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The Politics of Islamic Philanthropy in the post-Soeharto Indonesia: A Study of the 2004 Waqf Act

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ABSTRACT

Islamic philanthropy has a significant role in the spread of Islam and knowledge as well as in the establishment of institutions that support this religion and its activities. One type of Islamic philanthropy is waqf which is simply recommended but has played a role not less important than zakat which is obligatory. Waqf in Indonesia is a case in point. However, this type of philanthropy does not obtain a serious attention from the state. It is in what is known as reform era (era reformasi) that waqf is given an important attention through the issuance of Waqf Act in 2004 by the state. This paper analyzes the background of legislation of waqf in terms of economics, regulations and politics. To analyze the issues, this paper utilizes content analysis as its method accompanied by political, historical and theological approaches. Meanwhile, the materials used in this paper are documents related to the issues under discussion such as the Bill of Waqf Act, process of legislation of waqf and the 2004 Waqf Act, supported by other materials relevant to the issues. This paper argues that although waqf is religious matter, it cannot be separated from state affairs because it helpful to increase social welfare for which the state is responsible, and at the same time the legislation of waqf has accommodated Muslim interest.

Key words: Islamic philanthropy, Waqf, the 2004 Waqf Act, post-Soeharto Indonesia

Introduction

Philanthropy as kind of generosity is an ethical tenet with high position in various religions. This position can be seen in their religious doctrines as well as in their religious practices in different parts of the world with different names (Helmut K. Anheier and Regina A. List, 2005: 196), but with the same spirit, that is human solidarity toward fellow humans. That is to say that philanthropy is aimed at helping human good into better condition. It is for this reason that philanthropy is commonly defined as a “voluntary action for the public good” (Robert L. Payton and Michael P. Moody, 2008: 6).

According to Jeavons (2010), there are at least four important religious factors leading the adherents of religions to pay philanthropy. First, every religion has a specific doctrine that stimulates its believers to give their wealth to the poors. Second, religious institutions can serve as recipient of giving and at the same time as distributor of such a giving. Third, religion has a great impact on the establishment of philanthropic institutions. Finally, religion can serve as power in creating social space for activity and institutionalization of philanthropy.

Like other religions, Islam also pays a great attention toward generosity with different names, such as sadaqah (giving), zakat (obligatory tax), waqf (endowment) and so on, and with different positions, like obligatory (wajib), highly recommended (mandub), or merely recommended. However, it is waqf that is considered a well-organized philanthropy in Islamic history (Bremer, 2004: 5). This is true because this type of philanthropy has contributed to the spread and development of sciences, the establishment of religious educational institutions, and the social welfare as well (Siraj Sait and Hilary Lim, 2006: 149; Azyumardi Azra, 2006: 17; Azra, 2003: xxiv), even some libraries in the big cities in the Middle East were established and funded by waqf (Yahya Mahmud Sa’ati, 1996).

This high significance of waqf has lead Muslim states to not separate it from their affairs and powers. According to Alterman and Hunter (2004: 11-12), there are at least four attitudes these countries take in terms of waqf. First, certain states attempt at nationalization of philanthropic institutions so that these institutions can be controlled by the states. In other words, philanthropic management should be subject to the interest of states. Second, the states adjust themselves to the religious authority. This is to say that philanthropic institutions are absorbed into the state institutions and at the same time the states get a justification from religious authority. Third, the states appoint power that can manage philanthropic institutions. In this regard, the states give a free
space for philanthropic activities insofar as they are not attached to politics. Fourth, the states leave the societies to establish philanthropic institutions independent of the state affairs.

The practice of waqf in Indonesia in fact has been taken place since the advent of Islam in this country. This practice has been easily accepted by the indigenous people due to the fact that they have practiced philanthropic activities based on their religious belief before Islam. However, when Muslim kingdoms come to power, waqf has not been managed officially by the states (Azra, 2006: 19). This situation continues until the post-independent Indonesia and even under New Order regime head by Soeharto. It is in the post-Soeharto regime, known as reform era (era reformasi), that the state is involved in the management of waqf through the issuance of Waqf Act in 2004.

