CONCEPTUALISATION OF CORPORATE WAQF

Abdullaah Jalil
Asharaf Mohd Ramli

ABSTRACT

Corporate waqf is usually considered as the component of cash waqf. However, Hajar et al. (2011) suggested that corporate waqf should be established as an independent waqf concept. Thus, based on the suggestion, this paper aims to reconceptualize corporate as an independent concept. This paper is a theoretical study based on previous studies and researches on corporate waqf. The paper discusses corporate waqf from three different aspects: definition of corporate as independent waqf concept, models, and Shariah considerations. The study will establish corporate waqf as an independent category of waqf due to its salient characteristics and extend the understanding and concept of the corporate waqf. The novelty of this study lies on its attempt in defining the corporate waqf independently. This study also discuss the three models of the corporate waqf and deliberate on the main Shariah considerations related to the corporate waqf practice.

Keywords: Corporate Waqf, Shariah Consideration, Corporate Waqf Models.

1. INTRODUCTION

Waqf has proved to be an evolving subject and dynamic in nature and practice. The variety of waqf assets and practices provide rooms for this dynamicity and lead the way to creativity in this field. Unlike zakat, all of the Islamic jurists allow the non-Muslims to be the beneficiaries of general waqf. Additionally, non-Muslim could also be the donours in the practice of waqf. This fact has been proved in Johor where a non-Muslim has endowed his property (land) for the interest of Muslims.

Primarily, Waqf is usually associated with immovable properties where the waqif endowed his real properties such as land or building for general or specific purpose to general or specific beneficiaries. Later, the practice of cash waqf evolved when the fatwa by the Islamic jurists of Ottoman Empire approved such practice (Cizakca, 2011a).

The rise of cash waqf has provided the means to the expansion of waqf practices. The waqf of financial assets that provide income such as shares has also take place afterward. The participation of corporate institutions in the waqf practices has enriched the subject of waqf to be more complex and vibrant.

1.1 Problem Statement

The rise of corporate waqf in the recent years provides a new dimension of waqf practices. Although some literatures and works have recognized waqf corporate as a component of waqf cash. Hajah et al (2011) has suggested that corporate waqf could be considered as an independent waqf concept. Therefore, this study aspires to extend the concept of waqf

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1 Corresponding author, a senior lecturer at Universiti Sains Islam Malaysia and he can be contacted via mobile no.: 019-2234502. Email: abdullaah@usim.edu.my.
corporate by exploring and suggesting the definition, models and Shariah consideration of the waqf corporate.

1.2 Objectives

This study aims to:

1. Define the corporate waqf as an independent waqf concept – not a type of cash waqfs.
2. Illustrate selected models of waqf corporate.
3. Discuss the Shariah concepts and issues existing in the corporate waqf.

2. LITERATURE REVIEW: CORPORATE WAQF AND ITS DEVELOPMENT

The participation of corporate entity in the establishment, management and distribution of waqf proceeds to the beneficiaries has been started in the sixties in Turkey. Koc Holdings is the first corporate bodies involved in the establishment and administration of waqf properties as early as 1969 (Cizakca, 2011b). Koc Holdings endowed 10,000 shares of the company and entrusted to Koc Foundation as a trustee (nazir). Most of waqf fund managed by Koc Foundation channels towards the establishment of education institutions, for example, Koc University.

Realising the huge potential of mobilising cash waqf for the improvement of socio-economic of Muslim society has inspired Islami Bank Bangladesh Limited (IBBL) to establish the cash waqf certificate in 1997 (Mannan, 1999; Ramli and Sulaiman, 2006). IBBL is the first financial institution involves in the managing and administrating waqf asset in the form of cash money. Cash waqf certificate is created to accumulate waqf fund and channels the proceeds for the betterment of underprivileged Muslims. IBBL in this respect has become a pioneer in the establishment and management of cash waqf instrument at the global stage.

The establishment of Dompet Dhuafa Republika in 1993 has changed the perspective of the public towards waqf management in Indonesia. Dompet Dhuafa Republika is a non-profit organisation professionally managed waqf fund and accumulating its cash waqf fund through Tabung Waqf Indonesia. With strong governance and accountability the collection of Tabung Waqf Indonesia has been increased every year and the proceeds are channels to increase socio-economic of the designated beneficiaries (Hari and Asmak, 2010).

