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THE CLASH OF MUSLIMS AND THE STATE:  
WAQF AND ZAKAT IN POST INDEPENDENCE INDONESIA

Asep Saepudin Jahar

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Asep Saepudin Jahar

## The Clash of Muslims and the State: Waqf and Zakat in Post Independence Indonesia

**Abstraksi:** *Tulisan ini membahas tentang fenomena praktik wakaf dan zakat pasca kemerdekaan di Indonesia. Ada tiga bagian penting yang menjadi objek kajian tulisan ini. Pertama, politik Islam Orde Baru di bawah Presiden Soeharto yang menerapkan pendekatan netral terhadap praktik-praktik keagamaan bersifat formal seperti wakaf dan zakat. Kedua, kekakuan masyarakat Muslim dalam menginterpretasikan konsep wakaf dan zakat. Dan ketiga, proses transformasi wakaf dan zakat menuju filantropi Islam berprespektif social welfare.*

*Menyangkut aspek pertama, perlu ditegaskan bahwa Soeharto selama berkuasa senantiasa menjaga jarak dengan Islam sebagai ideologi dan menetapkan Pancasila sebagai ideologi tunggal Negara. Belajar dari kuatnya peran Islam seperti terlihat pada sidang konstituante tahun 1950an ketika membahas masalah dasar negara yang berakhir tanpa hasil, Soeharto menyadari bahwa Islam sebagai ideologi akan menjadi kendala dalam pemerintahannya, terutama untuk mempersatukan berbagai kelompok agama-agama. Karena itu ia menolak segala bentuk usaha penerapan syari'ah atau keterlibatan negara dalam urusan ibadah umat Islam. Salah satu contoh menarik adalah kasus wakaf dan zakat.*

*Walaupun terdapat usaha-usaha dari kelompok Muslim konservatif dan modernis membujuk Soeharto memasukkan masalah wakaf dan zakat menjadi bagian penting dari sistem negara, usaha itu tidak pernah berhasil. Pada 1967, kebijakan zakat untuk bisa dikoleksi negara hampir terbentuk, walaupun akhirnya Soeharto sendiri menolak baik menempatkan dirinya sebagai amil zakat (karena ia Muslim sekaligus pimpinan Negara), maupun Departemen Agama ikut terlibat. Sepuluh tahun kemudian, Soeharto hanya memberikan aturan berupa Peraturan Pemerintah tentang wakaf yang berkaitan dengan registrasi tanah wakaf, yang dicantumkan pada PP no. 28/1977.*

Penolakan Soeharto untuk terlibat langsung dalam masalah syari'ah bisa ditafsirkan bukan saja sebagai usaha melindungi negara dari kepentingan kelompok agama tertentu (Islam), tapi juga karena masalah ini tidak memberikan keuntungan politis baginya. Hal ini terbukti dari penolakannya yang kedua pada 1991 untuk terlibat dalam administrasi zakat. Dan ironisnya, walaupun menyangkut kepentingan umat Islam, ia memberikan izin berdirinya ICMI (Ikatan Cendekiwan Muslim Indonesia) tahun 1990. ICMI bagi Soeharto lebih menguntungkan secara politis, dibanding wakaf atau zakat.

Dengan kebijakan yang diterapkan seperti ini, wakaf dan zakat dalam masyarakat selalu mendapatkan kesulitan untuk berkembang. Baik secara legal formal maupun teknis organisasi, pengelolaan wakaf dan zakat pada masa Orde Baru tidak pernah mendapatkan dukungan dari negara. Pada saat yang sama, Soeharto ironisnya lebih menfokuskan pada usaha-usaha filantropi yang dikelola langsung oleh yayasan-yayasannya, seperti Supersemar, untuk menjalin komunikasi dengan masyarakat dengan memberikan bantuan, beasiswa atau semacamnya. Dana yang dikumpulkan yayasan ini umumnya dari para pejabat, kolega dan Badan Usaha Milik Negara.

Disamping itu, tidak berkembangnya zakat dan wakaf juga dipengaruhi oleh sikap ulama yang menafsirkan wilayah ini cenderung terbatas pada konsep ritual, seperti rukun, sah, objek, dan pada saat yang sama mengabaikan tujuan utama ibadah ini yang bersifat sosial. Bahkan, dalam penyaluran zakat dan pemanfaatan hasil wakaf, kepentingan-kepentingan ibadah ritual lebih diutamakan.

Kondisi ini kemudian berubah secara gradual, ketika masa reformasi dimulai tahun 1998. Reformasi paling tidak telah memberikan fasilitas untuk berkembangnya wakaf dan zakat dengan keluarnya UU No. 41/2004 tentang wakaf dan UU No. 38/1999 tentang pengelolaan zakat. Namun, perlu dicatat bahwa saat ini telah melahirkan kesadaran baru bagi komunitas Muslim, terutama aktifis LSM, untuk memberdayakan filantropi Islam sebagai bagian untuk membantu masyarakat miskin yang meningkat drastis pasca krisis moneter tahun 1997. Momentum krisis moneter (ekonomi) dan masalah politik inilah yang akhirnya memberikan ruang cukup luas berkembangnya lembaga-lembaga wakaf dan zakat pasca reformasi. Gejala ini pun mendorong adanya penafsiran-penafsiran baru atas wakaf dan zakat yang dilakukan oleh MUI (Majlis Ulama Indonesia) maupun ormas Islam seperti NU dan Muhammadiyah untuk bisa merespon tantangan masyarakat.



## The Clash of Muslims and the State: Waqf and Zakat in Post Independence Indonesia

**الخلاصة:** يتناول البحث على ظاهرة عملية الوقف والزكاة بعد استقلال إندونيسيا. ينقسم موضوعات البحث إلى ثلاثة أقسام مهمة. الأول، السياسية الإسلامية في عهد الرئيس سوهارتو الذي يتهج سياسة معتدلة تجاه الأعمال الدينية المعروفة مثل الوقف والزكاة. والثاني، جهود المسلمين في تطبيق شريعة الوقف والزكاة. والثالث، عملية الانتقال الوقف والزكاة نحو نظرية الإسلام في مواجهة الفقر الى تتسم برفاهية المجتمع.

نؤكد في القسم الأول أن في فترة حكومته، كان الرئيس سوهارتو يضع دائما المسافة بينه وبين الإسلام كأيدولوجي وبقر المبادئ الخمسة (بانثاسيلا) كأيدولوجي وحيد في البلاد. نظرا إلى قوة الدور للإسلام في الخمسينات الماضية خاصة في الجلسة الدستورية التي كانت تناقش دستور للدولة دون أن تسفر عنها أية نتيجة، أحس الرئيس بأن أيديولوجية الإسلام تمثل عقبات على حكومته خاصة في توحيد التجمعات الدينية المختلف. لذلك رفض أي جهود لتطبيق الشريعة الإسلامية أو تدخل الدولة في شؤون العبادات للمسلمين. وعلى سبيل المثال قضية الوقف والزكاة.

رغم المحاولات العديدة من قبل الفئة المسلمة التقليدية والعصرية لإقناع الرئيس سوهارتو بإدخال الوقف والزكاة في نظام الدولة، لكنها باءت بالفشل. في عام ١٩٦٧، مشروع الزكاة على وشيك تكوينه داخل الدولة، إلا أنه في الأخير رفض أن يكون نفسه رئيسا للجنة الزكاة،

لأنه مسلم ورئيس الدولة في نفس الوقت أو يكون اشتراك وزارة الشؤون الدينية فيها. وبعد ١٠ سنوات، لم يصدر إلا اللائحة الحكومية بشأن تسجيل الأراضي الوقفية هي اللائحة رقم ٢٨ سنة ١٩٧٧.

رفض الرئيس سوهارتو في إقحام نفسه مباشرة داخل قضية الشريعة قد يفهم ذلك من جهوده لتخليص الدولة من تجمع ديني معين فقط، بل هذه القضية لم تأت من ورائها أية مصلحة سياسية له. والدليل على ذلك رفضه لمرة ثانية في عام ١٩٩١ للدخول في الشؤون الإدارية للزكاة. والغريب أنه أعطى تصريحاً لتأسيس "جمعية المفكرين الإسلاميين الإندونيسيين" في سنة ١٩٩٠. وكانت هذه الجمعية أكثر مكسباً سياسياً له مقارنة بالوقف والزكاة.

وبهذه السياسية، كانت قضية الوقف والزكاة تواجه عقبات في تطويرها، سواء كانت من ناحية قانونية أم من ناحية تنظيمية، فإدارة الوقف والزكاة لم تحصل على تأييد الحكومة. وفي وقت نفسه والغريب أن الرئيس اهتم اهتماماً كبيراً بقضية إنسانية من خلال المؤسسات التي أسسها مثل "سويسمار" لتوطيد العلاقة مع المجتمع بتقديم لهم المعونات والمنح الدراسية وما أشبه ذلك. وأموال هذه المؤسسات جاءت من الوزراء في حكومته وزملائه وشركات القطاع العام.

والأسباب الأخرى من عدم تطور مسألة الوقف والزكاة تعود إلى موقف العلماء الذين فسروها بالتركيز على نظرية فقهية محضة مثل أركانها وشروط صحتها وموضوعها، وفي نفس الوقت أهملوا فيها الهدف الأساسي والاجتماعي، بل في توزيع أموال الزكاة والوقف يوجهونها أكثر إلى مصالح طقوسية.

وتغير هذا الوضع تدريجياً منذ عصر الإصلاح في عام ١٩٩٨ الذي أفسح الطريق على الأقل لتطوير الوقف والزكاة بصدر القانون رقم ٤١ سنة ٢٠٠٤ بشأن الوقف والقانون رقم ٣٩ سنة ١٩٩٩ بشأن إدارة الزكاة. وجدير بالذكر أن يظهر الآن الوعي الجديد للمسلمين خاصة داخل ناشطي الهيئة الأهلية في تفعيل قيم إنسانية إسلامية كجهود لمساعدة الفقراء والمساكين الذين يرتفع عددهم بسرعة بعد الأزمة النقدية سنة ١٩٩٧. وهذه الأزمة والقضايا السياسية هي التي أفسحت طريقاً واسعاً لتطور لجان الوقف والزكاة. ودفعت هذه الظاهرة إلى ظهور التفسيرات الجديدة للوقف والزكاة من قبل مجلس العلماء الإندونيسيين والتنظيمات الإسلامية الأخرى مثل هُضة العلماء والمحمدية للرد على تحديات اجتماعية.

The considerable efforts made by Indonesian Muslims to see waqf and zakat regulations instituted within the state system in recent decades reflects not only the importance Muslims in this country place on Islamic teachings, but also the strong sense of tradition attached to philanthropic practices. The roots of philanthropy, not just in the form of waqf and zakat, can be traced back to long before the coming of Islam to the archipelago.

Waqf constitutes the act of one person endowing an object for others to use and benefit from. It literally means to “block” the original owner from using the endowed object.<sup>1</sup> The historical origins of waqf can be traced back to the establishment of the first mosque in Islam — the Quba mosque in Madinah, the city where the Prophet migrated after he fled Mecca. It was said that the land belonged to the orphans of Banī al-Najjār, and so in order to establish the first mosque there, the Prophet bought it from the orphans.<sup>2</sup> The mosque and the land on which it was built were considered waqf in this case because the Prophet — the owner of the land — endowed the land and the mosque for the Muslim community to benefit from thus giving up ownership of the land.

While the practice of waqf is not clearly stipulated in the Qur’ān, it is however found in the Prophetic traditions (*ḥadīth*). The Qur’ān further commands Muslims to do good deeds, with waqf falling into the category of “good deeds”.<sup>3</sup> One of the best examples of waqf from the earliest times of Islam — which also reinforces its legitimacy — is that of ‘Umar ibn al-Khaṭṭāb’s (the second Caliph) pronouncement that his land in Khaybar was to be given as waqf for the poor and travellers who were striving in the path of God, such as those seeking religious knowledge.<sup>4</sup> In later times, waqf was interpreted in such a way that family waqf (*waqf ahl*) was also valid, meaning that family members could be the immediate beneficiaries of a waqf donation. This was different to public waqf (*waqf khayr*) which was designed to help the general public for religious purposes.

Zakat on the other hand means (linguistically) “to grow” or “cleanse”. Zakat was made obligatory for Muslims in the second year after the *Hijra* when the Prophet was living in Madinah.<sup>5</sup> In terms of Islamic Law, zakat — of which there are two types, that is, *zakat al-fiṭr* and *zakat al-māl*, refers to charity which is obligatory for all Muslims to give provided they meet certain conditions. *Zakat al-māl* is a levy paid on one’s wealth and property, including gold and land, and is collected in accordance with given requirements and conditions and is distributed amongst *al-aṣnāf al-thamāniyya*, or the eight categories of recipients.<sup>6</sup> The importance and obligation of zakat in Islam is evidenced by the fact

that it is considered one of the five pillars of Islam and is only second to *ṣalāt* (praying) in terms of importance<sup>7</sup>. This religious act not only represents a religious obligation (*'ibāda*), but also reflects one's virtue and commitment to maintaining social welfare by promoting justice between the rich and the poor.

