

Perpetual Concept of Waqf in Southeast Asia Solution Concept of Sustainable Family Business in Overcoming Pandemic Covid-19

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ABSTRACT

Covid pandemic conditions are similar to war conditions, colonialization periods. This paper aims to do analogical reasoning about the issue of the perpetual concept of the Islamic Philanthropic (Waqf) institutions in countries with colonialization experience and without colonialization one, to prove waqf institutions can survive in institutional change. The study uses a systematic literature review method of analysis. This research is conducted by using the most cited works listed in reputable journals and other literature sources. The time frame of analysis of Islamic philanthropic institutions in this study is the operational sustainability after the colonial period, until after independence for some countries. The findings say, most of the waqf institutions in Southeast Asia let the religious court's legality control the legal aspect of waqf institutions. Under certain conditions, colonialization tends to result in mismanagement and discontinuity due to their position in controlling the social activity. Meanwhile, the Islamic Philanthropic institutions were managed by their respective Waqf Board and supervised by religious courts tend to be sustainable from the point of view of legitimacy theory.

Keywords: Colonialization, Perpetual, Waqf.

1. BACKGROUND

Disturbances in system stability that occur during the COVID-19 pandemic can be compared to disturbances that occur during wartime. In war, many people die on the battlefield, while in a pandemic, humans die in an effort to fight epidemics that attack health. Government functions are paralyzed due to pandemics or wars, business and the economy seem to stop.

The strong statement by Abulhasan A Sadeq about perpetual concept of waqf that "A waqf asset cannot be disposed of; its ownership cannot be transferred. Only its benefits are to be used for the specific purpose(s), which is (are) mainly charitable in nature. In this sense, waqf is a perpetual charity and this perpetuity is its essential characteristic" [1]. The *Nadzir* or *Mutawalli* of the waqf asset is only a manager. Perpetual, cannot be terminated under any laws, because waqf asset is belong to God and be perpetual [2].

The waqf history in Southeast Asia has started by the coming of Islām to the region approximately

during the 13th century [3]. It was approximately two years after Islam started spreading in Southeast Asia in 11th century [4].

Waqf is a form of ownership based on trust, by an individual Muslim who is still living under Islamic law as rules and regulations. It is intended for perpetual general social services. The waqf operations are funded by income that is given for good. In the beginning of Islam era, the concept of waqf is that it must be immovable objects, but in its development waqf in the form of movable assets has been legitimized by Islamic law [5].

Sukmana in 2020, used the most cited works from reputable journals in his research, said that the finance topic dominated the literature of waqf with 35% coverage. The topic on the history of waqf has the lowest percentage, about 6% of the literature. Another interesting topic was topic of waqf with its relation to economic development as it recorded 25% of the cited literature. We can conclude that the works with analysis on history has the least interest among other topic in waqf literature [6]. It is a challenging space to work with the least references in it.

2. THEORETICAL REVIEW

2.1. Concept of Waqf on Family Business

The various waqf implementation around the world especially in Muslim countries has been facing the obstacles regarding its perpetual function. Cizakca stated in his book that the long history of waqf experiences universal fluctuations. According to historical data, distraction emerged in the nineteenth and twentieth centuries. His work states that one of the causes of the disturbance is western imperialism, while other institutional factors such as the stability of the government system and the waqf management system also play an important role [7].

Waqf can be understood as a reflection of one's piety in charity activities. The practice of waqf as a provider of public goods has existed since 750 AD or even before that. Timur Kuran does not distinguish the terms between waqf and Islamic trust or pious foundation. But the difference is that waqf is regulated by Islamic law and the activities of its use. The benefits of waqf are not limited to Muslims only [8]. Evidence has proved that the Muslim world recognizes endowments and the West, such as English, Spain, and South Africa [2]. Corporate waqf also has been applied in some countries as a family business [9], [10].

2.2. Waqf

In the past, waqf properties were used for education, health and financing of public facilities. Teacher salaries are paid using waqf funds. Students are given scholarships to continue their education to a higher level. Medical expenses and health care are also covered by these funds [11]–[13].

The origin of waqf rests upon the Ḥadīth narrated in the following words: "Abū Hurairah (Allah be pleased with him) reported Allah's messenger (SAW) as saying: When a man dies, his acts come to an end, but three; recurring charity (ṣadaqah al-jāriyah), or knowledge (by which people benefit), or a pious offspring, who prays for him." [19] With this, the institution of waqf has always been in the conscience of the Muslims. They used to give charity both movable or immovable properties, and they will strive to perform this act of devotion to seek perpetual benefit in this world and the hereafter [14].