The emergence of movable waqf assets, particularly in the form of shares of the company and cash money implemented in a number of Muslim countries is also affecting waqf practice in Malaysia (Magda Ismail Abdel Mohsin, 2009). The establishment of Corporate Waqf in 2006 by Johor Corporation (JCorp) has transformed waqf practice in Malaysia. For the first-time waqf assets in the form of shares of company was issued and managed by corporate body. According to its founder; Tan Sri Muhammad Ali Hashim, the idea of creating corporate waqf derives from the notion of jihad business pioneered by himself with the main agenda to improve socio-economic wellbeing of Malay society in the country (Muhammad Ali Hashim, 2012). Hajah Mustafa et.al (2011) and Abdul Shakur (2011) explains in detail the structure of corporate waqf which started with the pledged of share's amount RM200 million as waqf to WANCORP; a subsidiary of JCorp as a nazir (trustee). WANCORP manages and distributes waqf proceeds to the beneficiaries as stated in waqf deed.
In September 2011, Bank Muamalat Malaysia Berhad (BMMB) and Perbadanan Wakaf Selangor (PWS) collaborated in introducing cash waqf scheme known as Wakaf Selangor Muamalat (WSM) (Asharaf and Abdullah, 2014). Under this arrangement, both parties are agreed to manage and administer waqf asset in the form of cash money deposited at any BMMB branches. The fund accumulated will be channeled to a designated waqf activities in the areas of education and health. BMMB has became the first financial institution in Malaysia participate in managing and administrating of waqf asset.

The above discussion shows that corporate entities in a number of Muslim countries such as Turkey, Bangladesh, Indonesia and Malaysia have played a major role in the development and management of waqf properties. It is worth to note that these institutions focus on developing movable waqf assets, in particular, shares and cash. Given the current state of underprivileged Muslims in most Muslims countries, the participation of more corporate bodies in waqf activities could enhance and provide better living standard for them.

3. DEFINITION OF CORPORATE WAQF: A PROPOSAL

In this paper, the authors propose the definition of corporate waqf as:

The creation and management waqf asset and distribution of waqf proceed of by a corporate entity independently or collectively with other parties.

This definition is based on the previous researches and writings. The following subsections shall elaborate further on the definition into four main points as follows:

- The creation and management waqf asset;
- Distribution of waqf proceed;
- Corporate entity;
- Independently or collectively with other parties.

3.1 Creation and Management Waqf Asset

In the first stage of corporate waqf, the corporate entity will create its own waqf assets using its own assets. In this situation, the corporate entity in the waqf creator or “al-waqif” itself. The waqf assets could be financial assets such as cash or shares or non-financial assets such as buildings or land. At the same time, the corporate entity nominate itself as the trustee who is responsible to manage, maintain and invest the waqf asset. This means that the corporate entity is also the “nazir” or “mutawalli” of the waqf asset.

3.2 Distribution of Waqf Proceed

The corporate entity then could also nominate itself as the sole beneficiary or one of the beneficiaries of the waqf proceeds in order to have flexibility in managing and utilizing the proceeds. This is known in the Islamic jurisprudence as “al-Waqf ‘ala al-Waqif” or waqf is made by the endower/creator on itself. This practice has been allowed by some Islamic jurists.
After receiving the proceeds, they are then distributed to the final and real beneficiaries such as poor and needy people, Islamic institutions and et cetera. This arrangement gives flexibility to the corporate entity for the management and utilization of the proceeds.

Such flexibility is highly important to attract more participations from the corporate entities into the practices of waqf corporate. This means that the corporate entity could organize and plan the distribution of the proceeds creatively and productively based on the needs of the entity and community at the time of distribution. In the event of bad economic conditions where the corporate entities find themselves in the difficult financial conditions, they could use the proceeds the waqf assets for themselves and they are not obliged to distribute it. This aspect of corporate waqf would include the element of business interest into the charity (tabarru’) concept of waqf.

3.3 By a Corporate Entity

Corporate waqf is established by private entity that involve in the income generating activities such as trading and investment. This entity is also required to apply the corporate governance ethics of accountability, transparance and professionalism in accumulating and distributing waqf assets.

3.4 Independently or Collectively With Other Parties

Depending on the legal structure of the country, corporate entity can be independently establish, manage and distribute waqf proceeds to the beneficiaries. However, the law in some countries has prohibited private and corporate entities the freedom to administer and manage waqf properties freely without the participation of the authority especially in the management of waqf projects.

4. CORPORATE WAQF MODELS

Tan Sri Ali Hashim (2012) outlines six models of corporate waqf that could be structured including:

(i) business entity or corporations,
(ii) banking and financial institutions,
(iii) universities,
(iv) foundations,
(v) cooperatives, and
(vi) hospitals or clinics.

