

## PERSPECTIVE OF SIYASAH SHAR'IAH IN APPLICATION OF CASH WAQF TRANSFER FOR ISLAMIC FINANCIAL INDUSTRY: INDONESIAN STUDY CASE

Ahmad Mikail<sup>1</sup>

### ABSTRACT

World has become witness for the Indonesian rapid economic growth today. This rapid economic growth has elevated most of their population standard of living. Nevertheless, this rapid economic growth did not guarantee every citizen in this country live properly. About 35 percent of its population lives with income less than 2 dollar a day. Hence, Poverty is the major problem for Indonesia since this country reached their independence. As most populated Muslim country in the world Indonesia has a lot of opportunity to eradicate poverty by using its Islamic heritage policy. Waqf is the one of the several priceless Islamic heritages that can be utilized for Muslim in Indonesia to tackle their classic problem. Moreover, Muslim in Indonesia has a chance to maximize the momentum of rapid growing of Islamic finance industry by introducing once again waqf as the tool for poverty problem. The unique characteristic of waqf, perpetuity and temporary concept, that inherent with waqf itself can be strengthened by offering applicable method that can be matched with Islamic financial industry today. Several methods have been offered by many Muslims scholar in the world to re-juvenile the waqf into the Muslim economic activity. One of the most populist is cash waqf transfer. This method is more concern upon return on investment and cash collecting as main source of waqf fund. This concept can be combined by utilizing the Islamic capital market that growing fast recently in Indonesia. The objective of this paper is trying to review the concept of cash waqf transfer and its implementation in Indonesia. Furthermore, this paper also attempt to explain perspective of *syiasah shari'ah* in application of cash as medium of waqf. Based on library research method, this paper found that cash waqf transfer has been implemented in several private waqf institutions in Indonesia. Lack of government support and participation consider as two main reasons of the low level of cash waqf collection.

**Keywords:** Indonesia, waqf, cash waqf transfer, Islamic financial industry, Siyasa Shari'ah.

### 1. INTRODUCTION

Indonesia has good experience for developing their country from one of the poorest in Asia to become the member of G-20 in 2011. However, Indonesian rapid economic growth is proven not capable in ensuring the prosperity of the people since its independence. Based on World Bank data, the poverty has been decreased significantly from 85 percent in 1990 to 18 percent in 2010. Nevertheless, the massive numbers of Indonesian people live under the 2 \$ poverty line still continues following the diminishing rate of Indonesian economic growth since 1997. The proportion of Indonesia people live under 2\$ a day still reach 45 percent in 2010. Graph.1 shows us the progression of Indonesian poverty line from 1990 to 2010.

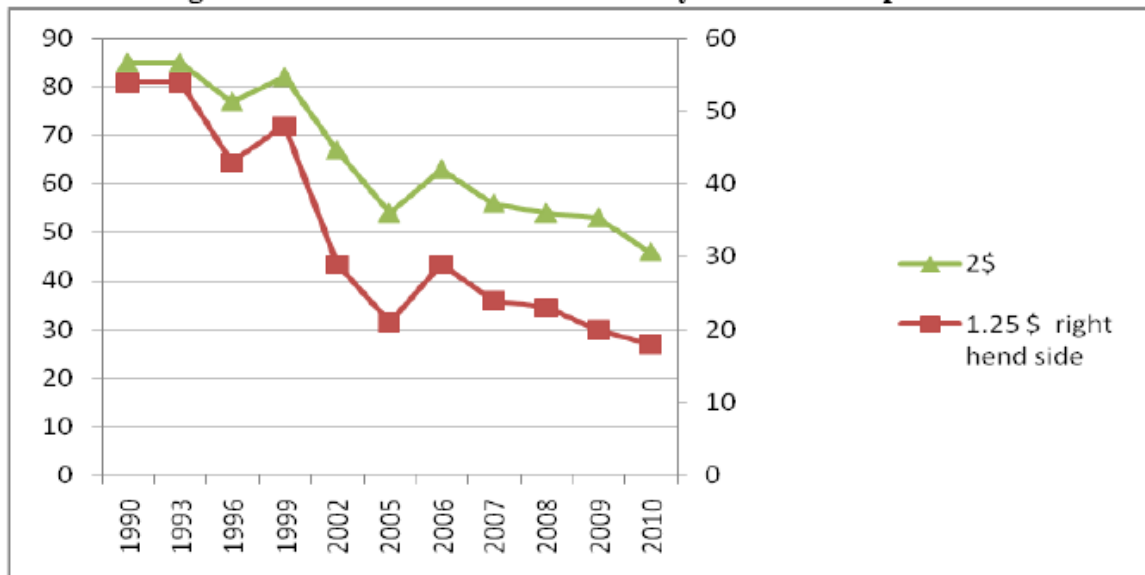
Furthermore, the inequality within the society also becomes major problem in Indonesian economy. Gini coefficient index shows increasing level from 0.34 in to 0.44 in 2010. Form this information we

---

<sup>1</sup> Ahmad Mikail Zaini is currently a Master of Economics student in Faculty of Economics and Management Science, International Islamic University Malaysia. Contact: ahmadmikailzaini@gmail.com.

can infer that the economic growth does not guarantee people in Indonesia prosper together. Inequality situation might bring social and political problem in Indonesia such as crime, chaos, and disintegration. The limitation of government budget, corruption and lack of national insurance also create worse condition for poverty alleviation in Indonesia.

**Figure: Indonesia Head Count Poverty Percent of Population**



Source: World Data Bank, 2013.

This situation might be handled by Indonesia if the people want to participate together to against the poverty. Indonesia has lot of potential resources that can be used to overcome this situation. Beside its abandon of natural resources, Indonesia has also good potential resources to against the poverty by active participation of Muslim society. Indonesia is the most populated Muslim country in the world. This condition should be maximized by Muslim people to erode this problem by implementing holistic approach of Islamic Economic system.

Islamic economic system has different goal than any other economic system in the world. The holistic approach that defining by Maqasid Shariah or the objective of Islamic law ensures the goal of Islamic economic system not only achieving economic growth but also justice and equality among people. The concept of Maslahah or beneficiary can be attained by protecting five values: life, lineage, wealth, intellect, and religion. One of the main characteristic of Islamic economic system is voluntary sector based<sup>2</sup>. Voluntary sector play important role in achieving maqasid shariah through several instrument such as zakat, waqf, infaq, and sadaqat. It is called third sector because it is different with government and private sector. Private sector works because of the profit motive so the allocation and distribution function in economics was generated by market mechanism. Meanwhile, Government institution plays to correct the market mechanism when allocation and distribution function is not worked efficiently<sup>3</sup>.