Waqf and zakat not only constitute forms of religious worship, but also a source of finance for religious and social activities. Zakat is a ritual obligation like *ṣalāt* (praying) in the sense that every Muslim who meets the requirements is obliged to carry it out. Waqf, on the other hand, is a voluntary act, which one is motivated to do only by promises of rewards in the hereafter. In looking at Islamic practices throughout the world, it should be acknowledged that attitudes towards waqf or zakat practices may differ slightly from one region to another. In Indonesia, for example, waqf and zakat are considered religious rites rather than an effort to improve the social welfare of the general public.

In the socio-political context of Indonesia, the political system and the struggle for the Muslim identity have greatly influenced the development of waqf and zakat in post-independence Indonesia. The political development of Indonesia can be divided into four specific periods, that is, the colonial times, the Old Order era,<sup>8</sup> the New Order era<sup>9</sup> and the Reformation Era<sup>10</sup>. Each era has had a significant impact on the development of waqf and zakat practices. When the Dutch ruled Indonesia, for instance, waqf and zakat was a crucial financial source for Muslims in social, educational and political activities. In order to mitigate the use of waqf and zakat resources by Muslims to achieve their political aspirations, the colonial government applied a set of regulations on waqf and zakat administration. This policy, as history showed, not only led to a reduction in funds collected but also resulted in the distortion of waqf and zakat's real objective.<sup>11</sup>

The state's policy towards Islam in New Order times was not dramatically different from that of the colonial government. The New Order government, furthermore, was still suspicious of Muslims, among others, for fear of their efforts to have Islam introduced as the state ideology replacing the Pancasila. As a result policy related to Islamic teachings — waqf and zakat included — were neglected by the Soeharto government. The only regulation relevant to waqf that was issued during the New Order's reign was government regulation no. 28/1977 on the registration of waqf land. This regulation, however, has nothing to do with strengthening the waqf system in an effort to improve social welfare in Muslim communities. In the field of zakat, the New Order regime never allowed the state to facilitate zakat administration.

The huge potential of waqf in Indonesia can be seen from the amount of waqf land in Indonesia, which totals approximately 1,566,672,406 m<sup>2</sup>.<sup>12</sup> This large amount of waqf land, however, does not contribute significantly to the development of Muslim communities, due primarily to poor management. As such, the amount mentioned above is mostly administered in a traditional manner<sup>13</sup> with little concern for using the waqf land and the revenue derived from the waqf in the most efficient manner in order to effectively develop Muslim communities. The absence of regulations that would ensure waqf resources are managed efficiently paves the way for people to administer the waqf as they see fit.

Zakat shares much the same fate at waqf due also to the absence of strong regulations. Because of the voluntary nature of zakat payment, as well as the lack formal regulations, people have the liberty to pay their zakat if they wish and to whom they wish. In other words, although zakat is regarded as a religious obligation, it is, however, not enforced by the government or other authority.

This paper will focus on waqf and zakat policy, practices and developments in the post-independence era, or more specifically the New Order era and the reformation era. These two phases of political development of Indonesia have undoubtedly shaped the political system in general and Islam in particular, including waqf and zakat practices. When Soeharto's government fell in 1998, the political conditions changed drastically. It was because of Habibie, who succeeded Soeharto as president that democracy was able to flourish. And it was Habibie introduced Act no. 38/1999 on zakat administration. This Act, although containing some weaknesses in terms of the management system, has opened the doors to innovation in the field of zakat administration in this country, and the state now plays an important role as regulator and facilitator of zakat administration.

In the case of waqf, the reformation era also saw the introduction of Act no. 41/2004, enacted in 2004. Just as with zakat, this act was introduced in response to the Muslim community's demands for the development of waqf practices across the country. Most importantly this act specifies the position of the Indonesian Waqf Body, which functions not only to control waqf administration but also to improve its effectiveness in accordance with waqf's purpose.

### **The New Order Regime and Islam**

Soeharto's coming to power in 1967 marked a new political phase in the relationship between Islam and the state. Learning from political disputes of the past – including the debate surrounding the role of

religion in the state between 1957 and 1959<sup>14</sup> - Soeharto believed that national unity should be the main concern of his administration. Therefore, Soeharto decided to use *Pancasila* (the five principles) as a vehicle to unite all segments of society irrespective of people's religious affiliation or ethnic background.<sup>15</sup> Any ideology identified as being communist or considered in opposition to the *Pancasila* was banned and in turn associations or religious organizations were required to use *Pancasila* as their ideological foundation. Such a political strategy was employed as a means of avoiding or minimizing conflicts that would obviously affect the stability of the nation. Hence the *Pancasila* (the five principles) became the cornerstone of state ideology in building a strong and stable nation. Reducing the religious identity within the state system was held by Soeharto to be the moderate way of achieving harmony between Muslims, Christians, Buddhists and Hindus.

Placing Islam as the basis of the Indonesian political system, even though its adherents constitute the majority in Indonesian, was viewed with great suspicion by political rivals such as communists, Christians and nationalists. During Soekarno's time in power, particularly between 1955 and 1959, political Islam (represented by Masyumi, or the Consultative Council of Indonesian Muslims [*Majlis Syura Muslimin Indonesia*]) gained significant support from Muslims. Masyumi, however, suffered bitter oppression at the hands of the Soekarno government.<sup>16</sup> One reason for this was that Masyumi was used by Muslims accused of planning to establish a state based on Islamic law — or at least sought to impose Islamic principles considered contradictory to the *Pancasila* — as a political vehicle. As a result Masyumi was dissolved and was never rehabilitated. For Muslims the rise of Soeharto to power was filled with hopes of rehabilitating Masyumi, although this never materialized. Unlike Soekarno, whose support-base came mostly from PNI (the Indonesian Political Party) and some of the elite within PKI (the Indonesian Communist Party), Soeharto had support from the army and his political party GOLKAR (Functional Group, Golongan Karya). The army's involvement in politics was marked by their direct involvement in the prohibition of Islamic parties like Masyumi. For some of the nationalist elite and Christians the power of political Islam was regarded as a threat to modernization.<sup>17</sup> In other words, the efforts to restrict political Islam were not only in Soeharto's political interests but also the interests of other parties and their ideologies, namely the *Pancasila*.

Soeharto was wary of political Islam and took a neutral stance on Islam in order to avoid direct opposition and maintain harmony and



equality among Indonesian people. Soeharto realized that restricting Muslims' activities may have negative if not destructive implications for his government. Soeharto's government then applied the policy of "depolitization" of religion, which aimed to protect the state's interests above all religions that existed in Indonesia. As a result, religion - especially political Islam - was severely restricted, meaning that Muslims were free to be involved in politics as long as they did so without a religious basis. Soeharto's restriction on religious activities was none the more evident than in the practice of waqf and zakat administration. Soeharto, despite being considered a Muslim, never allowed the state to concern itself with matters of improving the system of waqf and zakat administration. Soeharto's stance, in this regard, can be seen from his stark policy to avoid any forms of Islamization in this country.

### **Waqf Regulations during the New Order Regime**

Given Soeharto's neutral stance on Islam, Muslims were free to determine waqf practices as long as such practices did not impact on political affairs. Thus, over time waqf was moulded into a mechanism that was of a traditional manner, considering mostly religious and ritual purposes. This came about mainly as a result of the adoption of static legal interpretation. During the New Order regime, only one government regulation was introduced, government regulation (PP) no. 28/1977, which dealt only with the registration of waqf land. This regulation was introduced purely in an attempt to ensure that the waqf assets were only used for religious and social activities, and not political ones.

Prior to the New Order regime, some attempts were made by the Department of Religion to regulate waqf administration. Such attempts included PP no. 33/1949 and PP No. 8/1950. In 1952, the Department of Religion released regulations no. 9 and 10/1952, which emphasized its authority to supervise, justify and register any and all waqfs.<sup>18</sup> In technical matters, through regulation no. 2/1958, the Department of Religion ruled that waqfs had to be established in accordance with their religious and social purposes. The Department of Religion further issued another regulation (no. 3/1958) insisting that the religious offices in every sub-district across the county were authorized to register and legalize the waqf.<sup>19</sup> The Department of Religion later introduced regulations no. 114/1969 and no. 18/1975, though they only pertained to the mechanism of creating waqf on land. All of these regulations, however, did not seek to utilise the waqf system as a means of meeting the religious and social needs of society. Rather, they focused solely on the mechanism



of waqf registration and certification rather than on enhancing the benefit it could provide.<sup>20</sup>

The lack of government regulation regarding waqf land was attributed to the government's belief that waqf rules were sufficiently covered by the Act of Agrarian Law no. 5/1960 which allows peoples to own and take benefit from land endowed as waqf as long as it is used for religious purposes or for social benefit.<sup>21</sup> Basically, this Act was an attempt to revise the existing Dutch laws, which were no longer relevant to the Indonesian needs and culture, particularly with regards to land rights.<sup>22</sup> In 1961, government regulation no. 10/1961 on land registration was issued and clearly stated (article 1) that "the right to use land is guaranteed if legally validated by the agrarian and religious offices." In addition, in regulation no. 38/1963 the status of land owned by religious institutions was such that, "The ownership of land is permissible as long as the Department of Religion recognizes it." Politically, the New Order regime always threw caution to the wind when it came to waqf. While Soeharto did not ban waqf as such, he did, however, control the use of waqf revenue to ensure that it was not used for activities outside of the realm of religion. One important point to note here is that the government merely introduced government regulations' (*Peraturan Pemerintah*, or PP) as opposed to acts (*Undang-Undang*), because of the belief that doing so would only encourage Muslims to seek changes to other laws in fields outside of waqf and eventually push for the implementation of Islamic law. The waqf regulations were introduced only as a stop gap measure for seemingly meeting Muslims' demands.

### **Government Regulation no. 28/1977**

To accommodate Muslims' demands in the field of waqf, the government introduced PP no. 28/1977, which provided guidelines for a simple model of waqf administration. This regulation, however, had little to do with the mechanism ensuring that waqf would benefit the public, except in religious matters. Instead the main purpose of enacting the government regulation was basically to register and certify waqf lands. However, how waqf should be organized and in what manner the government could meet Muslim interests in promoting waqf, particularly in providing human resources and financial support for technical administration, was completely neglected. The regulation, however, seems to acknowledge and appease Muslims' demands by addressing matters pertaining to both the formal regulation of lands used for waqf and the traditional waqf interpretation.

Four elements are required to be fulfilled whenever someone intends to make waqf. These strict requirements, as described in fiqh (Islamic jurisprudence) books from Sunni schools of law, are considered vital for a waqf to be considered valid: the founder, the object given as waqf, the formal statement (the waqf deed) and the administrator.<sup>23</sup> According to government regulation no. 28/ 1977, the founder is the person who determines the administration of the waqf, the beneficiaries and the administrator.<sup>24</sup> The administrator is not entitled to deviate from the founder's desires as stated in the waqf deed (*waqfiyya*). It is stated that the founder can be an individual or legal institution. Such an approach is based on fiqh that is generally agreed upon by all Indonesian Muslims. In order to ensure legal certainty, the land has to be legally and religiously dedicated for waqf by making it at the religious office. The office, on the one hand, represents the government side that can supervise and control the waqf. In this regulation, a waqf, for instance, is not only regarded as a religious realization which is sufficiently based on ritual principles but also transformed into a state system that is only legally valid if recognised by the religious office, which requires the submission of all of the required legal documents. The religious model, however, is still dominant as can be seen on the mechanism of waqf transaction which is generally carried out through an oral statement pronounced by the founder and witnessed by at least two persons. Once the waqf has been created the founder is relieved of any authority he or she had over the waqf property.

Once the waqf property has been given, it remains waqf permanently and generally cannot be exchanged unless the waqf is no longer productive or it ceases to generate income. The exchange of waqf is only possible if the administrator has obtained legal permission from the Department of Religion (the religious office).<sup>25</sup> The administrator is also allowed to exchange the waqf if the substitution is equal to or has a higher value than the original waqf.<sup>26</sup> Such a regulation is likely only a minimal effort on the government's part to ensure that waqf meets its intended goal, which is to give benefit to the general public. In practice, however, the role of the religious office remains passive particularly on the mechanism and the purpose of exchange.

