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*ISSUES AND JURISTIC OPINIONS ON THE INVESTMENT OF WAQF FUNDS:
AN OVERVIEW FROM THE ENDOWMENT FUND OF KELANTAN
ENDOWMENT COMMITTEE*

Abdulsoma Thoarlim
Mohammed Muneer'deen O.A.
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*MODEL PENINGKATAN OCB MELALUI *SERVANT LEADERSHIP* DAN
KEPUASAN KERJA (Studi Kasus Pada PT. Beverly International)*

Berty Meitya Ayu Saputri
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*PENGARUH MOTIVASI INTRINSIK, *KNOWLEDGE MANAGEMENT*, DAN
KOMITMEN AFEKTIF DALAM MENINGKATKAN KINERJA SDM
(Study Kasus Pada Dinas Pertambangan Dan Energi Kab. Kolaka Timur)*

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INDIKASI MANAJEMEN LABA*

Siti Rochmah

*PERSEPSI MAHASISWA TERHADAP METODE SIMULASI *ONLINE TRADING*
DI BURSA EFEK INDONESIA DI FAKULTAS EKONOMI YOGYAKARTA*

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Rasa syukur kepada Allah SWT Tuhan semesta alam, atas segala kemudahan sehingga Ekobis Vol.17 No.2 Juli 2016 bisa terbit.

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ABSTRACT

Wakaf is linked to a variety of fields, such as religious, educational, cultural, social and economic. There are several problems and issues facing the Malaysian endowment management as a whole, and Kelantan in particular. Some of the problems and issues are lack of academically and administratively qualified personnel in the Wakaf sections/departments, lack of standard system for preserving wakaf assets, lack of standard system procedure for the transfer of wakaf items to the Endowment Committee, and so on. There are several contemporary problems and issues surrounding Wakaf management and organization, and the most prevalent of which is the issue of investing Wakaf funds. This is so because it is of great interest to the Malaysian Islamic institutions or the Malaysian Islamic council. Based on the importance of the subject, we have seen the need to examine wakaf applications to Kelantan endowment committee. This study is comprised of four sections, namely: the emergence of the Kelantan Endowment Committee and its objectives; the rule of investing endowment funds from the Islamic jurists' perspective; contemporary decisions on the issue of investing Wakaf funds; and investment of Wakaf funds in the Kelantan endowment committee. The most important finding of the study is that the Kelantan Endowment Commission relates to several fields, as stated by the researchers. It is hoped that the study and its findings will benefit the researchers, the needy ones, as well as the authorities of Wakaf institutions and committees.

Keywords: *Investment, Wakaf (Endowment) funds, Endowment committee.*

INTRODUCTION

Kelantan is one of the Malaysian states. It has the area of about 14,922 kilometers square, and it is situated on the eastern coast island of the Malaysian Peninsula. Al-Waqf (lit. Endowment) is a religious endowment of the corporeal from been possessed by any one; it is a beneficial charity to be spent legally. Al-

Waqf considered one of the righteous deeds employed to move closer to Allah SWT, as He SWT says: "the similitude of those who spend their wealth in the path of Allah is like that of a grain having seven spikes, in each of the spikes there are a hundred grains, and Allah doubles it for whom He wants, and Allah is All-Encompassing and

All-Knowledgeable (al-Baqarah: 261).

The endowment committee affiliated to the Islamic council and Malay customs in Kelantan is seen as the one who plays an important role in promoting the issue of waqf to the people. It manages the administration and organization of Waqf, whether it is a general (governmental) waqf or a personal (individual) waqf. The Kelantan waqf committee strives to invite people to invest their wealth in various ways, either directly or indirectly, and through mass medium and the modern communication, such as the Internet, the email, and through organizing conferences and others. The organization receives endowment from the rich and wealthy ones in Kelantan specifically, and from Malaysian and non-Malaysians generally, and in various forms. It may be a direct hand-to-hand collection or indirectly transfer of the endowment from the donor's bank account to the endowment committee's bank account number in Kelantan, or in a corporeal form.

