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THE WAQF AS THE SOCIAL INSTITUTION AND THE REALIZATION OF ISLAMIC OF NUSANTARA (The Study in West Sumatera)

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Abstract

As a religion which concerned with the social, cultural, psychological and spiritual of the community, Islamic laws had the ability to answer the new problems, especially in all muamalah fields. The Islamic of Nusantara was the comprehension, experience, and implementation of Islam in muamalah of fiqh segment as the dialectical result among the syariat, cultural and reality throughout the archipelago. The reality reflected on in waqf that became a dynamical ijtihadiyyat laws along with the benefit which fulfilled the certain space, time and situation. The waqf as the social institution was the realization of the Islamic laws transformation to become a law formation which consisted of the funding system of tasawuf (ilahiyah) study and Islam absolute which grew as the social framework that had the ability to answer all the community needs in some of life fields which affected by the dynamic of space and time. In the context of social institution, the waqf was the norm system which arranged all the human actions in order to fulfill the basic needs in community life, and it was a part of community

norms which formed the social, religion institutions and the other institutions which protected by the state.

Keywords : *Waqf, Social Institution, Islamic of Nusantara.*

A. Introduction

Waqf is a realization of social regulation of the social institution as the vehicle to fulfill the collective and planned life needs. It is institutional form which consists of the dimensions such as religious, community, the other institutions arranged by the state. As the institution which closes to the attentive faith, it has a high sensitivity form along with the religious service values that has aim to be closed to Allah SWT. Therefore, as an effort to fulfill the life needs, the waqf development must be fit with the principles of Islamic laws.

The waqf institution as the social regulation is appropriate with the era development. The development of history of fiqh and waqf has been going on along with the demands of the community needs relate to all life aspects. The waqf has transformed to become a religious potential institution to make a change in the welfare of social economic of the community.¹ The civilized concept of it in Indonesian customs forms the unification among theological Islamic, the local tradition values, culture, and the customs in Motherland.

It has a tradition of Islamic culture in Indonesian customs that symbolize the Islamic culture from that region. This makes it become the realization of Islamic of Nusantara. The Islamic and *Nusantara* cultures have two elements which become the unity namely Islamic element and the pattern of

¹ OnnyMedaline, 2017, *Perwakafan Tanah Ulayat untuk Kesejahteraan Sosial di Sumatera Barat*, Disertasi, Universitas Andalas, Padang, page. 105

cultural values of Indonesia. The Islamic elements are the Divine values which form the systems of the faith, thought, Qath'I religious service based on Al Quran and Hadis. Whereas the cultural elements of Indonesia the thought, the behaviours, the material and the system of the certain values, characteristics, such as the different, open, egalitarian, courteous, polite, tolerance, faith and belief. These elements are Islamic and *Nusantara* cultures.

According to the data from the Indonesian Waqf Board in 2016, there were 435.768 locations (*four hundred thirty five thousand seven hundred sixty eight*) the width of the area was around 435.944,317Ha² (*four hundred thirty five thousand nine hundred forty four comma three hundred seventeen hectare*) had the large potential to realize the aim of the waqf that was the welfare of the community. The data of the waqf land till 2016 were the data results of the waqf lands existed in Indonesia not only the new waqf lands but also the waqf land known their existence for a long time. Practically in Indonesia, the social institutions which are similar to the waqf institution existed before the Islam arrival. In some areas in Indonesia also met the ownership and the utilization the custom wealth together with all custom communities, this fact is very similar to the waqf institution. In other word¹, institutionally or regulation there is the similarity between the utilization of the custom wealth and the waqf, that is in the ownership form together with the management aimed to the community interests. For example, there is "*Huma Serang*" in Badui ethnic of Cibeo (South Banten) that is the field worked together every year and the yield used to public interests and to the religious ritual.

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² <http://bwi.or.id/index.php/in/tentang-wakaf/data-wakaf/data-wakaf-tanah.html>.

