

OPTIMIZING THE WAQF MANAGEMENT IN ISLAMIC BOARDING SCHOOLS: A STUDY OF THE BASMALAH FRANCHISE IN INDONESIA

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Abstract

Waqf is an alternative for Muslims to donate their endowment for a charitable purpose. This endowment is also usually purposed to build or develop mosques, madrasas, Islamic boarding schools (pesantren), and other Islamic institutions. From the business perspective of Islamic boarding schools, it can mean a capital asset or something that can be used for productive or valuable purposes. The research examines the concept of optimizing waqf in pesantren and analyzes the implementation of management waqf on the Basmalah franchises (Kopontren Basmalah Sidogiri). This article is based on a field study that used a descriptiveanalytical approach. The paper concludes that the optimization of waqf on the Basmalah franchise uses the concept of productive waqf. Kopontren Basmalah, based on an Islamic sharia cooperative, accommodates members and investors collectively to develop waqf assets. The management of the Kopontren Sidogiri also facilitates the new branch of the Basmalah store by accommodating various aqad in a profit-sharing system.

Keywords: Sidogiri Islamic Boarding School, Kopontren Basmalah, Productive Waqf, Franchise Business.



Introduction

Islam has been carrying the principal value, namely rahmatan lil 'alamin, so it can be said that Islam has pragmatic universal values. It is no exception in the view of Islamic property, not only as a fulfillment of the necessities of life but also as a facility to alleviate social inequality. It follows the two objectives of agreement in Islamic trans-actions, namely business contract (agad muawadhah) and social contract (aqad tabarru), which include waqf (an endowment made by a Muslim to a religious, educational, or charitable cause). In the history of Islamic civilization, waqf has been playing a central role in the progress of society as follows:

- Nearly 75% of all arable land in the Ottoman Empire was waqf land;
- 2. Half (50%) of the land in Algeria during the French colonial period in the mid-19th century was waqf land:
- 3. In the same period, 33% of land in Tunisia was waqf land;
- 4. In Egypt up to 1949, 12.5% of agricultural land was waqf land;
- 5. In 1930, about 30% of the cultivated land in Iran was waqf land.

The government must optimize the magnitude of this potential to prosper and prosper the people. However, in contrast to the facts on the ground, waqf in Indonesia is only for 'ubudiyah affairs.

Nothing is wrong with this, but it would be better if the manifestation of waqf was hablum minal Allah and hablum minan nas. This textual reading of waqf closes the possibility of broader aspects of the usefulness of waqf. The aftermath is that waqf loses its productive economic, social, and even educational aspects. The amount of waqf land that is intended for other than 'ubudiyah affairs is still very minimal. According to the latest data from the Waqf Information System (SIWAK), there are two largest waqf implementations in Indonesia: 43.94% for building mosques and 28.01% for mosques, while for utilization in other sectors, it is less than 11%.

The data above shows that waqf in Indonesia is still consumptive and even requires a budget for maintenance. Regarding management, 66% of waqf in Indonesia is still managed traditionally (individually). Meanwhile, waqf, managed in an organized and competent manner, is only 16%, and legal entities manage 18%.

This causes the substance of waqf to stagnate, and the benefits of waqf for the poor, orphans, people in nursing homes, widows, and people in need are not conveyed. Therefore, a mosque or prayer room is often built magnificently but not accompanied by the welfare of the surrounding community. Waqf should be beneficial for the community's welfare

through various inventive efforts such as improving the community's quality of life, expanding public space for the community, and launching policies that always favor the poor.

Implementing the waqf is still not following the teachings of the Prophet Muhammad, which focuses on the form of the waqf and the equitable distribution of the benefits of managing the waqf. At that time, the waqf land was not only consumptive but also productive. For example, land in Khaibar owned by Umar bin Khattab was waqf to be managed, and the proceeds were distributed to the poor, brothers, enslaved people, ibn sabil, and guests; and many other examples of productive waqf, whose management results can be maintained and beneficial to the recipient (mauquf 'laihi).

During the caliph of Islamic dynasties era, waqf implementation expanded its scope. The orientation of waqf is no longer only to meet the needs of the poor, but it has a broader scope, such as being used as capital to establish school foundations, build libraries, and pay teachers and scholarships for students. This spirit drives the state to regulate waqf as a sector to build community social and economic solidarity.