We can find voluntary sector in conventional economics like endowment fund. Nevertheless, endowment fund in conventional system works based on altruism motive. In Islamic society voluntary sector works based on seek of Allah blessing. One of the main significant sources of funding for this sector is Waqf. It has played significant role in Islamic society since the era of Prophet Muhammad (Pbuh). The history of Waqf in the economic activity is as long as the history of Islam. Waqaf have been practiced by Prophet Muhammad (pbuh) and his companion since the beginning of Islam<sup>4</sup>.

<sup>2</sup> Ziauddin Ahmed, et.al, "Fiscal Policy and Resource Allocation in Islam," (Jeddah: International Centre for Research in Islamic Economics, 1983):17

<sup>3</sup> Ibid.p.18

<sup>4</sup> Monzer Kahf, "Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider," (Presented at the Harvard Forum on Islamic Finance and Economics, 1999):10

Unfortunately, the western colonization had reduced the role of Waqf in Muslim society and the critique from western orientalist about the concept of Waqf as the source of corruption had totally reduced waqf institution in Muslim countries<sup>5</sup> Now days, many people even could not understand what actually the concept of waqf is. With the rapid development of economic activity in many Muslim countries and the awareness of the important of Waqf Muslim country has tried to revive the waqf institution once again. The main problem that face by many Muslim in Indonesia to improve the role of waqf in Muslim society today is the awareness of Muslim people in Indonesia about the benefit of waqf. Besides, people are not well educated about the concept of waqf itself. For majority people waqf is identic with land, building, mosque, and any other fixed asset.

In recent days, Muslim scholars try to revive waqf institution trough several concept one of the most famous method is cash waqf transfer. We can define cash waqf transfer as charitable endowment or mobilizing fund for certain purpose through cash capital<sup>6</sup>. This method is famous because the flexibility of cash capital. Through cash waqf transfer nadzir or the person who manage waqf asset might manage the asset easily. Cash waqf transfer not only limited with transferring cash but also transferring any other asset which allowed by shariah principle such as stock, sukuk, deposit certificate, and hajj saving certificate<sup>7</sup>.

The development of Islamic financial institution in Indonesia now day has support the implementation of cash waqf transfer in several Muslim countries. This momentum should not be ignored by Muslim people in Indonesia. Islamic financial institution like Islamic capital market and Islamic bank should be integral part for developing voluntary sector in Indonesia. These institutions should play as intermediary channel for rich people in Indonesia to waqf their wealth. The graph.2 shows us the growth of Islamic bank asset, financing, and third party fund in Indonesia. The average growth of Islamic bank asset increases around 40 to 60 percent a year. The third party rose rapidly from just Rp. 1 trillion in 2000 to Rp.102 trillion in 2011.

That number show us how huge the potential amount of money that can be collected from the third party to finance the voluntary sector in Indonesia. Moreover, we can use this potential by offering waqf contract for some rich depositor in Islamic bank for poverty reduction purpose. With this kind of effort we can revive and modernize once again waqf institution in Muslim society.

Aside from Islamic bank, Islamic capital market is also the potential institution in Islamic financial industry. Islamic capital market has been growing significantly in Indonesia. With average growth 40 percent each year, Islamic capital market has potential place for Muslim to revive waqf institution in Indonesia. Based on graphic.3, the total capitalization of Islamic capital market reached Rp.1671 trillion or US\$ 167,1 billion increasing rapidly from only US\$7.8 billion US\$ in 2000. This rapid growing indicate how big money that can be collected if there is good institution that provided by the Indonesian government or private institution for altruism purpose.

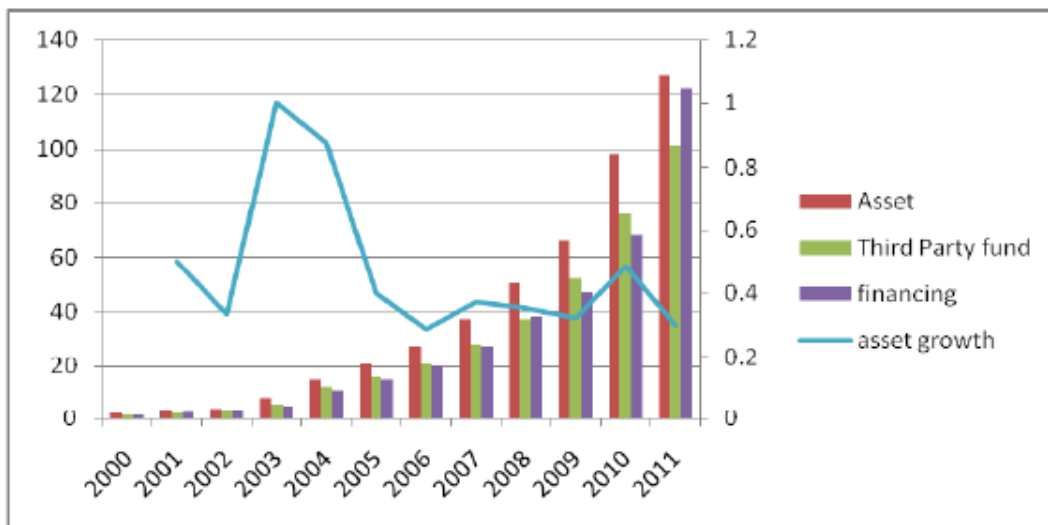
---

<sup>5</sup> Ibid.p.13

<sup>6</sup> Murat Cizaka,"Incorporated Cash Waqf and Mudarabah, Islamic Non-Bank Financial Instrument from the Past to the Future?"(Presnted in International Seminar on Non-Bank Fiancial Institution, Kuala lumpur,2004):1

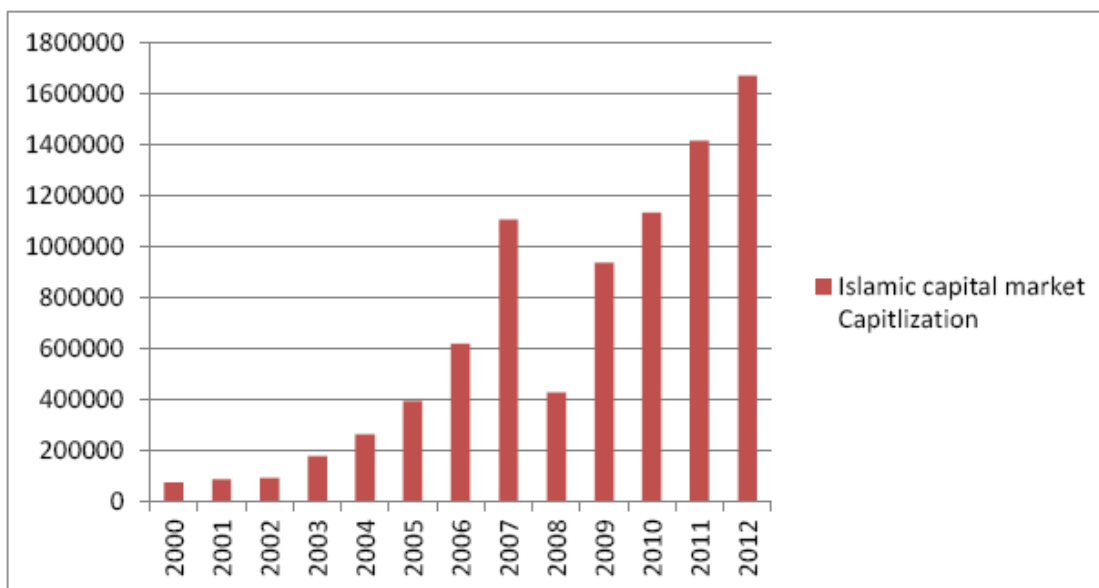
<sup>7</sup> Dodik Siswanto and Miranti Kartika Dewi." The effectiveness of Waqf Raising through Mutual Fund in Indonesia,"( Jakarta: Department of Accounting Faculty of Economics University of Indonesia,2006):4

