**OPTIMIZATION OF WAQF LAND FOR THE CONSTRUCTION OF HOSPITALS THROUGH BUILD OPERATE AND TRANSFER (BOT)**

**TRINI HANDAYANI1**

**ANITA KAMILAH2**

1Faculty of Law, Suryakancana University, Pasir Gede Raya Street, Bojongherang, Cianjur, West Java 43216

2Faculty of Law, Suryakancana University, Pasir Gede Raya Street, Bojongherang, Cianjur, West Java 43216

Email: trinihandayani@unsur.ac.id

**Abstract.** Waqf is a legal act of a person or group of people or a legal entity that separates a portion of his property and institutionalizes it forever in the interest of worship or other public needs in accordance with Islamic teachings. The waqf paradigm that provides understanding is only for religious purposes, resulting in many unproductive waqf lands. So the purpose of this article is to analyze the use of waqf land for the construction of hospitals through the Build Operate and Transfer (BOT) model in order to increase the Human Development Index in Indonesia. The research method in this article is qualitative research and this type of research belongs to the category of library research and its research approach is descriptive analytic. While the data analysis techniques in this study used data analysis techniques modeled by Miles and Huberman. The conclusions of this article are waqf positivation through Law No. 41 of 2004, which requires Nadzir to manage and develop waqf property in accordance with its purpose, function and designation, becoming one of the cornerstones of the utilization of waqf land for health service business activities by establishing Hospital. Build Operate and Transfer (BOT), can be used as a model for utilizing waqf land in hospital business activities that play a role in entrusting waqf institutions in the face of limited funds or capital as well as providing strategic land for investors. Given that there are no rules governing BOT, it needs government policy in the establishment of the BOT Act to ensure the certainty of legal relations between parties, especially in the hospital business.

Keyword: Waqf land, Hospital Construction, BOT.

**Introduction**

The opening of the 1945 Constitution gave a mandate to the state administrators to protect the entire Indonesian nation and all of Indonesia 's bloodshed, as well as promote public welfare. This shows that the Indonesian state other than as a Law State (*rechtsstaat*) as stipulated in Article 1 paragraph (3) of the 1945 Constitution, the third amendment, is also based on the welfare state. With regard to the welfare state, Bagir Manan gave the view that the state or government is not merely a guardian of security or public order, but bears the primary responsibility for realizing social justice, public welfare, and the maximum prosperity of the people in achieving state goals through development national (Manan, 1996).

In order to realize these national goals economic development is needed, one of which is through the development of the potential contained in religious institutions that not only provide religious and social facilities, but also have economic benefits, namely "Wakaf" institutions.

In the provisions of Indonesian national law, provisions concerning waqf are included in Law Number 5 of 1960 concerning Basic Agrarian Principles, Article 49 Chapter XI concerning Land Rights for Sacred and Social Purposes, and Law Number 41 2004 concerning Waqf which is further regulated in Government Regulation Number 42 of 2006 (Mubarok, 2013).

 Referring to the contents of the two laws and regulations, there is a similar function of waqf which is to realize the potential and economic benefits of waqf property for the purposes of worship and to promote public welfare. Underlining the function of waqf, which gives emphasis to the interests of worship, social, and public interests, then when the use of waqf objects, especially land for purposes other than for economic activities in the broadest sense, namely for the benefit of hospital development still raises pros and cons because considered to have deviated from the purpose and function of the waqf, while quite a lot of people needed health development facilities but were still constrained due to limited availability of land. In order to examine the issue more deeply, the questions are: (1) Is it justified to use waqf land for the establishment of hospitals in order to increase the Human Development Index in Indonesia; and (2) How is the use of waqf land for the construction of hospitals through the Build Operate and Transfer (BOT) model.

**Method**

This research is a qualitative research, in accordance with the object of study. In this article, this type of research falls into the category of library research. According to Kaelan, in library research sometimes it has a descriptive and also has historical traits including those in religious research. Therefore library research will face data sources in the form of books that are very large in number so that they require adequate methods. For this reason, in library research, collecting books must be gradual, because there will be difficulties if not. By using data from various references both primary and secondary. These data are collected by documentation techniques, namely by reading, studying, and recording the literature that has to do with the problems discussed in this article.

