

The Current Status of Waqf Sector's Governance in Indonesia

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ABSTRACT

Purpose

In the past, waqf was able to significantly contribute towards the ummah welfare. While the potential remains in this contemporary era, a contrast situation on waqf can be observed in many Muslim countries, including Indonesia. In Indonesia, most of existing waqf assets are not productive. Yet the actual collection of cash waqf is reported to be less than 1% of its perceived potential. National Planning Agency (BAPPENAS) mentioned that this situation occurred due to lack of transparency and good governance on waqf sector in Indonesia. Whereas some studies have acknowledged importance of effective governance for waqf revival, a study that elaborates the current status of governance on this sector is hardly found. The current study aims to elaborate and analyze the reality of governance of waqf sector in Indonesia.

Design/methodology/approach

Qualitative approach with meta-synthesis of the literatures on governance and waqf in Indonesia is employed in this study. In addition, relevant laws, regulations, published reports, and online sources are also being included.

Findings

According to Waqf Act 41/2004, Indonesian Waqf Board (IWB) represents the governing body of waqf sector in Indonesia. Theoretically, this body is equipped with certain authorities and resources to conduct the governance mechanism. However, in practice, lack of governance mechanism and issue on governance structure are observed. In addition, Ministry of Religious Affairs (MoRA) is also playing a role as Waqf authority in the country. Lack of explicit work clarity and segregation of duties between those two authorities is considered to cause overlap and inefficiency in governance of waqf sector in Indonesia. Hence, clear governance system of waqf sector in term of functioning (mechanism), structure, infrastructure, and composition are in need of development and implementation.

Originality/value

This study represents the first work that attempts to elaborate the state of governance of Waqf sector in Indonesia.

Keywords: Indonesia, Governance, Waqf Sector

Theme: Governance, Public Policy, Public Administration and Management, Leadership

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INTRODUCTION

Some studies have acknowledged significant contribution of waqf in the past. For example, Kahf (2005) noted various types of waqf in terms of public facilities. Waqf was able to provide essential services in the area of health, education, and municipalities without any cost to the government (Çizakça, 2000). According to him, this fact holds the relevancy of waqf to the Islamic modern societies. Similar argument was mentioned by Ascarya, Husman, & Tanjung (2018) in view that waqf is considered as a pillar of Islamic economic and finance which was proven to become instrument for wealth distribution and benefit the ummah's welfare.

While the huge potential remains, unfortunately, the actual situation of waqf is in contrast. In Indonesia for example, most of existing waqf assets are not productive. The actual collection of cash waqf in the country is reported to be less than 1% of its perceived potential. Gap between the potential and actual performance of waqf can be observed. In the context of Indonesia, one main contribution which considered to cause the gap is the lack of good governance on waqf sector (BAPPENAS, 2016). In view of this situation, a study to elaborate the current status of governance is necessary prior proposing any improvement. This is the area that will be covered in the current study.

UNDERSTANDING WAQF

Waqf (plural awqaf) represents Arabic "*waqfa*" that means 'stoppage, immobilization (of ownership of property)'. It is defined as "*making a property invulnerable to any disposition that leads to transfer of ownership and donating the usufruct of that property to the beneficiaries*" (AAOIFI, 2015). Al-Jazairy (2001) mentioned that substantially waqf principal should not be inherited, sold, or given away as a gift or used as security collateral and the benefit should be continuous.

Mohsin (2009) noted that there are three conditions that should be maintained to keep waqf assets, namely irrevocability, perpetuity, and inalienability. The first refer to the situation when the waqf deed and status cannot be revoked, even by the founders' heirs. The second condition means that waqf assets need to give perpetual benefit towards the respective beneficiaries. And the latter condition refers to a situation when the usage of waqf assets is limited according to the stated purpose. The waqf assets cannot be the subject of any sale, disposition, mortgage, gift, inheritance, or any alienation whatsoever.

Basically, Alquran as the primary source of Islamic jurisprudence does not specifically mention "waqf". However, Rashid (2002) noted that it is a recommended act according to some Alquran verses, for instance Alquran Surah Ali Imran: 92 and 115, Al Baqarah: 177, 215, 261 and 267, and Al Hajj: 77. In addition, Abdullah (2015) acknowledged that it was mainstream for the companion to establish a waqf in the past.

CONTEXT OF GOVERNANCE

Hassan (2014) noted that initially terminology of governance is derived from Greek word *kyberman* which means “*to steer, guide, or govern*”. Particularly with regards to corporate governance, she noted that Cadbury Report represents the first code which was issued in 1992. Since then, governance codes have been developed in the local and international context. While the OECD principles have become international benchmark in corporate governance development in many countries, Abu-Tapanjeh (2009) elaborated that the recommended set of principles which are contained in the OECD are not new in Islam. Instead, he acknowledged that those principles had been existed since the early stage of Islamic civilization. With this, it can be inferred that those principles have been covered in the Islamic teaching.