**Figure 2. Growth of Islamic bank industry in Indonesia from 2000 to 2011 (Trillion Rupiah)**



Source: Bank of Indonesia, 2013.

**Figure 3. Capitalization of Islamic Capital Market in Indonesia from 2000 to 2012 (Billion Rupiah)**



Source: Indonesian Financial Authority, 2013.

Regarding above explanation, we know the valuable potency of Islamic financial industry in generating cash waqf transfer in Indonesia. This potency should not be ignored by Indonesian government and Muslim society to accelerate poverty alleviation. Nevertheless, the implementation of cash waqf transfer is not immune with several obstacles. The lack of government support in constructing silent nadzir institution in Indonesia and fiqh issue related cash waqf concepts are several issues that faced by the society today. In this case the framework of *siasah syar'iyah* plays important role to analyze these problem. By definition of Ibn Qayyim, "*siasah syar'iyah is any measure which actually brings the people closest to the beneficence (salah) and furthest away from corruption (fasad)*"

*partake in just siyasah even if it has not been approved by Prophet (PBUH) nor regulated by Divine revelation. Anyone who says that there is no siyasah syar'iyah where the shariah itself is silent is wrong and has misunderstood the companions*<sup>8</sup>

That definition explains that the ruler, in this case Indonesian government, can take any measure to reach *maslahah* for its people and reduce *mafsadah* or any obstacle that arise in implementation of cash waqf transfer in Indonesia of course with several steps that allowed or not contradict of shariah. It is interesting to inform what kind of obstacle that faced in implementing cash waqf transfer in Indonesia and what is jurist opinion about this method. According to these reasons, this paper tries to explain and review clearly the concept of cash waqf transfer and its implementation in Indonesia. Moreover, this paper also tries to analyze the concept of cash waqf transfer from syiasah shariah perspective.

## 2. LITERATURE REVIEW

In this part, the author try to explain the definition of waqf, its general principle, institution, and concept of cash waqf transfer. The sources of this part come from several journal and books.

### 2.1. General Concept of Waqf

Firstly we have to identify what is the meaning of waqf. "*Literally waqf means to stop, to hold, to restrain, to detain, or to prevent, such as saying, 'preventing from disposition.'*" In Islamic law, waqf refers to irrevocable dedication of a portion of ones wealth for the purpose of expending its usufructs to legitimate causes or charitable and righteous ends with the overriding objective of getting closer to Allah<sup>9</sup>. By this definition we can infer that waqf has different characteristic with any other charitable gift. It has stock concept then flow concept. The principle of waqf asset must be hold and the usufruct or the return of that asset can be used for charitable purpose.

In Islamic history Waqf has play a crucial role. It is help not only to build mosque but also to create job. "*Waqf institutions also contributed significantly in taking care of orphans, widows, handicapped and the old; by providing them with food, shelter and all the basics they needed. There were also some waqf for animals and dead people; for instance, and during the Mamluki era in Egypt, a whole Waqf institution cared for funeral ceremonies for the aliens, and another one cared for cats and dogs. Awqaf helped also in providing job opportunities for the jobless; for example, in Turkey 1931, the Turkish Awqaf hired over 13% of the working power in the country*"<sup>10</sup>. From Islamic jurisprudence, waqf can be classified into three aspects: time, purpose, and object matter of waqf<sup>11</sup>.

- Time: we can divide waqf based on how long the waqf asset invested in waqf purpose. When one person decided to waqf his asset forever for certain purpose, we can classify this as permanent waqf. Based on *Malikiyyah* if some on decide to waqf his asset for certain period of time and take back the usufruct or the ownership of his asset before for his pleasure, it can classify it as

<sup>8</sup> Mohammad Hashin Kamali, "Siyasah Shari'iyah or the Policies of Islamic Government," *the American Journal of Islamic Social Sciences*, vol. 6 no. 1 (1989): 1.

<sup>9</sup> Mek Wok Mahmud and Sayed Sikandar shah. *Optimization of Philanthropic Waqf: The Need for Maqasid-Based Legislative Strategies*, <http://webcache.googleusercontent.com/search?q=cache:u6cfn8Vm9f0J:www.iefpedia.com/english/wp-content/uploads/2010/01/Optimization-of-Philanthropic-Waqf-The-Need-for-Maqasid-based-Legislative-Strategies-Dr.-Mek-Wok-and-Dr.-Sayed-Sikandar-Shah1.doc+&cd=1&hl=en&ct=clnk&gl=my> (accessed March 3rd, 2013).

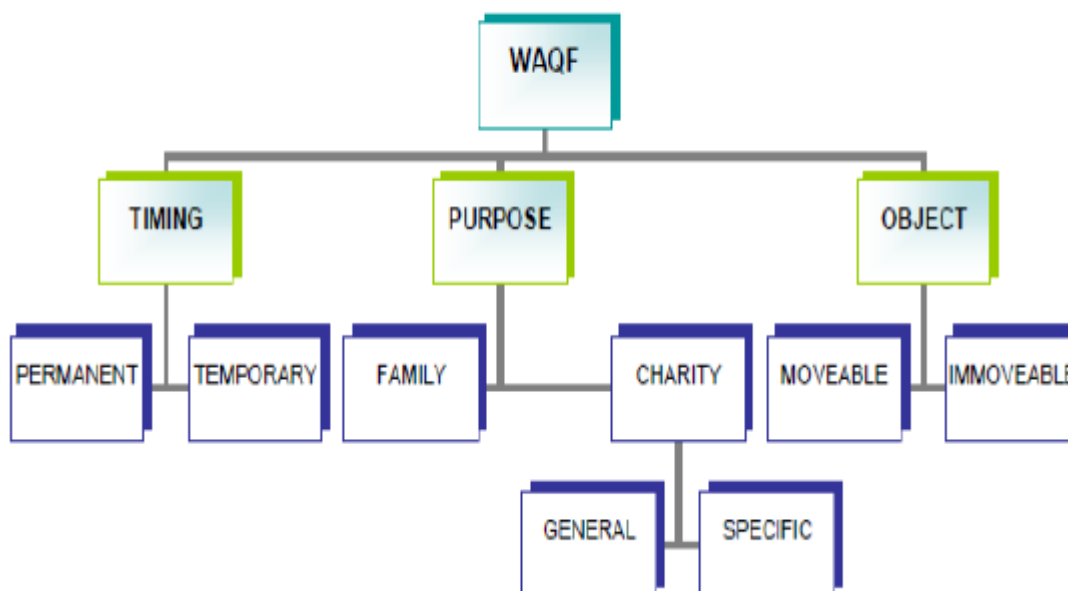
<sup>10</sup> Ahmed Habib. "Role of Zakat and Awqaf in Poverty Alleviation", (IslamicDevelopment Bank, 1st edition, 2004).p. 3.