The waqf administrator (*nāzir*) is responsible for organizing the waqf in accordance with the founder's wishes as stipulated in the waqf deed. Placing the administrator in such a role means that he/she seems only to act as a 'guard' of waqf rather than as a manager who can act at his own discretion in order to enhance the waqf's productivity. The regulation only mentions the administrator's rights to receive income

derived from the waqf (a maximum of ten percent of the total income).<sup>27</sup> As such, the administrator is required to be an Indonesian citizen with a sound mind and living in the region where the waqf exists.<sup>28</sup> Sometimes a number of people are recommended to serve as administrators as a means to improve the management of the waqf. If one of the administrators dies, a current administrator is allowed to nominate candidates for the job after having obtained consent from the Minister of Religion (or the religious office).<sup>29</sup> The law moreover stipulates that the religious court is authorized to resolve disputes over waqf.<sup>30</sup>

It is obvious from the above that the government regulation focuses merely on matters of registration and legalization of waqf property, not how to manage waqf more effectively and attempt to make it more productive. This illustrates the predisposition for Muslims of the time to approach waqf affairs in a static and traditional manner. In terms of the law, regulation PP no. 28/1977 does not sufficiently regulate how waqf should be administered,<sup>31</sup> especially since this PP is only an extension of Act no. 5/1960 on land.

### The New Order Policy on Zakat

Soon after his inauguration as the second president of the Republic of Indonesia in 1967, Soeharto faced a great deal of uncertainty in social, economic and political matters, all of which were devastating the country. Further to poverty and high inflation, rebellions in some parts of the country and the remnants of communist movements threatened national stability. Soeharto's government first concentrated on social and economic improvement. In addition, the government held *Pancasila* – which was neither purely religious nor purely secular - as the sole basis of the state ideology.<sup>32</sup> The New Order regime tried to keep aloof from taking a stance on religion in order to maintain a neutral approach towards all citizens.

For Muslims, efforts to apply Islamic law in Indonesia became an endless struggle. This struggle included aspirations to introduce zakat administration that was directly organized and supervised by the government. Even before Soeharto came to power, in 1952 a conference was held in Sukabumi regarding the management of zakat facilitated by the Minister of Religion. On that occasion, the mechanism of zakat administration on the basis of a professional system had thoroughly been discussed. Besides zakat, the conference also discussed the possibility of organizing waqf directly through a state institution. However, with letter no. 1/D/13/7 June 1958, delivered to religious offices across the country, the Department of Religion decided that

zakat collection could not directly be organized by the state, but instead, every Muslim was free to give his zakat to whom he wished according to Islamic principles. The cancellation of the collection of zakat through a formal body or state institution was likely linked to opposition made by those who feared that this could open the doors to the eventual introduction of Islamic law in Indonesia, a topic that was hotly debated in the national assembly from 1957-1959.

An effort to implement Islamic law was later made, when in 1968, some *ulama* of DKI Jakarta tried to persuade President Soeharto to become an administrator of zakat and urge Muslim people to pay their zakat. They asked the President to advise the governors of all provinces to take initiatives in coordinating the collection and distribution of zakat in accordance with the principles of zakat law.<sup>33</sup> In response to such a suggestion, Soeharto announced on the occasion of the *Isrā Mi'raj* celebration on 26 October 1968 that as "a private citizen" he was willing to be in charge of the massive zakat collection and would submit annual reports.<sup>34</sup> Soeharto's readiness to organize zakat administration was marked by Presidential Instruction No.07/PRIN/10/1968 by delegating General Alamsyah Ratu Prawiranegara, Colonel Inf. M. Drs. Azwar Hamid and Colonel Inf. Ali Affandi to assist him with zakat administration. His apparent readiness to become the official administrator of zakat was merely the President playing his political cards, for the formal administration organized by the central government under his control never eventuated. Conversely, on 16 December 1968 his Cabinet Secretary sent a letter (no. B-3732/Setkab/12/1968) to the Minister of Religion implying that Soeharto objected to the Regulation made by the Minister of Religion no. 4/1968 on zakat administration.<sup>35</sup> One year later, the Department of Religion postponed its regulation on zakat administration by issuing the Letter of Instruction no. 1/1969. It was not explicitly clear how and why the regulation was cancelled. However, by reading it one can see that the Department of Religion was in a difficult position to make a just decision between Soeharto's objections on the one hand and Muslim appeals on the other. In 1991, another attempt to request President Soeharto to become the national zakat administrator was also made by Munawir Sjadzali and KH Hasan Basri. However, Soeharto declined again to accept this project but rather suggested they create a Joint Decree between the Department for Home Affairs and the Department of Religion on the zakat administration.<sup>36</sup>

Although the efforts made by the Department of Religion failed, at some provincial levels the response to President Soeharto's readiness to become the zakat administrator led to many interpretations. The

governors at some provincial levels saw it as an optional regulation depending on the local demands and circumstances. In DKI Jakarta, governor Ali Sadikin issued the letter of decree on the establishment of the 'āmil zakat agency on the basis of *sharī'ah*.<sup>37</sup> This agency was directly supervised by the governor and deputy governor by delegating its authority to all levels from village level (*keurahan*), sub-district (*kecamatan*) until the province of DKI through coordination with the religious offices in the respective districts. Since the zakat agency was attached to the provincial government, the governor provided a subsidy for the administration expenses, with the zakat income itself exclusively distributed to recipients. The members of zakat administration consist of government officials, the 'ulamā', the religious people, Muslim organizations and the House of Representatives.<sup>38</sup>

The policy of mass collection of zakat organized directly by the provincial administration was also conducted by the Aceh province through the letters of the governor no. 11/1968, no. 452/DKDA/1968 and no. 180/MU/1968 on 28 November 1968. The legal formula of such a regulation was marked by giving instructions to the *bupati* or major at all regions in the Aceh province to cooperate with the religious office to create the zakat agency in the respective regions starting from the villages, the districts up to the central province.<sup>39</sup> In order to improve zakat collection, through the letter no. 52/1973 (4 April 1973) the governor tried to establish the body of religious property management (BPHA) which was a charity body in essence. Three years later, letter no. 407/1976 (28 June 1976) was issued to restructure BPHA, which then became the Body of Religious Property (BPH). In the long run however, this institution (which is in charge of fund-raising) again failed to enhance zakat collection to meet Muslims' interests.

### **Zakat in the Reformation Era — Zakat Act no. 38/1999**

The New Order regime was overthrown in 1998 following demonstrations over President Soeharto's failure to stamp out corruption and end multiple crises.<sup>40</sup> Vice-President B.J. Habibie was appointed to succeed Soeharto tasked with preparing for the general elections for a new government. However the legitimacy of Habibie's appointment was questioned by a number of parties due to the fact that his inauguration, which took place at the presidential palace, was only attended by Soeharto and some cabinet members, as opposed to being inaugurated by the People's Consultative Assembly (MPR), which holds the supreme authority in appointing and dismissing the President. At any rate, Habibie's government was regarded only as a transitional

government. Habibie immediately went to work on introducing regulations which would give more freedom to political parties, the press and the general population. Further to this, it was during Habibie's time as President that the House of Representatives (DPR) introduced a number of new laws including the law on zakat administration no. 38/1999. In addition, the political atmosphere during Habibie's time was marked by the growing role of Muslims in politics and policy-making.

Though Habibie was not strongly supported by the military, his government was backed by important segments of the Islamic community with whom he maintained close relations, particularly the modernist wing. This close relationship began in 1990 when he was appointed the Chairman of the Indonesian Muslim Intellectual Association (ICMI), a position he held from December 1990 to March 1998. In addition, Habibie was also strongly involved in Golkar, the ruling party during the New Order regime, long before he headed ICMI. Habibie also received a great deal of support from KISDI (the Committee for Islamic Solidarity and Da'wa) and DIDI (the Board of Islamic Da'wa). KISDI's support for Habibie was demonstrated on 22 May 1998 when it staged a rally at the National Assembly with a banner which read, "Opposition to Habibie = Opposition to Islam."<sup>41</sup> It was at this time that Muslim organizations were free to express their demands in public almost without any restriction from state officials. For Habibie, support from the Muslims was important not only to the survival of his government but also vital to the achievement of his ultimate goal: re-election. In this regards, the enactment of zakat law no. 38/1999 could be viewed as part of his efforts to garner political support from Muslim constituents.

Even though efforts to have introduced laws regulating the collection of zakat were made in 1968 and 1991 (both of which subsequently failed), the enactment of law no. 38/1999 in the reformation era was a political victory for the Muslim community. Hence, in spite of the fact that Habibie's government was regarded as a transitional government, many regulations were legislated during that time.<sup>42</sup> With regards to zakat law no. 38/1999, though it is recognized as an important step in regulating zakat administration, a sign of negotiation amongst some different parties having different political interests is apparent especially in putting the role of Act. The Act, for instance, is not authorized to not enforce zakat payment for every individual Muslim but instead leaving the choice of payment to them. The legal rationale for this is based on the



consideration that the state constitutionally must respect each individual's personal beliefs.<sup>43</sup>

Law no. 38/1999 on zakat administration was able to be successfully enacted not solely because the roots of democracy had begun to grow in the country; but also because this law is based on the rationale purpose of zakat, that is, to help the poor. This reason is relevant to and clearly mentioned in the state constitution, especially article 34 of UUD 1945.<sup>44</sup> In this article, furthermore, the state is responsible to protect and provide necessary support for the poor and needy citizens, even though, in fact, the state fails to do so. This is of course of great relevance considering the main aim of zakat is to improve the social and economic position of the poor.

As an introductory remark to the draft of the zakat law delivered in front of the House of Representatives, the Minister of Religion, H.A. Malik Fadjar stated that, "zakat is not only an obligatory duty for every Muslim, but also functions to provide a financial source for social amelioration and embodies social justice among people." His speech in the House of Representative, besides persuading the House members to acknowledge the social role of zakat, marks a significant shift in the attitudes of the state towards zakat administration. By emphasizing the improvement of the circumstances of the poor and needy through improving zakat management, the government not only responded to Muslim aspirations but also convinced people of the significance of social welfare. Malik Fadjar furthermore insisted that "the administration of zakat carried out by the Muslim mass social organizations and some zakat agencies did not yet contribute significantly to the social welfare and the benefit of the poor." Based on this circumstance, he insisted, Habibie's government believed that a law regulating zakat administration needed to be introduced.<sup>45</sup>

With regards to the policy exercised during Habibie's administration, the enactment of law no. 38/1999 has multifaceted meanings for both Muslims and political parties. On one side, it not only seems to accommodate Muslims' aspirations but also paved the way for the political engagement of Muslims. The law of zakat administration can be summarized as follows: Firstly, it seeks to involve the government in facilitating the collection of zakat. Secondly, the existence of zakat agencies either directly linked to the government or independently organized by Muslim communities is used as the mechanism of zakat mobilization. Thirdly, the Department of Religion has the right to determine legal policy regarding zakat administration agencies and their organizational systems across the country.



## Zakat and the State

In accordance with law no. 38/1999, there exist two types of zakat administration agency in Indonesia, that is non-government zakat agencies called *Lembaga Amil Zakat* (Zakat Collection Institutions), or LAZ, and the semi-governmental agencies called the *Badan Amil Zakat* (Zakat Collection Agencies) or BAZ. In carrying out their tasks of zakat collection, administration and distribution, both BAZ and LAZ should comply with rules made by the Directorate of Waqf and Zakat Development at the Department of Religion.

As the status of LAZ is independent, it can be established by any person or group from the Muslim community regardless of their social and political affiliation such as Muslim activists, professionals, government officials and '*ulamā*'. This zakat institution organizes zakat collection from Muslims wherever they live across the country. The BAZ, however, follows a bureaucratic system at every governmental level from the Department of Religion down to the lowest sub-district level (*kecamatan*), which is directly controlled by the head of the sub-district (*camat*) and the religious office (KUA).<sup>46</sup> Such a hierarchical structure seems to illustrate that zakat — despite being a religious duty — has been adopted by the state as, to a certain extent, a political vehicle for controlling the financial flow of zakat income.