This paper discusses the regulation of waqf in the post-Soeharto Indonesia with specific reference to the 2004 Waqf Act. The discussion starts with the regulation of waqf before reform era followed by the discussion of background leading to the issuance of this act, and finally ended up with conclusion.

Methods and Materials

To discuss the above issues, this paper uses content analysis (Alan D. Monroe, 2000: 58; Bruce L. Berg, 1995: 175; Earl Babie, 1998: 309) as method of discussion accompanied by political, theological and historical approaches. Through content analysis I want to draw a general conclusion identifying the characteristics of concept, i.e. waqf, found in the data. Moreover, since the Waqf Act of 2004 is a product of political process that serves as state policy, political approach is undoubtedly of great significance. At the same time, waqf is a religious issue that cannot be separated from theological discussion. In more explicit manner, this theological approach will take a form of Islamic jurisprudence. Finally, historical approach is intended to view the development of practice and regulation of this type of Islamic philanthropy. As for the materials used in this paper, I draw greatly on the Bill of Waqf Act, Discussion Process of the Bill of Waqf Act, and the 2004 Waqf Act as primary sources. In addition, I use works and articles relevant to the issues under discussion.

Results:

As mentioned in passing, the practice of philanthropy has been found in Indonesia before the coming of Islam to Indonesia. There are different names used to designate this type of philanthropy in different districts in this country. In Ponorogo, East Java, for example, there is suma, a philanthropic tradition in which the king leaves a certain land to his people to manage for their own interest without tax charge. This philanthropic tradition is sometimes called huma or huma serang. In other place, like Lombok, this endowment is known as tanah parenan (land for rice), initially owned by the state, which is left for the villagers and members of certain temples for their public good and is free from taxation (Juhaya S. Praja, 1992: 46).

In Aceh, the philanthropic activity was known as weukeuh, which had been practiced long before coming of colonial powers. In the era of Islamic sultanate, this practice continued to survive where the sultan used to give a plot of land for public interest through plantation, agriculture, or building public facilities. This land, generally, had a special status in that it was controlled directly by the sultan, not by his officers and was free from. This institution continued to survive in the era of colonial government and functioned to fund religious ceremonies and rituals, as well as to build the mosque, madrasah (religious school) or pesantren (Islamic boarding school) (Amelia Fauzia and Ary Hermawan, 2003: 166).

Islam came to Indonesia introducing philanthropic tradition known as waqf. The indigenous peoples accept it without difficulty because waqf has the same spirit as the previous philanthropic activities with which they have been familiar. Moreover, the role the waqf plays in Indonesia is much greater than that of zakat, which is obligatory according to Islamic law. It is in this relation that Kozlowski states that waqf is one of the most popular institutions in the Islamic world in the 14th or the 15th century (Gregory C. Kozlowski, 2006: 317).

According to Sutarmadi (2003: 193-94), the practice of waqf in Indonesia was actually hand in hand with the process of Islamization itself. For example, Walisongo (nine saints), known as key figures in the propagation of Islam in Java, accepted the trust of people who newly converted to Islam to establish a mosque or pesantren in their own land as waqf. Furthermore, it is stated that when Raden Fatah come to power as the first sultan of Demak, he established mosque of Demak on waqf land and funded its maintenance and administration from waqf.

It is clear that waqf in archipelago has been practiced since the advent of Islam in this area although the objects of waqf in general are limited to those that have permanent entities, such mosques, madrasahs, pesantrens, funerals and so on. However, it is interesting to note that in certain district the book was allowed to be an object of endowment as in Banten. It is related that the Sultan Maulana Muhammad (the king of Banten at the time) was very highly concerned with religious matters that lead him to endow some books on Islamic jurisprudence. This indicates that the objects of waqf have expanded to include books (Amelia Fauzia and Ary Hermawan, 2003: 166). Suminto adds further that, in addition to the the books and immovable objects, waqf...
also consisted of certain goods and cash money specified mainly for building mosques or its renovation (H. Aqib Suminto, 1985: 162, note no. 190).

