial matters relating to waqf administration such as the roles and responsibilities of mutawalli, types of waqf assets, the allotment of waqf assets, as well as the establishment of Indonesian Waqf Board.

3. Review of the Act No 41/2004 on Waqf

As mentioned early, the enactment of The Act No 41/2004 on Waqf has been waited by many academicians and practitioners who are interested in waqf. To be exact, this act was enacted by the President of Republic of Indonesia on 27th October 2004 after the agreement of the Parliament. The act consists of nine chapters which are divided into 71 sections. Among those chapters, Prihatini et al., (2005) identify some crucial themes relating to waqf administration, namely mutawalli, types of waqf assets, the allotment of waqf assets, as well as the establishment of Indonesian Waqf Board. These themes are important as these matters have never been the subject of any previous waqf regulations in Indonesia. In addition, it reflects the willingness of Indonesian government to give more attention to improve waqf management in Indonesia.
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With regard to mutawalli the act provides clear guidelines pertaining to the requirements of mutawalli as well their roles and responsibilities. It is mentioned in Chapter 5, section 9, mutawalli of waqf can be individual, organization, or corporate body. Individual mutawalli should fulfill the requirements as follows: Indonesian citizenship, Muslim, adult, amanah (trusted), able to conduct their duty and not under judicial proceedings. Whereas, organizations and corporate body can be any non business organization which is concerned with social, education, and Islamic issues.

Furthermore, in section 11, it is stated that mutawalli has responsibilities as follows:

1. To administer all waqf assets.
2. To manage and develop waqf properties in line with the objective of its establishment.
3. To control and protect waqf assets.
4. To report their performance and activities to the Indonesian waqf Board.

In addition to abovementioned responsibilities, mutawalli deserves to have further training provided by Indonesian waqf Board and Ministry of Religious Affairs in order to improve their skill in managing waqf. Hence, mutawalli should be registered in the Indonesian waqf Board as well as Ministry of Religious affairs. Furthermore, it is also mentioned in the act that mutawalli can get paid based on their duty in managing waqf, however, not more than 10% of the net income of waqf institutions.

Accordingly, the act has taken into consideration the improvement of the performance of mutawalli. It is clear, that mutawalli should fulfill all requirements, and should be registered. Besides, they should provide reports on their duty regularly to the Board. It implies that all mutawalli will be monitored by Indonesian waqf Board and at the end of the day; it will improve the responsibility of mutawalli as well as to encourage them to be more transparent in performing their duties.

Interestingly, the act provides clear guidance pertaining to how mutawalli should manage waqf assets. This issue is mentioned in chapter 5 concerning management and development of waqf assets. It is stated in section 43 that mutawalli is responsible to manage and develop waqf assets in accordance with the objective of waqf establishment. In addition to managing waqf assets, section 44 (2) mentions that the management and development of waqf assets should be performed productively.

Indeed, the above matters are in line with the new paradigm of management of waqf assets. Kahf (1998) points out that waqf activity is not only related to protecting the assets, but also investing them to become more productive. Therefore, mutawalli should be creative in managing and developing waqf assets. In other words, the act has encouraged mutawalli to be more creative in managing waqf, where it is not only to maintain the assets, but also to invest and develop them.

Another important issue in the act is pertaining to types of waqf assets. While the previous regulations on waqf restricted waqf assets to land, in the new act waqf assets can be in the form of various assets such as buildings, money, gold, marketable securities, vehicles, patent, etc. Chapter 6 section 15 and 16 mentioned clearly any types of assets that can be endowed as waqf. This act has strengthened a fatwa issued by Board of Indonesian Ulama which allowed waqf in terms of money.

Nevertheless, it might take time to disseminate this waqf innovation to Muslim community in Indonesia. This is due to the classic terminology of waqf was dominated by waqf in terms of fixed assets. Prihatini et al., (2005) acknowledge that the new model of waqf i.e. cash waqf is not easy to be managed since it needs more transparency and requires the handling of professional management. However, this innovation...
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can encourage Islamic community to endow their assets. As mentioned by Prihatna (2005) actually, the majority of Muslims in Indonesia are willing to give charity and donations. Prihatna gives sample based on the research by PIRAC in 2002 relating to the Muslim preference in endowing charity. The research found that up to 98% of respondents said they have given something to charity. Meaning that, many Muslims want to give waqf, however sometimes they do not know how to carry it out, since the conservative term of waqf was only in terms of land. Therefore, the innovation on waqf assets will give more opportunities for Muslim community to endow their assets.

Furthermore, section 22 of the act regulates the allotment of waqf assets. In the act it is stated that waqf assets can be endowed for:

a. Worship activities;
b. Education and health activities;
c. Assisting the poor, orphans, and also can be used as scholarship;
d. Development of Islamic society economy;
e. Development of society in general as long as it is not against the shari'ah rules and laws.

Interestingly, this act has encouraged the usage of waqf assets for the improvement of Muslim community and society at large, something which was not covered by any previous regulations. If this act can be run effectively, then waqf will be an effective means to solve social and economic problems in Indonesia. This is in line with Al-Makassary (2003) who opines that a modern Islamic philanthropy should be built on foundation of social justice, without discriminating any genders, groups, and beliefs. Furthermore, modern Islamic philanthropy can support the government to achieve social justice. In addition, waqf is a means to deliver da'wah, since many non-Muslims can get benefit from waqf. Therefore, they will realize that Islam is not addressed to Muslim only, but rahmattan li 'alamin vii.