In the early stages of the development of waqf regulations, the founder is allowed to appoint himself and/or his family and descendants as guardians and/or

heirs of the waqf. Only after the lineage is extinct will income be allocated to certain pious purposes [2], [11], [15].

This waqf is said to be in line with the spirit of worship wherein the wakif will receive a reward for good deeds even after he dies as Abu Hurairah reported that the Holy Prophet (pbuh) said "when a person dies, all his actions end, but three; repeated alms (ṣadaqah jarriyah), or knowledge (which is beneficial to humans), or pious children who pray for it [13].

2.3. Perpetual Concept of Waqf Among Scholars

Some scholars seem to be stated with the similar tone in whole works and give the details. Such like Cizakca etc in the most comprehensive waqf book, stated that duration of the waqf must be perpetual, comparing to a trust, which cannot be perpetual. Sadeq in his work analysed that waqf is such a perpetual charity in the Islamic ethical which could be perpetual charity and perpetually alleviating poverty. Increasing access to perpetual charity will lead to the effectiveness of poverty alleviation. Basically that is not only for poverty alleviation but also building healthy moral and human resources development through the mechanism of perpetual charity in an institutional instrument of perpetual charity in the Islamic ethic.

Timur Kuran pointed out that benefits of waqf were treated as perpetual not itself have to be perpetual, within decentralized units, which ensures perpetual experimentation and competition in various system could not produce dynamically perpetual organizations. In particular, waqf could be kind of cooperation that occurs within decentralized regime that ensures perpetual experimentation and competed realms [8].

While Sabrina Joseph in her analysis of Waqf in Historical Perspective Online Fatwas and Contemporary Discourses by Muslim Scholars bolded the conclusion that however the form of the waqf, it need to result the perpetual nature of waqf, perpetual charity, perpetual benefit. The response by highlighting the perpetual nature of waqf is in fact its perpetual and permanent nature. However, assets continues to be perpetual waqf but it does not have contradiction with the legal to be temporal endowments [16]. In another tone, some scholars give the two kind of period of time of waqf purposes. It is mentioned that perpetual and temporary classification of waqf period [17], [18]. In the contemporary world,

perpetual form of waqf asset is not necessary according to the modern ulema fatwas. The perpetual and temporal types of waqf is a chance to gain the perpetual form of philanthropic institution. Kahf has made the clearer these perpetual attribute of the waqf. It is also allowed by Maliki school, that allowed perpetual and temporary. Kahf says there are two types of waqf, perpetual and temporal. Not all waqf assets are perpetual by nature except land. Perpetuity objective of waqf must be perpetual. The perpetuity of the endowment, but allowed the temporary movable asset [15], [19]–[22].

3. RESEARCH METHOD

The study uses a systematic literature review method of analysis. It is the comparison of historical resources data and research by systematically identifying the data analysis of research to gain the finding and conclusion of the research question.

This research is conducted by using the most cited works both books and reputable journals as the literature sources. The key to gathering the resources is by using the list of literature supporting research in the study area in this paper, which is presented in table 2 of this work.

The time frame of analysis of the sustainability of Islamic philanthropic institutions in this study is the operational sustainability after the colonial period, until after independence for some countries.

The sample of this research that we choose are some countries in Southeast Asian countries such as Indonesia, Malaysia, Brunei Darussalam, Singapore, Thailand and the Philippines.

4. RESEARCH FINDING

4.1. Indonesia

The Portuguese colonized Indonesia in early colonialization eras, but the Portuguese did not intervene the religious court authorities. Dutch, the Dutch East Indies government took over control of government regulations to the regions, they don't recognize the authority of the ulama court in some areas. It made some waqf asset can't operate and even discontinued to operate [4], [23]. In Indonesia, especially in Java, the shariah Islamic qadi authority synergized with the priyayi in regulating Muslim affairs, including waqf regulations. However, when the Java war occurred in the 1880s, its function was deprived of its function, with the presence of a priest's

court by the Dutch East Indies government (Lombard, D., 1996). After independence, the modern Indonesian government accommodated the concept of waqf in the form of laws contained in Law no. 41 of 2004 concerning Waqf. In one of the articles of Law no. 41 of 2004 has explained the definition of cash waqf.