Next is the data analysis technique. The technique used in this article is the data analysis technique modeled by Miles and Huberman. In this model qualitative analysis activities are carried out interactively and continuously until it feels sufficient. According to Kaelan, there are two stages in data analysis techniques in this library research. First, the analysis at the time of data collection is intended to better capture the essence or core of the research focus that will be carried out through sources collected and contained in the verbal formulation of language, this process is carried out aspect by aspect, in accordance with the research map. Second, after the data collection process has been carried out, then it is analyzed again after the data collected in the form of raw data must be determined by relations with each other. The collected data may not necessarily answer all the problems raised in the study, therefore it is necessary to re-analyze the data that has been clarified. Data analysis activities of this model include data reduction (data reduction), display of data and description of conclusions or verification (Nasution, 2008).

**Results and Discussions**

**Utilization of Waqf Land for Hospital Development**

Waqf is a social instrument in Islam that plays an important role in improving the welfare of the people through increasing the income of the poor, managed by individual and legal entities (Asytuti, 2012).

Endowments terminology that has been adopted into Indonesian comes from Arabic, is a *masdar* form or an inverse word of a verb or *fi'il*: *waqafa*. This *waqafa* verb sometimes requires an object (*muta'addi*) and sometimes does not require an object (common). Synonyms waqf are ḥabs, waqafa and ḥabasa in the form of verbs that mean stopping and holding or stopping in place (Furqon, 2012). Whereas according to the Law on Endowments Number 41 of 2004 that: “Waqf is a legal act of wakif to separate part of his property, to be used forever or within a certain period of time according to his interests for the purposes of worship or general welfare according to sharia” (Muntaqo, 2012).

The Shorter Encyclopedia of Islam refers to the notion of waqf according to the term Islamic law, which is to protect it from being a property of a third person. The statement means that maintaining something or object by holding it so that it does not become the property of a third party. The object that is held must be an object that remains in its substance, released by one who has his own power in certain ways and conditions, but the results are picked and used for the purposes of virtues determined by Islamic teachings.

Terminologically in Islamic law, according to the definition that is most widely followed, waqf is defined as “institutionalizing an object that can be taken advantage of by stopping the right of act of the waqf perpetrator or other to the object and channeling the results to the existing existing channels or for social purposes kind”. There is also a definition of waqf as “holding an object not transferred for ever and donating benefits (results) to poor people or for good purposes” (Anwar, 2007).

The waqf paradigm in Indonesia is less supportive of optimizing waqf empowerment, which provides understanding of waqf only for religious purposes such as places of worship, as well as social interests only (Damanuri, 2012). The waqf tradition then gave rise to various phenomena that resulted in the representation of Indonesian representatives not to experience encouraging developments for the benefit of many people. In terms of the types of objects, the endowments carried out by the Indonesian people are also more in the form of land built for the purposes of mosques, mushallas, madrassas, tombs. There is also a form of paddy fields and plantations, but because of the limited ability and narrow understanding of waqf itself, resulting in a lot of waqf land that is not productive (Mubarok, 2013).

Based on data from the Directorate of Waqf Empowerment of the Ministry of Religion of the Republic of Indonesia until March 2016, the total area of waqf land throughout Indonesia reached 4,359,443,170.00 M2, of which 287,160 were certified, while 148,447 were not certified yet. The amount of waqf assets in Indonesia is the largest number of waqf assets in the whole world (Piliyanti, 2010), and is a potential asset to overcome economic, social and educational problems if managed productively and professionally (Furqon, 2012). However, from the vast amount of land that is represented, its utilization is not optimal because it is only limited to religious, social activities, and even a lot of abandoned land that does not provide benefits for the welfare of the people is even a burden to the Nadzir.

Based on this condition, one of the strategic steps in increasing the role of waqf as a religious institution and fulfilling legal needs in the context of national development, on October 27, 2004, the Government ratified Law Number 41 of 2004 concerning Endowments (Lubis, 2015). The promulgation of the law, is the first step for a new era of representatives in Indonesia, because the arrangement is more comprehensive, for example the scope of objects that can be represented which are generally understood to tend to be limited to waqf of immovable objects such as land and buildings, becoming more diverse money, precious metals, securities, vehicles, intellectual property rights, rental rights, and other movable objects including the use of waqf objects themselves (Muslim, 2015).

Positivisation of waqf through the provisions of Article 42 Chapter V of Law No. 41 of 2004, which requires Nadzir to manage and develop waqf property in accordance with its objectives, functions and designation, becoming one of the cornerstones in answering pros and cons relating to the utilization of waqf land for business activities, as well as other social interests such as the construction of hospitals.