Such a system of organization has to date proven to be ineffective in improving zakat collection and distribution.<sup>47</sup> This has resulted likely from three factors. Firstly, people still have little trust in BAZ and are thus reluctant to transfer their zakat to BAZ. Secondly, some of the BAZ's personnel are not fully involved in carrying out daily administration, since, at the same time they are required to work at the government offices. Thirdly, the quality of the human resources is relatively low.<sup>48</sup>

For Muslims, the institutionalisation of religious practices directly under a state system may ensure the implementation of religious duties,<sup>49</sup> although such direct intervention may also give rise to political distortion and the politicization of religion by state officials, which eventually inhibits Islamic norms. For some Muslims, however, the method of collecting zakat through state institutions has provided a nuance of Islamization as well as democratization for their aspirations. The reason for this is reflected in Muslims understanding that in Islam there is no clear separation between the state and religion in the sense that religious values and norms are combined with and adapted to the state political system. Such a religious and political concept departs from the assumption that daily life for a Muslim is marked by *ibādah* (submission to God) and

therefore ritual and political matters are organized in one system. In the Indonesian case, the establishment of the Department of Religion is basically intended to accommodate Muslims' aspirations in implementing their religious teachings within the state system. This department, however, is not only limited to Muslim groups but also serves the interests of other non-Muslim people such as Christians. With regards to Muslim interests, besides education and some other religious affairs such as pilgrimage (*hajj*), one of the main tasks of this Department is to serve Muslim people in providing regulations on waqf and zakat. To fulfil such a task, the Department created a directorate called the Directorate of Waqf and Zakat Administration which functions to make policies and control the administration system of waqf and zakat across the country. Even though special attention is paid to this matter, the state, however, must maintain a neutral position over religious doctrine in accordance with the constitution, which stipulates that the state is based neither on religion nor on secular objectives. Therefore, *vis-à-vis* zakat the Department of Religion places itself merely as a regulator and facilitator of the zakat system rather than becoming directly involved in zakat administration.

In contrast to BAZ, the non-governmental LAZ<sup>50</sup>, run by Muslim professionals or activists, is organized in a more professional and independent manner. This professionalism results in considerably greater amounts of zakat income being directed to LAZ and also directly influences zakat distribution in Muslim communities. As will be discussed later below, the independent nature of LAZ is also reflected in its nature of making the programs relevant to the zakat recipients and their needs. Besides having independence in zakat administration, the allocation of zakat income is not restricted to the strict legal interpretation as elaborated in the fiqh books, but rather it is based on the conditional needs of society in accordance with the planned programs. The distribution of zakat, for instance, focuses on productive purposes (rather than consumptive ones) on the basis of its priorities. This flexible approach may lead to the betterment of social conditions especially among the poor and could in turn strengthen the position of civil society in paving the way for a modern and democratic state.<sup>51</sup>

Regarding their role of administration, BAZ and LAZ are authorized to deal with planning, organizing, executing and controlling the collection and the distribution of zakat.<sup>52</sup> Planning means that zakat agencies are required to identify *muzakki* (zakat payers) as well as *mustahiq* (the recipients). This mechanism is expected to ensure the certainty of operation that can be carried out by a zakat agency. As

mentioned earlier, there are two types of zakat, that is zakat collection on personal property and wealth (*zakat māl*), and *zakat fiṭrah*. The former covers commodities having economic value such as gold, silver and money, as well as goods derived from such economic activities as trading, agricultural cultivation, fishery, mining and all kinds of public services (e.g. hotels, hospitals, etc.). Interestingly, the collection as stipulated by the law may also include some forms of voluntary alms such as *hiba* (gift) and *ṣadaqa*, amongst others.<sup>53</sup> This broad interpretation of objects on which zakat should be paid indicates that there is a tendency amongst Muslims to consider zakat in terms of its function and objectives as opposed to the concept of zakat commonly expounded in the classical *fiqh* books which see zakat more in terms of its ritual function, and not in terms of the social benefit it could provide. This does not mean, however, that the *fiqh* books have become obsolete for they are still referred to where relevant.

While the list of objects on which zakat should be given is extensive, the act on zakat does not stipulate explicitly an effective system and mechanism of ensuring payment since every Muslim has the liberty to pay zakat at his or her own discretion.<sup>54</sup> This consequently leads to uncertainty over accounting the flow of zakat in society. In other words, we still experience difficulties in estimating the amount of zakat being collected and paid by people, since there is still a large amount of zakat distributed directly by the payers to the recipients. Therefore, zakat payment is dependent merely on the personal piety of Muslim citizens, because the zakat agencies can only persuade them through advertising, such as brochures, banners, or advertisements in newspapers. The absence of the enforcement of zakat payment legally is a result of the nature of the law, which deals only with the system of zakat administration, thus making zakat purely a private matter. The law provides zakat agencies with the green light to collect zakat on a mass scale, but does not allow them to enforce the collection; thus it might not be expected to be the driving force for enhancing zakat collection, since the individual is left with the decision as to whether or not to pay zakat. Hence the persuasive call of the *ulama* or religious figures and the innovative efforts of zakat agencies play a critical role in persuading Muslims to pay their zakat. In this light, zakat has become a "religious market commodity". Publications, advertisements and the like have been employed to promote zakat collection. The collection of zakat is also often coordinated with financial institutions such as banks, which allow the zakat agencies to collect the zakat levied on money.<sup>55</sup>

The independence of those who pay zakat, the *muzakki*, is also evident when we look at the mechanism of zakat calculation. Every Muslim, for instance, has the freedom to calculate his or her zakat on the basis of zakat rules without any intervention from the zakat collector, although the zakat collector can calculate the amount of zakat levied on the property if the owner requests.<sup>56</sup> All of this affirms the perception among Muslim scholars that zakat is generally an individual duty which cannot be enforced by the state.<sup>57</sup>

There is further a distinction between the income derived from an obligatory payment (zakat) and voluntary almsgiving (*sadaqa*, *infāq*, etc.) in relation to their distribution. Though zakat agencies are given the choice to deliver the zakat income in accordance with their programs,<sup>58</sup> the conventional nature of zakat administration is still dominant. Zakat, for instance, should be distributed to the poor and the needy or *al-aṣnāf al-thamāniya*.<sup>59</sup> It means, despite efforts to interpret it having been extended into such actual cases as improvement of small business amongst the traders, the administrator should hold such mechanism without any reserve. Unlike zakat, forms of voluntary almsgivings such as *sadaqa*, *infāq*, and gifts can be allocated to finance productive activities,<sup>60</sup> although in practice the distinction between the two is difficult to be justified. As will be discussed below, proceeds from voluntary almsgiving are allocated into various fields of social development.

### The Department of Religion and Zakat Agencies

As the facilitator and regulator of zakat agencies in the country, the Department of Religion (through the Directorate of Waqf and Zakat Development) is given the authority to issue a license for non-government zakat agencies<sup>61</sup> as well as monitor their operations.<sup>62</sup> Ultimately, the Department of Religion has the function of coordinating, facilitating and regulating zakat administration.

Department of Religion decree no. 581/1999 states that the Directorate of Waqf and Zakat Development, under the Directorate-General of Islam and Hajj Affairs (*Binas Islam dan Urusan Haji*), serves not only to organize and develop zakat but also to improve waqf property scattered across the country. The main tasks of the Directorate are to assist the Department of Religion facilitate the organization of waqf and zakat as follows:

1. Develop the technical framework and policy on the development of waqf and zakat;
2. Implement the technical policy on waqf and zakat;
3. Encourage the development of waqf and zakat;
4. Improve the role of the administrator and zakat agency;

5. Provide public services in the supply of relevant information, assistance with the legalization process, and certification;
6. Perform evaluations and provide technical report; and
7. Organize the internal administration of the Directorate.<sup>63</sup>

The number of zakat agencies organized by the Muslim community has grown rapidly in recent years, with approximately more than twenty five LAZ, the most renowned of which are Dompét Dhu'afa (DD) and Pos Keadilan Peduli Ummat (PKPU).<sup>64</sup>

Giving a greater role to the Department of Religion on zakat policy seeks to ensure that zakat is collected and distributed appropriately. However, it should take into account the weaknesses of the legal policies applied by the state, namely that it has hardly succeeded in achieving synergy between the Department of Religion and the zakat agencies.<sup>65</sup> Deficiencies in relation to the Department of Religion can be summarised in two points: professionalism and the organizational system. Firstly, the Directorate of Waqf and Zakat Development is still run by personnel who are not equipped with good management skills and are thus incapable of transforming the legal policy into a concrete plan and program relevant to its mission. Secondly, the coordination system — in terms of collecting and distributing zakat — among zakat agencies is not organized properly, especially between government and non-government zakat agencies.<sup>66</sup> What this means is that even though zakat collection may be on the rise, the emphasis that zakat agencies put on maximizing collection rather than cooperative works among agencies means that success will only occur at a limited, regional level, as opposed to improving social welfare throughout the nation.

### **The Dilemma of Law No. 38/1999**

One of the biggest questions surrounding the impact of law no. 38/1999 is whether or not practices changed as a result of the introduction of this law. In this regard, two main points should be highlighted. The first point is the response of the Muslim community and the second concerns its impact on the manner of zakat collection and distribution.

According to Didin Hafiduddin a member of the advisory board of Dompét Dhu'afa, a LAZ which has been legalized by the Department of Religion, the most significant impact of the zakat law on the administration of zakat has been the legalization of BAZ and LAZ as zakat administrators. Hafiduddin believes that the enactment of this statute is not aimed at mobilizing and enhancing zakat collection, but rather deals purely with the matter of zakat administration.<sup>67</sup> Based on

this fact, one may assume that the zakat law — since it gives freedom to Muslims to pay their zakat if they wish — cannot be used as a vehicle for enhancing zakat collection.

Hafiduddin's views are echoed by findings of the research conducted by the Syarif Hidayatullah State Islamic University (UIN), Jakarta in 2002 on the effectiveness of the law on the zakat administration. Non-government zakat administrators perceived that the regulation on zakat administration was only a legal instrument for the establishment of zakat agency. The law, they argued, was not in itself influential in raising zakat collections, improving zakat management or developing people's trust in zakat agencies.<sup>68</sup>

These views thus demonstrate that the law of zakat administration still contains a number of weaknesses particularly with reference to law enforcement of zakat collection. It is difficult to make a clear judgment why the government is reluctant to impose a more direct system of zakat collection through the enforcement approach. A more relevant answer to such case is not simple, since the state constitution may give a multi-interpretation, especially on article 29, which gives people of any religion the freedom to practise their religion. In this regards, however, the state seems to steer clear of any intervention in people's observance of religious duties by imposing Islamic law (*sharī'ah*) in ensuring Muslims observe their religious duties.

There is no doubt that the law on zakat administration in some respects has provided Muslims with the impetus for organizing zakat collection and distribution in a more modern and professional manner through the establishment of zakat agencies. Some problems, however, remain regarding the patterns of zakat payment. Muslims generally believe that zakat is an individual religious obligation and giving zakat through the zakat collection agencies and institutions is often not regarded as necessary. As a result people tend to pay their zakat in the traditional manner by giving directly to the recipients. Such a traditional method of disbursing zakat is not exclusively a result of strict interpretation on the Islamic jurisprudence but rather people's lack of trust in the zakat agencies and institutions, especially the BAZ.<sup>69</sup>

Research carried out by the Public Interest Research and Advocacy Centre (PIRAC) in eleven big cities in Indonesia<sup>70</sup> examined the rate of zakat payment among Muslims, the reasons for zakat payment and the level of people's trust in zakat administration agencies.<sup>71</sup> For Muslims, zakat is a religious obligation just like *ṣalāt*. Of those surveyed during the research, about 98 percent paid their due zakat regularly. However, as touched on above, most paid their zakat in a traditional manner,



with 66 percent giving their zakat to the zakat committee operating in the surrounding area, and about 28 percent distributing their zakat directly to the recipients. Only 4 percent of respondents paid zakat to a BAZ. The dominant reason for paying zakat in such a traditional manner is marked by the assumption that the objective of zakat is to improve the welfare of the poor directly, with the strong need for transparency and accountability often neglected. Transferring zakat to the local zakat committee is, however, regarded as a way of paying zakat in a way that the distribution can be easily monitored.<sup>72</sup>

In the case of the eight groups of zakat recipients (*al-aṣṇāf al-thamāniya*), they are still considered those who can rightfully receive zakat. In recent times these eight categories have been interpreted more flexibly than in the past, with the main concern being to simply help and empower the poor and needy. The data shows that 46 percent of Muslims gave their zakat directly to the poor and needy and about 39 percent transferred it for the benefit of orphanages. Interestingly, people differentiated between the poor and others in need like widows and the elderly. For instance, six percent of zakat was given to the widows and only three percent to the elderly. This variety of zakat payment is basically characterized by individual motivation, as well as religious norms. About 98 percent of people claimed that they paid their zakat because of religious teachings, though 89 percent of them were also driven by social solidarity. Interestingly, customs or traditions still determine the motivation behind zakat payment. In this regard, 28 percent of people paid their zakat for this reason.<sup>73</sup>

Table I  
The Collection of Zakat in Rupiah

Year	BAZIS DKI Jakarta	Dompot Dhu'afa
1997	10,967,480,548.50	1,541,716,814.00
1998	6,762,772,558.16	3,054,290,757.00
1999	8,122,693,568.87	6,079,320,283.00
2000	8,416,629,931.68	11,395,570,642.00

Source: PIRAC Jakarta

Given the fact that zakat is paid in a traditional manner and that its payment depends primarily on individual choice, professional management and gaining people's trust have become two important



factors for BAZ and LAZ alike in attracting donors. Two zakat agencies, BAZIS DKI Jakarta (a BAZ) and Yayasan Dompot Dhu'afa (a LAZ), provide us with solid examples of more successful institutions. Although there is some gap between BAZIS DKI Jakarta and Dompot Dhu'afa in terms of the time of their establishment, with the former established in 1968 and the latter in 1993, the two work in Jakarta and hence often face similar issues. As shown in table II above, in 1997, Dompot Dhu'afa collected less than 2 billion rupiah, whereas BAZIS DKI collected almost 11 billion. In 2000, however, the amount of zakat collected by Dompot Dhu'afa had overtaken that collected by BAZIS DKI. This would most likely be a result of the differences between the two agencies in terms of the management system and transparency. Furthermore, while there is neither concrete data nor proof that BAZIS DKI is riddled with corruption, there is certainly a perception that this is the case, an accusation that appears to be based solely on the fact that it is a state-run institution.

