A PROPOSED FRAMEWORK OF ISLAMIC GOVERNANCE FOR AWQAF

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ABSTRACT
Along with the revival of waqf (plural awqaf) institution, the attention to the call for good governance and best practices of waqf has emerged. It is widely agreed that the best practice of good governance should be adopted as it is one of the critical success factors for revitalizing awqaf institutions. As far as waqf study is concerned, there is no existing study on waqf governance. This is probably because the conception of governance was used exclusively in the commercial sectors. In fact, governance in charitable and not-for-profit organizations is much related to demonstrating accountability to stakeholders. This paper attempts to review some Islamic concepts and values which underpin the governance framework for awqaf institutions and thus demonstrate the Islamic accountability of mutawalli (awqaf manager).

Key words: Awqaf, Governance, Islamic Accountability

1. INTRODUCTION

The institution of waqf (plural awqaf) in Islam is one of the principle means to alleviate the poverty problem in the society besides zakat (compulsory charity) and sadaqah (optional charity). It is believed that waqf can be an effective system for poverty eradication by improving non-income generating aspects such as health, education etc. as well as increasing access to physical facilities, resources and employment (Abu Zuhra, 1971; Sadeq, 2002). Unlike other charities which get spent in consumption, waqf is unique where the corpus of waqf should be remained as capital. This is in line with Kahf (2003) who is widely cited in defining waqf as “holding certain property and preserving it for the confined benefit of philanthropy and prohibiting any use or disposition of it outside its specific objective”. In nature, waqf is categorized as public sector but non-governmental (Kahf, 2007). In addition to this, the establishment of waqf is very simple whereby the deceleration by the founder is considered enough to create a waqf. Waqf, therefore, had become part of Muslim’s life and the best endowment system in the past (Rashid, 2008).

It was the colonization of Muslim lands which had brought the declination of waqf for centuries (Abu Zuhra, 1971). Many waqf assets were taken over by the colonial governments (Rashid, 2008). Colonization had also given consequence to moral degradation of the

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mutawalli which led to the mismanagement of waqf. Not surprisingly therefore waqf assets were misused or even lost. Rashid (2008) noted that there are many cases in Muslim countries where waqf assets were occupied illegally.

Fortunately, it has been witnessed in the last few years that the revitalization of waqf institution has been on agenda of Muslim communities around the world. There is an awareness of waqf revitalization which emerged amongst Muslim countries. The governments of Muslim countries have realized the need for waqf revival in order to create a better society (e.g. Sudan, Malaysia, Kuwait). In addition to this, a series of international waqf conferences which were held by Islamic Development Bank (IDB) through its subsidiary organ, the Islamic Research and Training Institute (IRTI), also indicates a growing interest and awareness in waqf institutions as one of the tools for community development (Cajee, 2008; Ayedh and Ihsan, 2013).

Along with the revival of this historic institution, the attention to the call for good governance and best practices of waqf has emerged. It is widely agreed that the best practice of good governance should be adopted as it is one of the critical success factors for revitalizing awqaf institutions (Kahf, 2007; Cajee, 2007; Ayedh and Ihsan, 2013). However, as far as waqf literature is concerned, there is no existing study on waqf governance. One of the possible reasons behind the absence of study on waqf governance is because scholars did not pay attention to that issue (Hoexter, 1998). In a broader context, Speckbacher (2008) admits that research on governance mechanism in the nonprofit sectors is relatively underdeveloped. Indeed, the governance issue in not-for profit and charitable sectors has just been promoted in the last few years (Hyndman and McDonnell, 2009).

Apparently, the discussion about governance in charitable and not-for profit organizations is much related to demonstrating accountability to stakeholders (Stone and Ostrower, 2007; Hyndman and McDonell, 2009). Therefore, this paper aims at exploring the major themes that form the basis of discussion on governance and accountability in awqaf. In doing so, the existing studies on accountability and governance in charitable and not-for profit organizations are reviewed. In addition to this, the theoretical underpinnings relating to Islamic accountability and governance are also examined. This paper comes up with some ideas relating to governance structure of awqaf which can demonstrate Islamic accountability of mutawalli.