Hidayat (2016) gave his view that waqf is basically “economic corporation”, which contains elements of investment as the main foundation for the development of productive economy, which is able to generate profits and can be used for the welfare of the people as mandated by wakif in the waqf pledge.

Elaborating the views of Mubarok (2008) and Qahaf (2006), what is meant by productive waqf is the management of waqf naturally into the management of professional waqf to increase or increase the utilization of waqf, both in agriculture, industry, trade and other fields, wrong the only construction of a hospital is to provide health services in improving the Indonesian Human Development Index, which is in accordance with the purpose of waqf.

Several countries and institutions that have implemented productive endowments through business activities, namely the Islamic Development Bank (IDB) which formed the World Waqf Agency in 2001, by developing representatives in the real sector and trading shares. Investments are made in several countries such as Qatar, Kuwait, Malaysia and several other countries, in the form of hotels, offices and agriculture. The Kuwait Public Waqf Foundation (*al amanah al 'aamah li al-awqaf*) places the representative as an economic instrument and social security. Turkey has developed health services through hospital waqf, one of which is a hospital founded in 1843 in Istanbul by the mother of Sultan Abdul Mecit who became known as Bezmi Alan Valid Sultan Guraki Muslim. The hospital is currently one of the modern hospitals which has 1,425 beds and approximately 400 doctors, nurses and staff (Hasanah, 2008).

The application of productive waqf is in line with the principles contained in the provisions of Law No. 41 of 2014 which function the waqf assets to realize the potential and economic benefits of waqf property so as to provide benefits for improving the welfare of the people.

The Human Development Index (HDI) is an indicator of the level of welfare of a country. Indonesia is ranked 87th out of 157 countries. Components that influence the HDI are the Education Index, the Health Index and the Purchasing Power Index. One strategy to improve HDI in the health sector is to establish a hospital, considering the number of hospitals in Indonesia is still lacking according to the standards of the World Health Organization (WHO), namely 1 bed (TT) of patients in hospitals is comparable to 1,000 residents.

The following are data on the number of beds per 100,000 population and the number of hospitals based on the region in 2018:

**Table 1 Hospital by Region**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Region** | **Number of hospitals** | **Number of TT** | **Total Population** | **TT**  **Target** | **WHO**  **Target** |
| Region 1 | 1.402 | 889 | 152.449.900 | 1.525 | 152.500 |
| Region 2 | 413 | 735 | 39.183.700 | 392 | 39.200 |
| Region 3 | 702 | 2.068 | 51.935.100 | 519 | 51.900 |
| Region 4 | 134 | 622 | 11.634.900 | 116 | 11.600 |
| Region 5 | 159 | 700 | 13.069.300 | 131 | 13.100 |

Source: https: //sirs.yankes. kemkes.go.id/fo and processed Central Statistics Agency

Information:

Region 1 is a joint territory of the Special Province of the Capital City, West Java, Central Java, Special Region of Yogyakarta, East Java and Banten;

Region 2 consists of West Sumatra Province, Riau, South Sumatra, Lampung, Bali and West Nusa Tenggara;

Region 3 consists of Nanggroe Aceh Darussalam Province, North Sumatra, Jambi, Bengkulu, Bangka Belitung Islands, Riau Islands, West Kalimantan, North Sulawesi, Central Sulawesi, South Sulawesi, Gorontalo and West Sulawesi;

Region 4 consists of Central Kalimantan Province, South Kalimantan, East Kalimantan;

Region 5 consists of East Nusa Tenggara, Maluku, North Maluku, West Papua and Papua Provinces.

Based on the table above, if according to the indicators from the Ministry of Health, only in Region 1 areas that still need hospitals, out of 889 beds in 1,402 hospitals there is still a shortage of 636 beds in hospitals. When compared with WHO standards, all regions still experience a shortage of hospital beds. Hospital development is prioritized for Region 1, then analyzed based on regional and Region 4 profiles and Region 5 which need to be prioritized based on territorial profiling. Investing in the Hospital sector requires a long time to Break Event Point (BEP), on average, the new BEP will be achieved in the 10th year onwards. Therefore, BOT can be done in more than 10 years.