### **Zakat and Community Empowerment?**

As a product of the post-New Order regime, zakat law no. 38/1999 paves the way for collecting zakat in a massive and modern manner. The law allows organizations of zakat to collect and distribute zakat in accordance with its vision and mission. In running their programs, for instance, the zakat law allows zakat organisations, both BAZ and LAZ, to create plans relevant to the social needs and Muslim aspirations such as religious aid, poverty alleviation, scholarships, public health care services, emergency aid for natural disasters, economic development, and so on. Such programs can be used by the zakat agencies to help accelerate community development and thus strengthen civil society.

The improvement of zakat management and collection activities is viewed by the organizations as critical in gaining people's trust. In doing so, zakat agencies generally adopt a modern management approach and regularly employ the media through newspapers, televisions, radios and banners to promote the work they are carrying out.<sup>74</sup> Such a method is an effective way of increasing zakat collections since people are more inclined to give zakat to organizations with accountable practices. Organizations today also apply modern strategies such as providing alternative methods of payment, not only for zakat but also for some other forms of almsgivings such as *sadaqa*, *infāq*, or waqf, through a bank account attached to the zakat agency. As a result of these developments in the zakat industry, the role of Muslim leaders has changed significantly; in the past they were responsible for both the issuing of fatwa on religious and social matters and acting as zakat and

waqf administrators whereas now this later role has been taken over by trained professionals. The *ulama* do, however, continue to act as advisors. The director and executive board of zakat organizations, for instance, are often experienced personnel who have some knowledge and experience in the field of economics or management. Two LAZs, the Foundation of Dompét Dhu'afa and Pos Keadilan Peduli Umat, are relevant examples where the executive directors are young Muslim activists and not *ulama*. Such changes have contributed significantly to improving their capacity for economic and community development.

Table II  
The Distribution of Zakat, Infaq, Iadaqa and Fiṭrah of

Rescue Program	2001 (Rp)	2000 (Rp)
Food Subsidies	2,079,759,896.60	3,668,733,161.40
Investigation and Legal Consultancy	54,551,200.00	11,877,100.00
Public Aid	121,243,790.00	166,900,000.00
Poor and Needy	443,536,300.00	-
Ibn Sabil	10,482,600.00	-
Fi sabilillah	2,772,000.00	-
Ghârimîn (In Debt)	800,000.00	-
Mu'allaf (Converts)	46,020,480.00	-
Zakât Fiṭrah	189,867,750.00	63,809,250.00
Social Relief	199,535,418.00	493,318,727.66
Health Aid	261,923,400.00	750,325,655.00
Education for Orphanages	150,103,600.00	33,961,450.00
<b>Rehabilitation Program</b>		
Building Public Facilities	114,549,700.00	533,670,040.00
Clinic Rehabilitation	-	-
Public Rehabilitation & Religious Infrastructure	84,836,090.00	-
<b>Community Development</b>		
Society Health Development	93,480,475.00	-
Clinic Development	385,487,422.00	-
Mental Training	461,854,800.00	466,302,600.00
Scholarship	196,329,525.00	-
Education Aid	35,772,750.00	225,439,850.00
Community Economic Development	94,177,600.00	152,227,500.00
Program for Zakât Socialisation	627,251,840.33	606,258,480.00
	<b>5,654,336,636.93</b>	<b>7,172,823,814.06</b>

Source: PKPU

Pos Keadilan Peduli Umat concentrates its programs on providing social and humanitarian aid in conflict zones and areas struck by natural disasters such as Maluku, Aceh, Sulawesi and Gunung Kidul. The distribution of zakat income is divided as follows: the rescue program, the rehabilitation program and community development. As shown in table II above, the distribution of charity for the rescue program constitutes a significant amount of the total. Of the expenses allocated to this sector, the subsidy for consumptive purposes (food subsidy) accounts a considerable portion of the total figure. Of *al-aṣnāf al-thamāniya*, the poor and the needy receive a greater portion than *ibn sabīl* or *fi sabīlillāh*.

With reference to this pattern of distribution, we are given the impression that zakat tends to be used for social needs and community development programs rather than merely used for consumptive purposes. It can be said that such current phenomena notably, besides the strong move of legal reinterpretation towards social affairs of Islamic norms, shaped by the increasing demands of social welfares for people to attain a better life. Muslim people then begin to reinterpret the legal doctrines of zakat (as developed by four Sunni schools of law) in accordance with the social changes and needs. Such flexibility does not necessarily mean neglecting the principles of Islamic law, but rather its spirit and legal requirements are held as the main considerations in regards to distribution. Zakat *fiṭrah*, for instance, is still placed in a different category from that of *ṣadaqa*, *infāq*, charity and waqf, the funds of which can be distributed more flexibly.<sup>73</sup> Over the period 2000 to 2002, PKPU's zakat collection experienced a rise each year, as shown in table III below.

Table III  
Zakat Income of PKPU from 2000 to 2002

No	Year	Amount in Rupiah
1.	2000	945,938,455.00
2.	2001	2,289,035,328.77
3.	2002	3,508,966,667.66

Source: PKPU

Like PKPU, the Foundation of Dompét Dhu'afa also administers zakat with a special focus on religious and social development. There are three main programs run by Dompét Dhu'afa (DD): an economic development program, human resource development program and

charity program. The economic development program deals with micro-finance, agricultural development and small-scale enterprise development. In implementing its program, DD has established links with the Islamic financial institutions *Bayt al-Māl wa Tamwīl* (BMT) and the People Credit Islamic Banking (BPR *Sharī'ah*), that employ a profit-loss sharing set-up. To support the program, DD also set up a regional forum, called *Forum Ekonomi Syariah* (the Shari'ah Economic Forum), or FES, which aims to create synergy between DD itself and the BMTs. More than 12 FES have joined the DD network representing various geographical areas, including Java, Sumatra and other more remote parts of the region. On agricultural development, DD provides agricultural produce at a reasonable cost. For example, running a rice huller assures production continuity and price stability. DD and other partner NGOs provide seed capital and a revolving fund.

In the field of human resource development, DD draws on three sources: Firstly, the Best of the Best Program (BBP) scouts for talent, while high-achieving university students are selected for fellowships. DD further has an internship program. By October 2000 as many as 300 students had received BBP fellowships, with disbursed funds totalling around Rp. 1 billion. Moreover, DD also set up a supporting program called the foster parent program (*orang tua asuh*) to enable orphans or other unfortunate children to pursue their education. The prospective donors can either directly support the children in need or channel the funds through DD.

The charity program provides health services, ranging from medical operations to hospitalisation, by cooperating with many hospitals and getting a number of doctors and paramedics to work as volunteers. The neediest families, widows and orphans are eligible to receive a small regular allowance. On the other hand, people in debt or facing urgent financial obligations and *musāfir* (a traveller for good purposes) would also normally receive a living allowance. DD at times provides relief aid for victims of natural disasters such as earthquakes, floods, volcano eruptions, or social riots such as in Aceh, Banyuwangi, Maluku, among others.<sup>76</sup>

As elaborated on above, in implementing programs DD interprets the legal concept of *al-aṣnāf al-thamāniya* in accordance with social needs. Like other zakat organizations, DD employs such methods of alms collection as direct mail, media campaign, special events and other approaches relevant to the situational needs. Table IV below shows that almost half of DD's income from 1997 to 1999 came not exclusively from zakat, but also from other sources such as *infāq*.

Table IV  
Income of the Foundation of Dompét Dhu'afa (Rupiah) 1997-1999

No	Fund Source	1997	1998	1999
1.	Zakât	1,018,933,664	1,977,504,526	3,327,496,517
2.	Infâq	522,783,150	1,358,087,737	1,263,160,830
3.	Special Event	201,187,925	579,149,352	1,488,662,936
4.	Income	3,403,522	28,547,970	16,185,250
5.	Royalty	1,688,650	2,586,500	7,472,675
6.	Other Income	30,294,830	32,049,950	13,261,442
7.	Other Income	12,790,000	366,262,675	144,718,500
8.	Special Income	33,194,550	13,898,100	73,930,281
9.	Interest	2,240,854	11,387,032	29,504,369
10.	Total	1,851,641,896	4,419,986,517	6,427,482,611

Source: Dompét Dhu'afa

### Waqf in the Reformation Era

Unlike zakat practices, which experienced significant developments in terms of legal interpretation and management even before the enactment of zakat law no. 38/1999, the waqf system prior to the promulgation of waqf law no. 41/2004 remained traditional. Waqf was organized in a traditional manner, providing mostly for religious purposes such as building mosques. The administrator, who functioned to ensure the waqf served its most effective purpose, was strictly constrained by the founder's directives and regarded merely as a superintendent following orders. Such rigidity in the waqf system was generally caused by a strong rooted assumption among Muslims that the founder's stipulations regarding the waqf are irrevocable. The waqf administrator has to manage the waqf according to the desires of the founder and in the interests of the selected beneficiaries. This ensures that the waqf, as defined by the waqf deed, is maintained for its original purpose. Once a waqf had been assigned, say, for a mosque the administrator is required to ensure the waqf remains as such.

The traditional nature of the waqf system is also reflected in the supervision mechanism. Since waqf was managed by a "trust system"

between the founder and the administrator, people outside this circle were almost never involved. The waqfs organized in a traditional system applied no mechanism of control over its accountability and transparency. It seems to us that Indonesian Muslims failed to formulate a legal system of waqf suitable for the changing needs of society. The crux of the problem, however, was not exclusively due to the traditional Islamic legal interpretation, but also because of the government's (the New Order regime) inadequate policies.

In terms of waqf administration, the waqfs were mostly entrusted to individual administrators, usually religious people, with little regard for the importance of good management. For most people, establishing a waqf was deemed a way of getting closer to God and there was further a common belief among people that establishing waqf meant to convert personal property into a public good for the benefit of people in the realm of religion. One of the most striking consequences of such an attitude was that the waqf system suffered from operational rigidities.

Up to May 2004, waqf scattered throughout the thirty provinces of Indonesia amounted to approximately 1,566,672,406 m<sup>2</sup>, located in 403,845 places. Of this total amount there are only 73.96 percent (298,698 places), which have been legally certified.<sup>77</sup> In addition, waqf categorized as productive waqf amounts only to 388 places, or only around 0.01% of the total.<sup>78</sup> While the waqf in the form of a mosque is more common, waqf endowed in the education sector is few and far between, equivalent to only 7.28 percent of the total. Indeed there was effort to use waqf for productive purposes even though it is few in number. It can be seen, for instance, that the total amount of productive waqf of agricultural fields is about 264 places. Some other waqf are also used for hospitals (2.57 percent), small-scale enterprises (1.28 percent), hotels (0.77 percent) and cemeteries (0.77 percent).<sup>79</sup> The strong emphasis of waqf allocation in the Muslim community was indeed for religious interests. In September 1989, for example, the designation of waqf for mosques and *muṣallā* reached 30.94 and 37.15 percent respectively, while waqf assigned for public schools and cemeteries accounted for only 8.51 percent and 8.40 percent respectively of the total waqf. About 14.60 percent of waqf was also assigned for social welfare needs.<sup>80</sup> These figures show us that waqf is still assumed to be of ritual importance as opposed to social or economic importance. Further to the absence of sufficient and relevant legal regulations, the root cause of this condition is the supremacy given to the founder's stipulation in setting up the waqf whereby the role of the administrator is disregarded.