Arshad & Haneef (2015; 2017) are among those who categorized waqf as part of third/voluntary sector. Within charity and non-profit sector, there is a charity governance code that has been developed by the steering committee in the UK. Whereas the third version separates the code into the code for larger and smaller charities, in substance they have same seven guiding principles, which are organizational purpose, leadership, integrity, decision making and risk control, board effectiveness, diversity, and openness and accountability. Charities with income more than £1m a year are being recommended to refer the code for larger charities and other way round.

While the achievement of organizational purpose represents the main focus that indicates the level of success in applying the charity governance code, the main purpose of waqf is to fulfill the waqf deed. Technically, the fulfillment of the waqf deed can be achieved when the waqf characteristics are being maintained. Those are included the sustainability of the waqf assets, perpetuity of the benefit to the beneficiaries, and shariah compliance (AAOIFI, 2015; Abbasi, 2012). In this sense, the structure and mechanism of the governance need to be developed to accommodate the fulfillment of waqf objectives.

In term of content, it can be inferred from governance principles that board plays an important role in the context of governance within this sector. With regards to this, Pointer and Orlikoff (2002) have categorized main factors that can affect the governance quality of the board, namely governance functioning, governance structure, governance composition, and governance infrastructure. Governance functioning refers to the roles and responsibilities of the board. Governance structure refer to the way of the board is divided, shared, or coordinated. Governance composition refers to characteristics of the board. And the governance infrastructure covers resources and systems that facilitate and support the board and its work. Those components then will be used as reference in elaborating the current status of governance of waqf sector in Indonesia.

RESEARCH METHODOLOGY

Qualitative meta-synthesis is being acknowledged as an exploratory research method that designed to build or extract reference from qualitative research results (Lee, 2010). He noted that goal of qualitative meta-synthesis is “*to develop an explanatory theory or model that may explain the findings of a group of similar qualitative studies*”. In this sense, qualitative meta-synthesis is being selected as the research method for this study, considering that current study is exploratory in nature.

Technically, electronic database search in the Google Scholar and Mendeley are undertaken using combination of terms “Waqf/Wakaf/Awqaf” and “Indonesia”. Those two platforms are being used considering that majority of the papers with regards to waqf in Indonesia are in Indonesian language (Bahasa) and do not being covered in indexed journals that using English. Other than two mentioned databases, relevant published reports and publications from respective authorities in Indonesia are also being covered. Those include Masterplan for Indonesian Islamic Financial Architecture issued by BAPPENAS, performance report 2016, performance agreement 2016 and 2017 of Directorate General of the Guidance of Islamic Society, Collection of Waqf Law and Regulation issued by IWB, and Minister of Religion’s Regulation 42/2016 on Organization and Governance of MoRA.

Summary of Literature Selection

Criteria	Google Scholar	Mendeley	Others	Total
Papers contains word "(waqf OR wakaf OR awqaf) AND Indonesia" anywhere	21100	152		21252
Papers contains word "(waqf OR wakaf OR awqaf) AND Indonesia" in title and accesible. Language is limited in English and Bahasa	206	100		306
Relevant papers on governance area indicated by the title	64	40		104
Relevant papers based on contents of abstract and keywords	8	4		12
Duplicate papers		-2		-2
Relevant reports, books, documents issued by waqf authorities or government of Indonesia			6	6
Primary studies after quality assessment and accessibility (availability of full documents)	8	2	6	16

According to above criteria, 16 documents are analyzed to elaborate the current situation of governance of waqf sector from the lens of main components identified by Pointer and Orlikoff (2002).

