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### Problems of Implementation of Productive Waqf in Pesantren

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**Abstract:** Discourses of Productive waqf in Indonesia has appeared since Act Number 41 Year 2004 concerning Waqf has been published. This discourse requires the management of waqf to be more productive at several institutions of waqf in Indonesia including pesantren, because all this time the management of waqf looks consumptive. this paper will discuss about what are the problems in implementation of productive waqf in Pesantren. This paper is library research. The data is taken from the book reference that explaining the several pesantren experience such as Pesantren Gontor, Pesantren Tebuireng and Pesantren Ash-Shiddiqiyah. The data that has been collected would be analyzed descriptively qualitative. The results of this research show that the problems of implementation of productive waqf in pesantren can be described as follows: Firstly, the majority of the positions of waqf pesantren are not yet fully owned by the public institution, so that the community is less concerned to participate in the development of waqf assets of pesantren. Secondly, the unclear status of the outcome of waqf, whether it belongs to the institution of waqf automatically or it belongs to the owner of the pesantren. Thirdly, the manager of waqf pesantren (*nazîr*) is less professional. The majority of them are still patterned in the paradigm of consumptive waqf thinking, besides that the selection process of the manager of waqf perfunctorily make their sense of responsibility relatively reduced

**Keywords:** *problems, waqf, productive, pesantren*

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#### A. Introduction

Waqf is one of the philanthropic pillars known in Islam. Historically, waqf seems static compared to other social funds management such as zakat, infaq, and alms. Thus, it can be said that the management of waqf in Indonesia is still far from expectations. It can be seen as a consequence of historical reality showing the existence of a condition where the tradition of utilizing waqf is directly related to the pattern of dissemination and development of Islam in this nation.

The fact above shows that the waqf for the mosque and educational institutions such as pesantren and cemetery are the most recognized type of waqf in the society since the 12<sup>th</sup> century. It occurred at the same time when Islam became a social political power with the emergence of various Islamic kingdoms in this nation.

Such dynamics simultaneously provide a waqf type in Indonesia that is identical with the religious pattern because the dominant form of waqf found are waqf for mosque and pesantren, it can rarely find waqf for productive purposes or other aspects of socio-economic life (Najib & al-Makassary, 2006, pp. 72-76 & 121).

In fact, waqf in Indonesia has considerable potential and can be an alternative source of funds for national development. Data from the Ministry of Religious Affairs states that the area of waqf land until the end of 2002 is 1.5 billion square meters spread over 359,462 locations and the majority of the potential is waqf for mosques, pesantren and cemetery (Dirjen BIPH, 2003). the potential of waqf has not been managed optimally so that its contribution in the field of social economy especially in the improvement of people

welfare is less than in the religious field. This fact is not surprising because the regulation waqf in Indonesia in its history runs slow and less profitable for the development of waqf so that the dynamics waqf in Indonesia looks static and its management tends to be consumptive.

Waqf in Indonesia began to get more attention from the public and the government since the issuance of independent waqf regulation namely the issuance of Law No. 41 of 2004 on Waqf. The law mandates that waqf should be managed productively instead of consumptively, so that waqf can contribute to overcoming the people economic problems (Suyono, 2007, pp. 2-3).

The paradigm of productive waqf is a demand for waqf institutions especially pesantren considering that it is part of the majority waqf institution in Indonesia, besides it also has relatively strong position in society and it is even able to defeat society culture itself. Pesantren can survive for centuries in applying the values of his own life and make a total transformation in the attitude of life of the surrounding people without sacrificing their identity (Wahid, 1974).

Pesantren with its such position is expected to be a pioneer and frontline in managing waqf productively in Indonesia so that it can perform not only traditional functions as science transformation, tradition maintenance and reproduction of ulema, but also agents of change and society development as well as economic empowerment center (Azra, 1997).

The large and practical potentials of pesantren waqf existed in the management paradigm that tends to be consumptive, will certainly cause various problems when it has to respond the new ones. The problems will be described in this paper, but it will be begun with a description of the meaning or concept of waqf which is essential as a philanthropy institution of Islam which must be managed and developed productively. Then, it will explain the response which have been done by pesantren in waqf management with productive paradigm.