In the era of colonial government, waqf first come to the front when the dispute among peoples occurred. It is to solve this dispute that the Dutch colonial government issued several letters. In addition, these letters are meant to pave the way for the government to build certain facilities, such as public roads, which sometimes related to waqf lands. Among these regulations are as follows:

1. The Circular Letter of Governmental Secretary dated January 1, 1905, No. 435. Although does not regulate the waqf issues in specific manner, this letter confirms that the government basically recognizes this practice and allows Muslims to perform this religious instruction (Uswatun Hasanah, 2008: 10). Implicit in this letter is that Muslims are allowed to build religious facilities, such as mosques, religious schools, and so forth, which are generally located on waqf lands (Juhaya S. Praja, 1992, 3).

2. The Circular Letter of Governmental Secretary dated June 4, 1931 No. 1361/A. In contrast to previous one, this letter mentions waqf explicitly, but its content is basically the same in that it confirms the former. Furthermore, it regulates certain waqf lands in order that they will not be threatened by the urban development and vice versa (Uswatun Hasanah, 2008: 11).

3. The Circular Letter of Governmental Secretary dated December 24, 1934, No. 3088/A. In general, regulates specifically waqf lands and building mosques. This letter emphasizes the regulations to overcome a dispute among Muslim societies on waqf land (Juhaya S. Praja, 1992, 44).

4. The Circular Letter of Governmental Secretary dated May 27, 1935, No. 1273/A. This letter provides several conditions and procedures on how waqf should be performed. According to this letter, people who want to perform have to simply report the district officers in order that those waqf lands are not challenged by social order and public interest (Juhaya S. Praja, 1992, 45).

Based on these letters, it is clear that Dutch colonial government was involved in regulating waqf issues only for its own purpose. That is, such regulations are issued to facilitate its main function to manage social order and affairs, without involvement in religious dimensions of this philanthropic activity.

After independence in 1945, the regulation of waqf in Indonesia in general remained unchanged in that there is no regulation specified exclusively for waqf issues, but they were inserted into agrarian affairs. It is under Soeharto regime, however, that waqf issues has been given serious attention with the issuance of Government Regulation (Peraturan Pemerintah) No. 28 of 1977 which is specified for waqf of property. This regulation, for example, includes the definition of waqf, one who does waqf (waqif), transaction and one who is trusted to manage waqf property. The intended function of waqf, its elements and requirements are also mentioned in this regulation. It is safe to say that this is the most complete regulation ever issued by government in terms of waqf after Indonesian independence until New Order regime. In addition, this regulation is accompanied by a number of regulations issued by relevant ministries, such as Ministry of Religious Affairs and Ministry of Home Affairs, for detailed implementation.

It is under Megawati’s regime, however, that an attempt to regulate waqf finds its momentous time. This is because waqf is not merely regulated through ministerial decrees as mentioned before, but through an act specified for this type of philanthropy. Of course, this attempt does not emerge in vacuum. There are at least two main factors leading to this legislation of waqf: external and internal factors.

The first includes successful story of waqf management in other Muslim countries, the growth of the economic system and the conceptual development of waqf itself. As an Islamic institution, waqf has attracted a great attention from a number of Muslim countries. This can be seen with the establishment of specific ministry intended to manage waqf properties, such as in Turkey, Egypt, Kuwait, and Malaysia and so on. The experiences these countries have in waqf management show that if waqf properties managed in good manner they will come with lot of benefits for social welfare.