The primary objective of investing waqf monies is to solve the poor and the needy ones' problems. The investment of the waqf monies is considered a contemporary issue upon which there are differences of opinions from the Islamic scholars. There are various facets of endowment investment in Malaysia, some of which are: land investment, such as purchasing real estates and letting them out, construction of buildings on waqf lands, or any other lawful investment; service projects investment; agricultural real estate investment; and financial investment and Islamic banking through investing accounts for the sake of the deposits' investment, saving investments, and the investment certificates for limited period, and so on. In addition, the Kelantan waqf committee is also one of the organizations that invest endowment funds in Malaysia. Hence, this study attempts to describe the view of the waqf in Kelantan – Malaysia model.

Research Objective and Methodology

The research objective of the paper is to describe the view of waqf model in Islamic teaching which was implemented in Kelantan – Malaysia as it is the role model waqf management in Malaysia. For the purpose, this research used simple analysis by employing a descriptive analysis. The study is descriptive qualitative research and focused on library research.

Result

Foundation of Kelantan Waqf Committee

The council for Islamic and Malay customs in Kelantan was established on December 24, 1915. In the 1800-1900CE, Kelantan was referred to as a historical and religious state; it is a strong and influential state in the aspects of religious, administrative, Islamic culture and civilization, military, and other activities, in the Malay Peninsula (Abdul Razak Mahmud: n.d).

The council for Islamic and Malay customs in Kelantan consist of three main sections. First is the administrative section, second is the religious organization, and the third is the public treasury, which is sub-divided into two, the department of zakat and the department of endowment. As it was, the section for the public treasury had five officers. But on August 1, 2013, the department of endowment became independent of the public treasury's section and was renamed 'Endowment Committee managed by seven officers. In the beginning, this committee was established solely to assist the poor and needy ones and others, but with the passage of time and up till now the endowment committee accepts donations from donors and/or companies, both from inside and outside the country (<http://www.e-maik.my>).

Objectives of Waqf Committee of Kelantan

The Islamic council in Kelantan has

divided the endowment into three stages; a general (public), individual (personal/special), and generational. The general purpose endowment is the type that can be used for any public activity, such as Islamic activities. The individual purpose endowment is that which can be used on jihad and specifics, such as building schools, institutions, organizations, orphanages, land for cemetery, and so on.

The generational purpose endowment refers to asset which can be used/spent on the relatives of the endower, beginning from the endower's children until the end of his/her descendant (<http://www.e-maik.my>). Among the goals of the waqf committee of Kelantan are to develop the endowment sectors in Malaysian in particular and in the Islamic societies of the world in general. The waqf committee spreads information to researchers and teachers from among Muslims and non-Muslims, through organizing conferences, seminars, radio and television stations, electronic mail, magazines, and others, about waqf.

Besides that, the goals of the waqf committee also are to improve the management of the endowment funds, improve the economic status of the populace, assisting those who are destitute among the poor and needy ones, the in debtors and others, and to provide services and facilitations for the endowers as much as possible, this is to project strong cooperation between the endowers and the committee. As a result, this will reflect on the Islamic society, the Kelantanis, Malaysia as a whole, and the Islamic nations in general.

The Concept of Waqf in Islamic Jurisprudence

One of the literal meanings of waqf is 'donation'; when one says: I endow the house, he means: I donate it for the cause of Allah. Another meaning it has is 'to forbid'. When one says: I stopped the man from a thing, what he means is that: I forbade/

deprived him of it. One other meaning is 'to tie something'. When one says: I stopped the cattle, he means: I have tied the cattle to rest. Waqf could also be designated for the endowed property. Waqf is singular and its plural form is awqaf, i.e endowment (sing.) and endowments (plu.), just like thawb and athwab (garment and garments) (Makram, Lisan al-Arab, 1414AH).

The jurists have different conventional interpretations to al-Waqf. The Hanafis interpret it as rendering the fund legally as the property of Allah, the Most High, and spending it on the ones He loves. This is according to the two Shaykhs, Bukhari and Muslim. To Abu Hanifa, waqf is still recognized as the endower's property and the interest can be given in charity, even as a whole (Ibn 'Abidin M., 1992). Ibn Arafah, from among the Malikis, define waqf saying: endowment, originally, is giving the usage of a thing for a period of its existence under the ownership of the giver, even if it is just the estimate. Nominally, waqf is what benefit is given throughout the period of its existence (Muhammad Elysh, 1989). The Shafi'is define it as donating an asset, the benefit of which can be made use of while the capital is still preserved at the authorized bank (al-Sharbini, 1994). The Hambalis interpret it as donating an asset, the benefit of which can be made use of while the capital is still preserved at the authorized bank or elsewhere, the proceed of which is kindly expended on the cause of Allah (al-Baihaqi, 2003).