<sup>11</sup> Abdullah Jalil and Asharaf Mohd Ramli., *Waqf Instrument for Construction: An Analysis of Structure*, [http://www.academia.edu/504004/WAQF\\_INSTRUMENTS\\_FOR\\_CONSTRUCTION\\_CONTRACT\\_AN\\_ANALYSIS\\_OF\\_STRUCTURE](http://www.academia.edu/504004/WAQF_INSTRUMENTS_FOR_CONSTRUCTION_CONTRACT_AN_ANALYSIS_OF_STRUCTURE) (accessed March 3rd, 2013).

temporary waqf<sup>12</sup>. For instance, when some on decide to waqf her building for mosque purpose for one year then take back his asset after that is what we mention as temporary waqf.

- Purpose: the intention of using the usufruct of waqf asset can be classify as two main categories family waqf and full charity purposes. In family waqf the usufruct and the ownership of the asset is still hold by family member of waqif or the person who waqf his asset. The usufruct of that asset is used to family member pleasure. In full charity waqf the ownership of the asset and the usufruct of the asset are transferred to nadzir or the institution which manage asset of waqf. The purpose of this waqf can be specific or it can be general for social welfare.
- Object: the object of waqf or the asset of waqf can be classified as two main categories. The first one is moveable asset such as cash, book, valuable certificate, etc. the second is immoveable asset such as building, land, mosque, and house<sup>13</sup>. The graphic bellow shows us the summary of categories of waqf.

**Figure 4. The Categories of Waqf in Islamic Jurisprudence**



Source: Abdullah Jalil (2010)<sup>14</sup>

## 2.2. The Characteristic of Waqf

Based on classical jurist Waqf has three main characteristic<sup>15</sup>. Irrevocability means lack of power of waqif to revoke his donation at any time. In other word when someone has decided to waqf his asset, he could not revoke the ownership of his asset for his pleasure. The second characteristic of waqf is perpetuity which has three definitions *“once the declaration of waqf is made by the donor, a legally binding waqf os automatically effected. Second, that waqf cannot be constrained by time and temporariness. Third, the subject metter of the waqf should remain so forever”*<sup>16</sup>.

<sup>12</sup> Ibid, p. 2.

<sup>13</sup> Ariff hidayat Ali, "Waqf ontinued Relevance as The Third Sector in Term of Mobilizing Resources for Productive Use in Islamic Economic Sytem,"(Malaysia: The Global University in Islamic Finance,INCEIF).10

<sup>14</sup> Abdullah Jalil, ibid., p. 2.

<sup>15</sup> Mohammad Tahir et.al, "Obstacle of the Current Concept of Waqf to Development of Waqf Properties and The Recommended Alternative", [http:// eprints.utm.my/501/1/27-38.pdf](http://eprints.utm.my/501/1/27-38.pdf) (Accessed June 1st 2013).

<sup>16</sup> Ibid., p. 29.

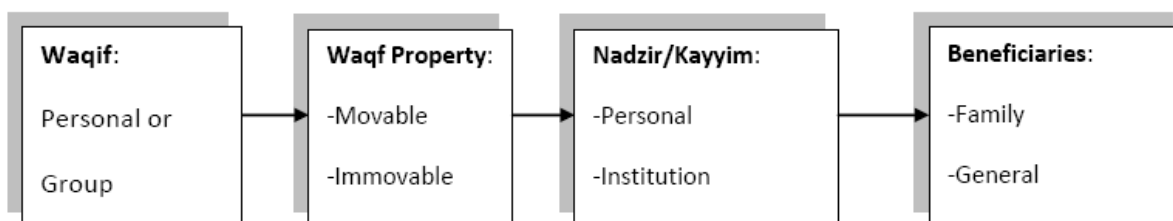
This definition shows us the rigidity of waqf asset. By this definition the ownership and the usufruct of waqf asset could not be changed. The interpretation of perpetuity concept creates some different idea. Jurist has some different position regarding perpetuity of the asset. Kahf argued that the perpetuity of subject matter of waqf can be changed as long as the usufruct of the asset or *mal* still at the same purpose<sup>17</sup>. He insists that as long as the principle of the asset preserved there is a room for changing the object of the asset. The third characteristic of waqf is inalienability. It mean “*after a valid declaration is made, the subject matter of waqf passes out of the ownership of the waqif and it cannot be alienated or transferred either by waqif or the mutawalli or nadzir*”<sup>18</sup>. Even for family purposes the waqf asset could not be hold by the name of waqif. There should be legal transfer of asset from waqif to society.

### 2.3. Institution of Waqf

There are several individual or parties who get involved in waqf process. The first one is the founder or the person who waqf their asset called al-waqif. This person must have several criteria such as an adult, be sound of mind, capable of handling financial affairs; not under interdiction for bankruptcy<sup>19</sup>.

The second is the property or object matter called *al-mawqūf* or *al-muḥabbas*. There are several requirements for object matter: al-waqif must have control over the object matter, the objects should be allowed in Islam, the object should be clearly defined, and the purpose or intention to waqf this object must be clearly stated. The third one is an administrator called *nāzir* or *mutawallī* or *ḳayyim*. This administrator or manager of waqf asset could be a person or institution. Waqif is given the right to choose the administrator of his waqf assets.

**Figure 5. The Grant Concept of Waqf**



Source: Author’s Own

### 2.4. Cash Waqf Transfer Concept

The cash waqf transfer is one method of waqf which popular today although the history of cash waqf transfer can be trace back to ottoman era<sup>20</sup>. This method became popular among philanthropy in Ottoman era even there are some critique about the implantation of cash waqf transfer. They argued that if someone already gave their asset for waqf purpose then the asset belongs to Allah and could not be transferable to third parties<sup>21</sup>. According to Cizakca during the ottoman time philanthropies give cash waqf to some borrowers and let the borrower used the usufruct of that money. The borrower then used their house as the collateral to the waqf institution. As long as the borrower keeps the money they obligated to pay rent for their house that they allowed to use. When they pay the loan back they can take the ownership of their house again<sup>22</sup>.