Almost in every area has the land utilized not only for family interests but also for the public interests. In Bali island, there is the land to build the Balinese temple and the other goods (such as the jewelries for party), belongs to the temple or the high Balinese gods. In Lombok, there is the land called “*Tanah Pareman*” that is the state land which is free from the tax or “*Landrente*” given not only to the villages but also to the temple for the public interests.³

According to the findings of the study in West Sumatera, the heritage land in community in West Sumatera can be compared to the utilization of the wealth in the waqf, met some similarities.⁴ This happens because of the order of the religious life in Minangkabau community which is going on from the interaction results between custom laws and Islamic laws. The arrival of Islam in Minangkabau community in order to make complete of the Minangkabau customs.⁵ Since the existence of Islam, Minangkabau always faced an alternative of system of the other property relationships. The custom relationship with Islam had changed from the historical period which could be called as the stages of adjustment, open conflicts and smooth ideological interaction.⁶ The social and law relationships get more expressed with the Arabic terminologies, and Islamic laws such as the right, belonging, heritage, grant, will and waqf. This may make the customs more systematic (because no data from pre-Islam). However, the comparison of the customs expressed by the Islamic law terminologies, by the definition of the terminologies in

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³ Abdurrahman, 1984, *Masalah Perwakafan Tanah Milik dan Kedudukan Tanah Wakaf di Negara Kita*, Alumni, Bandung, page. 14

⁴ Onny Medaline, *Op Cit*, page.9

⁵ M. Nasroen, dalam Onny Medaline, *Wakaf Tanah Ulayat Kaum di Sumatera Barat*, Al-Awqaf, Jurnal Wakaf dan Ekonomi Islam, Vol. 9 No. 2 Jakarta 2016, page. 187

⁶ Franz von Benda-Beckmann, *Properti dan Kesenambungan Sosial, Alib Bahasa Tim Perwakilan KITLV bersama Indira Simbolo, Grasindo, Jakarta, 2000*, page.415

Islamic laws clearly showed the concepts of the old customs were not crushed by the new Islamic institution.⁷

Some of the opinions have stated that the heritage system in Minangkabau customs essentially similar to the waqf institution. The *pusako* wealth, given by the ancestors to the family interests with the prohibition of selling and buying, can not be inherited individually but it can be utilized to all members of the families. These characteristics make the *pusako* wealth as the social institution similar to the waqf.

The Islamic leaders in Minangkabau apply *harato pusako as musabalab wealth*. This concept according to Prins,⁸ only developed by the Minangkabau clergies, give *harato pusako* the law status as “the property lays on the dead’s hand”, a kind of the waqf, which can not be shared or inherited and it causes the Islamic heritage laws can not be applied on the heritage wealth. This concept relates to the *musha* concept, “unshared part”, which is valid if done the waqf.⁹ This showed that in the beginning Minangkabau communities did not the waqf institution in their custom laws. The custom law only have the heritage wealth concept and after the developing the Islamic laws it has been known that their characteristics are similar to the religious waqf institution.

The essential of the waqf is reflected on the custom laws of Minangkabau community can be seen from the gift concept or resignation the *ulayat* land or the heritage wealth. The resignation of it is a law deed which the owner of it gives the permission to the third party or other side to manage it as the agreement of the agreed cooperation that poured forth in *adat diisi limbago dituang*.¹⁰ Therefore the taken

⁷ *Ibid*, hlm. 416

⁸ Franz von Benda-Beckmann, *Op Cit*, hlm. 418

⁹ *Ibid*

¹⁰ <http://pasca.unand.ac.id/id/wp-content/uploads/2011/09>

beneficial party must fulfill all custom determination that is “*mengisi adat menuang limbago*” in retained that must be given to the ulayat holder. This is the feedback right between the ulayat holder and its users.¹¹ The gift concept of the heritage wealth is applied to the effective shifting in the life of the giver or when he dies. It is not the traditional custom laws related to the limited law consequences. Practically, the gift is used to cover the transactions that can be called the grant or the waqf.¹²

In the deed side, the gift of the *ulayat* land is the law deed that causes the right and the obligation between the involved parties in the agreement, not only in the resignation in unilateral or the law deed of bilateral, however both the parties which get the agreement have the equal burden namely the right and the obligation which must be fulfilled. If this concepts compare to the waqf concept, it will be seen the same characteristics. In the deed side, the waqf is a unilateral law deed between the *wakif* as the owner of the source waqf wealth, along with *anazhiras* the party who manages the waqf wealth to become the wealth that gives the advantage to the community.