Currently in Malaysia, corporate waqf structured on Business Corporation and banking and financial institution have been applied by Johor Corporation and Bank Muamalat Malaysia Berhad (Asharaf & Abdullaah, 2012, 2013; Hajah Mustafa et.al, 2011). The conceptual corporate model based on university on the hand, is expected to be adopted by public universities for the purpose of income generating purposes (Abdullaah & Asharaf, 2008). The details of these three models are shown below:
4.1 Business Corporation Model

Waqaf An-Nur Corporation Berhad could be considered as the first corporate waqf model in Malaysia. Waqaf An-Nur Corporation Berhad (WANCorp) is a subsidiary of JCorp and a company limited by guarantee and not having any share issue. WANCorp has been incorporated to manage the assets and shares of companies of JCorp which have been endowed in accordance with the principles of Shariah.

WANCorp acts as an entity under JCorp. It is the core of waqf corporate model practiced by JCorp with the authorization from MAIJ. Based on the MoU between MAIJ and JCorp in 4th December 2009, MAIJ has consented to appoint WANCorp as “Nazir Khas” for the endowed shares effectively from 11th July 2005. WANCorp acts as the Beneficiary, Manager and Administrator of waqf assets recognized by Majlis Agama Islam Johor (MAIJ). At the same time, WANCorp acts as mawquf alayh (main beneficiary) for the assets endowed by the endowers. It also performs the Islamic Corporate Social Responsibility (CSR “Islam”) on behalf on JCorp.

In 2006, JCorp launched the idea of “Corporate Waqaf” which involved the transfer of 12.35 million unit shares owned by JCorp Kulim (M) Bhd, 18.60 million unit shares in KPJ Healthcare Bhd and 4.32 million unit shares in Johor Land Bhd to Kumpulan Waqaf An-Nur Bhd as trustee (JCorp, 2007). This concept is a key institutional strategy towards making a success of its corporate mission of “Business Jihad”. As a proof, via its corporate waqaf agenda as reported in 2007, JCorp pledges to dedicate 25% of the annual dividend payout from the shares transferred into waqaf. (JCorp, 2007). Thus, the dividend is useful to organize various activities for Muslims and non-Muslims and arranged for charitable and religious activities that benefit and fulfill the needs of the society as a whole.

The sources of funds for WANCorp are primarily come from the endowed shares of corporations. The endowments of shares are made by the several subsidiaries of JCorp. The endowed shares could be further divided into listed and non-listed shares. The listed companies participating is this corporate waqf model include KPJ Healthcare Berhad, Kulim (M) Berhad and Al-Aqar KPJ REIT. The non-listed companies are Tiram Travel Sdn Bhd, Capaian Aspirasi Sdn Bhd and TPM Management Sdn Bhd.

Distribution of waqf proceeds is made based on the Hujah Waqaf document which regulates that 70% of them are distributed for reinvestment and human resource development, 25% is for fisabilillah purpose and 5% is for Majlis Agama Islam Johor (MAIJ) (WANCorp, 2011; Johor Corporation, 2008; KWANB, 2007; WANCorp, 2010). 70% of the waqf proceeds are kept in two main forms:

i. Investment (fixed) deposits at Shariah-compliant financial institutions
ii. Purchase of “Saham Dana Johor”

With regard to 25% portion of the waqf proceeds, they are divided into three types of charity programmes accordingly:

i. Charity and Good Deeds (55%)
ii. Human Resoource Development, Education and Entrepreneurship Capital (10%)
iii. Specific Projects (35%)
The category includes contribution to healthcare, mosque, Islamic chapel, public societies, orphanage, bridged waqaf, and other types of CSR. The second category could include seminars, mutawwif training programme, books, non-interest loan, scholarship and etc. Specific projects are those projects that has been decided by WANCorp for that particular year that needs huge contribution such as indigenous people improvement programme in 2011 and Imam al-Bukhari theatre in 2010. In 2011, RM718, 076 of the waqf proceeds or 5% has been distributed directly to MAIJ. The figure below illustrates one of the corporate waqf structures based on the JCorp’s practice of corporate waqf.

Based on the figure above, a corporation could set up a subsidiary which focuses on the management of waqf activities as JCorp did. At the same time, the subsidiary could be the nazir and beneficiary of the waqf assets and proceeds. In the case of JCorp, seventy percent (70%) of the waqf proceeds will be channelled to Waqaf An-Nur Corporation Berhad back and then, distributed accordingly.