<sup>17</sup> Ibid., p. 29

<sup>18</sup> Ibid., p. 30.

<sup>19</sup> Arif hidayat ali, Ibid., p. 11

<sup>20</sup> Murat Cizaka, ibid., p. 2.

<sup>21</sup> Ibid., p. 2

<sup>22</sup> Ibid., p. 3

This rental amount that they have to pay is similar with usury. This condition arise some critique about its implementation that close with riba. Based on this experience Imam Zufar approved the implementation of cash waqf as long as it was invested under mudarabah contract<sup>23</sup>. According to Cizakca musyaraka and mudarabah contract are the two contracts that can be used to avoid back door riba and reduce agency problem. The profit from mudarabah or musyarakah contract can be used for waqf purpose and these contracts also avoid cash waqf asset from riba practice.

The main ide of cash waqf transfer is maximizing the flexibility of cash as a liquid asset. With transfer of cash nazir will manage the waqf asset easily for attaining the waqf objective. The cash waqf also create opportunity for nazir to invest in several sectors that could bring more benefit. One of the pioneers in cash waqf transfer is social investment bank in Bangladesh. Dr. Mannan as founder and chairman of this bank is one of the Muslim scholars who implement the concept of cash waqf transfer in real life<sup>24</sup>.

According to him the cash waqf transfer concept can be strengthened by issuing cash waqf certificate. This leads to securitization of Islamic voluntary sector. With the cash waqf certificate it will increase the interest of the people to waqf their small amount of money. This also can pool that money in several purpose and increase good governance in maintaining waqf asset. Mannan gives several guidelines governing the issuing of cash waqf certificate<sup>25</sup>:

1. *Cash-awqāf shall be accepted as endowment in conformity with the sharī a. The bank will manage the waqf on behalf of the wāqif;*
2. *Awqāf are done in perpetuity and the Account shall be opened in the title given by the wāqif;*
3. *Wāqif will have the liberty to choose the purpose (s) to be served, either from the list of 32 purposes identified by SIBL as noted later or any other purpose(s) permitted by the sharīca;*
4. *Cash-waqf amount will earn profit at the highest rate offered by the bank from time to time;*
5. *The waqf amount will remain intact and only the profit amount will be spent for the purpose(s) specified by the wāqif. The unspent profit amount will automatically be added to waqf amount and earn profit to grow over time;*
6. *Wāqif may also instruct the Bank to spend the entire profit amount for the purpose specified by him/her.*
7. *Wāqif will have the opportunity to create Cash-waqf at a (later?) time. Otherwise, he/she will declare the amount he/she intends to build up and will start with a minimum deposit of Tk. 1000/= one thousand only (or equivalent foreign currency). The subsequent deposits shall also be made in thousand or in multiples of thousand;*
8. *Wāqif shall also have the right to give standing instruction to the bank for regular realization of Cash-waqf at a rate specified by him/her from any other a/c maintained with SIBL;*
9. *Cash-waqf shall be accepted in specified endowment receipt voucher and a certificate for the entire amount shall be issued as and when the declared amount is built;*

---

<sup>23</sup> Ibid., p. 3

<sup>24</sup> M.A.Mannan, "Cash Waqf Certificate Global Opportunities for Developing The Social Capital Market in 21st century Voluntary-Sector Banking( Proceeding of the Third Harvard University Forum on Islamic Finance: Local Challenges, Global opportunities Cambridge, Massachusetts, Center for Middle Eastern Studies, Harvard University.1999pp.23-256):243

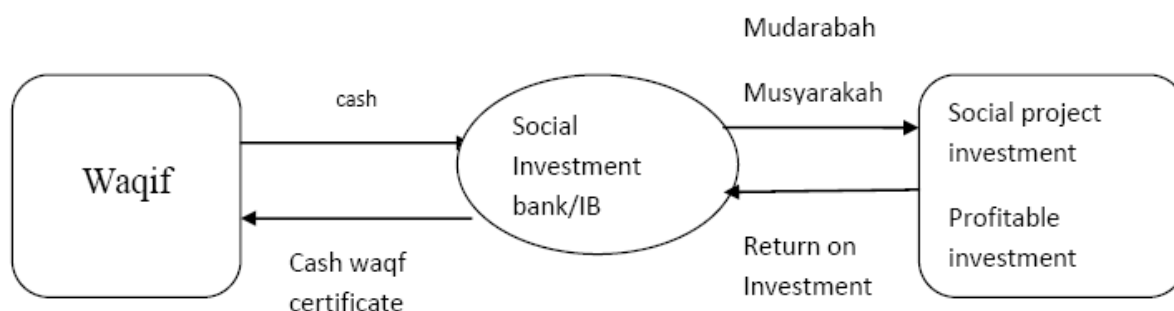
<sup>25</sup> Ibid., p.251



10. The principles and shara-based rules of Cash-waqf Account are subject to amendment and review from time to time

From above explanation we can contract the concept of ideal cash waqf transfer method. The following picture shows us the flow of money in cash waqf transfer model. We can infer from this picture that the waqf money can be invested in social project and profitable investment. The profitable investment such as investment on industry, agriculture, and service sector can help financing the social project. The consideration of high cost of managing social project can be overcome by the profit which generate by private investment. Furthermore the implementation of financing under musyarakah and mudarabah contract is considered as the way to avoid practice of riba by social investment bank.

Figure 6. General Concept of Cash Waqf transfer



Source: Author's Own

### 3. RESEARCH METHOD

This study uses library research method in collecting the data which relevant with application of cash waqf transfer. The data is collected from relevant literature such as journal, books, and other related materials. Several paper show how the concept of cash waqf transfer has been implemented in such countries like Indonesia, Malaysia, and Singapore. Moreover, jurist's point of view related with cash waqf transfer is also gathered to inform us the *fiqh* issue in cash waqf transfer.

#### a. Implementation of Cash Waqf Transfer in Several Countries

##### Malaysia

Malaysia is one of the leaders of Islamic financial industry in the world. With several Islamic institutions Malaysia continues to develop Cash waqf method for several purposes. Government actively encourages the development of waqf institution like establishment of department of waqf, Hajj, and Umrah in 2004 under the ministry of finance. Furthermore, Johor Corporation as quasi-governmental body in 2006 establish corporate waqf share by its subsidiary in Kuala Lumpur, Waqf An-Nur<sup>26</sup>. The establishment of several clinic of An-nur shows the commitment of this corporation to develop the role of waqf.