Another chapter of the act is pertaining to the establishment of Indonesian waqf Board. This theme is explained extensively in chapter 6 of the act and being specified into fifteen sections with regard to the roles and functions of the Board, as well as members, funding and their responsibilities. It is stated that Indonesian waqf Board is an independent body which is established to encourage the development of waqf in Indonesia. The Board is located in the capital city of Indonesia, however, if necessary, any branches can be established in any provinces, and residences.

In section 49 of the Act, the roles and functions of the Board is mentioned as followed:

a. To train and educate mutawalli in managing waqf assets;
b. To manage and develop any national and international waqf assets;
c. To authorize any change with regard to the status of waqf assets;
d. To determinate and change mutawalli;
e. To give approval for any change in waqf assets;
f. To give suggestions to the government pertaining to waqf matters in Indonesia.

Pertaining to point b where the Board is responsible to manage any national and international assets, Abubakar (2006) argues that so far neither national nor international waqf assets have been established. Further, Abubakar gives a comparison with Turkey where waqf Board in Turkey is responsible to manage all historical buildings heritage from the Ustmaniyyah Dynasty. However, there is no such waqf asset in Indonesia, unless the management of national Mosques i.e. Istiqlal is entrusted to the Board. Therefore, it is a challenge for the Board to prove that they can be trusted to manage national or international waqf assets.
In section 54 of the act, the requirements of the Board members are explained. In general, the requirements are quite similar to the requirements of mutawalli except some additions namely; capable and having knowledge in economics, waqf and Islamic economics. In addition to capability, the members should be committed to develop waqf in Indonesia. The members of the Board will be authorized by the government; hence it is also mentioned in the act that the Board deserves to get funding from the government.

Concerning their responsibility, the Board is responsible to the Indonesian government and they should provide annual report of their duties. Moreover, this report should also be delivered to the public. This point is interesting, since it will encourage transparency in all level. While mutawalli should provide their reporting to the Board, at the same time the Board is responsible to the government and public.

To some extent, the idea of the establishment of Indonesian waqf Board is slightly similar with the Charity Commission in the UK which is responsible in controlling all charities in England and Ireland. Moreover, the idea of establishment of Waqf Board can turn waqf institutions to be more transparent and professional. Hence, the independency, professionalism and transparency will be the key factors in determining the success of the Board to develop waqf in Indonesia.

However, it is disappointing to note that the act does not provide details with regard to regulation of how waqf account should be prepared as well as the audit of waqfs. Even though section 11 of the Act mentions about the obligation of mutawalli to provide reports to the Indonesian Waqf board, it is not clear how mutawalli should prepare accounts for their reporting. In fact, to discharge accountability of mutawalli to the public, clear reporting guidelines should be provided. Therefore, there is a need for the Indonesian Waqf Board to issue by-laws on the accounting and auditing of waqf institutions.

By and large, the new act has enforced the professionalism of waqf management in Indonesia by taking into consideration the main problems faced by waqf institutions namely lack of skill of mutawalli (Hasanah, 2003), misuse of waqf asset (Al-Makassary, 2003) and unstructured management of waqf institutions (Prihatna, 2005). The enactment of waqf act has become a starting point for the improvement of waqf management in Indonesia in the future.

4. Recommendations

Since the current waqf act does not touch on the management and accounting of waqf, the authoritative body and policy maker should consider developing waqf by-laws for management and accounting. The call for management and accounting standards for waqf is very crucial since it will give impact to the transparency and accountability of mutawalli to public.

Regarding the management of waqf, it is necessary to set up code of good corporate governance for waqf. With reference to charity in the UK, the Charity Commission has issued the code of corporate governance for charity which was jointly worked with the ICSA®. Basically, waqf institutions deserve good governance since good governance will ensure that waqf practices and procedures are in line with its objective. In addition, good governance will assist mutawalli to focus on the expectation of the beneficiaries and the fulfillment of shari'ah requirements. Therefore, Indonesian Waqf Board can make a joint work with the National Committee on Governance® (Komite Nasional Kebijakan Governance) to develop recommended governance practices for awqaf.

Whilst to set up accounting standards, the authoritative body of waqf can ask the accounting professional body or academics to come up with a standard draft. Moreover, the standard draft can be
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referred to the AAOIFI as currently it is working on developing accounting standards for waqf. The accounting standards for waqf can improve the quality of waqf financial reporting besides enhancing the accountability and transparency of mutawalli.

These recommendations are expected to be considered by the policy maker and waqf authoritative body particularly in Indonesia in developing management and accounting standards for waqf institutions.

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I Fatimid Caliphate is the Ismaili Shiite dynasty that ruled North Africa from A.D. 909 to 1171

II In some references, manager of waqf also called nazer. These both terms are used interchangeably in this paper.

III In the Bijblad op het Staatsblad No 133901 1934 it was mentioned that to build mosques and perform Jum'ah prayer should be authorized by the Dutch government.

IV However, Gofar and Suhaidi conducted their study prior to the enactment of new waqf act

V In the act, the term nazhir is used instead of mutawalli. Basically, the latter term is mostly used in South Asia.

VI The Board of Indonesian Ulama issued fatwa on 11th Mei 2002 relating to cash waqf practices in Indonesia. It was mentioned it the fatwa that cash waqf is jawaz (allowable).

VII PIRAC (Public Interest Research & Advocacy Centre) is a NGO which concerned in philanthropic research, training and advocacy in Indonesia.

VIII Rahmattan lil ‘alamin can be translated as mercy for the worlds.

IX ICSA (Institute of Chartered Secretaries and Administrators) provides professional qualifications and governance guidance for businesses and corporate governance guidance.

X National Committee on Governance (NCG) is aimed to enhance comprehension and implementation good governance in Indonesia, and also to advise the government about the governance issues, both in public and corporate sectors.

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