### 4.2 Banking and Financial Institution Model

For the banking and financial institution model of corporate waqf, the waqf programme by Bank Muamalat and Perbadanan Wakaf Selangor could provide a sample framework as illustrated below.
The *waqf* fund is obtained through the Bank Muamalat banking services from the individuals and institutions. The minimum contribution is RM10 by individuals and RM100 by institutions and there is no maximum amount for contribution by both. The *waqf* fund aims to accumulate a sum of RM50 million in three years’ time and Bank Muamalat itself has endowed RM1 million into the fund and its staff has contributed RM74,040 at the launching ceremony of Wakaf Muamalat-Selangor (Bank Muamalat, 2012). The fund will be managed and channelled by JPB to three main sections, namely; education, such as infrastructure construction, equipment and etc; healthcare, such as dialysis machine and equipment, research and treatment; investment by Muamalat Invest Sdn. Bhd.

Muamalat Invest Sdn. Bhd. - a fund management company - will invest the allocated fund professionally in Shariah compliant instruments to generate return. 25% of the return will then be distributed to the PWS and 75% of them will be channelled back to JPS for redistribution in areas deemed appropriate by them. The two main sectors aimed as beneficiaries of Wakaf Selangor Muamalat are healthcare and education for the needy people, both Muslim and non-Muslim. These two sectors have been the major area of *waqf* distribution in the history of Islamic countries. Murat Cizakca (2011a) believes that *waqf* distribution to the public will eventually help to mitigate the cost of living and government spending.

### 4.3 Universities Model

The university model of corporate *waqf* is not something new as it is practiced by a number of universities in different countries. The figure below is an supposition made by the authors on the potential application of *waqf* corporate by a Malaysian public university i.e. USIM.
Based on the figure, the construction of the building (e.g. hostels or excellence centre) should be based on the contract of al-‘istikha’ (manufacturing sale). In this particular framework, the nazir (acting as agent) deals with the contractor to build the building as prescribed in the wakalah and waqf contract. No third party financing is needed if the waqf fund is sufficient. In the case of non-sufficiency of the fund, a more complex structure is needed and the discussion is not within the scope of the study.

The building e.g. hostels, could be leased to the university or students or any users at a reasonable rate. Exemption or rebate on the rentals could be given to any qualified and deserving parties (e.g. poor and needy students). The rentals acquired could be used for two main purposes. The two main purposes are:

- The maintenance of the (waqf) building. This involves the cost of managing (manager’s salaries, security, etc.), upgrading, renovating, fixing, repairing, cleaning of the assets or et cetera.
- The charity purposes. This is based on the contributors’ intention whether to make a general or specific endowment. It is better to make a general endowment so that the nazir could channel the fund to any types of charity purposes. The description of the beneficiaries could be done on the basis of their attributes e.g. poor and needy students.

The portion of each category could be stated in the contract. However, it is more flexible to leave it to the due diligence of the nazir.
5. SHARI'AH CONCEPTUALIZATION OF CORPORATE WAQF

There are several considerations in examining the corporate waqf from the Shariah viewpoint. The considerations are as follows:

- **Shakhsiyyah I'tibariyyah: Ahliyyah (Legal Capacity) and Wilayah (Legal Authority)**
- **Waqf of al-Waqif on Himself**
- **Al-Waqif Stipulates the Waqf’s Proceeds (al-Ghallah) for Himself**
- **Hybrid Waqf (Waqf Mushtarak): Combination of Waqf Khayri and Waqf Ahli/Dhurri**
- **Istibdal**

5.1 **Shakhsiyyah I’tibariyyah: Ahliyyah (Legal Capacity) and Wilayah (Legal Authority)**

In waqf, the donor usually is a natural individual (shakhsiyyah haqiqiyyah or tabi'iyyah). However, in the practice of corporate waqf, the donor is usually an institution. Thus, the concept of legal individual or entity (shakhsiyyah i'tibariyyah/qanuniyyah/ma'nawiyyah) may arise. However, since most of the contemporary Islamic jurists have agreed to recognize this concept based on analogy to bayt al-mal, masjid and slavery institution, the issue may be deemed as resolved. However, the two most important requirements that must be enjoyed by the representative (mumaththil) of this shakhsiyyah i'tibariyyah are ahliyyah (legal capacity) and wilayah (legal authority). The second requirement means that the donor must be the owner of the subject matter or an agent (wakil) appointed by the owner who performs the contract based on wakalah (agency) contract. If the donor has neither wilayah nor wakalah on the subject matter, his transaction on the subject matter is known in Islamic jurisprudence as fadalah. Hanafiyyah, MalikIyyah and an opinion of Imam Ahmad validate the contract of fadalah but it is suspended and subject to the approval of the owner. On the other hand, Shafi'iyyah and an opinion of Imam Malik dan Imam Ahmad state that the contract is invalid (WASI, 1983). This issue may be more significant if the company - that plans to create its own waqf corporate scheme - is owned by the government and not by the individuals.