WAQF IN INDONESIA

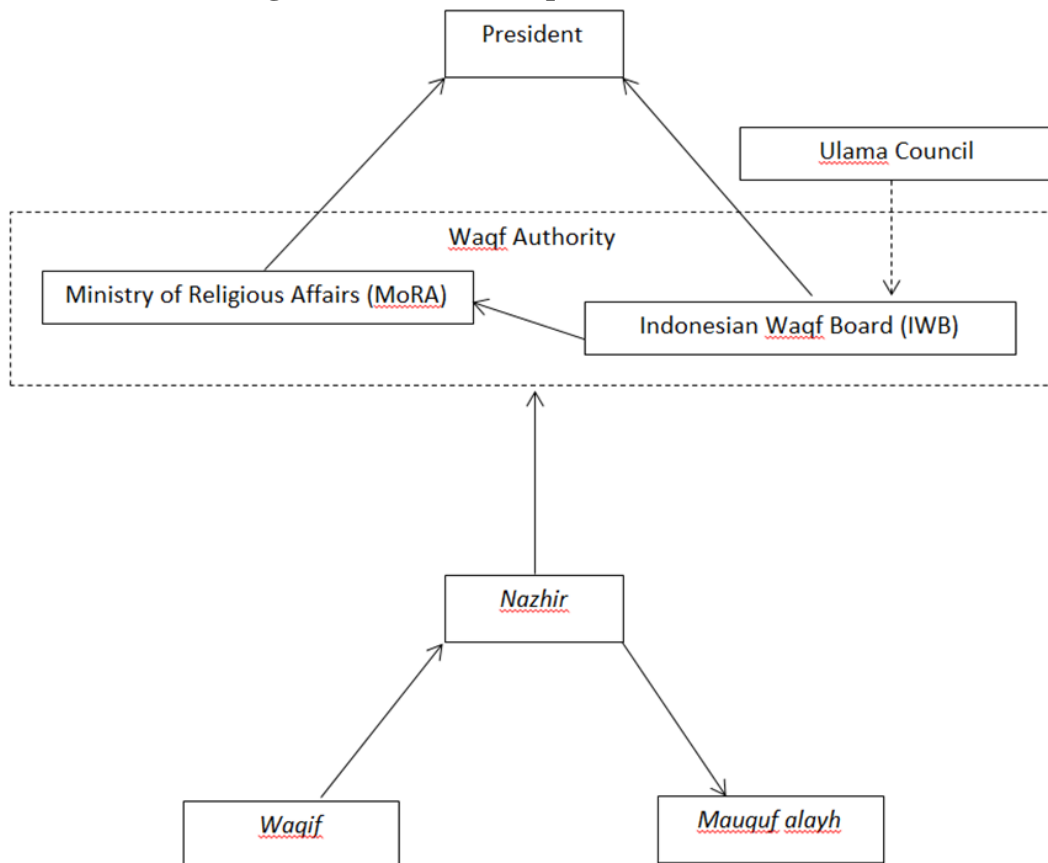
In Indonesia, waqf sector is being regulated by an Act and positive regulations. Waqf Act 41 that was issued on 2004 represents the main regulation on waqf sector. According to this Act, waqf is defined as “legal action of waqif to separate and/or give part his belongings, to be benefited forever or temporary for religious activity or prosperity within shariah lens”. Ihsan (2007) mentioned that establishment of this act represents important step to promote productive waqf in Indonesia.

This act is basically supported with some derivative regulation, including Government Regulation 42/2006 on practice of stated Waqf Act that has been updated with Government Regulation 25/2018. These regulations also become the basis to establish Indonesian Waqf Board (IWB). IWB is an independent body to promote and develop national waqf, hence considered as the governing body of waqf sector in Indonesia (Manaf, Mohamad, Ali, Kadir, & Nasir, 2017).

Legal structure of waqf institutions in Indonesia, according to the existing waqf law and regulations can be seen in below figure. Whereas the Waqf Act 41/2004 has acknowledged the independent status of IWB, Haneef et.al (2017) found that duality on waqf authority between IWB and MoRA caused the weakness of IWB. They noted limited waqf development in the country which indicated from the slow progress of waqf institutions and lack of research and literatures in this area.

According to the existing Waqf Act 41/2004, nazhir can be individual, organization, or legal entity. As of October 2017, there are 76% of 187 cash waqf nazhir who represents Islamic microfinance institutions (BMT and cooperation) in Indonesia. The remaining represents non-governmental organization (NGO) in form of foundation.

Legal Structure of Waqf Sector in Indonesia



Developed from Indonesian Waqf Act (Waqf Act, 2004)

GOVERNANCE OF WAQF SECTOR IN INDONESIA

Some studies have acknowledged that IWB and MoRA play role as waqf authorities in Indonesia at the same time (Aslam Mohamed Haneef et al., 2017; BAPPENAS, 2016; Hasanah, 2014). Within the same studies, lack of clarity on scope of work between those two authorities has been observed to cause overlap that hinder waqf development in the country. To date, most of waqf assets are in form of mosque and burial area which do not generate revenue for beneficiaries or socio-economic development program. Further elaboration on the status of governance on waqf sector in Indonesia is summarized in below table.