2. GOVERNANCE AND ACCOUNTABILITY PERSPECTIVE IN NONPROFIT AND CHARITABLE ORGANIZATIONS

The discussion about waqf governance is preceded by the review on governance and accountability in nonprofit and charitable organizations. This is important as waqf shares the same characteristics with these institutions. Indeed, waqf is a non-profit organisation as its establishment is aimed at the benefit of society. Hence, waqf is sometimes called perpetual charity (Sadeq, 2002)

The term “governance” was derived from the Latin word gubernare, literally meaning to “direct”, “rule” or “guide” (Hyndman and McDonnell, 2009). In the broad sense, governance refers to the relationship between the governors and the governed at the basis the decision making by individuals to those in authority (Lewis, 2005). According to Iqbal and Lewis (2009), the conception of governance has been used in various contexts such as monetary
governance (the making of monetary policy), economic governance (to ensure the smooth of market economy), public governance (ensuring efficiency in the public sectors) and corporate governance (ensuring the effective functioning of market and enterprises).

Although governance is a very prominent concept, the definitions of governance are hardly found in the nonprofit research literature (Stone and Ostrower, 2007). The reason is probably because the conception of governance was exclusively used in the commercial and public sectors. So far, the conception of nonprofit governance overlaps with public governance. However, Stone and Ostrower (2007) argue that there should be a clear-cut between these two conceptions as the governance system in nonprofit sectors comprises board of directors.

There could be two possible methods to develop governance conception in nonprofit sectors. First, as the governance system in nonprofit encompasses board of directors, the perspective of governance from business sectors can be adapted (Hyndman and McDonnell, 2009). In this sense, the paradigm of principal-agent theory might be relevant. Apparently, the principal-agent theory suggests that the suppliers of finance to corporation need to assure themselves of getting return on their investment. However, it is inapplicable for nonprofit and charitable sectors where the donors do not expect any financial return from what they have donated. Therefore, Hyndman and McDonnell conclude that the “return” could be viewed as the money being spent for the purpose of donation. In other words, the dimension of governance is to demonstrate accountability of boards to their donors.

Secondly, public governance literatures can strengthen nonprofit governance (Stone and Ostrower, 2007). Public governance entails formal and informal relationships which exist inside and outside public hierarchies. Stone and Ostrower believe that nonprofit sectors also emphasize formal and informal power relationships. They assert that nonprofit governance involves the relationships between board and staff. In addition to this, the composition of board; its responsibility and effectiveness are the issues in nonprofit governance. Stone and Ostrower further underline governance in nonprofit organizations is the province of boards of directors and its relationships with organizational level control, accountability and managing resource dependencies. Similarly, Hyndman and McDonnell (2009) stated that governance is the methods by which the organizations are accountable. In other words, governance is the operationalization of accountability. It is therefore, the conception about accountability should be clear in the first place.

From managerial perspective, Sinclair (1995) defines accountability as the requirement to those with delegated authority to be answerable for producing outputs or the use of resources to achieve certain ends. Cutt and Murray (2000) believe that formal definition of accountability presumes the existence of at least two parties, one who allocates responsibility and one who accepts it with undertaking to report on, account for, the manner in which it has been discharged. In the charitable sectors contexts, Cordery and Morley (2005) argue that the trustee should demonstrate accountability to various groups of stakeholders such as donors, government, beneficiaries and public at large.

Although the above conception of government and accountability seem appropriate for *awqaf*, they fail to demonstrate accountability in Islamic perspective for some reasons. The discourse about accountability and governance from Islamic perspective will be discussed in the following section.
3. **THE QUR’ANIC PRINCIPLES OF ACCOUNTABILITY AND GOOD GOVERNANCE**

As mentioned previously, the discussion about governance is related to accountability. Therefore, this section is preceded by discussion about accountability in Islam. It is undoubtedly true that accountability is a central theme in Islam since the accountability to Allāh and the community is paramount to a Muslim’s faith (Lewis, 2006). Askary and Clarke (1997) asserted that the word hisab which is interrelated with account and accountable is repeated more than eight times in different verses in the Qur’an.