**Utilization of Waqf Land for Hospital Development through Build Operate and Transfer (BOT)**

The Build Operate and Transfer (BOT) concept began to become widely known around 1985 in Turkey, as the concept of privatization of Prime Minister Turgut Ozal, known as "Turgut's Formula", in the construction and management of dams on the Syehan river, with a project value of 231.5 million US dollars (Kamilah, 2012). The concept of BOT is widely adopted by developing countries including Indonesia in the construction of infrastructure projects in the midst of limited government funding in the State Expenditure Budget (APBN) and the Regional Expenditure Revenue Budget (APBD).

In the provisions of Indonesian national law, there are no comprehensive rules regarding BOT cooperation. The foundation on which the BOT agreement is based is only based on the principle of freedom of contract as stipulated in Book III of the Civil Code concerning Engagement (*Van Verbintenissen*) Article 1338 paragraph (1) of the Civil Code, which gives everyone the freedom to make any agreement, containing anything, and in any case including the construction of hospitals originating from the use of waqf land through the BOT model, with provisions that may not conflict with law, public interest, and decency (Murdiana, 2015).

But to understand the concept of BOT can be based on the Decree of the Minister of Finance of the Republic of Indonesia No. 470 / KMK.01 / 1994 concerning Procedures for the Elimination and Utilization of Property or State Wealth, Build Operate and Transfer (BOT) agreement is the utilization of goods or property of state assets in the form of land by other parties, by the way the other party builds buildings or other facilities and facilities on the land, and utilize them within a certain period of time, to then return the land, buildings, and or other facilities and their facilities along with their utilization to the relevant department or institution after the end of the agreed period (Jamilah, 2012).

Referring to these provisions, in order to optimize waqf land in the midst of financial or financial constraints owned by waqf institutions, one of them can use the Build Operate and Transfer (BOT) model. Through the BOT model, Nazhir as the party that receives the waqf property can partner with a third party (investor) to fund the construction of waqf land, both for the construction of hotels, trade centers, offices, and hospital construction. Then, giving the right for investors to operate the construction of the infrastructure or hospital for a certain period of time as agreed between Nadzir and the investor, and then after the BOT period is completed, the investor is obliged to surrender the land, hospital building, and supporting facilities to Nadzir.

Optimizing waqf land for the construction of hospitals through the BOT model has benefits for Nazhir and investors, as follows:

1. Benefits for waqf institutions
2. Optimizing waqf land is funded by investors so that it can reduce the amount of loan funds from third parties, as well as provide solutions for waqf institutions in facing constraints of limited funds;
3. Financing the construction of a hospital with a BOT system will benefit both financially and administratively, because the waqf institution does not have to conduct a feasibility study, the project will be financed and carried out by and at the risk of the investor and from the quality of the results of hospital development;
4. During the management of the hospital, the waqf institution will get a rent or royalty in the amount according to the agreement;
5. At the end of the management period, the hospital building and all supporting health service facilities are left to the waqf institution, and to keep the hospital building and supporting facilities submitted to the waqf institution in good condition, the waqf institution can continue to burden the obligation to the investor to carry out maintenance and repairs to the hospital building during the BOT period;
6. Optimizing waqf land in hospital development activities opens employment opportunities to reduce the number of unemployed;
7. Financing the construction of hospitals through the BOT system does not create a debt burden for the waqf institution (Wirana, 1994).

2. Benefits for investors

a. For investors, they can take advantage of the strategic land owned by waqf institutions for hospital development in the midst of limited land;

b. Expanding business to other fields that have good prospects and are profitable;

c. Creating a new business field and climate.

Thus, the use of waqf assets for the construction of hospitals through BOT provides benefits for both parties for waqf institutions as parties given mandate by Wakif as well as for investors as parties who have funds. For the private sector (investors) can build a hospital to provide health services without having to own land. For waqf institutions that have strategic land only and when they will use waqf land constrained by funds because they require very high costs, then with the BOT model in the short term, waqf institutions get benefits in addition to obtaining financing for project development, they will also receive compensation or royalties from managing the project. In the long term, the benefits received by the waqf institution, namely after the BOT period ends, the waqf institution will get the building and its facilities and infrastructure, so that the BOT agreement will not only disrupt the use of waqf institution funds, but also can increase financial receipts waqf institution, both during construction, operation, and at the time of handing over the hospital building.