Legitimacy of al-Waqf

Majority of the jurists consider the legitimacy of waqf under recommended issues (al-Dasuqy A., n.d), for the narration of Ibn Umar (may Allah be pleased with both of them) that: Umar attained a piece of land in Khaybar, and he approached the Prophet SAW for guidance on the land saying: Oh messenger of Allah, I have acquired a piece of land at Khaybar, it is the greatest of my assets, what would you order me do with the

piece of land? The Prophet SAW replied: if you so wish you may endow it and give it in sadaqa. Ibn Umar said: so, Umar gave the land in sadaqah, meaning it can not be sold, given out or bequeathed; he gave it in sadaqah to the service of the poor ones, close relatives, freeing the slaves, the cause of Allah, the travellers, and the visitors. It is not a sin on the caretaker to consume righteously from its proceeds and feed those who are in need of it (Muslim, n.d).

The Prophet SAW also said: when a man dies all his deeds are stopped except in three aspects; a perpetual charity, or beneficial knowledge, or a righteous child who prays for him (Muslim, n.d). Ibn Qadamah said: this is a unanimous consensus approved by all the companions (may Allah be pleased with them), and there is no difference of opinion on it (Qadamah, 1968). Ibn Rush said: endowment is a standing sunnah practiced by the Messenger of Allah SAW and Muslims afterwards (Muhammad Alysh, 1989). Ibn Abidin also collected it from Al-Is'af that: waqf is permissible in our scholars Abu Hanifah and his followers (Ibn Abidin M., 1992).

Legal Mandatory

The basic ruling is that waqf is a recommended act of worship although it might be affected with other rulings in particular cases. Waqf may become obligatory when it relates to fulfilling of a promise. For example, when a father said, if my son returns/arrives safely I will endow this house on the cause of Allah (Ibn Abidin M., 1992). Waqf may become permissible if it is without the intention of worship, thus it is welcomed from a non-Muslim with no religious obligation, but it would be regarded as an act of worship if it is accrued from a Muslim (Ibn Abidin M., 1992).

Waqf may become forbidden, in a situation whereby a Muslim donates on sinful acts, such as endowing to the church. A similar example is what we find among the Malikis that waqf becomes forbidden when

it favours only the male children without the female ones; this is so because it happen in the practice of jahiliyyah era to deprive the female children from inheriting their fathers. But in some cases such kind of waqf is disliked, but it is acceptable, this is the opinion of Ibn Qasim and it is also our stand... (al-Bahuty, 2000).

Pillars of al-Waqf

The pillars of al-Waqf, according to majority of the jurists –Malikis, Shafi'is and Hanbalis– are four (Ibn Abidin, 1992):

- i. Formula of the statement – statements used in conveying al-Waqf: It is all pronunciation that indicates donating the asset endowed and making charity with its proceeds. The formula of the statement is of two types; direct pronunciations and indirect pronunciations. The direct pronunciations are three; al-Waqf, al-Habs, and al-Tasbil. The indirect pronunciations are also of three kinds; tasaddaqtu, harramtu, and abbadtu. The linkage indicates the required meaning, such as eternal charity.
- ii. The endower: he must be wise and matured. He must not be ignorant and in debted, he must also be in healthy condition. He must also be sound in mind, and not on the verge of death.
- iii. The endowed (the asset)–there are numerous conditions binding the endowed:-
 - a. The endowed should be suitable towards good deed and act of worship.
 - b. The endowed should be perpetual and not stoppable.
 - c. The returns of the endowed should not be unto the endower.
 - d. It should be suitable for ownership and possession.
- iv. The endowed and its conditions:
 - a. It must be a standard asset.
 - b. It must be known at the time of declaration.
 - c. It must be owned by the endower.
 - d. It must be a fixed asset and not mobile.
 - e. It must be detached, and not fixed to

the mosque or cemetery. As for the Hanafis, the pillar is just only one; the formula of the statement (Ibn Abidin M., 1992).

