

# CHAPTER I

## INTRODUCTION

### A. BACKGROUND OF STUDY

Philanthropy is one of the instruments in a modern economic system. It is one of the solutions to the issue of the inequitable of social distribution wealth which prevails due to the dominance of the doctrine of capitalism over the economic system in national and global ranking, including the Islamic world. This sector is used by corporations, community institutions and individuals for handling various issues that involve the general benefit of society and the surrounding environment. Philanthropic practice in all its type illustrates Islamic civilization that teaches the fundamentals of justice and complete welfare. Islam recommends practicing the welfare of fellow Muslim, one of them is waqf.

The practice of waqf was very meaningful for socio-economic, cultural, and religious life. Therefore Islam concludes the waqf practice as one of the most exhilarating services.<sup>2</sup> In addition, waqf was worship that never breaks its deeds as long as the asset was utilized in term of goodness and draws closer to Allah. This was explained in the hadith of Prophet Muhammad:

وعنه قال: قال رسول الله صلى الله عليه وسلم: إذا مات ابن آدم انقطع عمله إلا من ثلاث: صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له (رواه مسلم)<sup>3</sup>

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<sup>2</sup> Ahmad Azhar Basyir, *Hukum Islam Tentang Wakaf, Ijarah, Syirkah*, (Bandung: PT al-Ma'arif, 1977), p. 7

<sup>3</sup> Hadith 1383 kitabul 'ilm, *Imam Muslim bin A-Hajaj al-Qusyairi*, Shahih Muslim, Juz 2, Semarang

Abu Hurairah (May Allah be pleased with him) reported: The Messenger of Allah (صلى الله عليه وسلم) said, «When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ceaseless charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)» (Muslim).

Based on waqf data of the Directorate of Waqf Empowerment of the Religion Ministry of the Republic of Indonesia dated March 2016 waqf land data throughout Indonesia are as follows:<sup>4</sup>

No	Province	Ammount	Certified <i>Waqf</i>	Uncertified <i>Waqf</i>	The Table of (Length (M2
1	Nanggore Aceh Darussalam	24.898	13.730	11.168	767.869.011,58
2	North of Sumatra	16.280	7.761	8.518	36.035.460,00
3	West of Sumatra	6.643	4.420	2.223	212.212.380,00
4	South of Sumatra	6.394	3.521	2.873	380.456.227,29
5	Riau	8.152	2.641	5.691	1.183.976.528,00
6	Jambi	5.918	3.521	2.133	13.516.703,00
7	Bengkulu	2.759	1.861	890	7.122.171,22
8	Lampung	14.591	8.372	6.219	22.990.814
9	Bangka Belitung	1.133	779	354	3.243.060,00
10	Kepulauan Riau	1.187	326	861	1.066.799,00
11	DKI Jakarta	7.422	4.623	2.799	3.013.640,00
12	D.I. Yogyakarta	8.547	8.051	496	2.933.943,00
13	West of Java	74.860	45.873	28.987	116.662.017,81
14	Center of Java	103.294	82.641	20.653	163.169.706,97
15	East of Java	74.429	54.193	20.236	58.239.272,20
16	Banten	20.089	11.049	9.040	39.322.270,00
17	Bali	1.399	1.132	267	13.990.000,00

<sup>4</sup> <https://bwi.or.id/index.php/ar/tentang-wakaf/data-wakaf/data-wakaf-tanah.html>, accessed on, 02-11-18, 05.43 a.m.

18	West of Kalimantan	4.467	2.257	2.210	27.544.360,00
19	Center of Kalimantan	2.642	1.631	1.011	5.778.500,00
20	South of Kalimantan	9.265	7.582	1.683	58.239.272,00
21	East of Kalimantan	3.425	772	2.651	13.984.104,00
22	North of Sulawesi	887	420	467	1.905.272,70
23	South East of Sulawesi	2.386	1.516	870	5.778.500,00
24	Center of Sulawesi	3.173	2.051	1.122	165.042.816,23
25	South of Sulawesi	10.440	5.486	4.954	1.029.030.278,00
26	West of Sulawesi	2.448	571	1.877	3.251.700,00
27	Papua	346	142	204	694.466,00
28	West of Papua	338	105	233	591.117,00
29	East of Nusa Tenggara	1.272	1.047	225	5.311.787,00
30	West of Nusa Tenggara	12.105	7.031	5.074	25.816.325,00
31	Maluku	1.215	449	766	5.006.325,00
32	North of Maluku	1.489	605	543	30.223.191,00
33	Gorontalo	1.877	729	1.148	1.663.350,00
JUMLAH		435.768	287.160	148.447	4.359.443.170,00

Source: Directorate of Endowment Empowerment Ministry of Religion RI

Dated on March of 2006

Meanwhile, based on the data of Indonesian Waqf Board, as far as January 2017, the total waqaf asset in the form of property or land have reached 4.4 billion square meters with an estimated economic value of

around 370 trillion.<sup>5</sup> From these data, it can be easily known that the nominal value of asset waqf is not an inconsiderable amount. Nevertheless, the utilization of waqf assets is not yet maximal. It is because there is no fund to manage waqf for and waqf disputes which not certified.