5.2 **Waqf of al-Waqif on Himself**

Generally, the practice of waqf in meant for charity and qurbah. Accordingly, the majority of Islamic jurists state that the ownership of al-waqif should not return back to the waqif himself as it denies the very purpose of waqf. However, based on the authors’ analysis, some of the waqf corporate practices nominate the waqif himself as the legal owner of the waqf: How does Islamic jurisprudence judge this issue? The answer is as follows.

The mainstream stance of the Islamic jurists on this matter view this matter as invalid as the waqif could not re-own himself what he already owns. This is the stance of al-MalikIyyah, al-Shafi'iyyah in their strongest view (al-asahh), the authorized view of al-Hanabilah (al-madhhab) and Muhammad Ibn al-Hasan of al-Hanafiyyah. On the other hand, this practice has been approved by Abu Yusuf of al-Hanafiyyah, and this is their (al-Hanafiyyah) formal stance, an opinion of al-Shafi'iyyah and a view of al-Imam Ahmad (WASI, 1983).
The authors favor the second opinion with regard to the practice of corporate waqf as the institutions usually do not really mean to reown the waqf asset. Such practice is carried out to give the corporate institutions full flexibility and right in managing, distributing and channeling the waqf proceeds or even utilizing it. The institutions could use the proceeds of corporate waqf for their CSRs programmes and in certain situations reuse the proceeds to sustain their operation and business. This flexibility would provide them greater motivation to involve in the corporate waqf practices and provide more rooms for Shariah compliance. However this opinion may legally contradict to existing legal framework.

5.3 *Al-Waṣīf Stipulates the Waqf’s Proceeds (al-Ghallah) for Himself*

Another issue which may seem to be similar with the previous one is the situation where the waqif stipulates himself as the sole beneficiary or the major beneficiary or amongst the beneficiaries of the waqf’s proceeds. Hanabilah, Hanafiyyah and an opinion of Shafi‘iyyah view such practice as permissible in order to encourage the people to make endowments and based on several Shariah evidences. On the other hand, Shafi‘iyyah and Muhammad Ibn al-Hasan of Hanafiyyah view such practice as generally impermissible with certain exceptions (WASI, 1983).

5.4 *Hybrid Waqf (Waqf Mushtarak): Combination of Waqf Khayri and Waqf Ahli/Dhurri*

In terms of the beneficiaries, waqf could be either *waqf khayri* (charitable endowment) or *waqf ahli/dhurri* (endowment for offspring). Based on the waqf corporate practices, it has been observed that some institutions stipulate themselves or their subsidiaries as the primary beneficiaries of the waqf proceeds. As discussed above, there are some Islamic jurists and opinions that approve such practice. From a fiqh perspective, the combination between *waqf khayri* and *waqf dhurri* is known as *waqf mushtarak*. From a managerial perspective, *waqf mushtarak* could provide advantages for the institutions that involve in the corporate waqf. The institution may design its corporate waqf scheme to be in tandem with its CSR programmes. Thus, the practice of waqf corporate and CSR programme could be constructed jointly as a pair.

5.5 *Istibdal*

The issue of *istibdal* is highly imperative for the continuity and sustainability of waqf corporate. Although the practice of *istibdal* has been approved by some Islamic jurists with certain conditions, the issue may be reviewed in details to ensure the Shariah compliance of the *istibdal* practice. The corporate waqf model as pioneered and practiced by WANCorp has undergone the practice of *Istibdal* i.e. replacement of waqf asset with its similars. The practice has taken place on 29th June 2009 where the waqf shares of Johor Land Berhad has been replaced with shares of Al-‘Aqar KPK REIT since Johor Land Berhad has been delisted from Bursa Malaysia.

The istibdal practice was based on the (market) value of the shares and not the quantity (units) of the shares. The 4.32 million units of waqf shares of Johor Land Berhad which have current market value of RM 13 million has been replaced with 12.62 million share units of Al-‘Aqar KPJ REIT which have the same market value of RM 13 million (Borham, 2011).
This practice has provided a precedent for the practice of istibdal where necessary in the future. This istibdal has been made known and acknowledged by the then state’s Mufti.

6. CONCLUSION

The advantages of corporate waqf could be observed from several aspects. With the huge size of assets and funds, professional management team, public confidence towards their practices and government’s recognition, the corporate waqf could be viewed as the most promising star in the area of waqf development. However, such potentials may only be cultivated and enriched optimally with the support of the authorities such as MAINs, JAWHAR and Malaysian fatwa bodies. The synergy between the institutions could bring up further the waqf corporate practice to rejuvenate and restitute the waqf system of the ummah.

REFERENCES