Today waqf should be more flexible so Muslims can feel its impact. Through productive waqf, their economy can develop massively and sustainably for a long time. This paradigm should follow as a form of philanthropy in Islam to the times' needs. It is crucial for waqf institutions such as in pesantren. The position of pesantren is very significant in the social fabric of Indonesian people. Pesantren have values and maintain traditions that can survive in Indonesian culture.

Moreover, pesantren can change the social attitude of the surrounding community without reducing its existence as a tradition. As an Islamic philanthropic institution, pesantren is required to change the climate of waqf management to be productive. Pesantren not only performs its cultural obligations such as transforming knowledge, maintaining traditions, and printing scholars, but pesantren also provide renewal and improvement of community quality, as well as being a central buffer for the community's economy.

Sidogiri Islamic Boarding School, one of the significant boarding schools in Indonesia, contributed to the progress of productive waqf. In 1961 after the independence of the Republic of Indonesia, Kiai A. Sa'doellah Nawawie founded the Sidogiri Boarding School Cooperative (Kopotren). This cooperative was established as a medium of learning entrepreneurship for students. At that time, Kopotren was still a food stall and grocery store. K.H. Cholil Nawawi who leads the Sidogiri Islamic

Boarding School, formed a cooperative board to give trust to take care of Kopontren and make decisions related to business in the Sidogiri Islamic boarding school.

Until 1997 Sidogiri Kopontren was a legal entity authorized by the Minister of Cooperatives and Small Business Development of the Republic of Indonesia no. 441/BHK/KWK/13/VII/1997. In 2018 the Sidogiri Kopontren had three companies. First, Basmalah Store (PT. Sidogiri Mitra Utama) is engaged in retail stores. Second, AMDK Santri (PT. Sidogiri Mandiri Utama) is a producer of bottled drinking water. Finally, Sidogiri Excellent Center (PT. Sidogiri Pandu Utama) engaged in Outsourcing Provider and Training Center.

This article uses qualitative research methods that focus on indepth observations to find the substance of its meaning. The research process is based on a literature review from books, journals, and previous research. In addition, this article also uses descriptive-analytical methods that seek to analyze data to obtain a conclusion.

Fuqaha's View on Waqf

The Islamic jurists (fuqaha) differ in defining waqf, and therefore their views on the nature of waqf are also different.

Imam Abu Hanifa

Waqf means holding an object that,

according to the law, still belongs to the waqif to use for good. Based on this definition, ownership of waqf property cannot be separated from the waqif and is even justified, for example, if he withdraws his waqf back or sells it. If he dies, he will inherit his inheritance. So, waqf here means "donating benefits". Therefore, Hanafi madhhab defines that waqf as "[...] not to do an act on an object, which has a fixed status as a property, by giving its benefits for (social-)virtues, both now and in the future."

Imam Malik

The Malik madhhab argues that the waqf does not relinquish the right of ownership of waqf property to the waqf, but the waqf property prevents the waqif from relinquishing the right of ownership of the waqf to others, and the waqf property is obliged to be donated by the waqif and is not allowed to withdraw the waqf property back. It makes the waqif use his valuable property by mustahiq (people who receive waqf). Therefore, this money is his salary so that the results of his labors are the same as waqf.

Doing waqf should start with aqad, a contract stating how to manage waqf and its relation to the owner (waqif). Aqad aims to make it clear that the use of waqf by the right administra-

¹ Wahbah az-Zuhaili, *Fiqih Islam wa Adillatuhu* (Jakarta: Gema Insani, 2011), 151.

tors is not to achieve good results and benefit all. The waqf, however, remains the property of the waqif. Such a waqf model can only be used or enforced at certain times because the waqf model is not allowed to be used in the long term $(so on)^2$