Basically, in the context of Indonesia, there have been many practicing implementations of waqf. But in fact, the public's understanding of Waqf has been limited. Understanding of waqf is still interpreted as immovable objects such as land so that the community is not so easy to rendering waqf. Because they assume that to rendering waqf they must have landed first and another immovable object. In addition, the form of utilization is still limited to mosques, prayer rooms, plantations, medical centers, and other physical building.<sup>6</sup> Meanwhile, the current need of the community is so huge that they need cash to improve their welfare. Based on the waqf principle, a cash waqf innovation product was made, which is not only property but waqf by funds (money) in cash.<sup>7</sup> The effort to revitalize the element of waqf to provide various economic benefits require a solution of thoughts about the concept which is in accordance with the existing developments but does not leave the element of Syari'ah.<sup>8</sup>

Recently, as we know a new program has emerged in recognizing the potential of a community that can be utilized to build community solidarity through the concept of cash waqf.<sup>9</sup>

The Indonesian Waqf Agency declare that money waqf can be the potential alternative instrument for the development of the country.

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<sup>5</sup> <https://finance.detik.com/berita-ekonomi-bisnis/d-3611522/aset-wakaf-ri-bernilai-rp-370-t-sri-mulyani-harusnya-dimanfaatkan>. accessed on, 2<sup>nd</sup> November 2018, 05.43 a.m.

<sup>6</sup> Umi Chamidah, *Pengelolaan Aset Wakaf Tunai Pada Lembaga Keuangan Syariah* (Studi Pengelolaan Wakaf Tunai di Baitul Maal Hidayatullah Malang), Skripsi, (Malang: Universitas Islam Negeri (UIN), 2008), p. 19-20

<sup>7</sup> Setiawan Budi Utomo, *Fiqih Aktual*, (Jakarta: Gema Insani Press, 2003), p. 155

<sup>8</sup> M.A. Mannan, *Sertifikat Wakaf Tunai Sebuah Inovasi Instrumen Keuangan Islam*, (Jakarta: CIBER – PKTI- UI, t.t.), p. 94

<sup>9</sup> Tim Penyusun, *Strategi Pengembangan Wakaf Tunai di Indonesia*, (Jakarta: Dirjen Bimas dan Penyelenggara Haji, 2007). p. 1

However, because it was still relatively new in Indonesia, socialization, as well as optimization, needs to be done. This opinion was expressed by the Director of the National Amil Zakat Agency Irfan Syauqibeik. Further, it was assumed that the number of Muslim families in the capable category in Indonesia is around 18 million. If 10% of the total number of families were doing cash waqf Rp. 100.000-, each month therefore it will be collected Rp. 180 billion each month or Rp. 2.16 trillion each year. While if 50% collected Rp. 900 billion each month or Rp. 7.2 trillion each year.<sup>10</sup> This potential will be very useful if the management of waqf were done professionally. But not all Muslims understand the concept of cash waqf well.

Cash waqf for Muslims in Indonesia is something new. The Indonesian Ulama Council (MUI) published a fatwa about halal cash waqf in mid-May 2002. While the legal foundation regarding the development of waqf in the form of legislation was published in 2004. Namely Law No. 41 of 2004 concerning Waqf and RI. Government Regulation No. 42 of 2006 concerning Implementation and Regulation of the Minister of Religion No. 4 of 2009 concerning Administration of Money Waqf Registration.<sup>11</sup> Understanding the high potential of cash waqf, some foundations such as pesantren benefitted cash waqf funds to develop an Islamic Institution. This certainly must be in accordance with the statement of the intention of Waqif in its utilization, and perform in writing in accordance with the provision of Indonesian Republic Law No, 41 of 2004 concerning waqf in an article 29.

