

# The Meaning of 'Amânah' and 'Trust' in the Appointment of *Nâzhir* in Indonesian Endowment Regulations

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**Abstract:** *The Meaning of 'Amânah' and 'Trust' in the Appointment of *Nâzhir* in Indonesian Endowment Regulations.* This article analyzes the realization of the professionalism principle for the *nâzhir* (waqf organiser) as conceptualized in waqf (endowment) law. One of the *nâzhir* requirements in the endowment law is the *amânah* which is interpreted as human responsibility covering the horizontal/*insâniyyah* and the hereafter (transcendental/*ilâhiyyah*) dimensions. By using a statutory approach (statute approach) and a conceptual approach, this research finds the fact that endowment (endowments) is the *tabarru'* (voluntary) contract; the *amânah* principle as contained in the endowment pledge has a similar meaning to the concept of trust in a general sense. The concept of trust in a general sense and the concept of *amânah*/trust in Islamic law are both forms of trust from one party to another with the conditions set out in Article 10 of the Endowment Law and the endowment pledge deed.

**Keywords:** *amânah*, trust, *nâzhir*, Endowment Regulations, Indonesia

**Abstrak:** *Makna 'Amânah' dan 'Kepercayaan' dalam Pengangkatan *Nâzhir* dalam Peraturan Wakaf Indonesia.* Artikel ini menganalisis realisasi prinsip profesionalisme bagi *nâzhir* (pengelola wakaf) sebagaimana dikonseptualisasikan dalam hukum wakaf. Salah satu syarat *nâzhir* dalam hukum wakaf adalah *amânah*, yang dimaknai sebagai tanggung jawab manusia yang meliputi dimensi horizontal/*insâniyyah* dan akhirat (transcendental/*ilâhiyyah*). Dengan menggunakan pendekatan undang-undang dan pendekatan konseptual, penelitian ini menemukan fakta bahwa wakaf adalah akad *tabarru'* (sukarela); asas *amânah* sebagaimana terkandung dalam ikrar wakaf memiliki makna yang mirip dengan konsep *trust* dalam pengertian umum. Konsep *trust* dalam pengertian umum dan konsep *amânah* dalam hukum Islam keduanya merupakan bentuk kepercayaan dari satu pihak kepada pihak lain dengan syarat yang diatur dalam Pasal 10 UU Wakaf dan akta ikrar wakaf.

**Kata kunci:** *amânah*, trust, *nâzhir*, Peraturan Wakaf, Indonesia

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## Introduction

Conceptually, *zakât* and *waqf* (endowment) have great potential to support the development of the halal industry in Indonesia. With their special characteristics, Indonesians are considered the most generous population in the world, as emphasized by the CAF World Giving Index in 2018. According to the CAF World Giving Index, Indonesia obtained a score of 78, which means 78% of Indonesians made money donations in the past month. This tendency is in second place after Myanmar which obtained an 88% score.<sup>1</sup>

The formulation of Article 1 of the Endowment Law states that endowment is a legal act carried out by a person to separate and/or to give part of the property to be used for worship and/or public welfare for a certain period or forever according to sharia provisions (Islamic law). Based on the potential distribution of endowment land throughout Indonesia, as recorded by the Indonesian Ministry of Religion, and the Indonesian Waqf Agency (BWI), as well as reaffirmed in the Indonesian Islamic Finance Master Plan initiated by Bappenas, there are 274,061 locations of endowment land in Indonesia with a total land area is approximately to 435 million square meters. Unfortunately, of the number of existing locations, only 66% of the land has been documented (certified). This is as released by the National Development Planning Agency [BAPPENAS].<sup>2</sup> BAPPENAS also released several obstacles and problems that arise in the management of endowment funds in Indonesia, especially from the endowment administering institutions. The obstacles include a) not all endowment administrators in Indonesia are registered and supervised. This puts the total endowment amount at risk and opens up opportunities for manipulation and loss; b) shortage of endowment management institutions that are registered in BWI and also those that do not obtain operational permits.

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<sup>1</sup> See Deputy for Economics (Ed.), MEKSI 2019 – 2024 (Results of the Study of Sharia Economic Analysis in Indonesia, (Jakarta: Ministry of National Development Planning/National Development Planning Agency, 2018), p. 254.

<sup>2</sup> Bappenas RI. *Masterplan Arsitektur Keuangan Syariah Indonesia [AKSI]*, 'The National Development Planning Agency [BAPPENAS] Republik Indonesia' (Jakarta: Bappenas RI, 2016), p. 138.

Meanwhile, the appointment of *nâzhir* (endowment organiser) means handing over the responsibility for managing endowment assets to a person or institution administering endowment to manage, maintain, and develop endowment assets. This appointment was exemplified by the Prophet Muhammad who appointed Abû Rafi' as the manager of the endowment, which was later followed by the Prophet's companions, for instance, Abû Bakr with his endowment, 'Umar bin Khattâb with the land of Khaibar, Alî bin Abî Thâlib with the Land in Yanbu', Khalid bin Walid with his armor, Ustman bin' Affan with the Raumah well, Zubair bin Awwâm, Sa'ad bin Abî Waqash, Amru bin 'Ash and Hâkim bin Hazam with their house, as well as several other companions of the Prophet.<sup>3</sup>

On one hand, endowment institutions are almost similar to 'charity trust' institutions, on account that they have the same goal, namely for the benefit of the wider community, and are social in nature. On the other hand, endowment has a very important role in fulfilling the economic interests of society. Endowment management has a special principle, namely the principle of immortality which makes endowment different from alms, donations, or other forms of donations as can be found in Western countries.<sup>4</sup> Another principle that is no less important is trust, which is reflected in the expertise and creativity of endowment administrators in developing endowment assets. This principle of trust becomes a necessity, especially when it is related to the purpose of the endowment worship itself, namely to create value for the benefit of the endowment property. The concept of trust that was born from a *wâqif* (endowment giver) and the concept of *amânah* in endowment administrators have the same views, although both come from different legal sources, namely trust in the perspective of civil law and *amânah* in the perspective of Islamic law.