Issues and the Juristic Opinions on Waqf

Firstly: Temporary endowment:

There are two opinions in this regard: majority of the scholars of Hanafi, Shafi'i, and Hambali agree that temporary endowment is illegal, endowment should be permanent; temporary endowment is not approved (Ibn Najim, n. d). Their proof is the related hadith of endowment made by Umar Bin al-Khattab (may Allah be pleased with him) when the Messenger SAW says: "endowing the origin, and donating the fruit", for the hadith indicates the meaning of permanence. As for the Malikis, temporary endowment is allowed, whether for a short period or long period, the ownership will then return to the endower. Their proof is that endowment is just like charity which can be either temporary or permanent, there is no evidence from the Quran or the Sunnah necessitating that charity should be eternal (al-Dasuqi M., n. d), the preferred statement is that of the majority for the strength of their evidence.

Secondly: Endowment of movable asset:

Movable is anything that can be transferred from one place to the other, and it includes cash, properties, animals, measurements and weights (Afandi, 1991). Most jurists from Shafi'i and Hambali, as well as the Maliki authority and some Hanafis, have approved to the permissibility of movable endowment, such as horse, weapon, and other donations to the fighters, as evident from the hadith of Abu Hurairah (may Allah be pleased with him) that: whoever donates a horse on the cause of Allah SWT, in good faith and trust to the promises of Allah SWT, the feed food and water, excretion and urination of the said horse shall be on the weight of such person on the day of reckoning (al-Bukhari, 1422AH). It is also evident from the

prophetic statement that: ...as for Khalid, you are oppressing Khalid who had donated his war antics on the cause of Allah SWT (al-Bukhari, 1422AH). Al-Khilal also related from Nafi' that Hafsah (may Allah be pleased with her) sold a twenty thousand worth of an ornament, which was donated to the womenfolk of al-Khattab household, and she did not pay any zakah on it ('Aleysh, 1989).

In the analogy of the Hanafis movable endowment is not permissible because the condition of endowment is that it be perpetual whereby the movable is not perpetual. As for the intential movable endowment it is not permissible in the practice of Abu Hanifah and Abu Yusuf, but it is permissible from Muhammad if it can be utilized by the people, such as hoe, Adz (a carpentry tool), pot, funeral and its clothes, Qur'an, and books, because analogy could be left for utilization (Ibn Abidin, 1992), for Ibn Mas'ud once said that whatever is seen as good by Muslims could be considered good unto Allah SWT (al-Shaybani, 1995).

Thirdly: Revocation of endowment:

The first party, Abu Hanifah and some others, are of the opinion that endowment is a deal that is not indispensable. An endower could revoke the endowed; he could sell, mortgage, give, or bequest it [to people], or act however he wishes on it. Endowment may not be indispensable unless in two cases, one is by judicial ruling and the other is if it was made as a standing order after the demise of the endower (al-Sarkhasi, 1993). This is evident in the hadith of Bibr ibn Hazim saying: Abdullah bin Zaid bin Abd Rabi' -the one who calls to prayer- came to the messenger of Allah SAW saying: Oh Messenger of Allah, this wall (house) of mine is a charity to the cause of Allah SWT and that of His Messenger SAW. Later, his parents came saying: oh Messenger of Allah, this is the source of our living, and the Messenger of Allah SAW returned it back to them. And when the two parents died, their son inherited it (al-Daraqutiniy, 2004).

The second party; majority of Maliki, Shafi'i, Hambali, and Abu Yusuf and Muhammad from Hanafi maintain that endowment is an indispensable deal, it cannot be revoked and the capital cannot be spent. It has to be totally endowed and the proceeds be used on charity (al-Kharashi, n.d). This is evident in the hadith that says Umar bin al-Khattab possessed a land in Khaybar. The land is called Thamagh. The Messenger of Allah SAW said in this regard: "...give and endow its source in charity, [so] it can neither be sold nor be bequeathed (al-Baihaqi, 2003). The best opinion is that of the majority, for the clarity of their evidence that the Messenger of Allah SAW forbade any activity on an endowed asset.