Table V  
Administration System of The Productive Immobile Waqf (Land)

No	Province	Individual Nāz}ir	Organizational Nāz}ir
1	D.I. Aceh	6	-
2	North Sumatra	6	-
3	West Sumatra	29	1
4	Riau	3	-
5	Jambi	2	-
6	South Sumatra	5	9
7	Lampung	13	1
8	Bengkulu	1	-
9	West Java	3	2
10	DKI Jakarta	1	1
11	DI Yogyakarta	12	3
12	Central Java	148	2
13	East Java	4	11
14	West Kalimantan	2	-
15	Central Kalimantan	-	1
16	East Kalimantan	4	1
17	South Kalimantan	11	43
18	North Sulawesi	4	-
19	Central Sulawesi	-	1
20	Bali	29	1
21	NTB	11	-
22	NTT	1	-
23	Maluku	2	-
Total		297	77

Source: Directorate of Waqf and Zakat Development

With regard to the waqf administrator, as shown in table V above, productive waqfs are administered more by individual *nāz}ir* than by institutions. The mechanism of individual administrators is in fact prone to corruption or distortion as there is a lack of control and transparency, as found by the Department of Religion which revealed that institutional waqf administration is better than individual administration. In this regards, an investigation conducted by the Department of Religion on the management system found that the institutional *nāz}ir* is generally more effective than the individual.<sup>81</sup>



### Waqf Law No. 41/2004

Although the waqf law was enacted in 2004 during Megawati Soekarno Putri's reign as president the issuance of the waqf law was planned and drafted during Abdurahman Wahid's administration. The issuance of Waqf Law no. 41/2004 may be regarded as an attempt to resolve the deficiencies of the waqf system through the reform of the legal system. This mechanism was expected to reduce disputes over various interpretations of waqf and encourage waqfs to be developed and used in the most efficient and beneficial manner. Efforts by the Muslim community to redefine the concept of waqf and to apply a positive law on waqf may be defined, what Masud rightly points out, as a means of "positivist legal theories who consider the coercive power of the state and the fear of sanction as sufficient reason to justify obedience to law."<sup>82</sup> With regards to this perspective, the waqf legal system begins to evolve into a nation-state legal system and eventually becomes a recognized normative basis for Muslim communities in organizing and administrating waqf regardless of the different views of the schools of law.

The enactment of Waqf Law no. 41/2004 has to some extent provided a solid mechanism of waqf administration across the country and thus provides new hope for the Muslim community in particular and Indonesian people in general to generate waqf income for the benefit of social and educational affairs. This law has two main purposes. Firstly, it attempts to legalize the waqf system in order to justify its practice. Secondly, it aims to organize the administration of waqf in order to ensure it is used as effectively and efficiently as possible for the benefit of social and religious affairs.<sup>83</sup> The most significant change pertinent to the statute in defining waqf is reflected on the authority of *nāz'ir* (administrator), the flexible mechanism of waqf assignment, the establishment of the Body of Indonesian Waqf and the wide range of waqf objects. Different from PP 28/1977 which deals specifically with waqf land, this law allows people to make waqf coming from all profitable commodities to the extent they are recognized by Islamic law. Moreover, the system of waqf administration is protected by law, the violation of which is punishable.

Though the statute seems to adopt a modern system of trust in terms of organization and management, the religious principles in relation to the mechanism of waqf transaction, such as the founder and the waqf objectives are still held to comply with *sharī'ah*. The waqf, moreover, is designed to serve beneficiaries interests in social, economic and religious affairs. In this respect, the waqf is no longer restricted to

the founder's directives, but rather the administrator is authorized to develop waqf as he sees fit. For instance, the waqf can be designated for a temporary period of time or for perpetual purposes.<sup>84</sup> Such reform of the waqf system in the Indonesian context can be seen as a modern trend of Muslim intellectuals in adapting Islamic jurisprudence (*fiqh*) to modern social conditions by way of reinterpreting Islamic norms on the basis of *maṣlaḥa* (public interest). Compared to the waqf system organized prior to 2004, which was mostly created and administered based on tradition, the current waqf framework — based on law no. 41/2004 — is developed in line with a modern concept of law. Money, for instance, which has in the past been a hotly debated topic, is defined in Waqf Law no. 41/2004 as a waqf commodity.

In terms of administration and supervision, the reform has also been made especially for the parties that may participate in waqf. This system makes waqf to be directly supervised by an independent institution, the Body of Indonesian Waqf, as a means of enhancing waqf productivity and ensure its proper administration, and further - as noted by Timur Kuran — to “create a fertile ground for further development of civil society.”<sup>85</sup> This dramatic change, albeit still in the form of law, likely opens the opportunity for developing waqf on a large scale.

The significant change on waqf administration, compared to the regulation made during Soeharto's times, is on the role of the characteristics of the founder. As specified by Waqf Law no. 41/2004, the founder may be an individual, organization or legal institution. The inclusion of legal institutions into the founder category, which was not explicitly mentioned in the classical texts of Muslim jurists of Sunni schools of law, is a considerable development in the field of Islamic jurisprudence. It may also be viewed as an attempt to meet the changes of the modern world especially in the economic context.<sup>86</sup> The recognition of legal institutions as founders in the waqf system illustrates that the concept of waqf in particular and Islamic law in general is adapting to the social conditions of Indonesian society. On the one hand, a modern system is adopted in order to promote the fulfilment of waqf objectives, while on the other the religious foundation genre of waqf is maintained as the legal and philosophical basis of Islamic philanthropy. In such cases, for instance, the intention (*nīya*) of the founder - be it an individual or organization/institution - in assigning their property is characterized as a determining factor in the legal validity of waqf.<sup>87</sup>

Once a waqf has been endowed, it is directly transformed into a charity in accordance with the founder's wishes and then falls under the administration of the waqf system. The administrator moreover is

required to organize the waqf in line with the founder's stipulation as handed down in the waqf deed, because, the alienation from the deed is regarded as a violation of waqf rules.<sup>88</sup> In this regard, the waqf law allows people to endow waqf for public purposes or for private ones (family waqfs).<sup>89</sup> The waqf can be divided into two categories: permanent or temporary. The latter is revocable once it expires, while the former is not.<sup>90</sup> The founder, however, is not allowed to change the waqf deed once it has been concluded.<sup>91</sup>

### **Waqf and the State**

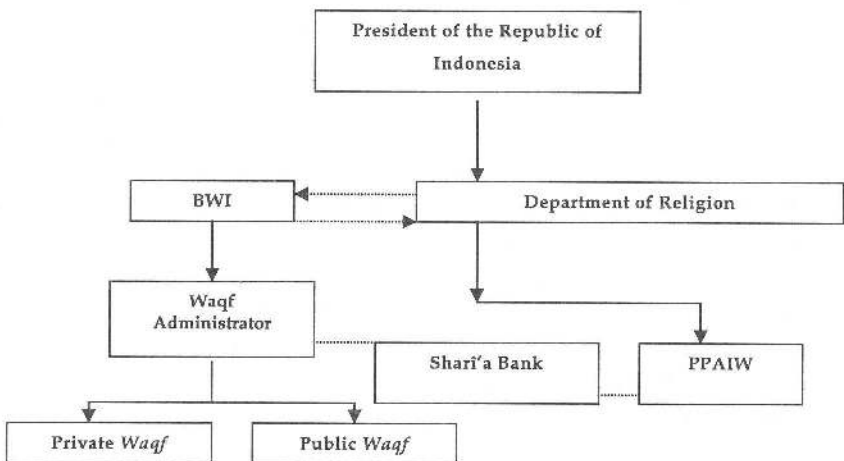
Like in zakat system which gives the authority to the state (the Departemen of Religion) to supervise the waqf administration, in the waqf, the role of the Department of Religion and the Body of Indonesian Waqf (BWI) is both as supervisor and coordinator of waqf in the community. It is expected that such mechanism may accelerate and develop waqf administration especially in encouraging human resource development of waqf administrators. The position of BWI, however, is independent from the intervention of the Department of Religion, meaning that BWI is equal to the former. The independent position of BWI is intended to emphasize its neutral stance in waqf administration in order to make certain that there is no conflict of political interests. The independence of BWI is found in a clause of Waqf Law no. 41/2004 which stipulates that the Department of Religion is not authorized to dismiss or appoint the personnel of BWI.<sup>92</sup> BWI's role moreover is directed to improve the waqf in favour of beneficiaries (the poor). In certain cases, however, the Department of Religion together with MUI (the Ulama Council of Indonesia) is entitled to give a recommendation to BWI regarding waqf management.<sup>93</sup> BWI is regularly audited by a public auditor, with the report being submitted to the Department of Religion.<sup>94</sup> The tri-relationship in the waqf system between BWI, the Department of Religion and MUI is in fact designed to encourage cooperation in further developing and improving the system of waqf administration.<sup>95</sup>

As a representative of the state, the Department of Religion is entitled to be involved in waqf affairs on the condition that it should coordinate with BWI.<sup>96</sup> Both the Department of Religion and BWI at large function to sustain waqf development. A larger authority regarding the cash waqf, moreover, is given to The Department of Religion which is authorized to assign the bank served as Monetary Institution in order to manage the waqfs derived from the cash waqfs (money).<sup>97</sup> In certain cases, the Department of Religion is allowed to supervise waqf administration including that, which is directly organized by BWI.

The BWI's tasks are divided into two main areas. Firstly, BWI functions to develop the human resources of waqf administrators. In this regard, BWI is authorized to appoint and dismiss the administrators. The administrators can be dismissed if they do not carry out the tasks properly or violate the waqf purposes.<sup>98</sup> Secondly, BWI supervises the waqf management system. Therefore, the main role of BWI is aimed at developing and promoting the waqf independently in order to benefit the beneficiaries.<sup>99</sup> BWI is also authorized to recommend the exchange of waqf assets whenever there is necessity to do so.<sup>100</sup> Waqf exchange is permissible if the waqf stops providing benefit or its purpose is no longer relevant to the founder's stipulation.<sup>101</sup>

In addition to carrying out its main task of encouraging administrators, BWI is also allowed to organize and administer waqf assets at the national level. Concerning this matter, the position of BWI is unique. On the one hand, it carries out its role as the supervisor of waqf across the country, while on the other it also organizes the waqf. In order to support its task, BWI may establish its representatives in some districts. It is worth noting that BWI may also coordinate directly with government institutions concerning the waqf in all regions throughout Indonesia.<sup>102</sup>

Table VI  
BWI and the Waqf Administration Process (Waqf Law no. 41/2004)



**Note:**

- PPAIW : Legal Office/Religious Office Served to Issue Waqf Certificate  
 ————— : coordination relation (horizontal relation)  
 ————— : subordination relation (vertical relation)

### Administrator and Object of Waqf

Unlike in *fiqh* legal theories of Sunni schools of law, which assigns the waqf administration in an individual manner, Waqf Law no. 41/2004 is designed to ensure that waqf is organized in a flexible manner. The individuals, organizations or legal institutions are entitled to participate in waqf administration in accordance with the waqf deed.<sup>103</sup> The administrator is required to be a Muslim, an Indonesian citizen and be of a sound mind. In the case that the administrator is a legal institution, it is necessary that such an institution is a social, educational, or Islamic organization.<sup>104</sup>

The law reform in the waqf system in this regard is expected to fulfil the demands and needs of the Muslim community. To attain this objective, objects which may be endowed as waqf include various forms of property including movable and immovable materials. Money, cultivated produce, shares, intellectual property rights, apartments, hotels, among others, are defined as approvable properties to be endowed as waqf.<sup>105</sup> Thus while the religious nature of waqf is still maintained, this is viewed more flexibly in consideration of the social and economic benefits in line with the concept of *maqāṣid al-sharī'ah*.<sup>106</sup>

The transaction of waqf is also required to specify the object, the administrator, the purpose and the waqf term. This mechanism is written down in the waqf deed, which is used by the administrator as the main reference of management. In establishing a waqf, the founder is required to express his intention regarding his waqf before the religious office and witnessed by at least two persons in order to approve the transaction.<sup>107</sup> Once a waqf had been established, the administrator resumes his or her role as manager of the waqf in accordance with the waqf deed as stipulated by the founder. In such a case, the administrator is required to develop the waqf in a productive manner, which is in tune with the purpose and function of waqf.<sup>108</sup> Basically, the administrator (*nāẓir*) is not allowed to exchange the waqf except if he is given the legal authority by BWI.<sup>109</sup> The administrator is consequently under the direct supervision of BWI in carrying out his duties as waqf manager.<sup>110</sup>

The designation of waqf can be made for various purposes in accordance with the rule of law and *sharī'ah*. If we look at the passages of law carefully, we will find that the designation of waqf is made in some categories, such as for religious affairs, the poor, the needy, the orphanages and economic purposes.<sup>111</sup> In the case that the founder was silent in specifying his waqf purpose, the administrator is authorized to determine the purpose of waqf as long as it is in line with *sharī'ah*.<sup>112</sup>

Waqf may be derived from a bequest, as long as it only amounts to one third of the bequest (except when the beneficiaries agree to assign more than that amount).<sup>113</sup> This can be done in two ways: firstly, the administrator directly accepts the waqf as left by the deceased in his or her will; secondly, the waqf transaction is performed by a second party on behalf of the deceased. The waqf testament is legally binding if its transaction is witnessed by at least two persons.<sup>114</sup>

### Concluding Ramaks

Developments in the field of waqf and zakat in recent times mark a new phase in the relationship between Muslims and the state. Muslims, on the one hand, have long demanded that the state provide sufficient legal basis for implementing waqf and zakat rules within the state system. This demand was based on article 29 of the 1945 constitution. The state, on the other, has in the past made every effort to ensure that religion stays out of the public sphere and remains purely a private matter.