Beside for allocation purpose, cash waqf transfer can be used for economic growth objective. Malaysia tries implementing this relatively a new way to help micro and medium enterprises (MME'S). The purpose of cash waqf transfer is to provide financial assistance and develop financial service for MME's in Malaysia. Several methods are offered by the scholar to collect and generate fund from society and MME's and MME's stakeholders to improve the adequacy of fund. For building the cash

<sup>26</sup> Ariff Hidyat Ali, *ibid.*, p.16

waqf in Malaysia Lahsana suggested the cooperation between several institutions is needed. SMIDEC Stand for Small and Medium Industries Development Corporation (Malaysia) is the main important institution to insist this model work<sup>27</sup>.

Several steps are needed to construct the cash waqf transfer for MME's<sup>28</sup>. Firstly, the SMIDEC has the obligation establishing the cash waqf and create deposit account for every SMIDEC member. Secondly, SMIDEC make Appointment of trustee with the founder of the cash waqf (fund management to invest the capital). Thirdly, the SMIDEC mobilize the fund by attracting several institution like SME members in SMIDEC, NGO, financial institution, Government, etc. Fourthly, this fund can be used to investment in debt financing like murabaha, BBA, Ijarah financing. Otherwise, this fund can be invest in equity financing like musyarrakah and mudarabah financing.

Lastly, the distribution of the profit according to SMIDEC member's terms and according to the accounts of cash waqf management. This concept that create by lahsana can solve the problem of high risk financing contract like musyarakah and mudarabah financing. The MME's in Malaysia always faces the difficulties when they ask for this contract financing because agency problem that inherent with profit and loss sharing contract. With chash waqf some of this problem can be solved.

### Singapore

Singapore institutionalize it waqf under the Majlis Ugama Islam Singapura (MUIS). Tis institution is a statutory body under the Ministry of Community Development youth and sport (MCYS)<sup>29</sup>. The administration of Muslim act (AMLA) in 1968 is a basis for Muslim in Singapore to establish waqf institution. The sources of financing for several waqf project in Singapore are financed by Sukuk musyarakah bond and cash waqf method. By this method Muslim in Singapore can directly participated in monitoring and maintaining waqf project.

*According to Hanefah In 2007, the pre –tax income received by the Waqaf Funds is \$98.9 million increased from \$6.3 million from 2006 because of an increase on the fair value of investment properties. The total capital owned is \$65.4 million and the asset revaluation reserve is \$8.4 million. The accumulated funds received are \$341 million increased from \$130.7 million in 2006.*

### Indonesia

Indonesia is one of several countries which already implemented cash waqf transfer method to finance several social projects especially for poverty reduction and reducing inequality. Indonesian government already established the regulation for cash waqf activities since 2004. Waqaf act no 41 2004 has become basis for several institution to collect and spend cash waqf in Indonesia. This act clearly stated that sources of waqf can be tangible asset such as money, stock and securities. One of the leaders for waqf institution is Tabung Waqf Indonesia (TWI). TWI is independent private institution which establish as initiation of Dompot Dhuafa. Beside TWI there are several private waqf institutions such as center for justice and Caring of Ummah, and Caring of Ummah Darrut Tauhid<sup>30</sup>.

Although Indonesia is most populated Muslim country the awareness about cash waqf transfer is leave behind. This condition happened because the people are not really familiar with the concept of cash

---

<sup>27</sup> Lahsana, Ahcene."The Role Of Cash Waqf In Financing Micro and Medium sized enterprices (MMES)".(Paper was Presented in Seventh International Conference-the Tawhidi Epistemology Zakat and Waqf Economy.Bangi. 2010): 105.

<sup>28</sup> Ibid., p. 105.

<sup>29</sup> Hajah Mustafa Mohammad Hanefah et al,"financing the development of Waqf Property: The Experience of Malaysia and Singapore",(Malaysia: Faculty Ekonomi dan Muamalat Universitas Sains Islam Malaysia).3

<sup>30</sup> Ahmad Affandi and Diah NurhayatiNufus."Analysis on Cash Waqf Return Fund Allocation in Indonesia: A case study in Indonesian Waqf Deposit,"(Paper was presented in Seventh International Conference-The Tauwhidi Epistemology: Zakat and Waqf Economy, Bangi, Bangladesh, 2010):121

waqf<sup>31</sup> because waqf in Indonesia identic with fixed asset such as land, building and mosque. For that reasons it is not easy way to inform Muslim in Indonesia about cash waqf transfer.

TWI as the leader in this sector spent the cash waq for productive and social sector. The allocation for social sector is the major expenditure of TWI. Beside the collecting and spending activities, cash waqf transfer can also be generated by Mutual Fund. In the case of Indonesia, Batasa Capital as nadzir for individual investor transfers some fraction of money to Dompot Dhuafa.

**Table 1. The Proportion of Cash and Mutual Fund**

No	Cash Waqf	Mutual Fund
1.	10%	90%
2.	30%	70%
3.	50%	50%
4.	70%	30%
5.	90%	10%

Source: Siswantoro,2006

*This Mutual fund base on fixed income basis where 80 to 100 percent of the fund from the investor is allocated to Islamic bond including Repurchase Agreement (REPO) and the rest is to Islamic Money market ( Islamic Deposit). The rate of return is around 11 to 13 percent and the scheme offered to investor in some combination of mutual fund investment and cash waqf transfer.*

Fraction of money that distributed to cash waqf and mutual fund investment is predetermined before the Mutual fund invested. That table shows allocation and investment scheme that offered by Batasa Syariah.

From the explanation of Siswantoro above, we can infer that cash waqf can be generated by Mutual fund concept and cash waqf collection as commonly used. Mutual fund concept is relatively new method in Islamic world where nadzir maximize the rapid growing of Islamic capital market such as Sukuk and Islamic share to generate cash waqf. The idea quite interesting because this scheme not only can generate income for the investor of Islamic capital market but it also can increase the share of voluntary sector based in Indonesia. Nevertheless there is some limitation of the development of this scheme.

Based on Siswantoro, the transparency is really needed for the investor’s trust. Lack of transparency or information regarding the management of cash waqf transferred will reduce new investor to come. Moreover, government support regarding this concept is urgently needed. The placement of government account in such Mutual Fund and will help the Batasa Syariah capital to generate more money for cash waqf purposes. Besides, government can also help by securitizing idle asset owned by government and use that cash collection for this mutual fund purpose.

---

<sup>31</sup> Dodik Siswantoro, *ibid.*, p. 4 .

### 3.2. Opinion of Muslim Scholar about Cash Waqf Transfer

Cash waqf method can be implemented under the condition where the waqf asset in this case money can be exchange with different asset that will generate income. This condition arise some fiqh issue related the ahkam of exchanging waqf asset with other asset. Based on *Fatwa Kedua Puluh Dua Saham Wakaf dan Wakaf gentian: Muzarakah Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia*, Malaysian government has allowed waqf ibdal to be implemented.