The utilization of waqf land for the construction of hospitals through this BOT model is also able to provide benefits not only for waqf institutions and investors, but also provide benefits to the wider community who need health services to shift 'private benefits' to 'social benefits' (Darwanto, 2012) . So that the function and purpose of waqf as mandated in Article 4 and Article 5 of Law Number 42 of 2014 in promoting the welfare of the people can still be realized. Thus, creating a triangle synergy between waqf institutions, business or social, communities, that waqf institutions through strengthening state policies as stipulated in Law Number 42 of 2014 concerning Endowments provide a place to increase the function and role of waqf productively. The private sector (investors) encourages the creation of jobs and increased income for the community, and the community accommodates social and political interactions, and participates in these social and political economic activities (Susantono and Berawi, 2012).

Utilization of waqf land in hospital development activities is not intended to equalize waqf management with business management in the private sector, but in accordance with Chapter V Article 42 and Article 43 of the Law on Waqf management and development of waqf assets carried out with sharia principles namely a rule agreements based on Islamic Law between waqf institutions and investors and those who have relevance to the use of waqf land through BOT (Supriyadi, 2003), such as banks, contractors, insurance companies, and tenants all based on the following principles: : (1) Inter-Chinese principles (voluntary in contract). (2) Principles of *al-I’timad ‘ala la-nafs* (entrepreneurship). (3) *al-ta'awun principle* (mutual benefit in matters that are useful) (4) principle of *al-mas'uliyah* (responsibility). (5) The principle of *al-tasyir* (ease) because all of your activities are permissible as long as there are no restrictions. (6) *al-idariyah* principle (correct and transparent financial administration), (7) principle of *al-takaful al-ijtima'i* (social responsibility), and (8) *alikhtiyat* principle (caution) (Ismanto, 2014).

In the empirical level, the use of waqf land in hospital development activities through the BOT model in addition to having benefits is also inseparable from the risk, namely the potential loss due to events, which can cause adverse effects (Karsaman et al., 2015 ), among them:

1. Legal Risk, namely the possibility of unenforceable or inoperability of contracts either in whole or in part made by the parties;
2. Economic Risk, namely the calculation of the project based on incorrect assumptions and bias towards project implementation costs, market conditions, or sudden currency movements so that the situation is very difficult for investors to continue implementing the BOT agreement (Yasa, Dharma, and Sudipta, 2013);
3. Force majeure or overmacht, for example, the occurrence of unexpected conditions for BOT objects, such as fire, natural disasters, war, riots that are directly related to or affect the implementation of the BOT agreement, so that the BOT agreement is impossible to continue;
4. Market and Income Factors, namely loss of income caused by insufficient direct income from the project, lack of income from other sources related to the project (Kamilah, 2012).

Considering the impact of these risks can hinder the purpose of utilizing productive waqf land in the development of the hospital, it is necessary to carry out risk mitigation, which is carried out by both waqf institutions and companies in decision making (Wryhas, 2005 ) Actions that can be taken in dealing with risks are: 1) Risk Retention carried out through a certain action because the impact of an adverse event is still acceptable (acceptable); 2) Risk Reduction, by in-depth study of these risks, and making prevention efforts on risk sources or combining efforts so that the risks received do not occur simultaneously; 3) Risk Transfer, which is carried out by insuring the risk of either partially or wholly to other parties who will provide guarantees or dependents if these risks actually occur in the BOT agreement: 4. Risk Avoidance, done by avoiding activities with a high level of loss (Yasa, Dharma, and Sudipta, 2013).

**Conclusions**

Land is one of the waqf objects performed by wakif through the separation of parts of wakif objects to be used forever or in a certain period of time according to their interests for the purpose of worship or public welfare, through endowment optimization in the construction of hospitals as the development of productive waqf. Productive waqf is a professional management of waqf to increase or increase the benefits of waqf, one of which is through the construction of hospitals, which are able to generate benefits that can be used for the welfare of the people as mandated by wakif in the waqf pledge. Utilization of waqf land for the construction of hospitals through the Build Operate and Transfer (BOT) model is a model of utilization of waqf land in the midst of financial or financial constraints owned by waqf institutions where Nadzhir as the party that receives waqf property, cooperates with parties third (investor) to fund the construction of a hospital on waqf land. Investors are given the right to operate the construction of the hospital infrastructure, for a certain period of time as agreed between Nadzir and investors, and then after the BOT period is complete, the investor must submit land, buildings, hospitals and other health service supporting facilities to Nazir.

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