## B. Productive Paradigm in Waqf Concept

Waqf is one of the icon of philanthropy that has been known and practiced for a long time in people history. In pre-Islamic era, waqf had been practiced by the society especially on the matters concerning the place of worship (Zahrah, 2004, p. 9). Then in the Islamic era, it developed not only on the matters concerning the place of worship but also on the matters concerning all the possessions that can be productive such as waqf over slaves, debt with *qardhun hasan* contract and so on (Zahrah, 2004, p. 9). The history showed that the beginning of waqf in Islam was exemplified by the prophet at the Quba Mosque built on the land owned by an orphanage from the Banu Najjār where the prophet purchased for a hundred dirhams then gave it as waqf. In addition, the prophet also gave the seven palm plantations belonged to Mukhairiq for waqf (Qahaf, 2006, pp. 19-20).

What the prophet did was followed by his friends. They were Utsmān bin affān buying a well (bi'ru) of a house and gave it as waqf for the shake of Moslems, Abū Thalhah giving his palm garden "bayruhā" for waqf, 'Umar bin al-Khattāb giving his khaibar land for waqf (Qahaf, 2006, pp. 20-22). In addition, 'Alī bin Abī Thālib gave his "yanbū" land as waqf for poor people and other public interests. Even at the end of the reign of Umar ibn al-Khattāb, Jabir bin 'Abdillāh's witnessed that no friends having wealth except those giving their property as an eternal elm called waqf (az-Zarqā, p. 12).

Socio-historical perspective above shows that waqf has become a public practice, while formal juridical perspective states that the legality of waqf is based on three main principles: (Zahrah, 2004, p. 11) First, the hadith narrated by Abū Hurairah stating that the Prophet said "*Idzā māta ibnadam amqaaa amaluhu illā min tsalātsin shadaqatin jāriyah wa 'ilmin yuntafa'u bihi wa waladin shālihin yad'ū lahu*". Ibn Abbas and some other companions such as Mu'adz bin Jabal, Zayd bin Tsābit, Ā'isyah, Khālid ibn al-Walīd, Jābir bin 'Abdillāh and so regarded that the meaning of the word "*shadaqatin jāriyah*" in the text is that a

waqf due to the stored property with the flowing results (az-Zarqâ, p. 13).

Second, the hadith narrated by Ibn 'Umar is popular and it even becomes the main reference as the basis of legality of waqf. It was explained that 'Umar once asked the Prophet for guidance on the use of his property called "*tsamgha*" which was in Khaibar (Syalabî, 1957, hal. 23), the Prophet then said "... *in syi'ta habbasta ashlah wa tashaddaqta bihâ* ... (if you want, save the main land and give the result or benefits for alms) (as-Suyûthî, 1930, p. 232). Based on the prophet's suggestion then 'Umar gave the khaibar's land for the poor people, relatives, servants, public interest (*sabîlillâh*), guests and *ibnu sabîl* with a commitment that he would not sell, grant and inherit the land, he also advised that the keeper or nazhir of the land could take its results as long as it was good and wise (*bi al-ma'rûf*) (al-Bukhârî, p. 126). The third is the practice (*atsar*) of the waqf of the prophet's companions as described above.

The socio-historical and juridical basis above indicate that waqf is one of the Islamic philanthropy institutions having the character of the protection and preservation of the property given as waqf by a person and the continuous distribution of the results or the benefits of the property. Such a character indicates that waqf requires a productive activity of the property management so that the results or benefits given by the property can last in a long time that it is known as *şadaqah jâriyah*. The character also affirms that the essence of waqf is productive, an effort to get results and benefits from a waqf (Jamal, 2007, p. 126). This is certainly different from other types of philanthropy such as grants, zakat, infaq and alms that must be divisible and immediately utilized without any obligation *mustahiqqîn* (recipient) to preserve it. In other words, it can be stated that basically the property is created for any advantages which can be utilized in two ways; how to spend such property in the grant, zakat, and alms, or by using the property continuously while maintaining the sustainability of the object called waqf (az-Zarqâ, p. 9).