Imam Shafi'i and Imam Ahmad

Imam Shafi'i and Imam Ahmad madhhab have the same opinion on the definition of waqf. They argue that the waqif must relinquish ownership of it after all procedures and conditions have been completed or fulfilled his waqf's provisions. A waqif who has given his waqf is not allowed to do anything with the waqf he has given. If the waqif has died, the goods that have been waqf cannot belong to the rights of the heirs. Waqif can distribute the benefits of the goods that have been waqf to mauquf'alaih (people who have been given waqf) as a form of bonded charity, which waqif can not prohibit mauquf'alaih from being distributed or donated by anyone. However, if waqif refuses this, qadli has the right to force it to be given to mauguf'alaih. According to the Imam Shafi'i madhhab, waqf is "not doing an action on an object, which has the status of belonging to Allah by giving their benefits to a good (social)."3

Legal Basics of Waqf

Sources of the legal basis (daleel) of waqf include:

1. The Qur'an

O believers! Bow down, prostrate yourselves, worship your Lord, and do 'what is' good so that you may be successful (Surah al-Hajj [22]: 77).

مَّثَلُ الَّذِينَ يُنْفِقُونَ أَمُولَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلَ فِي كُلِّ سُنْبُلَةٍ مِّائَةُ حَبَّةٍ ۗ وَاللَّهُ يُضْعِفُ لِمَنْ يَشَآءُ ۗ وَاللَّهُ وْسِعٌ عَلِيمٌ

The example of those who spend their wealth in the cause of Allah is that of a grain that sprouts into seven ears, each bearing one hundred grains. And Allah multiplies 'the reward even more' to whoever He wills. For Allah is All-Bountiful, All-Knowing (Surah al-Baqara [2]: 261).

2. Hadith

From Abu Hurairah, The Prophet saying: When the son of Adam (man) dies, his deeds are decided, except for three things: Sadaqah jariyah, beneficial knowledge, and righteous children who pray for their parents (Muslim).

² Az-Zuhaili.

³ Az-Zuhaili.

The interpretation of sadaqah jariyah contained in the Hadith is stated in Chapter Waqf because the scholars interpret Sadaqah jariyah with waqf.⁴

In the Hadith, Prophet Mohamad expressly advocated waqf. The Prophet ordered Umar to donate his land in Khaibar.

"From Ibn Umar Ra. he said that Umar's friend acquired a piece of land in Khaibar, and then he (Umar) went to the Prophet for guidance. Umar also said to Mohammad: O Prophet, I got a piece of land in Khaibar, I never got such good property, then what will you command me? The Prophet (peace and blessings of Allah be upon him) said: If you like it, keep the land and give it to the people. Then Umar did Sadaqah, did not sell, was not given, and was not bequeathed the land to his heirs. Ibn Umar said that Umar gave alms (the proceeds) to the disbelievers, relatives, purchased enslaved people, sabilillah, Ibn Sabil, and guests. And, there is nothing wrong or forbidden for those who control the land to eat from the results in a good way or eat by not accumulating wealth." (Muslim).

In another hadith, it is also mentioned:

From Ibn Umar, he said, "Umar told The prophet that I had a share of one hundred dirhams in Khaibar. I have never had a treasure that I admire the most like that. But I want to give it up." The Holy Prophet said to Umar, "hold (do not sell, do not give, or bequeathed) origin (principal capital) and make the fruit alms for *sabilillah*" (Bukhari and Muslim).

There are a few verses in the Qur'an and Hadith about waqf. However, both legal sources guide Islamic jurists (fiqh experts). Therefore, the Islamic laws concerning waqf and its development since the Khulafaur-Rashidun until now from ijtihad using various methods, one of which is *qiyas*.

Waqf Empowerment

In order to function temporarily, waqf needs to be managed by authorities such as the government, *nadhir* institutions, and community empowerment institutions that care about waqf, and others. Law No. 41 of 2004 states that waqf must be implemented consistently and well structured in order to be optimally implemented. The law is needed to protect waqf lands and other waqf assets, both fixed and mobile assets, which have been recorded or registered with the Ministry of Religious Affairs.

Nadhir institution has a central role in the management of waqf assets.

⁴ Muhammad bin Ismail al-Kahlani, *Subulussalam*, Jilid 3 (Kairo: Dar al-Fikr, tt.), 87.

Therefore, the institution must prioritize the quality and existence of its human resources. The professional waqf management of the nadhir institution will gain public trust. The professional aspect contains moral values committed to helping and serving people sincerely.