Jurist has different opinion about the akham on *istibal*. This word means change or exchange waqf asset with different asset by selling or buying with other asset with the intention to keep and maintain asset of waqf<sup>32</sup>. Imam Abu Hanifah one of the classical jurists allowed *istibal* on waqf asset. He argued that *istibal* is allowed as long as it will bring more benefit. He also allowed to sale the waqf asset when it is urgently needed<sup>33</sup>. Maliki schools also allowed this transaction under *darurah* condition. Several jurists disagree with it. Imam syafii argue that waqf asset cannot be transferable because when it already announce as waqf the ownership belongs to Allah and there is no room to revoke that asset<sup>34</sup>. Imam syafii is also one of jurist who disallow cash as waqf asset<sup>35</sup>. Besides Syafii, Ibnu Qudamah is also one of the jurst who disagree with cash waqf<sup>36</sup>.

Regarding the need of cash waqf as the instrument of waqf Indonesian government has passed the Waqf act No.41 in 2004. In this act Indonesian government allow cash, valuable certificate, gold and silver, land certificate, etc. this act is similar with other act in several countries which already allowed cash as one of waqf asset.

## 4. RESULT

### 4.1 Issues Related Cash Waqf transfer in financial Industry

Several issues may arise regarding implementation of cash waqf transfer concept especially in Indonesia. We can analyze this issue by each institution that must exist in waqf: waqif, Asset of waqf, *Nadzir*, and portfolio investment.

- **Waqif:** with the growing consideration of implementing shariah in recent economic activities, there will be big chance for big corporation or international corporation deal with private waqf institution in Indonesia such as TWI. The issue is how we decide that institution or corporation waqf their money for good purpose. Based on several endowment fund experience around the world, money laundry activities did happen in the name of endowment fund. We don't want the good intention of establishing waqf institution in Indonesia mislead by avoiding tax practice or money laundry activities. According to this, selective criteria must be regulated by the government for international and private institution that eager to waqf their asset in cash waqf method especially in Mutual fund arrangement. According to this check and balance and transparency must be implemented to avoid that case.
- **Asset of waqf:** based on Waqf act no.41/2004, government allows several asset like cash, equity, sukuk, deposit certificate, land certificate, etc as to be waqf. This certificate is representing the ownership of some asset like equity and sukuk of several corporations. The screening criteria of this portfolio must be done by nadzir such as Batasa Capital in receiving this portfolio. AAOFI has already clearly stated what type of equity which categorize as shari'ah compliance. From that criteria nadzir should receive the asset or certificate that categorized as shari'ah compliance asset.

<sup>32</sup> Fatwa kedua puluh dua, "Saham dan Wakaf," (Muzarakah Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia ke-4 pada 13 hingga 14 pril 1982):84

<sup>33</sup> Fatwa kedua puluh dua.p.84

<sup>34</sup> Mohammad Tahir et.al, *ibid.*, p. 3.

<sup>35</sup> *Ibid.*, p. 3.

<sup>36</sup> *Ibid.*, p. 4.

In Indonesian context, stocks of corporations that list in Jakarta Islamic Index are preferable due to its liquidity and its lower ratio of debt to equity.

- **Nadzir:** in the context managing asset of waqf, nadzir must keep the amanah of waqif. The relationship of waqif and nadzir in cash waqf transfer is based on trust and transparency. Once nadzir violate the trust that already been transferred to him it will reduce the eager and participation of people to implement waqf. Cash is a liquid asset which very difficult to trace. According to this, TWI or Batasa Capital should create transparency and acceptable accounting method in managing cash waqf asset from waqif. Moreover, the excessive overhead cost in managing waqf asset should be avoided.
- **Portfolio investment:** manager of waqf asset should be selective in using and trading the portfolio of their investment. Cash waqf transfer through Mutual Fund should be considered what type of sukuk which tradable and non-tradable. Sukuk al-Ijarah, al-musyarakah, and al-mudarabah should become prioritize because its limitation of fiqh issue regarding these type. Moreover, mudarabah and musyarakah contract is preferable in mobilizing cash waqf for financing social project or profitable project. TWI or any other private waqf institution should become pioneer in introducing masyarakat and mudarabah type of financing amid Muslim people in Indonesia.

#### 4.2. Government Role and implementation of Cash Waqf Transfer in Indonesia

Siyasah shar'iah or Islamic oriented public policy play an important role in analyzing cash waqf transfer as one method that used amid revitalization of waqf institution in Islamic world today. Kallaf clearly denotes syiasah shar'iah as "*administration of public affairs in Islamic polity with the aim of realizing the interest of, and preventing the harm to, the community in harmony with general principle of Shari'ah even if it disagrees with particular ruling of mutjtahidun*". Kallaf said siyasah shar'iah is tantamount to acting on *maslahah*, or public interest<sup>37</sup>.

We consider that the implementation of cash waqf transfer not immune with critique from several jurist even from several classical jurist<sup>38</sup>. Nevertheless, the flexibility of cash that can be used and generated to make profit for waqf purpose is considered bringing more *maslahah* for the *ummah* today. By this method, we can also securitize idle asset into small numerator and sale it to potential waqif. The intention of this method is trying to capture common people to participate in waqf activities and generate more income for poverty alleviation and social purposes. By its nature waqf is one instrument of Islamic teaching which protect five values of Maqasid Shar'iah: life, lineage, wealth, religion, and intellect.

We have become witness how many *maslahah* which already been achieved by cash waqf transfer in Indonesia like financing school, poor district, rehabilitation of natural disaster victim, health center etc. All of these actions are trying to protecting the life of the *ummah*, their knowledge trough education, their wealth trough creating job, and their religion through mosque. In the framework of *syiasah shar'iah*, it is the obligation of government to increase the participation of Muslim people in Indonesia in waqf. It is not impossible to achive *hajihyah* (complement level), *tahsiniyyah* (desirable level) of *Maqasid shari'ah* trough active participation of Indonesian government and its dweller.

Based on Siswantoro, Indonesian government is not really active in helping the revival of waqf institution. This is un-fortune condition while 30 percent of its citizen live less than 2 dollar a day. The government of Indonesia should do more in supporting this method. Several ways can be done like increase the advertising of cash waqf transfer by government body, encourage participation of people who deposit their money in government bank, and encourage participation of investor in Islamic capital market through issuing government waqf certificate.

<sup>37</sup> Mohammad Hashin Kamali, *ibid.*, p. 61

<sup>38</sup> Dodik siswantoro, *ibid.*, p. 4.