The paradigm of productive waqf has long been done and developed in various regions of Islam. In Turkey, waqf has been known and practiced since the Abbasid Daula and Ottoman Empire. At that time, it was a philanthropic unit that can be used in the education and research sectors, the arts and cultural sectors, and cash waqf. Now, it has been managed professionally and it is even found in the form of investment in various fields of business (Najib & al-Makassary, 2006, pp. 49-50). In Iran, waqf has expanded to infrastructure sector financing, tourism and health services since the 10<sup>th</sup> century, as well as in Egypt with its al-Azhar waqf, Kuwait with the role of Kuwait Awqaf Public Foundation (KAPF) delivering waqf in the country as an independent institution and sustain the socio-economic life of the country (Najib & al-Makassary, 2006, pp. 49-50).

### **C. The Paradigm of Productive Waqf and Pesantren's Response to it: Between Inevitability and Reality**

Discussion of waqf in Indonesia cannot be separated with waqf regulation. Productive waqf discourse began to roll out and get attention since the presence of Law No. 41 of 2004 on Waqf and its implementation regulation of Government Regulation Number 42 of 2006 on Implementation of Law No. 41 of 2004 on Waqf. Many new things regulated by this law than the previous regulation, one of the essentials is the paradigm of management and development of waqf possessions ordained with the motto of the productive paradigm (Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf).

The paradigm of productive waqf occurred as a response to the reality of national waqf that tend to be consumptive as the impact of dominant and limited waqf objects in the form of land. It is not surprising that the regulation of waqf is not independent at that time, but it was hung or inserted in the land regulation namely the Basic Law Agrarian Number 5 Year 1960 on the basic provisions of agrarian, then clarified by Regulation of the Minister of Religious Affairs No. 1 of 1978 on Regulation

of Implementation of Government Regulation No. 28 of 1977 on Property waqf (Usman, 2009, pp. 2-7).

The existence of the above productive discourse is a new spirit supporting waqf as an instrument for the welfare of the Muslim society by changing the consumptive waqf management to productive one. Therefore, the approach used is not only the economic approach but also the business approach (Mubarok, 2008, p. 27). It can be seen from the efforts of waqf regulation requiring nazhir to manage and develop property waqf in accordance with its purpose, function and appropriation and it must be carried out productively without violating the principles of sharia. The productive management and development can be done by fundraising, investment, production, partnership, trade, agribusiness, mining, industry, technology development and construction of buildings, apartments, flats, supermarkets, shops, offices, educational facilities and business that is not contrary to sharia. It is expected to be managed by nazhir with a business approach called profit-oriented business which the benefits can be distributed to the rightful parties to receive it (Mubarok, 2008, p. 27).

Productive waqf discourse that has been strengthened with the above regulation is certainly a challenge for the waqf institution that is dominant in the religious field. It is usually in the form of land and buildings that is consumptive, including the institution of boarding school which majority of its assets in the form of land and building as a legacy of past tradition. Nowadays, with the concept of productive waqf, pesantren is required to manage its institutional management which majority of them are waqf in order to move dynamic to be realized as waqf institution of productive pesantren and unlimited da'wah institution not only in religion and education, but also in socioeconomic society through society development programs, increasing public participation, and advocacy of policies favoring the unfortunate people (Najib & al-Makassary, 2006, p. 23). This necessity needs to be realized since the majority of waqf from the beginning of its growth is

allocated to finance religious facilities and education such as pesantren (Fuad, 2008, p. 76).

In general, it can be stated that there are still few pesantren in Indonesia responding to productive waqf discourse. Nevertheless, some of them have shown a response to the productive waqf discourse by attempting to manage their waqf assets toward a productive paradigm. Modern Pesantren of Darussalam Gontor (Abubakar, 2005, pp. 226-233, 245-247), for example, has developed management of pesantren waqf assets by investing the assets of waqf that they manage in the form of business units based on modern management, extending waqf which is not only limited to movable property but also immovable property, perspective of people to the exchanging of waqf assets as something closed and it's also important that this pesantren applies the utilization of waqf not only concerning worship aspect of *an sich* but also improving economy and prosperity of people (Suyono, 2007, pp. 154-156). It is not surprising that waqf asset of pesantren becomes a fantastic dynamics. Gontor pesantren owned 18.59 hectares of land when waqf was given at the first time in 1958, then in 2009, it grew to 825,184 hectares, of which approximately 651 hectares was waqf. The land is acquired through waqf, grant, exchange, and purchase. In addition, this pesantren has invested its waqf assets in 27 productive business units (Zarkasyi, 2005, p. 186).