During Soeharto's reign in power, political Islam was characterized as an opposition movement to the state and thus was not given a chance to exist. The state, however, allowed Muslims to develop Muslim organizations as long as they were purely of a social or cultural nature. The direct impact of the government's efforts to distance itself from matters of religion was that waqf and zakat administration was left to the people without any assistance from the government. Between 1967 and 1998, it was only government regulation no. 28/1977 on waqf land that come close to the government making some effort to bring about positive developments in this area.

President Habibie's short time in power following the fall of the New Order, marks the beginning of an era when Muslims' demands are being considered more seriously by the government than before. This new attitude on the part of the government resulted not only in the issuance of zakat act no. 38/1999, but also rulings in relation to *hijj* amongst a number of other small political victories for the Muslim community. One may not deny, however, that the introduction of this law specifically was part of the Habibie government's push to gain wider support amongst Muslims.

While waqf and zakat administration practices in this country are far from perfect, Muslim intellectuals, the *ulama*, and the various agencies working in this field have made increasing efforts to reformulate the concepts waqf administration and zakat collection and distribution. The *ulama* have begun to leave the static and traditional attitudes towards



interpreting Islamic doctrine, namely through considering the *maqāṣid al-sharī'ah*. This will help zakat plays a stronger role in the betterment of social welfare and economic development, as well as help strengthen the roots of civil society. The outlook for waqf, however, remains bleak as the administration system remains unchanged. It was only in 2004 that the act on waqf no. 41/2004 was issued although it is to be as effective as it should, due to a failure to see this law fully-implemented.

Although there have been significant developments in zakat administration thanks to the growth of zakat administration agencies, some problems remain unresolved concerning the synergy between zakat agencies and between the government and the zakat agencies. Indeed, there is a Zakat Forum which functions, among other things, to coordinate with zakat agencies in matters of zakat administration. This forum, nevertheless, is not authorized to become directly involved in zakat agencies' affairs. The result is that each zakat agency implements its own programs and missions without concern for coordination and cooperation with other agencies to maximize impact and effectiveness, or for avoid an overlapping of programs. In addition, as a regulator and facilitator, the Directorate of Waqf and Zakat Development seems to have lost its effectiveness in its role in promoting zakat agencies through a coordination system.

This short study, amongst other things, demonstrates that the prospect of waqf and zakat in the future is promising in the sense that most Muslims are still aware of their obligation to pay zakat regularly and are concerned waqf development. Zakat agencies and *ulama*, however, are still challenged to develop and improve the administration of waqf and zakat. The *ulama*, on the one hand, are challenged with providing a legal formula which is both suitable to modern times and is not contrary to Islamic ideals. Zakat administration agencies, on the other hand, are required to improve the management system, achieve the visions and missions of the organization, whilst also keeping Muslims' trust by operating in a transparent and accountable manner.

## Endnotes

1. Waqf can also be described by the Arabic terms *Tasbil*, *Tahrīm* or *Tahbīs*, while the endowed object is referred to as *Mawqūf*, *Maḥbūs*, *Muḥabbas* or *ḥabīs*. See W. Heffening, "Waqf," in *Enzyklopaedie des Islam* (Leiden: E.J. Brill, 1934).
2. Mundhir Qahaf, *al-Waqf al-Islāmī* (Beirut: Dār al-Fikr, 2000/1421), 14; 83-87. The Prophet paid eight hundred *dirhams* for the land.
3. (Q. āli 'Imrān/ 3: 92); (Q. Al-Baqara/2: 267).
4. Ṣādiq 'Abd al-Raḥmān al-Gharyānī, *al-Fiqh al-Mālikī wa Adillatuh*, Vol., II (Beirut: Mu'assasa al-Rayyān, 2002), 210. Waqf means 'to stop'. Waqf pertains to religious endowment in favour of God. Such an endowment is not transferable, either through inheritance or trading. Such a practice was popularly based on the agreement of Prophet upon 'Umar b. Khattāb intention of his land in Khaybar to be used for public interest. See Kresmārik, "Das Wakfrecht vom Standpunkte des Shari'at-rechtes nach der hanafitischen Schule," 512-513.
5. Joseph Schacht, "Zakat," in *Enzyklopaedie des Islam* (Leiden: E.J. Brill, 1934).
6. *Ibid.*, vol. IV, 7. *Zakat al-fitr* is paid by all Muslims at the end of Ramadhan. The payment usually consists of staple food such as rice or grains, or in some cases can be paid in cash. This is then distributed amongst the poor.
7. (Q. al-Baqarah/2: 43); (Q. al-Tawbah/9: 5).
8. The Old Order administration spans from 1945-1967 with Soekarno at President of the Republic of Indonesia.
9. The New Order period was from 1967 to 1998 led by President Soeharto as the successor of Soekarno. During Soeharto's era, all legal systems and institutions were based on the Pancasila.
10. The reformation era is defined as the beginning of the implementation of a democratic system in Indonesia when B.J. Habibie succeeded Soeharto as president. Now, the Pancasila as well as religion may be used as the basis of a religious institution or political party.
11. *Zakat* incomes and mosque treasuries, as Aqib Suminto noted, had also been used to subsidise the Missionary Hospital in Surabaya. Aqib noted that the mosque of Sedayu in Surabaya had spent its treasury of about f.90 on the missionary hospital in Surabaya. See also Amelia Fauzia and Ary Hermawan, "Ketegangan antara Kekuasaan dan Aspek Normatif Filantropi dalam Sejarah Islam di Indonesia [The Tension Between Power and Normative - Philanthropic Aspect in Islamic History in Indonesia]," in *Berderma Untuk Semua [Giving for All]* (Jakarta: Teraju, 2003) 171.
12. Quoted from a source within the Department of Religion, Republic of Indonesia (2004).
13. Despite being organized by individual administrators, waqf tends to be designated for places of worship (mosques) rather than for productive enterprise.
14. Heated disputes arose during the assembly meetings concerning the matter of the state ideology; Muslim groups argued that the state should be an Islamic state, whereas the nationalists preferred the more secular Pancasila system.
15. *Pancasila* is a state ideology neither completely secular nor religious because it distinguishes between religious matters and political matters. *Panca* means five and *sila* is foundation. Therefore, *Pancasila* consists of five foundations: belief in one God, humanity, Indonesian union, democracy and social justice.
16. Safrul Muluk, "The Indonesian Army and Political Islam: A Political Encounter 1966-1977," (M.A. Thesis, McGill University, 2000) 52.
17. Alan A Samson, "Islam and Politics in Indonesia," (Ph.D. Dissertation, University of California, Berkeley, 1072) 298. See also Safrul Muluk, "The Indonesian Army and Political Islam," 56.
18. Taufiq Hamami, *Perwakafan Tanah dalam Politik Hukum Agraria Nasional* (the Waqf of Land in the National Agrarian Law Policy) (Jakarta: PT. Tatanusa, 2003) 8-9.
19. See Usman, 52.

20. *Ibid.*, 53. The other parties such as the head of the village (*lurah*), the head of the sub-district (*camat*) and KUA were also employed. In some cases, however, the *nāz'ir* (administrator) and founder are not obliged to register or give information regarding the development of waqf. There were therefore many waqf properties administered in an individual manner (traditional system), which tended to lead to disputes among the parties concerned due to a lack of legal documentation. Refer to State Regulation No. 28/1977.
21. See articles 5; 6; 7 and 14 of the Statute No. 5/ 1960. The most striking example of the social function of land is stipulated in article 6 that "all rights to land are concerned with the social function." DEPAK RI, *Himpunan Peraturan Perundang-Undangan Perwakafan Tanah Milik* (Jakarta: Dirjen Bimas Islam dan Haji, 2002), 7-9.
22. Hamami, 20-23. See BW (*Burgerlijkwetboek*) articles 711 and 720 on the rights of land, which emphasizes an individual's authority in the ownership of land by neglecting the role of *adat* as well as religious tradition.
23. Article 1 of PP no. 28/1977
24. Article 5 of PP no. 28/1977.
25. Article 11 of PP no. 28/1977.
26. Article 12 and 13 of the Regulation of the Minister of Religion no. 1/1978.
27. Article 8 of PP no. 28/1977; see also article 11 of the Regulation of the Minister of Religion no. 1/1978. In some countries, the role of *waqfiyya* (waqf deed) is quite significant in defining the obligation and rights of administrator. See for example Aharon Layish, "The Family Waqf and the Shar'ī Law of Succession in Modern Times," *Islamic Law and Society* vol. 4, No. 3 (October, 1997): 358.
28. Article 6 of PP no. 28/1977.
29. Article 6 (4) of PP no. 28/1977. See also article 9 of the Regulation of the Minister of Religion no. 1/1978.
30. See UU No. 7/1989 on the authority of Religious Court particularly on article 49. See also article 12 of PP no. 28/1977.
31. The hierarchy of legal system in Indonesia in accordance with Decree no. XX/MPRS/1966 is as follows: *Pancasila*, UUD 1945, Decree of the People's Assembly (Ketetapan MPR), Statue (*Undang-undang*), Government Regulation (PP), Presidential Decision (Keputusan Presiden) and other implementing regulations. See C.T.S. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* [the Introduction to Science of Law and the Order of Indonesian Law] (Jakarta: Balai Pustaka, 1986), 51-58.
32. For more details on this theme, see Donald K. Emerson, *Indonesia's Elite: Political Culture and Cultural Politics* (Ithaca: Cornell University Press, 1985); Benedict Anderson and Audrey Kahin (ed.), *Interpreting Indonesian Politics: Thirteen Contributors to Debate* (Ithaca: Cornell Modern Indonesia Project, 1982).
33. The appeal to President Soeharto was made 24 September 1968 by eleven 'ulamā, among them Dr. Hamka, K.H. Ahmad Azhari, K.H. Mohammad Syukri G, K.H. Mohammad Sodry, K.H. Taufiqurrahman, K.H. Mohammad Saleh Su'aidi, Ustadz. M. Ali Alhamidy, Ustadz Muchtar Luthfy, K.H.A. Malik Ahmad, Abdulkadir R.H., and M.A. Zawawy. See Bazis DKI Jakarta, *Rekomendasi dan Pedoman Pelaksanaan Zakat* (Jakarta: Bazis DKI, 1987), 98. See also Taufiq Abdullah, "Zakat Collection and Distribution in Indonesia," in *The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: ISEAS, 1991), 51.
34. In his letter No. B 133/Pres/11/ 1968 (28 November 1968) on zakat collection, Soeharto referred to his speech delivered on the anniversary of the Prophet's ascension (*Isrā' Mi'rāj*) on 26 October 1968 stating that as a Muslim and as a citizen of Indonesia he was ready to make initiatives in administering zakat. See, Bazis DKI Jakarta, *Rekomendasi dan Pedoman*, 99. See also Arskal Salim, "Zakat Administration in Politics of Indonesian New Order," 182.
35. It was also noted that the suspension of the Regulation of the Department of Religion was based on two reasons: firstly, the collection of zakat as defined in this regulation was seen by the Cabinet Secretary as the concern of the Department of Religious Affairs only, without coordinating with other departments; secondly, it was expected that, following his speech, Soeharto would issue a regulation (such as