4.2. Malaysia

In Malaysia, waqf administrators are only legal under the law (eg, Federal Territories State Islamic Law, 1993), the SIRC of each state. By the development of shariah board, cash waqf is also recognized by legal law as stock waqf (stock waqf). Cash waqf is collected and the money is used for pious purposes such as helping the poor and needy and as educational aid. Several state SIRCs (namely Penang, Johor, Pahang and Selangor) have this type of waqf.

The concept of Malay Islamic Monarchy and has been practiced since the 14th century AD. Talking about waqf governance. It is different from what happened in India, Muslim Empires in Malaysia compromised with British government that British government recognise the ruling of waqf asset by religious court (Dahlan, Nur Khalidah et al. 2014; Roslan et al. 2012; Yaacob 2013b, 2013a).

4.3. Singapore

Singapore was recorded as the first to issue regulations regarding waqf. The Administration of Muslim Law Act, which has been effective since 1987, regulates waqf property in the form of immovable or movable property belonging to Muslims and Hindus whose functions are protected by the state. It was found that financial reporting for cash waqf (especially in Singapore) is better because it has completed financial reports with records of the amounts issued for various activities (Nahar & Yaacob, 2011; Yaacob et al., 2012). Singapore has a little effect of British government to their land endowments (hindu and muslim endowment) The government after independence took over all of waqf land under their ulema authority MUIS [27]–[29].

4.4. Brunei Darussalam

Brunei the highest Islamic dignity among others. In Brunei Darussalam, all matters relating to waqf are governed and administered by the Islamic Religious Council of Brunei Darussalam (MUIB) based on the provisions of the law contained in the Laws of Brunei Darussalam namely the Islamic Religious Council of

Brunei Darussalam (MUIB) and the Court of the Kadi Division 77.

The practice of waqf in Brunei has existed since the beginning of the Brunei Darussalam Sultanate. Those days, waqf is performed traditionally whereby a waqf giver give waqf property to ustaz or religious teacher, or a community leader who later acts as a nazhir. The development of the waqf management in Brunei Darussalam began in 1955 with the introduction of Brunei Darussalam National Law and the 77th Judicial Circuit Courts[30], [31].

4.5. Thailand

In Satun Province, South part of Thailand, waqf in Thailand can be found in various forms and mainly property waqf which includes mosque buildings, Islamic schools, agricultural land and rental houses. It is similar to waqf management in India, except that there is no law on waqf in Thailand.

The Imams also feel that they can manage the available waqf properties well and require no more intervention from the governmental authority. Many Imams are of the opinion that if the Thai Muslims are to fully benefit from waqf properties, waqf law must be introduced. At the moment, there is no Thailand law provides any reference to waqf and tends to cause tensions between Muslims and in many cases the governmental agencies[32], [33].

4.6. Philipines

However, the establishment of waqf (pl. awqāf; sing. waqf) institutions or inalienable Muslim endowments in the Philippines can be traced back prior to colonialism in the Philippines. Waqf literatures in the Philippines have cursorily addressed the impact of government policies on the target population in the Autonomous Region in Muslim Mindanao (ARMM) and the grassroots response to the development of Islamic institutions, particularly awqāf properties. the effectiveness of the remedies and solutions proofed in addressing the solving the problems of awqāf properties in Lanao del Sur, Philippines [34], [35].

5. CONCLUSION

The disturbance that occurred in the colonial period was an obstacle for an institution to operate normally. The concept of immortality in waqf is the main driver so that the institution always survives

under any conditions. The colonial authority that occurred in Southeast Asia was resolved by the active role of authority institutions represented by imams and local religious courts in reviving waqf. In the case of a pandemic, business processes are disrupted by the roles of the authorities which do not function due to health conditions, social distancing, or other health problems which are solved by volunteer mechanisms which are the main spirit of waqf institutions. Waqf concept of perpetuality can be brought to be a solution as it is applied to the family business as a solution for the pandemic covid-19 disruption.

AUTHORS' CONTRIBUTIONS

Most waqf institutions in Southeast Asia let the religious court's legality control the legal aspect of waqf institutions. It is also pointed out that colonialization tends to lead the mismanagement and discontinuity due to their position in controlling the social activity. The religious courts tend to be the most important role in maintaining the perpetual of waqf institution.

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Perpetual concept of waqf institution acquire the sustainable waqf institution. It is needed to search more about the form of religious courts that tend to be sustain during the colonialization and government transition.

According to Malaysia, Singapore, Brunei Darussalam, and Thailand case, the question arises whether the role of Muslim imperialism is a format that can strengthen the operational sustainability of waqf institutions.

The perpetual concept of waqf can be applied to the family business organization management, to solve the disruption caused by the pandemic covid-19.

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