The employing of cash waqf is implemented by Islamic education institutions such as Islamic Institutions. Employing of waqf management with professionally and productively will help Islamic education institutions continue to take part and survive in educating Muslim scholar in the future. Previous Islamic educational institutions that were able to survive and provide

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<sup>10</sup> <https://bwi.or.id/index.php/publikasi/berita-mainmenu-109/360-potensi-wakaf-tunai-triliunan-rupiah.html>, accessed on 23<sup>rd</sup> December of 2018, 1.51 p.m

<sup>11</sup> Muhammad Ahsanul Arifin, *Analisis Pengelolaan Wakaf Tunai Pada Yayasan Wakaf Al Kaff Ninjai Dengan Pendekatan Swot, Krips*, (Medan: Universitas Sumatra Utara, 2017), p. 18

the best educational services even scholarship to students with professional management of waqf were Al-Azhar University in Cairo, Zaitunyah University in Tunis, University of Darussalam Gontor and several other universities. This motivates many Pesantren (Islamic Education Institution) in Indonesia to try to manage professional waqf funds.

One of the cash waqf fundraising innovations is cash waqf auctions. Waqf auctions are widely used by Islamic education institutions such as the Tazaka Islamic boarding school, Al-Isyraq Islamic Boarding School and other Islamic Institution to support the development and construction of Islamic educational institution. This is because cash waqf auctions can be carried out by all Muslims who have money without waiting to become landlords. In addition, the implementation of waqf funds is more flexible than zakat funds, so that civilization development programs can be carried out using cash waqf auction funds.

Trensains Islamic Institution is one of the pesantren which was built by professional management of waqf fund. Trensains is Islamic Institution which was teaching science education and charity that focuses on aspects of understanding the Qur'an, natural science, and the interaction of religion and science. Trensains collaborates with Lazizmu in managing waqf fund professionally.<sup>12</sup> In practice, Trensains Islamic Institution announces Cash Waqf Auctions through recitation, banners and official websites. Funds can be distributed through Islamic institution accounts or done directly. The fund is planned to be used to purchase land that will be used for the construction of the Trensains boarding school.

To achieve the validity of the implementation waqf of the conditions and waqf requirements must be met. By the observation on the reality above, the writer is interested to elaborate the issue into thesis research with the title of "CASH WAQF AUCTION FOR THE ESTABLISHMENT OF TRENSAINS ISLAMIC INSTITUTION ON PRESPECTIVE OF ISLAMIC LAW AND POSITIVE LAW"

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<sup>12</sup> <https://trensains.sch.id/>, accessed on March 29, 2019, at 16.12 am

## **B. PROBLEM OF STUDY**

Beginning from many problems that exist around waqf in Indonesia, the authors limit the scope of the thesis only two main issues as follows:

1. How is the implementation of cash *waqf* auction on the perspective of Islamic law and Positive Law?
2. How is the Implementation of cash *waqf* auctions of Treinsains Islamic Institution 2018/2019 on the view of Islamic Law and Positive Law?

## **C. PURPOSE OF STUDY**

In accordance with the problem of the study was being described, the purpose of the study that the author wants to achieve in writing this thesis is described as follow:

1. To find out the implementation of cash auction waqf at the Trensains Islamic Institution.
2. To find out Islamic legal review of cash auction waqf at the Trensains Islamic Institution.

## **D. Significance of Study**

The Importance of writing this thesis is:

1. Theoretical aspects
  - a. This research is expected to add knowledge and insight about cash waqf specifically at cash auctions waqf.
  - b. Made an example as reference material in the implementation of waqf auction.
  - c. This research used as a source of reference and information for new researcher particularly on the waqf discourses.
2. Practical aspects

This research can be useful for valuable information to the community about how cash waqf should be carried out comprehensively.

## E. Systematic writing

To simplify the discussion material in this legal research, the writing compiled in a systematic, as follows:

CHAPTER I *Introduction*, this chapter contains background of study, problem of study, significance of study, and systematics of writing.

CHAPTER II *Theoretical Framework*, this chapter outlines some of the problems related to the literature review, basic of theory, from understanding waqf in Islamic *fiqh*, legal basis of *waqf*, the pillar of *waqf*, kind of *waqf*, *waqf* development, cash *waqf* according to Positive Law, management of cash *waqf*, the procedure for money *waqf*, and cash *waqf* auction.

CHAPTER III *Research Method*, Which contain type of research, Systematics discussion, and writing techniques.

CHAPTER IV *Chronology of cash auction waqf in Trensains Islamic institution Sragen*, Chronology of cash *waqf* auction, Legal basis for the implementation of the cash *waqf* auction in Trensains Islamic institution, Implementation of the cash *waqf* auction at Trensains, Analysis of Islamic law toward cash *waqf* auctions at Trensains Islamic institution foundation Sragen, and positive legal analysis of cash *waqf auction* at Trensains Islamic institution.

The concluding chapter V, the final chapter contains the conclusions from the discussion and previous exposure to problems or answer the questions provided in the formulation of the problem. As well as containing advice and afterword.