Aside from encouraging any measures that could close people to public interest, the ruler should also take any measure that could further away people to *mafsadah* or corruption. The key success factor of implementing cash waqf transfer method lays on trust, transparency, and quality of nadzir in managing cash waqf transfer. Trust between waqif and nadzir is playing crucial role in order to increase participation of people. Moreover, transparency is needed to encourage the trust of the waqif to nadzir. This is the role of the government to create transparency system in informing the citizen. Good governance in nadzir institution is urgently needed. This is also the rule of government to reduce fasad or corruption in society. Quality of manager must be another consideration of waqf institution Indonesia. To implement just *syiasah* or *siyasah adilah* loyal and strength officer are needed<sup>39</sup>. The loyal mean fear to misuse the *amanah* that already trust to them and strength is the capability of nadzir in investing cash waqf transfer. These two requirements must be attained to keep the existence of waqf institution.

## 5. CONCLUSION AND RECOMMENDATION

The objective of this paper is trying to inform several objectives: review the concept of cash waqf transfer, its implementation in Indonesia, jurist opinion about cash waqf transfer, and perspective of *syiasah shariah* in implementing cash waqf transfer in Indonesia. From several explanations above we can conclude some information regarding this topic.

The main objective of cash waqf transfer is increasing participation of Muslim in waqf their money through buying cash waqf certificate from bank or waqf institution. The cash will be mobilized to financing social project and profitable project to support financing of social project. Several jurist suggest the project must be implemented under *musyarakah* and *mudarabah* contract to avoid back door *riba* practice.

Several jurists have different argument in analyzing the *ahkam* of cash as instrument of waqf. *Syafii* schools tend to avoid the using of money as asset of waqf and prohibit changing waqf asset. Nevertheless Imam Hanafi allows changing waqf asset to different asset as long as it bring more benefit. Several countries has already allows the practice of cash waqf transfer such as Malaysia, Indonesia, and Singapore.

Several condition must be consider to success in implementing cash waqf transfer such as criteria of waqif, quality and transparency of nadzir, and investment process that should be in line with *shar'iah*. From the perspective of *syiasah shar'iah* the government should actively encourage the participation people in waqf to achieve better *maslahah*. The silent regulation and transparency must be constructed in order to increase participation of people.

Several recommendations can be addressed to government in order to achieve *Maqasid Shar'iah*. Firstly, the government can help revive waqf institution by create strong regulation according transparency and accountability of waqf institution. The government could help through providing good manager in maintaining waqf asset. Secondly the government could participate by injection some capital into the system to increase capitalization of waqf institution. Thirdly, government might facilitate auditing program for waqf institution in Indonesia to improve transparency. Finally, the government might help by improve socialization of cash waqf transfer in mass media or social media.

To conclude, how to improve participation of people can be main concern of Indonesian government.

---

<sup>39</sup> Mohamad Hashim Kamali, *ibid.*, p. 67.

## REFERENCES

- Affandi , Ahmad and Diah NurhayatiNufus. (2010). Analysis on Cash Waqf Return Fund Allocation in Indonesia: A case study in Indonesian Waqf Deposit. Paper presented at Seventh International Conference-The Tauwhidi Epistemology: Zakat and Waqf Economy, Bangi, Bangladesh.
- Ahmed, Ziauddin et.al. (1983). *Fiscal Policy and Resource Allocation in Islam*. International Centre for Research in Islamic Economics: Jeddah.
- Ali, Ariff Hidayat. (2010). *Waqf Continued Relevance as The Third Sector in Term of Mobilizing Resources for Productive Use in Islamic Economic Sytem*. Kuala Lumpur: The Global University in Islamic Finance,INCEIF.
- Cizaka, Murat. (2004). Incorporated Cash Waqf and Mudarabah, Islamic Non-Bank Financial Instrument from the Past to the Future?. Paper presented at International Seminar on Non-Bank Fiancial Institution, Kuala Lumpur.
- Fatwa Kedua Puluh Dua,"Saham dan Wakaf,"(Muzarakah Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia ke-4 pada 13 hingga 14 April 1982).
- Habib, Ahmed. (2004).*Role of Zakat and Awqaf in Poverty Alleviation*. Jeddah: IslamicDevelopment Bank, 1st edition, 2004.
- Hanefah, Hajah Mustafa Mohammad et al, "Financing the development of Waqf Property: The Experience of Malaysia and Singapore", (Malaysia: Faculty Ekonomi dan Muamalat Universitas Sains Islam Malaysia).
- Jalil , Abdullah and Asharaf Mohd Ramli. "Waqf Instrument for Construction: An Analysis of Structure" retrieved from [http://www.academia.edu/504004/WAQF\\_INSTRUMENTS\\_FOR\\_CONSTRUCTION\\_CONTRACT\\_AN\\_ANALYSIS\\_OF\\_STRUCTURE](http://www.academia.edu/504004/WAQF_INSTRUMENTS_FOR_CONSTRUCTION_CONTRACT_AN_ANALYSIS_OF_STRUCTURE)
- Kahf, Monzer. (1999). Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider. Paper Presented at the Harvard Forum on Islamic Finance and Economics. 1999.
- Kamali, Mohammad Hashin. (1989). Siyasa Shari'iyah or the Policies of Islamic Government. *the American Journal of Islamic Social Sciences*, vol. 6 no. 1.
- Lahsana, Ahcene. (2010). The Role Of Cash Waqf In Financing Micro and Medium Sized Enterprises (MMES). Paper presented at Seventh International Conference-the Tawhidi Epistemology Zakat and Waqf Economy, Bangi.
- Mahmud, Mek Wok and Sayed Sikandar Shah. "Optimization of Philanthropic Waqf: The Need for Maqasid-Based Legislative Strategies." <http://webcache.googleusercontent.com/search?q=cache:u6cfn8Vm9f0J:www.iefpedia.com/english/wp-content/uploads/2010/01/Optimization-of-Philanthropic-Waqf-The-Need-for-Maqasid-based-Legislative-Strategies-Dr.-Mek-Wok-and-Dr.-Sayed-Sikandar-Shah1.doc+&cd=1&hl=en&ct=clnk&gl=my>

Mannan, M.A. (1999). Cash Waqf Certificate Global Opportunities for Developing The Social Capital Market in 21st century Voluntary-Sector Banking. Proceeding of the Third Harvard University Forum on Islamic Finance: Local Challenges, Global Opportunities Cambridge, Massachusetts, Center for Middle Eastern Studies, Harvard University, 1999.

Siswantoro, Dodik and Miranti Kartika Dewi. The Effectiveness of Waqf Raising through Mutual Fund in Indonesia.” Retrieved from <http://staff.ui.ac.id/internal/060603523/publikasi/Waqf.pdf>

Tahir, Mohammad et.al. Obstacle of the Current Concept of Waqf to Development of Waqf Properties and The Recommended Alternative. Retrieved from <http://eprints.utm.my> - .pdf .