As discussed earlier, the conventional conception of accountability has some limitations to demonstrate Islamic accountability. Firstly, according to Al-Safi (1992) man-made definition of accountability is aimed to establish a certain material status for the individual and community. Indeed, accountability in Islam (taklif) can be seen as everyone is accountable for their actions on the Day of Judgment, as mentioned in this Qur’anic verse, “Then shall anyone who has done an atom’s weight of good, see it” (Qur’an, Al-Zalzalah 99:7). Similarly, Haniffa (2001) takes the view that the ultimate accountability in Islam is to Allāh since all deeds will be counted in the hereafter. Haniffa supported her idea through the following verse of the Holly Qur’an: “To Allāh belongs all that is in the heavens and on earth. Whether you show what is in your minds or conceal it, Allāh will call you to account for it” (Qur’an, Al-Baqarah 2:284).

The second reason why conventional accountability might not be appropriate is because in the western society, fulfilling accountability is regarded as nothing to do with religious matters. Lehman (2004) analyses that the current western societies have neglected the religious dimension in their social systems. While in Islam, rendering an account to discharge accountability is identified as part of ibadah (servitude to Allāh) and amal saleh (virtuous deeds) in attaining al-Falah (benefit for the people in this world and the hereafter (Haniffa, 2001).

In addition to the above discussion, Imam al-Ghazali explained the Islamic philosophy of life in his prominent book *Ihya Ulum Al-Din*. According to him, Muslims must keep in mind that there is no separation between spiritual and temporal affairs in their life. Therefore, all worldly deeds such as trading, studying worldly majors, and working are considered worshiping Allah, since they are in line with Islamic policies and rules (Shariah Islamiah), which promotes the seeking of human well-being (falah) and a good life (hyayt tayyibah).

Due to the fact that the conventional accountability does not show accountability to Allāh, Shahul (2000) therefore, comes up with the proposal of dual accountability where as Allāh’s khalifah, human beings are being accountable for all resources entrusted; besides they should fulfill any contract made among them. Shahul named it Islamic accountability. In fact, this conception will lead to some principles of good governance in Islam.

The basis of good governance in Islam is the concept of the absolute unity of God (tawhid). Actually tawhid is the very foundation of Islam whereby other principles depend on it. Philips (1994) notes that if tawhid is not sound, the rest of one’s Islam will become pagan rituals. Hence, in the context of governance an individual must seek the guidance from the Creator of the universe in fulfilling the obligation to the society. Tawhid will lead mankind to be aware that their existence on the earth is as the khalifah (vicegerent or representative of
God). Therefore, from the principle of *tawhid* and Qur’anic verses Zein et al. (2008) derive some good governance principles.

The first principle is *amanah* or trust to fulfill. According to Zein et al. (2008), *amanah* basically is a contract between God and man since it is mentioned in the Qur’an that God has given the trust to the mankind where the heavens, the earth and mountains refused to accept because they were afraid of the heavy burden (Qur’an 33:72). Moreover the Qur’an has reminded the believers not to betray the *amanah* delegated to them (8:27). The concept *amanah* will determine the individual’s relationship with the society. If an individual really understand the concept of *amanah*, the issues regarding the rights and responsibilities can be resolved. The fulfillment of *amanah* would bring to *adalah* (justice). Thus, *adalah* is the second principle in good governance.

The importance of *adalah* has been revealed in following Qur’anic verse “Allah commands justice, the doing of good, and liberalty to kith and kin, and He forbid all shameful deeds, and injustice and rebellion. He instructs you, that ye may receive admonition” (Qur’an, An-Nahl 16:90).

According to Shahul (2001), *adalah* in Islamic economic scheme is to achieve social welfare. *Adalah* principle leads Muslims to work with full objectivity. It is very crucial because in society there is always potential conflict among the member of the society. Moreover, in the context of manager and staff the conflict could occur. Therefore, Islam encourages those who are entrusted *amanah* to deal with people within the concept of justice or *adalah*. However, sometime it is difficult to achieve a just system due to subjective decision of human being. Therefore, Qur’an provides guideline how to make decision making i.e. through shura or mutual consultation. The following verses of Qur’an have revealed that every decision made should base on consensus: “And consult them on affairs (of moment). Then, when thou has taken a decision, put thy trust in Allah” (Qur’an, Al-Imran 3:159). And “Those who respond to their Lord and establish regular prayer, who (conduct) their affairs by mutual consultation; Who spend out of what We bestow on them for sustenance” (Qur’an Ash Shura 42:38).