Therefore, to manage waqf assets and land professionally and safely from misuse, it is necessary to take preventive measures against various problems. Finally, besides its legal status, the waqf land also needs legal protection to empower productive waqf land optimally. Waqf land with great potential in improving the economy must be a top priority, such as strategically located Waqf land and other productive waqf assets. In implementing waqf, management must also comply with safety standards and in accordance with applicable procedures.

In addition, there is also a need for supervision and concern for the surrounding community in managing the waqf land to generate adequate profits. This involvement will also stimulate the public to be more concerned about the waqf assets.

Some discussion about the importance of Waqf empowerment above is a logical consequence of avoiding various problems when dealing with government authorities, nadhir institutions, non-governmental organizations, and others. Some of these efforts are carried out to empower the community, and waqf assets still significantly improve economic and social life.

Productive Waqf

Law Number 41 of 2004 concerning productive waqf now seems to be an encouragement for anyone who wants to donate their wealth as a social charity saving that benefits the people. The absence of an explanation of productive waqf indicates that there is no more vague understanding. However, the facts on the ground show different understandings of productive waqf. In the Indonesian Dictionary (KBBI), productive means "having or being able to produce, bring results, benefits, and be profitable.5

According to its use, Munzir Qahaf divides waqf into two: the first, waqf is used directly for beneficial purposes, so it is also called consumptive waqf. The second, waqf, is used indirectly but managed to produce something productive; this is called productive waqf.6

While for Jaih Mubarak, productive waqf is a transformation to professional waqf management to increase the benefits of the waqf. This definition shows

⁵ Tim Pusat Bahasa, Kamus Besar Bahasa Indonesia (Jakarta: Pusat Bahasa, 2008), 1215.

⁶ Munzir Qahaf, Manajemen Wakaf Produktif, trans. Muhyidin Mas Ridha (Jakarta: Khalifa, 2005), 162-163.

that productivity is not always quantitative but can also be qualitative.

However, when referring to the Law on Waqf, the meaning of productivity tends to lead to the purpose of productive waqf, as Munzir Qahaf argues. The Law on Waqf does not distinguish between direct and indirect types of waqf in the Munzir Qahaf category. It can be seen in the following flowchart:

Waqf Flowchart

1	2	3	4	5
Waqif	Nadhir	Investa- tion	Result	Mauquf alaih'

The flowchart above shows that a waqif (number 1) gives or performs a waqf contract distributed to nadhir (number 2). The nadhir invests it in various forms and ways to be useful (number 3). The investment returns (number 4) are remanaged for the development and stability of financial management, which continues to rotate and returns to the initial cycle so that people's lives continue to improve; The waqf is then continued or given to the *mauquf 'alaih* (number 5) as the last person to receive the waqf.

In addition, the waqf can also be invested in various kinds and other purposes, for example, in the form of educational institutions, other institutions or assemblies, hospitals, shops, restaurants, hotels, gas stations; or also in agriculture, animal husbandry, and others; which can be remanaged to generate profits. Meanwhile, consumptive waqf should not be invested as before. Even so, this type of waqf should also be accompanied and directed to become a productive waqf so that later it can produce more benefits and diversity of functions for the consumptive waqf.

There are several ways or conditions in order to become a productive waqf.

- 1. A waqif cannot limit the use of the waqf for the sake of worship as usual. Concerning this, it is necessary to have ongoing socialization of productive waqf in the community.
- 2. A nadhir who manages a waqf should have multi-entrepreneurial motivation so that the responsibility of managing the waqf will not burden a nadhir later.
- 3. There needs to be transparency in productive waqf management so that later there will be no deviations caused.

The types of *aqad* (contract or arrangement) in productive waqf are as follows:

1. Aqad al-Ijarah

Aqad al-ijarah in managing productive waqf can be carried out as in

waqf objects in the form of land, buildings, vehicles, and others. The object of waqf in the form of agricultural land can be leased, for example, to a sugar factory to plant sugar cane; the building can be rented out as housing, offices, shops, and others; or vehicles such as cars can be used as rental or transportation business objects and others.⁷

2. Ijarah al-A'mal

Ijarah al-a'mal (labor) is a contract between the tenant (musta'jir) and the hired (ajir) for the rental of labor services with an agreed salary. In managing productive waqf, nadhir hired workers, as musta'jir and others, or ajir as the executor of the agreed work. While the tenant is a nadhir, he is obliged to provide a salary agreed upon by the renter.8