Another important external factor is the development of idea of cash waqf. M.A. Mannan, Bangladesh economist, is considered the first who proposes the idea of cash waqf in modern context, an idea that was not given a great attention in Islamic legal books, but in fact could be found in early history of Islam. It is narrated al-Bukhari that Imam al-Zuhri, one of the leading scholars of hadith, encourages the people to endow the dinar and dirham for the da‘wa, social activities and education. This can be done by making dinar and dirham as a venture capital, while its profits can be spent as waqf property (Anonimous, 2005: 5-6). This practice can be seen evidently in Ottoman Empire. In this period, the objects of waqf are expanded to include several movable objects such as books, animals and so on, and even to include cash waqf. The fund of waqf was used as capital that can be invested in several activities, so that waqf property becomes more productive (Randi Deguilhem, 2003: 89). Such practices are then applied also in Egypt, although the discussion of cash waqf was principally conducted during Mamluk dynasty (Doris Behrens-Abouseif, 2003: 65-66).

Apart from these precedences, Mannan’s attempt at revival of cash waqf is of great significance in modern context because it is related to modern system of banking and economics. Moreover, a number of countries, including Indonesia, have tried to apply this cash waqf (M.A. Mannan, 2008).
In addition to the external factors mentioned above, there are internal factors of high significance, mainly related to the economic, legal, and political considerations (Tuti A. Najib and Ridwan al-Makasary, 84). Since 1997, Indonesia was challenged by multi-dimensional crises ranging from economic crisis to political ones. The economic crisis was marked by an increasing number of unemployees and poors, and at the same time by the decreasing investment and so forth. This situation, of course, is very contradictory to the tenet of Islam, as majority religion, that emphasizes brotherhood and social justice (Aqil Munawar, 2006:17). By reviving waqf tradition, therefore, it is expected that waqf fund can contribute to welfare of society in more concrete manner. This kind of optimism towards waqf fund, in fact, serves also rationale for promulgation of waqf act in several countries (Mahmud Ahmad Mahdi, 2000). Such optimism is justified because waqf institutions in Indonesia are of great number with 359,462 locations and with a total area of 1,472,047,607 meters in 2002. In addition, history has shown that the endowment has proven to be an important source for the spread of Islam in this country and continued to play presently (Anonymous, 2005: 24). This optimism is in line with the 1945 Constitution of Indonesia which emphasizes social welfare, and one of the means to reach this end is by reviving waqf assets available in this republic (RUU Wakaf, 2004: 13).

In short, economic factor becomes an important impetus in promulgation of the Bill of Waqf Act in which the state is in crisis. It is expected that waqf can contribute to the country through increasing community welfare, which is basically the responsibility of the state.

In terms of legal aspect, as alluded to previously, a number of rules and regulations of waqf have been issued by different ministries. This inevitably leads to overlapping regulations that finally cannot be implemented smoothly. In such situations, it is difficult to expect waqf assets to be potential capitals for embodying social welfare. Therefore, the government considers necessary to issue a law specified for this type of philanthropy (Anonymous, 2005: 3). In addition, the solidity of legal arrangements has not provided certainty and safety for those who are responsible to manage waqf assets. As result, waqf is managed traditionally without any sense of progress and innovation, and event certain waqf assets were abused in the interest of their managers (nazir). Furthermore, the existing regulations manage only immovable assets of waqf. This is certainly out of date, because recent development shows that waqf can be done in cash, or through other valuable letters and so forth. It is to accommodate this development that the Bill of Waqf Act is promulgated (Anonymous, 2005: 43).

Apart from economic and legal factors, political factor cannot be put aside. This because every law issued by government is the result of the interaction between its power and public interest, which can also be called “policy” (Miriam Budhhardjo, 1992: 49). Mahfud MD (1998: 14) maintains that every law is always a product of political process. Therefore, any legislation is always of political dimension. Consequently, the Bill of Waqf Act cannot be separated from the political interest of the government and public interest of Muslims.