The spirit of these verses has explained how the decision making process should be conducted. Since Qur’an specifies that the decision making involves more than one party, the leaders must encourage others to participate in the process (Iqbal and Lewis, 2009). This Qur’anic evidence supports the collective aspect in decision making process. In other words, Islam encourages the consultation as the way of leadership instead of individual leadership.

The aforementioned principles actually had been introduced and practiced by the Prophet and his companions. Surely, there was no such expression in Arabic to represent the word “governance”. Sourial (as cited by Lewis, 2005) noted that the word *hakama* might be the closest terminology for governance. Regardless of the terminology, the Prophet had laid down the basis of good governance in the earliest Islamic state. The following example provides the vivid example of good governance in awqaf in the earliest Islamic state.

4. **THE EARLIEST WAQF FOUNDATION AND THE DIMENSION OF GOOD GOVERNANCE**

Before discussing the dimension of good governance in the earliest awqaf, it is most essential to understand the origin of this institution. Gil (1998) argues that learning about the earliest of
waqf will help in getting a better understanding of this contemporary institution. Cizkaca (1997) believes that institutional reform of awqaf must be preceded by having thorough understanding of waqf in the historical dimension.

Apparently, there was no clear stipulation with regard to waqf practice to be found in the Qur’an. It was indeed through the Prophetic tradition (hadith) the technique of giving away a property being suggested (Rashid, 2002; Jahar, 2006). Although there is a debate among scholars and historians as to where the origin of charitable endowments come from (Mohammad, 1983; Cizakca, 1997), a prominent endowment by Umar ibn al-Khattab was regarded as the first foundation of waqf institution (van Leeuwen, 1999). This fact was supported by the following hadith which was narrated by Ibn Umar:

Ibn Umar reported: Umar acquired a land at Khaibar. He came to Allah’s Apostle (may peace be upon him) and sought his advice in regard to it. He said: Allah’s Messenger, I have acquired land in Khaibar. I have never acquired property more valuable for me than this, so what do you command me to do with it? Thereupon he (Allah’s Apostle) said: If you like, you may keep the corpus intact and give its produce as Sadaqa. So Umar gave it as Sadaqa declaring that property must not be sold or inherited or given away as gift. And Umar devoted it to the poor, to the nearest kin, and to the emancipation of slaves, aired in the way of Allah and guests. There is no sin for one, who administers it if he eats something from it in a reasonable manner, or if he feeds his friends and does not hoard up goods (for himself) (Muslim, Shahih Muslim, undated).

Although in the aforementioned hadith the Rasulullah SAW used the word “sadaqa” instead of ‘waqf”, actually the both words can be used in the same sense which refer to perpetual immobilization the property for pious purpose (Gil, 1998). In addition, the words habs are used extensively in Iran and North Africa respectively to describe this activity (Cizakca, 1997). Despite there are slightly variations in terms of names, the above hadith has clearly defined what waqf is.

With reverence to the abovementioned hadith, waqf property is not addressed for personal enjoyment but rather for the needs of the poor, travelers and fighters for the sake of Allah. Simple interpretation of this hadith is the Ummah is beneficiary and the stakeholders of awqaf (Gil, 1998). In addition, it is only the revenue of waqf can be distributed to the beneficiaries, while the corpus cannot be sold, transferred or inherited. It implies that waqf trustee should ensure that waqf property is managed productively. Otherwise the corpus will diminish and cannot fulfill the objective of waqf.