In reality, the waqf which is existed in Indonesia not only localizes the Islamic precept or makes the Islamic of *Nusantara*, but also the waqf is the implementation of Islam without putting aside the place of Islam which becomes the faith and takes up by the cultural community in Indonesia. The Islamic of *Nusantara* is similar to Islam which is brought

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¹¹ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau, Gunungagung, Jakarta*, 1984, hlm. 215

¹² Bahwa sebagai mana wujud dari kegiatan wakaf dalam bentuk mendirikan tempat beribadatan. Maka konsep pemberian dalam hukum adat Minangkabau, dengan menyerahkan tanah untuk tujuan mendirikan tempat peribadatan berupa mushala, atau masjid, dapat diidentifikasi sebagai transaksi penyerahan harta dalam lingkup kegiatan wakaf.

out in Indonesia by the geographical definition. The waqf consists of the religious, material, social and interest norms to the community.

B. Discussions

1. Waqf

The waqf is one of the suggested institution in Islam to be used as the blessing medium. It is a form of the wealth expenditure in a good way, an alternative offered by Islam as the tool of getting close to Allah SWT. It is called as *al-habs* (hold), as etymology *al-habs* means *al-sijn* (prison), silent, prevent, barrier, obstacle, “prisoner” and pacification. The compound between the word *abbasa* (*al-habs*) with *al-mal* (wealth) means the waqf (*abbasa al-mal*). The nomenclature of the waqf in hadis and fiqh holy books is not the similar. Al-Syarkhas³ in *al-Mabsut* holy book gives the waqf nomenclature with *al-waqf*; Imam al-Syafi’I in *al-Umm* states that the *waqf* nomenclature with *al-Abbas* and even Imam Bukhari encloses the hadis about it with the nomenclature of *Kitab al-Washaya*. Therefore, technically, it is called as *al-abbas*, *shadaqah jariah*, dan *al-waqf*.¹³ The diversity of its nomenclature occurs because there is no word of it explicitly in Al-Qur’an and hadis. This shows that the area of *ijtihadi* in its field is larger than *tawqifi* area.

In relation to its case, in Al-Qur’an there is no obvious certainty which arranges⁴ about this problem. However in the order of Al-Qur’an to do the good things can be the common base to its deed. A part of fuqahas relates to its laws to do the good things from Al-Qur’an in *Surah Al-Ma’idah* (5):2 which means “...and cooperate in righteous and piety...”. This verse suggests to do the good things together

¹³ Jaih Mubarak, *Wakaf Produktif*, 2008, Simbiosis Rekatama Media, Bandung, hlm. 10

in all good deeds. Some of them are eternal and connected forever, other deeds are going on in certain time and last, and the others are utilized immediately. On the other hand, the deed which points to the certain people such as the certain group with their own characteristics, or to the certain aims without beholding the people who want to use them¹⁴. In *Surah Al-Ma'un* (107):7 says, “ *And behold [simple] assistance* “. The meaning is Allah SWT give the threaten of the hell to the bad people, which are described in this verse, even they behold the needed things for other people but they do not need at all.¹⁵ The other part of *fugahas* relate to the base of its laws with the Al-Qur'an verses that order to the faithful people to do the good deeds which are mentioned in the following verses :¹⁶ (1) Al-Qur'an *Surah Al-Baqarah* (2):267, (2) Al-Qur'an *Surah Ali 'Imran* (3):92, (3) Al-Qur'an *Surah Al-Hajj* (22): 77. Some of Al-Qur'an verses are not described it directly, but the *fugahas* relate to the general base of its laws. This occurred because of the verses encourage the faithful people to do the good deeds by their wealth. One of the suggested good deed in this verse is the waqf. Besides of the general base of the mentioned verse, it is existed in the popular hadis which tells about the waqf of Umar bin Al-Khatab.

2. The Social Institution

In the dictionary, institution means a system of the formal social behaviors along with the customs and the norms which arrange the behaviors and all equipment to fulfill some

¹⁴ MunzirQuhar, *ManajemenWakafProduktif*, Khalifa, Jakarta, 2004, hlm 136

¹⁵ *Ibid.*

¹⁶ Ahmad AzharBasyir, 1987, *Hukum Islam tentangWakaf, Ijarab, Syirkab*, Al-Ma'arif, Bandung, hlm. 5, LihatRachmadDjadmika, 1983, *HukumPerwakafan Tanah Milik di Indonesia*, Bandung, hlm. 4. Lihat Mohammad Daud Ali, 2012, *SistemEkonomi Islam Zakat danWakaf*, UI-Press, Jakarta, hlm. 80-81.

of the complex needs of people in the community.¹⁷ As one of terminology in sociology, the institution always related to the social word.