3. Al-Ijarah Muntahiyah bi at-Tamlik

Al-Ijarah Muntahiyah bi at-tamlik is a rental transaction with an agreement to sell or donate it at the end of the period. A nadhir can carry out this contract in collaboration with a sharia financial Institution to finance a building project or procurement of goods.9 After being realized, the object was handed over to nadhir to be appropriately used. Meanwhile, nadhir is obliged to pay the agreed rent. If the rent has been paid off, then the rent is calculated as purchase money as a sale and purchase contract. Consequently, the building or object initially rented out has become the tenant's property as a waqf object.10

4. Al-Murabahah

Al-murabahah is a contract of sale and purchase of goods by stating the price of income and profit agreed upon by the seller and the buyer. The management of waqf objects can be done through an agreement with nadhir as a buyer and seller. In this case, it can be done with the Sharia Financial Institution as the funder, which procures goods and the seller.11

5. Al-Musyarakah

Al-Musyarakah is a cooperation agreement¹² between two or more parties for a particular business in which each party contributes funds with an agreement that the profits and risks are shared. In managing the productive waqf, nadhir is one of the organizers of the al-musharakah agreement. Nadhir then handed over the waqf property

⁷ Dahwan, "Pengelolaan Benda Wakaf Produktif," Aplikasia: Jurnal Aplikasi Ilmu-Ilmu Agama 9, no. 1 (June 2008): 75.

⁸ Dahwan, 76.

⁹ Ascara, Akad dan Produk Bank Syariah (Jakarta: PT. Raja Grafindo Indonesia, 2007), 103.

¹⁰ Dahwan, "Pengelolaan Benda Wakaf Produktif," 76.

¹¹ Dahwan, 77.

¹² Ismail, *Perbankan Syariah* (Jakarta: Fajar Interpratama, 2011), 176.

and the others to be collected so that it would become joint capital in a business.¹³

6. Al-Mudharabah

Al-Mudharabah is a business cooperation contract between the owner of the fund and the entrepreneur or manager of the business fund with a profitsharing system. If In managing productive waqf, nadhir acts as sahibul mal who provides capital and gives it to other parties as mudlarib for business activities. According to the agreement, the profits obtained are divided between nadhir as sahibul mal and mudlarib. Nadhir's profit ratio became tasharuf for waqf or to develop the waqf object. Is

7. Al-Muzara'ah

Al-Muzara'ah is an agricultural arrangement between land owners who give their agricultural land to farmers to be planted and maintained in return for their harvest. ¹⁶ If the waqf object is agricultural land, one way to manage it can be done with al-muzara'ah. Thus, nadhir became the owner of agricultural land,

and farmers remained based on profit sharing according to the agreement.¹⁷

Sidogiri Islamic Boarding School Cooperative (Kopontren)

Sidogiri Kopontren is one of the cooperatives in East Java that uses the Islamic sharia cooperative system under the Sidogiri Islamic Boarding School. Sidogiri Kopontren is a profitable business because its consumers are residents of East Java, who are predominantly Muslim. In order to develop the entrepreneurial motivation of students, the Sidogiri Kopontren was established as an Islamic sharia cooperative to accommodate the students and the surrounding community.

The Sidogiri Kopontren was founded to accommodate students studying entrepreneurship by Kiai A. Sa'doellah Nawawie (the Chairman of the Sidogiri Islamic Boarding School Board) in 1961—on July 15, 1997, it was officially a legal institution and earned a significant profit. The Sidogiri Kopontren has now changed its name to "Basmalah" so that it is more famous as the Basmalah Store in Sidogiri Kraton, Pasuruan, East Java.

In its development, Kiai Kholil, who leads the Sidogiri Islamic Boarding School, formed a competent management board to operate the business

¹³ Dahwan, "Pengelolaan Benda Wakaf Produktif," 78.

¹⁴ Faqih Nabhan, *Dasar-dasar Akuntansi* Bank Syariah, 53.

¹⁵ Dahwan, "Pengelolaan Benda Wakaf Produktif," 78.