In addition, Pesantren Tebuireng also begins to move towards utilization of waqf assets productively although it seems too late. It is indicated by the management of productive assets such as rice fields and gardens whose results are distributed for the prosperity of pesantren, especially for the education funds in it (Abubakar, 2005, pp. 283-285). Although the management of waqf in it has not reached the professional level yet, it has strength in fundraising strategy and the waqf development as seen from the progress in providing educational facilities in it (Huda, 2009).

Another example is Asshiddiqiyah pesantren. It is able to raise waqf assets

from 2600 m<sup>2</sup> with an Islamic Prayer Room into 15 hectares (Fuad, 2008, p. 95), in addition, it develops various business in the form of rice fields and business activities that result oriented to operational financing and facilities as well as helping the economics of the surrounding people, especially the students' parents there (Fuad, 2008, p. 75).

Those are three examples of pesantren responding to the urgency of managing and developing waqf assets productively. Although it cannot be stated that they are professional waqf institution, but at least they have inspired the other ones to make waqf institution of pesantren as a productive waqf institution that not only focuses on the purely religious aspect but also improves the welfare people.

#### **D. The Problems of Productive Waqf Implementation in Pesantren**

In general, waqf in Indonesia has not empowered the people's economy. Uswatun Hasanah suggests several causing factors: First, the problem of society understanding about waqf law. In general, people do not understand the waqf law properly and correctly, both the principles and conditions of waqf as well as the reasons for waqf. Second, the administration and management of waqf are not professional. Third, the waqf objects tend to be static assets that are difficult to develop. Fourth, less professional nadzir (Hasanah, 2009, p. 18). Suyono et al in his research at Pesantren Modern Darussalam Gontor revealed some problems in managing the waqf assets of pesantren productively, one of them are due to the dominance of waqf concept of *syāfi'iyah*, unprofessional nadzir and domestic economic condition (Suyono, 2007, pp. 42-48).

In the context of pesantren, the existing problems are: First, the position of pesantren waqf which majority not yet become public institution. This is due to the ambiguity of pesantren both as an independent public waqf institution and as an institution under the authority of kyai (Najib & al-Makassary, 2006, p. 78). In fact, the authority of kyai is more dominant than

the power of public independence in pesantren, since kyai is a symbol of the source of power and absolute authority in pesantren so that it is often regarded as a person who has self-confident concerning science, power, and pesantren management (Dhofier, 1994, p. 56). It has affected the public's lack of attention to view pesantren as a public institution since there is no mechanism wondering the institution's accountability. In this case, it is stated that the institution has not yet become a public accountability (Najib & al-Makassary, 2006, p. 78).

Ideally, waqf as a public philanthropy institution should be positioned as public property so that it can be managed and trusted to the society where *kyai* and their families are also involved. This kind of can be found in Modern Pesantren of Darussalam Gontor and Pesantren Tebuireng, institutionalizes pesantren as a public waqf institution under independent management so that there is a change of position of waqf pesantren which originally belongs to kyai. In this case, kyai and family authority is more dominantly transformed into a public institution. On October 12, 1958, Modern Pesantren of Darussalam Gontor which was led by three Kyai, known as Trimurti, handed over it to 15 IKPM (United Modern Pesantren) representatives, then it was called as Waqf Board. Similarly, Pesantren Tebuireng, stood since the late 19<sup>th</sup> century, has instituted its waqf institution as public property with the establishment of Yayasan Hasyim Asyari since 1947.