- a Presidential Instruction or Presidential Decree) concerning the collection of zakat. See Salim, "Zakat Administration in Politics of Indonesian New Order," 185.
36. Ibid., 192. See also Pedoman Pembinaan BAZIS, *Hasil Pertemuan Nasional I BAZIS se-Indonesia 3-4 Maret 1992* (Jakarta: Dirjen BIUH Departemen Agama RI, 1992) 83.
  37. Letter no. Cb. 14/8/18/68 on the administration of zakat was made as a response to the President readiness to be involved in zakat administration.
  38. BAZIS DKI Jakarta, *Rekomendasi dan Pedoman*, 102-103.
  39. M. Yusuf Asry, *Zakat dan Aktualisasinya di Dnerah Istimewa Aceh* [Zakat and Its Actualization in the Province of Aceh] (Jakarta: Badan Penelitian dan Pengembangan Agama Depag RI, 1989/1990), 12.
  40. Rizal Sukma, *Islam in Indonesian Foreign Policy* (London: Routledge, 2003), 83. See also Michael Vatikiotis, *Indonesian Politics under Soeharto: The Rise and Fall of the New Order*, third edition (London: Routledge, 1998), 218-232.
  41. Sukma, 84. See also Ahmad Soemargono, *Saya Seorang Fundamentalist* [I am a Fundamentalist] (Jakarta: Global City Press, 1999), 111.
  42. Laws regarding hajj, the statute of Indonesian banks, among others, were made during Habibie's term.
  43. Article 29 of the constitution of 1945 (UUD 1945).
  44. UUD 1945 is the main basis of consideration for drafting and legalizing new laws. This constitution is therefore used as the spirit of all statutes in the country.
  45. On behalf of the government, the Department of Religion delivered the preliminary statement on the draft of the law on zakat administration on 26 July, 1999 at the House of Representatives. See 'The Draft of the Zakat Statute, *The Government Statement before the House of Representative* (Jakarta: the Secretariat of DPR, n.d).
  46. Article 6 (1), (2) and (3) of Zakat Law no. 38/1999. These agencies, however, are not organized in a dependent system (subordination), since each agency is independent to organize zakat in terms of collection and distribution. In other words, the collection of zakat at the sub-districts (*kecamatan*) across the country is not necessarily to be transferred to the central office of zakat administration in Jakarta, but rather, each agency is authorized to deal with zakat income in accordance with their own plans and programs.
  47. According to Zaim Saidi a senior researcher at PIRAC, there is a wide gap between the BAZ and the LAZ in the amount of zakat collection. The average of zakat income collected by the BAZ is approximately about Rp 7 million per agency, with 3,160 agencies spread across the country. The LAZ (non-government zakat agency), however, represented by five agencies (Yayasan Dompot Du'afa, Yayasan Dana Sosial al-Falah, Yayasan Darut Tauhid, Dompot Sosial Umul Qura', PKPU and Baitul-maal Muamalat) in 2000 collected zakat income of approximately Rp. 32 billion. It means, he emphasized, that the average amount of zakat collected by LAZ is about Rp 5.3 billion per annum. Zaim Saidi, *Membangunn dengan Sedekah* [Building with iadaqa], a working paper presented at a Seminar on Reinterpretasi Zakat dan Optimalisasi Pendayagunaan Dana Umat di Indonesia [the Reinterpretation of Zakat and the Advancement of Muslim's Charity in Indonesia] (Bandung, 26 October 2002), 10-14.
  48. It needs to be noted that BAZ's personnel are also religious officials, professionals and Muslim activists. However, the mechanism of administration at the BAZ sometimes restricts their independence in developing administrative practices.
  49. Prior to the enactment of the zakat statute, UU no. 17/1999 on hajj was also issued which deals particularly with the arrangement of hajj affairs.
  50. Article 7 (1) of Zakat Statute no. 38/1999. According to the Decree of the Department of Religion, a zakat agency can be established at every district level after having received a legal recognition from the state. Zakat agency in Jakarta is issued by the Department of Religion, zakat agency in the provinces by the governors, zakat agency in the districts by *bupati* and in the sub-districts by *camat*. Article 21 (1) and (2) of the KMA (The Decree of the Department of Religion) no. 581/1999.

51. According to Kuran, the emergence of diverse corporate bodies in the West stimulated the development of rules, regulations, and laws conducive to the strengthening of civil society. He emphasized moreover that over time these corporations contributed to the success of movements to curb the powers of ecclesiastical and secular authorities. Timur Kuran, "The Provision of Public Goods under Islamic Law: Origin, Impact and Limitation of the *Waqf* System," in *Law and Society Review* (Houston, 2001): 882.
52. Article 1 (1) of Zakat Statute no. 38/1999.
53. Article 13 of Zakat Statute no. 38/1999.
54. Article 12 (1) of Zakat Statute no. 38/1999.
55. Article 12 (2) of Zakat Statute no. 38/1999.
56. Article 14 (1) and (2) of Zakat Statute no. 38/1999.
57. Some debate does, however, exist regarding the position of the *zakat* collector and calculating the *zakat* levied on property of Muslim individuals and enforcing that payment.
58. Article 15 (1) of Zakat Statute no. 38/1999.
59. Article 28 (1) of KMA no. 581/1999. In the Qur'an (Q. 9:60), it is clearly stated that *zakat* income is to be distributed among the eight groups of recipients. Today however, these parties may be interpreted differently covering a wide variety of people since, the meaning of each category is open to interpretation.
60. Article 15 (2) and (3) of Zakat Statute no. 38/1999.
61. KMA RI no. 581/1999 on the implementation of Statute no. 38/1999 on *zakat* administration.
62. Department of Religion (KMA) Decree no. 1/2001.
63. Dirjen Bimas Islam dan Urusan Haji, *Profile of Directorate of Development of Waqf and Zakat* (Jakarta, February 2003) 6. The Directorate of Waqf and Zakat also concentrates on disseminating programs through seminars, journals and book publications.
64. Dirjen Bimas Islam, *Profile of the Directorate of Development of Waqf and Zakat*, 31-34. The sixteen *zakat* agencies are: Dompot Dhuafa Republika, Yayasan Amanah Takaf-ul, Pos Keadilan Peduli Umat, LAZ Muhammadiyah, Yayasan Baitulmaal Muamalat, Yayasan Hidayatullah, Yayasan Dana Sosial Al-Falah, LAZ Persis, Bamuis Bank BNI, Bangun Sejahtera Mitra Umat, Dewan Dakwah Islamiyah Indonesia, Baitulmaal Bank BRI, Baitulmaal Wat Tamwil (BMT), Dompot Sosial Ummul Quro, Dompot Sosial Daarut Tauhid, and Baituzzakah Pertamina.
65. According to the Director of Waqf and Zakat Development, Tulus, "zakat agencies lack synergy in distributing zakat income in Muslim communities." He emphasized that, "zakat agencies seem to organize zakat income according to the respective programs by neglecting the networks between the zakat agencies." He further noted that *zakat* income had been used for the benefit of the poor and the needy through scholarships and community development. See *Republika*, 2 July 2004.
66. Interview with Isbir Fadli, a staff member at the Directorate of Waqf and Zakat Development (Jakarta, October 2003).
67. Research Department of UIN Syarif Hidayatullah Jakarta, *Respon Institusi Zakat Terhadap Efektivitas Undang-Undang no. 38 Tahun 1999* [Zakat Agency Response to Zakat Statute no. 38/1999] (Jakarta, 2002/2003), 48.
68. *Ibid.*, 49-50.
69. According to research conducted by PIRAC in 2002 on the pattern of payment of *zakat*, the level of trust in state *zakat* agencies was only 4 percent. PIRAC, *Pola dan Kecenderungan Masyarakat Berzakat* [Patterns and Trends of Zakat Payment in Society] (Jakarta: PIRAC, 2002), 18.
70. These cities are: Jakarta, Bandung, Semarang, Surabaya, Medan, Padang, Denpasar, Manado, Makassar, Pontianak and Balikpapan.
71. PIRAC, *Pola dan Kecenderungan Masyarakat Berzakat*, 10.
72. *Ibid.*, 12-18.
73. *Ibid.*, 42-43.

74. See PIRAC, *Pola dan Strategi Penggalangan Dana Sosial di Indonesia* [Pattern and Strategy of Social Charity Collection in Indonesia] (Jakarta: PIRAC, 2003).
75. Refer to the PKPU website, [www.pkpu.or.id](http://www.pkpu.or.id)
76. PIRAC, *Giving and Fundraising in Indonesia* (Philippines: Asian Development Bank, 2002), 67-69. See also PIRAC, *Pola dan Strategi Penggalangan Dana Sosial di Indonesia*, 73-95.
77. Quoted from DEPAG RI, derived from the report of religious offices at the Government Provinces in Indonesia.
78. Dirjen BIMAS Islam & Haji, *Penelitian Tanah Wakaf Produktif dan Strategis* [Research on the Productive and Strategic Waqf] (Jakarta: Depag, 2002), 5.
79. *Ibid.*, 8.
80. Quoted by Imam Suhadi, *Wakaf Untuk Kesejahteraan Umat* (Yogyakarta: Dana Bhakti Prima Yasa, 2002), 118, obtained from the Department of Religion. Unfortunately, we failed to obtain figures on waqf and social welfare, but to my knowledge, such waqf was normally assigned for the orphanages, clinics, etc.
81. Dirjen BIMAS Islam & Haji, *Penelitian Tanah Wakaf*, 4. Imam Suhadi also insisted that institutional management is more effective than individual management in terms of improving the public benefits in society. See Imam Suhadi, *Wakaf Untuk Kesejahteraan Umat* [Waqf for Umat Welfare] (Yogyakarta: Dana Bhakti Prima Yasa, 2002), 132-133.
82. Muhammad Khalid Masud, *Muslim Jurists' Quest for the Normative Basis of Shari'a* (Leiden: ISIM, 2001), 3.
83. Consideration of waqf statute no. 41/2004 especially part a and b.
84. Article 1 (1) of waqf statute no. 41/2004. The temporary nature of waqf assignment is primarily held by Maliki jurists and it was not commonly recognized by Indonesian Muslim jurists until the waqf act no. 41/2004 was enacted.
85. Timur Kuran, "The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System," in *Law and Society Review* (2001): 841-897; 880-883.
86. Muslim jurists of schools of law have explained that waqf was only legal when it was made by an individual who has fulfilled the requirements. They, however, did not elaborate on the legality of waqf derived from a certain organization or legal institution.
87. Article 1 (2) of Waqf Statute no. 41/2004.
88. Article 44 (1) and (2); 67 (1), (2) and (3) of Waqf Statute no. 41/2004.
89. The Elaboration on the Waqf Statute no. 41/2004.
90. Article 21 (2) of Waqf Statute no. 41/2004.
91. Article 3 of Waqf Statute no. 41/2004.
92. Article 57 of Waqf Statute no. 41/2004. When the BWI was first established, its personnel were inaugurated by the President of the Republic of Indonesia through a recommendation made by the Minister of Religion.
93. Article 50 of Waqf Statute no. 41/2004.
94. Article 61 (1) and (2) of Waqf Statute no. 41/2004.
95. Article 63 (1), (2) and (3) of Waqf Statute no. 41/2004.
96. Article 64 of Waqf Statute no. 41/2004.
97. Article 28 of Waqf Statute no. 41/2004.
98. Article 49 (1) of Waqf Statute no. 41/2004.
99. Article 47 (1) and (2) of Waqf Statute no. 41/2004.
100. Article 49 (1) of Waqf Statute no. 41/2004.
101. The exchange of waqf is lawful if it (the good being received in exchange) is equal to or more in value than the original waqf asset. Article 41 (1), (2) and (3) of Waqf Statute no. 41/2004.
102. Article 49 (2) of Waqf Statute no. 41/2004.
103. Article 9 of Waqf Statute no. 41/2004.
104. Article 10 (1), (2) and (3) of Waqf Statute no. 41/2004.
105. Article 16 (1), (2) and (3); article 28, 29, 30, 31 of Waqf Statute no. 41/2004.



106. It is probable that Abū Ishāq al-Shāṭibī was the first man to introduce the concept of *maqāṣid al-sharīʿa*. According to him, *sharīʿah* law aims to protect five basic human interests: religion, life, reproduction, property and reason. These basic interests are, he insisted, universally recognized among all other nations. Muhammad Khalid Masud, *Muslim Jurists' Quest for the Normative Basis of Sharīʿa* (Leiden: ISIM, 2001) 8-9.
107. Article 17 (1) and (2) of Waqf Statute no. 41/2004.
108. Article 42 of Waqf Statute no. 41/2004.
109. Article 43 (1) and (2); 44 (1) and (2) of Waqf Statute no. 41/2004.
110. Article 45 (1) and (2) of Waqf Statute no. 41/2004.
111. Article 22 of Waqf Statute no. 41/2004.
112. Article 23 (1) and (2) of Waqf Statute no. 41/2004.
113. Article 25 of Waqf Statute no. 41/2004.
114. Article 24, 25, 26 and 27 of Waqf Statute no. 41/2004.

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