Fourthly: Endowing the benefit/proceed [of the endowed]:

Majority of the jurists of Hanafi (Ibn Abidin. M., 1992), Shafi'i (al-Sharbini, 1994), and the Hambali (al-Bahuti, n.d) opine that endowing the proceeds of the endowed asset is not permissible. This is so because they have it as a condition that the endowed asset must be a capital asset, the proceeds of which can be used without tampering with the capital. They also have it as a condition that the endowed asset must be perpetual. But the Malikis maintain the permissibility of endowing the proceeds of the endowed asset. If a man rent a house for a certain period, he can endow the proceeds in that period, and the endowment is over once the period is elapsed. This is so because it is not a condition in Maliki that the endowed asset be perpetual (al-Dasuqi, M., n.d).

Fifthly: Al-Istibdal (Replacement of the endowed asset):

Al-Ibdal literally means placing something at the place of the other, and this is also the same meaning connoted by al-istibdal. The linguists do not differentiate between the meaning of the two words (al-Zabidi, n.d). This case is similar to the position of the jurists who use the two words

interchangeably (al-Islamiyyah, 1427AH). Al-Istibdal in waqf means to replace the endowed land with another one, where the second one becomes the endowed and the first land is relieved of all endowment necessity. This could be done either directly, or by selling the first land and using the price to buy the second with the intention of endowment (Sabri, 2008).

The Hanafis, in the most popular opinion, agree that endowment with provision of replacement is legal provided that the endower has made a condition initially. It is also permissible if the endower did not make the provision, if the endowed has become useless and irrelevant, after the approval of the judicial judge who sees interest in the replacement (Ibn Abidin M., 1992).

The Malikis agree to the permissibility of replacing the movable endowment if there is any favour in doing so, such as the weakness or old aged of cattle that is no more suitable for fighting. Such an animal could be sold and the proceeds used to buy another one suitable for the purpose on the cause of Allah (al-Asbahiy, 1994). The Malikis do not permit the replacement of Immovable/land endowment unless it is in favour of general dissatisfaction (al-Qarafiy, 1994).

As for the Shafi'is, replacement of movable endowment is permissible for easiness or simplicity; it is not permissible without a legal reason, such as an Olive tree becoming dry, or an Onyx (precious stone) in the mosque when it brakes, or an animal that has become so fat that it can no more be used. That is for movable endowment because it is no more useful, then the amount received from selling would be used to buy a replacement in its place (al-Shirazi, n.d). As for a landed/immovable endowment it is not permissible to replace it, for the previous quoted hadith of Umar bin al-Khattab saying that it could not be sold, exchanged, given, or bequeathed. The evidence of the Shafi'is here is that whatever falls out or perishes from the immovable/landed endowment

could be replaced/repared; unlike the movable such as an animal whose useless part could not be replaced (al-Shirazi, n.d).

The Hambalis approve the permissibility of both movable and immovable endowment when the endowed asset becomes spoiled or seizes to be useful. As such it is permissible to sell it or a part of it to maintain another part [that is useful]. If it is impossible to maintain, then the whole endowed [property] could be sold and the proceeds used in buying a replacement for perpetuity. The Hambalis interpret the statement of the Prophet SAW (...it cannot be sold, exchanged, given, or bequeathed) as once it is still useful because waqf is an indispensable deal (al-Maqdisi, 1968).

Sixthly: Rental of the endowment asset:

Rental of endowment meant here is just like any other rental deal on the possessed assets of man. It is a deal on the returning-profit or possessing the profit in exchange, only that there are special rules with regard to the rental of the endowment asset. The one responsible for taking care, developing, and overseeing the endowment is the care taker, who is also referred to as the guardian. The guardian could be the endower himself or the one he approves or the judicial judge. If there is no care taker or guardian, then the endowment affair is on the judge, who will be responsible for the rental as a public representative. The one in whose favour the endowment is meant cannot be responsible for the rental [process], except he is the one chosen to act as the guardian on the endowed asset (Sabri, 2008). Following are some of the conditions required for being a Mutawali (guardian):

- 1- The Mutawali cannot rent the endowed asset to himself, his child, or anyone under his care.
- 2- It is illegal that a Mutawali rents the endowed asset to those whose testimony is not approved unto him, such as close relatives and spouses. This is to avoid suspicion, partiality, and exploitation. As

for the rate of the rental, the basic is that it should not be lower than the rate of the common rental, it could be more (Ibn Abidin I., 1992).