The second problem is the asset status bias occurring on the result of the development of a waqf asset whether it becomes waqf automatically or a private property of kyai. It arises when the position of waqf is still in the form of the institution mentioned in the first problem so that the progress of waqf asset productivity is difficult to measure. Pondok Pesantren Asshiddiqiyah Kedoya Jakarta, for example, has almost 15 hectares total area. The original waqf land is 2,600 m<sup>2</sup>, the rest of it is the result of self-purchase from the kyai. Karawang Campus is located in 11.5

ha with 5,000 m<sup>2</sup> of waqf land, 10 hectares in the form of processed rice field and the result is used for some operational cost of pesantren, the rest of the land area of 11 hectare was bought by the kyai, as well as the existing assets in Campus Batu Ceper Tangerang consists of waqf land area of 6000 m<sup>2</sup> and campus consisting of personal asset of the kyai (Fuad, 2008, pp. 74-75, 95). According to Zamakhsyari Dhofier states that there are two views for this kind of bias: first, the property belongs to the kyai; second, it is a waqf so it is not easy to conclude whether all religious institutions can be identified as waqf assets (Fuad, 2008, p. 77).

The bias of waqf assets can also occur in the strategy of raising and developing the waqf assets of pesantren which sometimes belong to non-waqf assets because of the form of alms or grant so that the management is mixed with waqf's assets. It can be found in Modern Pesantren of Darussalam Gontor. Such asset management as a consequence of the application of a one-stop financial management system purposing to facilitate oversight and security, but in fact, it is difficult to measure and evaluate the success rate of the pure waqf asset itself (Abubakar, 2005, pp. 240-241, 246-247).

The third problem is the problem of legal subject of waqf especially nazhir. Reflecting on the adage of "the man behind the gun", then it can be said that it is the main problem in managing waqf productively, especially in pesantren. Nazhir Professionalism is a non-negotiable demand in implementing trustworthy management of waqf property in a productive way (Asmuni, 2007, p. 70). But in reality, the number of professional nazhir especially in pesantren is still low. The quality of Modern Pesantren of Darussalam Gontor is still categorized as semi-professional because its management still combine traditional and professional pattern (Suyono, 2007, p. 154).

The main source of the problem of waqf legal subjects especially nazhir is the problem of understanding (main side). The majority of waqf legal subjects are still patterned on opinion about waqf as

something immutable and static, so the objects given for waqf tend to be immovable objects such as land and buildings. Hence waqf cannot be changed in other forms and status especially when it cannot be utilized anymore. Even more, the assets are deliberately left to be swallowed by the time so that the term of exchange of waqf (*istibdāl*) or asset refreshment never comes in their thought. Such an understanding causes the waqf assets to be static and almost consumptive especially when it is in an unutilized condition. In addition, nazhir is chosen carelessly so that they are less responsible unreliable in the development of waqf assets. It can be stated that the potential of waqf assets that can be optimized becomes more consumptive. It means that waqf is actually expected to provide benefits because its lasting productivity turns into a waqf that drains the benefits because it requires the maintenance cost of the waqf assets.

## E. Conclusion

The results of this research show that the problems of implementation of productive waqf in pesantren can be described as follows: Firstly, the majority of the positions of waqf pesantren are not yet fully owned by the public institution, so that the community is less concerned to participate in the development of waqf assets of pesantren. Secondly, the unclear status of the outcome of waqf, whether it belongs to the institution of waqf automatically or it belongs to the owner of the pesantren. Thirdly, the manager of waqf pesantren (*nazîr*) is less professional. The majority of them are still patterned in the paradigm of consumptive waqf thinking, besides that the selection process of the manager of waqf perfunctorily make their sense of responsibility relatively reduced

The description above describes the essence of waqf as one of Islamic philanthropy institutions which must be managed productively based on the benefit of lasting asset. In Indonesia, pesantren as a part of a potential waqf institution should have responded to the paradigm of waqf management in productive way, considering

the fact that pesantren is consumptively managed. the process of this response raises a variety of problems, one of them is the ownership of pesantren that has not been understood or even not purely become public property so that society is not fully help to develop religious social institutions namely pesantren. It causes further problems that bias waqf asset status whether it is as pure waqf or kyai's property in the development of waqf assets as well as a mixture of waqf and non-waqf assets in the process of raising funds and developing waqf assets. The main problem in this case is the subject of waqf law especially nazhir which has not fulfilled the competence as professional one.

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