The social institution comes from the foreign terminology and definition of *Institutions* in sociology is as the following :

Institutions include "all the beliefs and modes of conduct instituted by the collectivity"¹⁸ that is, beliefs and conduct not depending solely on the judgment, will, or habits of individuals considered in isolations. So defined institutions range from the simplest informal norms to the most complex formal organizations.¹⁹

The foreign term is translated directly in Indonesian language becomes the Community Institution or Social Institution. This happens because of there is no agreement to describe the content and the term of *Social Institution* in Indonesian language appropriately. The diversity of the use of *Social Institution* in Indonesian language, also caused by the point of view diversities in each scholar in order to give the synonym word to it.

Soerjono Soekanto, uses the term the Community Institution because of the institution definition refers to a formation and it consists of the abstract definition about the norms and the certain regulations to become the characteristics of the institution.²⁰ It can be said that the community institution is an association of the all levels of the norms that existed as a basic need in community life.²¹

¹⁷ Kamus Besar Bahasa Indonesia, *Kamus Besar Bahasa Indonesia, Edisi Ketiga*, Jakarta, 2007, hlm 893

¹⁸ Durkheim, dalam Jack Knight and Itai Sened, 1998, *Explaining Social Institutions*, The University of Michigan Press, America, hlm. 57

¹⁹ *Ibid.*

²⁰ Soerjono Soekanto, 1990, *Sosiologi Suatu Pengantar*, Edisi Keempat, Rajagrafindo Persada, Jakarta, hlm. 217

²¹ *Ibid.*, hlm. 218

Koentjaraningrat the professor of Anthropology stresses the behavior aspect. He uses the synonym word of institution with regulation which meant as the human pattern behavior in his culture. The term of social institution means a systems of behavior and the relationship centered to the activities ⁵ fulfill the special complex needs in the community life. The concept of the institution has been developed for a long time in sociology and a basic concept described widely in all studies about the science. On the contrary, in Anthropology the institution concept is rarely to use. The Anthropologyscholars are more prefer to use the concept of the cultural element to analyze the study of the human activities in the community.²²

The social institution is a norm system which arranges all the human actions in order to fulfill the basic needs in the community life. According to Soerjono Soekanto²³ the functions of the social institution are : (1) giving the guidance to all members of the community in order to how to behave and have an attitude in handling the problems especially relate to the basic needs. (2) keeping the community wholeness. (3) giving the hand-grip to the community to have the system of social control, in order to control the members of the community behaviors.

In the certain stage, the Islamic laws have been internalized into the available social institution in the community. It is occurred the allocation process of Islamic laws, in the dimension of the diversity into the social institution, therefore it is occurred the base and given the meaning along with the direction in human life. The results

²² Koentjaraningrat, 2002, *Pengantar Ilmu Antropologi*, Cetakan Kedelapan, Rineka Cipta, Jakarta, h³ 164

²³ Lihat, Cik Hasan Bisri, 2004, *Pilar-pilar Penelitian Hukum Islam dan Pranata Sosial*, Raja Grafindo Perkasa, Jakarta, hlm. 56

of the process happen in centuries, developed the diversities of the social institutions by the Islamic characteristics.²⁴In the context of the renewal of the Islamic laws, the social institution term is more known as the form of the Islamic law transformation to become a law form consists of the system and the *tasawuf (ilabiyah)* precept and absolute, however Islam grows as the social framework that has the ability to answer all community needs in some of life fields affected by the dynamics of the space and the time.²⁵

The social institutions can be seen from two points of view. Firstly, it is an actualization of the laws especially the Islamic laws, which concentrates on the pattern social interaction after having struggle with the attentive local norms by the community. In the struggle occurred the process of the adaption and the modification between the Islamic laws and the local precepts. Secondly, these institutions are the forms of the social interaction in Islam to fulfill their life needs. The social interaction standardizes and refers to the faith, the values, the attentive social principles.