Governance of Waqf Sector in Indonesia

Components	Current Situation
Governance Functioning	<p>Nasution (2008) mentioned that IWB was initially established with spirit to promote productive waqf in the country. It is being expected that IWB will be able to develop waqf in Indonesia in professional and productive way. The important role of IWB has been acknowledged, as there is dependency of waqf assets development with the policies issued by IWB (Hasanah, 2012). While IWB has developed vision, mission, and strategies without explicit measured indicators, MoRA has already set the expected target in their annual performance agreement (MoRA, 2016b, 2017). According to the published reports, whereas the target has been set, the scope is very limited. In 2017, MoRA set the same target as previous year related to 70% certification of waqf land (MoRA, 2016a). Same target was set as it has not been achieved in 2016.</p> <p>Particularly on IWB, the board plays role as nazhir, supervisor, motivator, facilitator, regulator at the same time (Aziz, 2017; Nasution, 2008). Role as operator has not been effective due to priority and overlap issue (Fithriyah, 2013). Hasanah (2014) added that even there is lack of clarity on institutional design of the headquarter and representative of the board in each province. She noted that while the main task of IWB is to supervise, coordinate, and empower nazhirs, majority of them are reluctant to comply with the existing law and regulations on waqf. For instance, they refused to submit periodic report to IWB. With regards to this situation, low law enforcement was taken. So far no cancellation on the license of non-compliance cash waqf nazhir, a possible follow up that actually can be conducted by the board.</p> <p>Practically, Putri (2016) concluded that programs that have been conducted by both IWB and MoRA for nazhirs have not been effective. In addition, she found that the programs were not conducted as per existing guidance. With that, indicator in term of development on nazhirs' competency has not been reached. She mentioned that according to survey, majority of nazhirs in Padang did not discharge their responsibility well. She pointed that some waqf lands have not been registered to the authority. Furthermore, lack of understanding with regards to their roles and responsibilities as nazhirs can also be observed.</p> <p>Ramli, Salleh, and Muhamed (2015) stated that there are three mechanism of governance, namely the existence of governing boards, the existence of monitoring systems, and signaling mechanism like reporting. In term of the first, they found that there is a board in the organizational level. While in term of the second, they noted that external audit process along with governmental audit are existed. However, there is no internal auditor and no sufficient mechanism on shariah audit. Whereas Ihsan (2007) acknowledged the necessity of reporting for the board, in reality, there is very limited published report available with regards to the work program of the IWB and MoRA. Furthermore, Ihsan (2007) also noted the necessity to have code of good governance for waqf in Indonesia.</p>
Governance Composition	<p>Board members of IWB are appointed by the task force committee according to some requirements and various backgrounds. Ramli, Salleh, and Muhamed (2015) noted that some of board members have shariah background. It has six divisions, including nazhir development, management and development of waqf property, institutional division, division of public relation, division of research and development, division of cooperation abroad.</p>

	Whereas it was mentioned that there are particular criteria that are employed in selecting the board members, no information with regards to the specific member expectations and periodic individual assessment on the board members.
Governance Infrastructure	BAPPENAS (2016) noted the lack of power of IWB. IDR 6 billion/year for IWB was stated to be late disbursed and insufficient to run the work program (Hasanah, 2014). BWI is stated to have independent status, but in practice the only source of income is allocated from MoRA. Dahlan (2016) stated that it was a contradict situation between reality and law on independency of IWB. There was a decrease budget for Directorate of Waqf in MoRA from ~IDR 58 billion to ~IDR 28 billion (MoRA, 2016a, 2017). Lack of staffs with part time administrators workers (Hasanah, 2014). Moreover, number of staffs is less than the number of board members in IWB.
Governance Structure	Executive Agency and the Advisory Council of IWB, each led by a Chairman and two Vice Chairman who are elected by the members (20-30 members). 27 board members in HQ (2017-2020) and around 14 members in each province. In total, there are 34 provinces in Indonesia. To date, no periodic assessment with regards to the size of the board by waqf authorities. In the published report, it found that directorate waqf and zakat was still separate, while according to PMA 42/2016, those two directorates have been combined since 26 September 2016. In term of number of human resources, MoRA has 43 employees working on waqf matters in 2016 (MoRA, 2016a). BAPPENAS (2016) noted that there is an inefficiency of the structure of waqf authorities in Indonesia and suggested to merge the existing authorities into IWB as single waqf authority in Indonesia.

CONCLUSION

According to Waqf Act 41/2004, Indonesian Waqf Board (IWB) represents the governing body of the waqf sector in Indonesia. Theoretically, this body is equipped with certain authorities and resources to conduct the governance mechanism. However, in practice, issue on structure and lack of governance mechanism can be observed. In addition, Ministry of Religious Affairs is also playing role as waqf authority in the country. Lack of explicit work clarity and segregation of duties between those two authorities is considered to cause overlap and inefficiency governance on waqf sector in Indonesia. Hence, clear governance system on waqf sector in term of functioning (mechanism), structure, infrastructure, and composition need to be developed and executed.

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