¹⁶ Muhammad Syafi'i Antonio, *Bank Syariah: Suatu Pengenalan Umum* (Jakarta: Dar al-Ittiba', 1999), 99.

¹⁷ Dahwan, "Pengelolaan Benda Wakaf Produktif," 78-79.

within the Islamic boarding school. The Basmalah Store business management system is different from modern retail, which is generally capitalist. The Basmalah Store uses the concepts of baraka, sharia, and maslaha in building its concept. Basmalah store, which is developed in various real sectors on the islands of Kalimantan and East Java, cooperates with small stores or marginal entrepreneurs in the surrounding community so that they are also able to improve their economy and welfare as a partner of Sidogiri Kopontren.

Establishing and developing new store branches was helped by increasing funds from many members and investors. Basmalah store applies this concept as a collective business concept, with everyone or members as business partners, in running the business to survive and compete with large and capitalist industrial businesses.

Productive Waqf Agreements of **Basmalah Store**

In collaborating, Basmalah Kopontren uses aqad syirkah or cooperation which also uses agad mudharabah, musyarakah, ijarah, and nadzah lajaj, each of which has its purpose and function to achieve prosperity for the Basmalah store and its partners by implementing Islamic values. The Basmalah store cooperates (syirkah) with various business partners to develop business through these new branches, and tends to use agad musharakah.

The various choices of agreements (aqad) offered to investors are one of Kopontren's efforts to attract investors to invest. This option also makes it easier for investors to invest permanently by implementing sharia business activities.

Since 2004 Basmalah Store has implemented agad musyarakah in business partnerships. The use of this contract because it has advantages compared to other contracts. The advantages of the contract include making it easier for investors to invest, the investment period is not time bound so that investors can withdraw their investment at any time, and the profit sharing is quite promising.

In establishing a new branch store, the contracts in it have a small portion; as in the mudharabah contract, which is only 10%. The more dominantly used is the aqad musyarakah because the business principle is that a business partnership will be a blessing for the people.

Investing in the Basmalah store is, so to speak, very easy. Among the conditions are being a muslim, investing twice a year, and anyone can become an investor in Sidogiri Kopontren. If an investor is a member of Kopontren, it can be classified as a special member. Meanwhile, an investor who is not a member is classified as a general member when using aqad musharakah.

Technically, opening a new store branch can be done by submitting a cooperation proposal with the Kopontren management. Furthermore, the management will discuss which contract to use in the cooperation. Many alumni of the Sidogiri Islamic Boarding School affect the high number of people's trust to invest in the Sidogiri Islamic Boarding School. After submitting the proposal and determining the agreement, the management will visit the location. If the application is approved, it will be executed immediately, and if there are insufficient funds from investors for establishing a new branch store, the funds previously collected from the community and the land owner can be added.

In opening a new store, the Basmalah store uses the collective concept (*jamaah*) of the funds collected from its investors to be used as business capital. This collective concept changes people's view of the establishment of a store. If the store is not profitable because of the lack of consumers, for example, the investor as the owner will go shopping at the Basmalah store so that the business will develop well.

The owner of the Basmalah branch store capital, by using *aqad musharaka* gets a profit share with the following profit percentage: the profit for a single investor gets a percentage of 65% and for the general public as much as 35%.

Meanwhile, the community's collective investment with a business partnership with the Basmalah store only requires a capital of Rp.700.000 with the percentage of dividends per year being 18% for investors with the collective concept (*jamaah*). In profit sharing, single investors get 65% and 35% for the Basmalah store.

Conclusion

The role of the Basmalah Kopontren, which now has many branch stores, has contributed to improving the economy and the community's welfare. The optimization of waqf in pesantren, as in the Basmalah Kopontren has significantly contributed to the development of the community's economy and Islamic education and muslims. On the other hand, as a waqf reform movement, Basmalah Kopontren has changed the waqf paradigm into productive waqf. Although the reform of the waqf paradigm is relatively late, at least this change has influenced Islamic philanthropy in Indonesia, which can support itself and muslims in general. Therefore, in this case, it is necessary to establish each institution's contribution and cooperation, such as pesantren, State Islamic Religious College (PTKIN), and Islamic madrasa, as a milestone in Indonesia's struggle for Islamic philanthropy.

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