3. The *Waqf* as the Form of Islamic of *Nusantara*

The Islamic of *Nusantara* is a concept in religious precept sources from Al-Quran and Hadis which is meek by the native community in Indonesia (*Nusantara*) by the interaction occurred between the customs and the Islamic laws. The word Islamic of *Nusantara* can affect the Islamic meaning not only normatively but also in variation. When Islam and *Nusantara* become the phase of Islam *Nusantara* therefore the meaning will be multiple diverse depends on the way of thinking or the applied scientific approaches, namely :²⁶

²⁴ *Ibid.*, hlm. 57

²⁵ OnnyMedaline, *Op Cit.*, hlm. 108

²⁶ Khabibi Muhammad Luthfi, *Islam Nusantara: Relasi Islam dan Budaya Lokal*, Shahih, Vol. 1, Nomor 1, Januari-Juni 2016 ISSN: 2527-8118 (p); 2527-8126 (e) LP2M IAIN Surakarta

Firstly, the historical-anthropological approach causes two terminologies namely Islam of Specific Indonesia and Islam of Cultural *Nusantara*. Islam *Nusantara* means as Islam Specific Indonesia that is: Islam of specific Indonesia, the composite of theological Islamic values with the local traditional values, the culture and the customs in Motherland.

Secondly, the cultural approach. In implementation of the Islamic precept, either in the system of the observance of religious duties, the ritual, or the other religious tradition which have done, inherited and engaged by the ancestors in the daily religious practice of the community.

Thirdly, the approach of the law philosophy occurred the Islamic terminology as the methodology. Abdul Moqsith Ghazali formulated the methodology used in comprehending or implementing IN as *maslahah mursalah, istihsan dan 'urf*. Moqsith took this methodology from the *ushul al-fiqh* study which is practised by the people in mazhab Sunni. The three methods are relevant because of IN more ranged in *ijtihad tatbiqi* aspect (seen by the coherence of the text) than *ijtihad istinbati* (seen from the correspondence with the utilization aspect in the field)

Fourthly, the approach of the laws causes the term of the *fiqh* of *Nusantara*. This term was mentioned by KH Afifuddin Muhajir (nu.or.id). According to him, it is a comprehension, implementation and application of Islam in the *fiqh of muamalah* segment as the dialectical result among *nash, syariat, 'urf*, culture, and the reality in *Nusantara*. He explains that IN only gets into the law section of dynamical and potential *ijtihad iyyat* to change along with the certain space, time, and condition of interest are not belonged to *syawabit qath' iyyat*.

In the scope of the *waqf* study as the form of Islamic of Nusantara, the contents of the *waqf* precept are unlimited in the contents of the principle, the devotion and the *muamalah* values as the scope of the Islamic precepts. However, the concept of the it also stands as a social institution of the community which formed the behavior pattern through the social activities. The social institution consists of the customs, the behavior arrangement, the habit and also the other cultural elements directly or not gather together in one functional unit,²⁷ which have the certain aims. The social institution as the deed, ambition, attitude and eternal cultural utility as well as has the aim to fulfill the social needs.²⁸ The position of the *waqf* as the social institution which its existence can be accepted as a apart of the value system consists of religious, social, cultural, economy or political fields. Therefore, the development of it as the social institution is able to fulfill all kinds of human needs.

The concept of resignation of the belonging right on the wealth voluntarily in order to use and manage for the good deeds, either to the public interest or the certain one, have been done by the people out of Islam in pre and post arrival of Islam. The people have been known about it since the formation of the institution of the community life in the world. Every community provides the public services which are needed by wholly or most of them. The religious place is one of the examples of the known *waqf* by the people for a long time. This is based the people needs on the place of observance of religious duties to do the ritual of the religion which are appropriate with their faith, later on these become the encouraging factor to every religious people to build their own place of the observance of the religious duties.

²⁷ Soerjono Soekanto, *Op Cit.*, hlm. 231

²⁸ *Ibid.*, hlm. 219

C. Conclusions

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Islam is the religion which came to Indonesia to Islamize Indonesian people. The *waqf* is the reality of enculturation of Islam in the custom principles of Indonesian people, that is proved by seeing the utilization of the custom wealth together or aimed to the public community in the mosque forms or the places of the observance of the religious duties. The essence of the similarity of the existing practice by the shifting in the *waqf* implementation. In this arrangement Islam and Indonesia culture in equal position, this comes into the concept of Islamic of Nusantara. The local culture also gives the effect on Islam development in the domain of *Ijtihad*, which Indonesia culture as “the host”² that keeps actively, gives the place and constructs of Islam. The *waqf* as the social institution is the form of the Islamic law transformation to become a law form consists of the system of the *tasawuf (ilabiyah)* and absolut precept funding.

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