Regarding waqf management, Abu Yusuf, one of Hanafi jurists concluded that the founder can appoint himself as the mutawalli. This opinion is justified by the fact that Umar distributed the revenue of waqf himself during his lifetime (van Leeuwen, 1999). While for his successor, Umar appointed his daughter, Hafsa to manage waqf assets. Hanafi School interpreted that as long as there is qualified relative of waqif can be appointed to handle waqf, a stranger should not be appointed as a mutawalli (Khan and Syed, 2007). Moreover, it is mentioned in the hadith that mutawalli can benefit from waqf revenue as long as it is not enriching himself.
It is indeed the principle of good governance and accountability had been applied by the Prophet in waqf management. Although waqf history does not specifically highlight these issues, Iqbal and Lewis (2009) believe that good governance and accountability had become the basic principle in every single activity of the earliest Muslim society. One of the principles of good governance which can found in waqf of Umar is shura or consultation (Zein, Al-Hasan and Zakaullah, 2008) i.e. when Umar consulted the Rasulullah SAW the best way to endow his assets. This tradition had been followed by other Prophet’s companions when they wished to create waqf (van Leeuwen, 1999).

When Rasulullah SAW allowed the one who administer waqf assets to benefit from waqf revenue, in condition as long as not enriching himself, it relates to the principles of adalah (justice) in good governance (Zen et al. 2006). It is true that mutawalli manages waqf asset to serve the needs of the ummah. But leave him alone unpaid will be unfair. Therefore, the mutawalli deserve for some remuneration.

Another principle of good governance is related to audit on the mutawalli’s responsibility. A hadith narrated Abu Humaid al-Sa'idi:

The Prophet (SAW) appointed a man of Azd called Ibn al-Lutbiyyah (to collect sadaqah). The narrator Ibn al-Sarh said: (He appointed) Ibn al-Utbiyyah to collect the sadaqah. When he returned he said: This is for you and this was given to me as present. So the Prophet (SAW) stood on the pulpit, and after praising and extolling Allah he said: What is the matter with a collector of sadaqah. We send him (to collect sadaqah), and when he return he says: This is for you and this is a present which was given to me. Why did he not sit in his father's or mother's house and see whether it would be given to him or not ? Whoever takes any of it will inevitably bring it on the Day of Resurrection, be it a camel which rumbles, an ox which bellows, or sheep which-bleats. Then raising his arms so that we could see where the hair grow under his armpits, he said: O Allah, have I given full information ? O Allah, have I given full information ? (Sunan Abi Dawud, 2946).

This hadith can be a basis for reviewing process of the mutawalli’s performance. Although this hadith is not directly related to waqf management, it indicates that the prophet SAW has conducted a systematic review (musala’ah) checking for the sadaqa collected. Hence, it could be the Islamic basis to set up audit committee to monitor the mutawalli’s performance in managing waqf property.

Another principle of good governance is amanah or responsibility (Zein et al, 2008). Perhaps this principle had motivated Umar to distribute waqf revenue during his life time and appointed his daughter as his successor. Umar wanted to ensure that the objective of waqf can be achieved. Moreover, this evidence also indicates that accountability had become the basis of waqf of Umar. Zein et al note that amanah is the basis of accountability.

The historical record of waqf of Umar indicates that the principles of good governance and accountability had been applied in managing waqf. Of course waqf foundation at that time was very basic and simple. But one should bear in mind; the foundation of Umar has become the basis example of waqf institution today. In the following section we will discuss the
building blocks of Islamic governance in awqaf institutions which can discharge accountability.

5. THE FRAMEWORK OF ISLAMIC GOVERNANCE IN AWQAF

Having discussed the conception of accountability and basic principles of good governance in Islam, now we turn to elaborate how these could be applied to the waqf context today. The basic principles of good governance such as Musala’ah, amanah, adala and shura can be interpreted into the basic building blocks of Islamic governance namely institution of shura, monitoring institution and syariah audit (Iqbal and Lewis, 2009).

Shura as a principle and institution of shura is meant to meet the Islamic moral value decision making (Abdul Rahim, 1998). Since Qur’an specifies that the decision making involves more than one party (3:159), the leaders must encourage others to participate in the process of decision making (Iqbal and Lewis, 2009). In the context of awqaf, it can refer to the board of trustees. It should be noted that mutawalli is responsible to various stakeholders. Hisham (2006) and Ihsan (2007) identify the stakeholders of waqf as wāqif, waqf board, regulator, beneficiaries, and community in large. It might be difficult to invite all elements of the stakeholders on board in order to ask their participation in decision making. Hence there could be an alternative to achieve the objective of shura in awqaf institution. The member of board of trustee should consist of the representative of the major group waqf stakeholders. Cajee (2007) identifies waqif, mutawalli, regulator and beneficiaries as the major stakeholders. According to Askari and Taghavi (as cited by Iqbal and Lewis, 2009), a system of governance with pluralistic governing body will prevent the ummah from the dictatorship.