Investment of the Endowment Fund in the Kelantan Endowment Committee

The Islamic council of Kelantan has given the following formal and legal opinions, with regard to investment of endowment fund:

The league of ulama' (scholars) of the Islamic council, popularly known as Majlis Agama Islam Kelantan (MAIK), on July 4, 2004 consulted and discussed the issues of investing the endowment fund and decided the following (<http://www.e-maik.my>):

Retrieval of the investment funds for those who work on a special landed endowment development projects could be achieved through any of the two following ways: -

- 1- The developer must seek approval before the investment, and after the investment s/he must return the endowment funds. Example of this is building a house for endowment and the building will acquire interest in the future as required by the endower.
- 2- Those in charge of executing/managing the endowment funds may collect a reasonable cost and distribute it as required by the endower.

The law of the Islamic council in Kelantan, article 61 of 1994, with regard to endowment funds, has decreed that: "anything that contradicts the law of the Islamic council in relation to endowment, however it may be, must be solved by the Islamic Council (MAIK), be it general (public) or special (personal) endowments, including all endowments based on vows (promises) and charitable in favour of Islam and Muslims, either the fund is inside or outside Kelantan" (<http://www.e-maik.my>).

Based on the previous formal and legal opinion, and the law of the Islamic council, it is clearly indicated that the Islamic council is interested in investing endowment funds with the aims of improving the conditions

of the needy ones socially, economically, educationally, physically and spiritually, and for upholding the Islamic *ummah* through monetary and material aids, in Kelantan.

Concerning the investment of endowment funds in the endowment committee of Kelantan, it could be done in various ways, but the initial aim and objective is the development of endowment funds and the basic rule employed in the investment of the endowment funds is the rule of replacement/exchange.

Currently, from the existing endowment funds in the Islamic council, the Sultan has endowed a land of approximately 10,800 hectares, the original sources of which were endowed for building mosque or school or institute or Muslims cemetery, and so on. But the locations of the lands were not suitable for constructing mosque, cemetery, and so on, on them, and thus in the end the lands were exchanged on the basis of the rule of replacement according to the Hanafis and the Hambalis (Abd. Rahman, 2006). After replacement of the endowment funds the Islamic council decides on taking the endowment funds in multiple folds and benefits, compared to the situation it was before the replacement. The case is the same in having building project on the endowment land. The council has got cash donation from the government and the national. Among these building projects is the building a seven floor hotel in the city of Pancur, Kota bahru, Kelantan in the cost of RM20,000,000.00 from JAWHAR. Another one is the building project of the orphanage in the city of Macang, Kelantan in the cost of approximately RM15,000,000.00 from

JAWHAR. Thus, about RM280,000.00 was collected from CIMB for the construction project of the houses for flood victims in the city of Telok, Tumpat, it will be used in building fourteen house (Abdul Razak, n.d).

In sum, the investment of endowment funds in Kelantan is basically done by replacing/exchanging endowment funds with relevant/suitable properties, and then the profit/proceeds/benefit gotten from the replacement of the endowment funds will be distributed to the needy ones among the poor and the likes.

CONCLUSION

Following are the most important results the researchers have arrived at in this study:

- 1- The Kelantan committee of Zakat is the most effective in Malaysian, as it operates and manages all endowment funds.
- 2- The purpose of investing the endowment funds is the process of development in numerous ways, and the sole aim is the actualization of benefit for the Muslims and people in general.
- 3- The only method employed by the endowment committee in investing the endowment funds is the replacement of the endowment funds with building properties.
- 4- The permissibility of investing the endowment funds in any form provided it is complied with the Islamic legal rulings.
- 5- After the investment of the endowment funds, the benefit/profit/proceed will be given to the needy ones among the poor and their likes.

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