This can be seen from a number of seminars held by Muslim scholars that come with recommendation to the government to promulgate a specific act for waqf. In January 7-8, 2002, for example, the international workshop on “Economic Empowerment of Ummah through Productive Waqf” has been held in Batam. This workshop recommended the establishment of Badan Wakaf Indonesia (Indonesian Waqf Board) (Anonymous, 2005: 16). Another international seminar has been held in January 6-7, 2003, in Medan, North Sumatra, and recommended the creation of small team to compose the Bill of Waqf Act (Mustafa Edwin, Interview; Agustianto, http://zonaekis.com/wakaf-uang-dan-peningkatan-kesejahteraan-umat).

To follow these recommendations, Ministry of Religious Affairs proposed to President Megawati to establish Indonesian Waqf Board through presidential decree (Anonymous, 2005: 16). The Presidential Secretariat responds this request with the drafting of Bill of Waqf Act.

As the Bill of Zakat Management, which is proposed by the government before the 1999 election, the Bill of Waqf Act has been issued too before the 2004 election. As president who wanted to be elected again, Megawati expects to gain the support of Muslim vote so that the interests of Muslims should be accommodate. This can be seen from the response of president to the request of Ministry of Religious Affairs above that suggests Minister to propose an initiative drafting the Bill of Waqf Act (Anonymous, 2005: 232-237).

The description above shows that the government—as the initiator of the Bill—has a strong desire to develop waqf as a source of productive capital, which can help the state to increase social welfare. Although waqf is a matter of religion, but has a high economic value, the government was committed to develop it, let alone the state is facing the economic crisis. Therefore, legislation of waqf is viewed beneficial for the state and society respectively. On the one hand, through this legislation it is expected that waqf can develop and, on the other hand, if it develops well, waqf will contribute to the welfare of people, which is basically the main task of the government.

The government through Ministry of Religious Affairs finally proposes the Bill of Waqf Act to the House of Representatives (Dewan Perwakilan Rakyat). After long debate in the parliament, the bill is approved as Waqf Act by all fractions on the ground that this type of philanthropy is very helpful to promote welfare of society (Anonymous, 2008). This approved bill then becomes The Act No. 41 of 2004 on Waqf consisting of eleven chapters and 71 articles (Undang-undang No. 41 Tahun 2004 tentang Wakaf, 2004). It is this act that since then regulates the waqf affairs in Indonesia today.
Discussion:

Since this act closely related to religious matter, it cannot be separated from religious regulations known as Islamic law of waqf. However, there are certain regulations that are not found in traditional books of waqf, as will be shown in this analysis.

The 2004 Waqf Act defines waqf as a “religious institution that has economic potentials and benefits should be managed effectively for the purpose of worship and social welfare” (Anonimous, 2008). Of course, this definition is very different from definition found in books on waqf, which usually consider waqf as “to conceal one’s right of wealth because he endows it for public good keeping it eternally” (Wahbah Zuhayli, 1995 [8]: 153; Sayyid Sabiq, 1981 [3]: 378).

Another distinctive character of this waqf act is its emphasis on the duration of waqf. This is to say that according to this act it is allowed for someone to endow certain wealth for limited periods and consequently he or she does not lose their right eternally, but they can regain their right of wealth if the limited period has passed (Anonimous, 2008). Although this regulation is not widely known, especially among Shafi’ite school, it is popularly held among the proponents of Malikite school who maintain that waqf is allowed in "muddah mu’ayyanah min al-zaman (certain period of time)" (Zuhayli, 1995 [8]: 156).

In terms of the objects, this act allows the following as the objects of waqf: money, metal, securities, vehicle, intellectual rights, rental right, and other movable objects that are allowed by Islamic law (Undang-undang Wakaf). Some of these objects are sometimes not mentioned in traditional books of waqf, such as money, intellectual right, and securities, but—as explained before—the development of waqf objects in other Muslim countries has been a significant factor for inclusion of these objects.