In order to ensure the shariah compliance of waqf management, the monitoring institution should be erected. In the economic matters this institution is represented by hisbah (Iqbal and Lewis, 2009). During the prophet time, institution of hisbah had significant role in controlling trade and economic practices. Probably, the same institution for waqf is qadi or judges (Khan and Syed, 2007). According to Khan and Syed, qadi has the authority to appoint, monitor or even replace the mutawalli if he found that mutawalli mismanaged waqf property. However, qadi cannot remove mutawalli merely on the complaint of beneficiaries, unless there is a proof of breach of trust.

Another institution for good governance is shariah Audit. It was mentioned before that mutawalli is accountable to Allah and human beings. The metaphysical nature of accountability to Allāh does not imply that it has nothing to do with reporting. Cutt and Murray (2000) state that, in nature, accountability manifests itself as information through management information systems and associated methods of analysis and evaluation. It is true that all deeds are recorded by the Angels and account to Allāh (Al-Qu’ran Qaf 50:17-18). But the accountability to Allāh (Hablun min Allāh) is interrelated accountability to human beings (hablun min An-nas) (Hassan, 1995 as quoted by Abdul Rahim, 2003). Therefore, in this sense a clear reporting from mutawalli will enable the user to see how compliant he is to the shariah rules in managing the waqf assets. To convince the stakeholders about shariah compliance of waqf management, shariah advisory services shariah auditing should be in place, especially with current transformation process of awqaf institution to be incorporation, the possibility is more to engage in non-shariah activities.
The relationship of basic building blocks of good governance and the principles can be drawn into the following figure:

![Diagram of waqf governance framework]

Figure 1: The framework of waqf governance

The waqf governance framework also explains how to discharge dual accountability. The application of concept shura, adalah and amanah in good governance will assist the mutawalli to fulfill accountability to Allah as all these principles are from revelation. In addition, accountability to Allah can be discharge through the fulfillment of all Allah’s commands and avoidance of His prohibitions (which is guided by Qur’an and hadist). For instance, in managing waqf assets, mutawalli cannot violate shariah rules. While at the same time, mutawalli should show his accountability to the Ummah in fulfilling waqf objective as wāqif wishes. Besides, mutawalli has to ensure that waqf will contribute to the betterment of Muslim society.

Good governance in awqaf institution is all about ensuring the accountability of mutawalli. From the basic Islamic perspectives (Iklas, amanah, adala, and shura) some governance could be derived. Iklas drive the mutawalli to target the perfection in managing waqf assets for the seek of Allah satisfaction at first then the society. Second principle of good governance is amanah which impels mutawalli to manage waqf assets as trustee to Allah and beneficiaries and consider this waqf property as trust. Adala principle is very important in the process of distribution of waqf revenue between the beneficiaries. Mutawalli have to act with justice (adala) in determine the waqf revenue rate for beneficiaries and himself. Last principle is shura, it shall be the basis of decision making process. Mutawalli has to involve representatives for all related parties in the decision making process.
6. CONCLUSION

There is a consensus among scholars that the good governance should be adopted for waqf as it is one of the critical success factors for revitalizing awqaf institutions. Actually the cornerstone of good governance in Islam had been laid down by the Prophet and his companion in the earlier Islamic state. Good governance and accountability had become the basic principle in every single activity of the earliest Muslim society. Some basic principles of good governance derived from Qur’an are, amanah, adala and shura, Musala’ah. From these principles, the framework of Islamic good governance can be built as institution of shura, monitoring institution and shariah audit. The application of the framework into waqf institutions can discharge dual accountability of mutawalli i.e. accountability to Allah and the society. A further study can be conducted to investigate as to how the Islamic good governance has been practiced by awqaf institutions. Furthermore, future study could develop the code of good governance and examine the possibility of adopting such code in the awqaf institutions.

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