Not less important is provision of punishment for those who abuse waqf assets. This abuse can take three forms: to transfer waqf asset as insurance and inheritance, to change the initial purpose of waqf asset, and to take benefit of waqt asset more than that is allowed by this act. This provision is, of course, not found in fiqh books, but it is only maintained that waqf management should not violate shari’a provisions as in Jordan (Mahmud Ahmad Mahdi, 2003: 44).

Although the political interest behind this legislation cannot be met due to the fact that Megawati was not re-elected as the president and defeated by Susilo Bambang Yudhoyono in 2004 president election, the impact of this waqf act is highly significant. Soon after coming to power, President Yudhoyono ratifies this act that has been approved by the parliament and since then the act can be implemented.

However, this act cannot be implemented immediately after its ratification because it needs some detailed regulations known as governmental regulation that should be provided by Ministry of Religious Affairs. The detailed regulations include provisions of nazir (one who is responsible for waqf management), provisions of waqf contract, provisions of moving object of waqf, provisions on the authority of issuing waqf contract, and so on (Jaih Mubarok, 2008: 60-61).

With legislation of waqf, this kind of philanthropy is also a part of the state responsibility in that the state cannot be ignorant of it. Rather, the state is responsible to facilitate its development by providing detailed regulations necessary for it as well as institutions for their implementation. This is because waqf since then has been managed through governmental act.

The implication of waqf legislation is the establishment of Indonesian Waqf Board (Badan Wakaf Indonesia) as suggested by Article 47 to Article 61 of the 2004 Waqf Act. According to this act, this institution should be issued by the presidential decree. Therefore, through Presidential Decree No.75/M/2007 BWI has been established for 2007-2010 period consisting of executive board and advisory council, supported by some divisions such as nazir coaching, waqf management, publication, institutional affairs, and research and development (Waqf Act, Article 53).

As suggested by the 2004 Waqf Act, the main duty of BWI is to develop waqf assets to be a productive capital for social welfare. On the one hand, the BWI is responsible for betterment of waqf management held by other waqf holders throughout Indonesia and, on the other hand, it has to develop the waqf assets which are under its management, both at national and international levels. Moreover, BWI also has authority to approve changing initial intention of waqf to other purposes. Even this institution has authority to dismiss manager of waqf assets if they are deemed to abuse those assets and appoint the others instead (Waqf Act, Article 49). Therefore, BWI can be regarded as the backbone of development as well as backward of waqf in the future.

However, the establishment of BWI should not be understood as the state involvement in this type philanthropy directly. This is because this institution is not included under certain ministry. This situation is far different from Kuwait, Jordan and Saudi Arabia, where the states are involved directly with the establishment of ministry of waqf (Mahmud Ahmad Mahdi, 2003). It is also different from situation in Singapore where the involvement of the state in waqf is only in terms of providing regulations (Shamsiah Abdul Kareem, n.d.). On the contrary, the state involvement in waqf in Indonesia is relatively similar to that is found in Malaysia, where the federal state is involved in minimum manner, but leaves this philanthropy to other institutions other than governmental institutions (Mahmud Ahmad Mahdi, 2003: 115). It is very different from Kuwait, Jordan and...
with a shortage of cash waqf and the land was formally recognized by the Ministry of Religious Affairs. It is also a good indication that the Waqf Act has made a significant impact on the development of waqf in Indonesia. This impact includes institutional organization and management, the betterment of waqf administration, and the increase of Islamic finance. It is expected that this impact will contribute to the progress of social welfare which is the main aim of the introduction of the Waqf Act.

Conclusion:

Based on discussion in previous sections, this paper comes to the following conclusions. First, waqf as a religious tenet cannot be separated from the state affairs, even though the state is not an Islamic state like Indonesia. Second, the legislation of waqf is not free interest that can be economic, legal or political. This paper shows that these three factors are evident in the legislation of waqf. Third, the enactment of Waqf Act has proven to be significant to contribute to social welfare.

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