Furthermore, recently, there has emerged a new practice in society which is known as cash endowment. This kind of endowment is a

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<sup>3</sup> A. Hajar al-Asqalani. *Fath al-Bari bi Syarh Shahîh al-Imâm Abi 'Abdillah Muḥammad bin Ismâil al-Bukhârî* (al-Qâhirah: Dâr al-Kutub al-Salafiyyah, 1960), p. 197.

<sup>4</sup> Rozalinda, *Manajemen Wakaf Produktif* (Jakarta: RajaGrafindo Persada, 2015), p. 7.

development of endowment concept generating quite a large amount of funds while requiring more complicated management. The magnitude of the economic potential contained in endowment makes the institutional aspects of endowment organizers very interesting to study, with the intention that endowment institutions can work together with the government to create community welfare.

Meanwhile, legal studies regarding the actualization of the concept of '*amânah*' and 'trust' in endowment have not been carried out in depth. Especially a specific study of the categorization of '*amânah*' for personal endowment organizer who acts as guardian, supervisor, and manager of endowment assets. The results of research on the concept of 'trust' in endowment written by Yulia Qomariyanti<sup>5</sup> explain that between trust institutions that developed in Western countries and 'trust' institutions as in the concept of Islamic endowment, there is a correlation of virtuous practices that aim solely for the benefit of society. *Charitable trust* in those days was given to the church as a trustee to manage property for social purposes. Such is similar to the purpose of endowment which is charitable trust forever in the public interest.

This research examines the laws and legal concepts of endowment in the context of the implementation of '*amânah*'<sup>6</sup> and trust. As understood that the essence of endowment in Islam is the value of immortality and benefit. Of course, these two values are in direct contact with the practice of virtue and social interests.

## Research Methods

This article examines the application of the principles conceptualized in endowment, namely professionalism, trustworthiness, and the realization of trust in the formation of endowment organizers for the benefit and prosperity of Muslims in Indonesia. This study uses a statutory approach, namely Law Number 41 of 2004 concerning Endowment. Data collection

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<sup>5</sup> Yulia Qamariyanti, *Pengelolaan Harta Trust dan Wakaf* (Bandung: Citra Aditya Bakti, 2004), p. 4.

<sup>6</sup> One of the requirements for an individual endowment organizer is '*amânah*'. See explanation of Article 10 paragraph (1) letter d of Law no. 41 of 2004 concerning Endowment.

and analysis are carried out through some activities: a) Collecting data and information needed to determine the role and function of the perspective of Law Number 41 of 2004 concerning Endowment; b) Collecting data and information needed to review the role and function of the endowment regarding endowment property; and c) Collecting data and information needed to determine various policies and programs that have been carried out by the government in improving and empowering the role of endowment organizer functions toward professionalism.

This research is a normative juridical research, using qualitative techniques in analysis. The stages of data analysis refer to the opinions of Miles and Huberman<sup>7</sup>, namely through 3 stages: a) data reduction; b) data presentation (data display); and c) conclusion /verification. The author starts by sorting out legal material relating to the regulation of 'amânah' and the concept of 'trust' in various literature; then proceeds to the process of presenting data regarding government policies in enhancing and empowering the role of endowment organizer; and, finally, analyzing the data to conclude by referring to the findings, thoughts, and ideas obtained from the research activities.

## Results and Discussion

In line with the Indonesian Sharia Economic Master Plan 2019-2024 which was announced by the National Sharia Financial Committee (KNKS) Steering Committee in May 2019, one of the objectives of developing the sharia economy in Indonesia is to increase national economic growth. This philosophical view and plan have been formulated in the vision, mission, strategy, and programs that will be realized in the next five years through the National Development Planning Agency. One of the development programs in the roadmap is increasing the receipt of *Zakât, Infâq*, Alms, and Endowment Funds (ZISWAF). Apart from this, there are still several problems in the endowment ecosystem strengthening program, for example, problems in the institutional sector of endowment

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<sup>7</sup> Sugiyono, *Metode Penelitian Kuantitatif, dan Kombinasi (Mixed Methods)* (Bandung: Alfabeta, 2013), p. 334.

organizers, especially for individual endowment fund organizers, which have not been resolved to date

In the practice of organizing and managing endowment assets, Islam outlines that for Muslims to fulfill their daily needs, they must have the experience and ability to realize personal economic independence and the economy of the people as a whole. Without economic independence, as al-Qarâdawi<sup>8</sup> emphasized, that Muslims will not have *izzah* (power or self-respect) and will continue to depend on other countries.

There are differences in the number of endowment land distributions in Indonesia according to the Indonesian Ministry of Religion and BWI. Data presented by BWI states that the number of endowment land assets in Indonesia is recorded at 435,768 endowment land objects with an area of 4,359,443,170 square meters (m<sup>2</sup>). Meanwhile, based on data released by the Indonesian Ministry of Religion, the number of endowment assets in Indonesia is 435,607. Of this number, 287,160 objects have endowment certificates, and 148,447 objects do not have endowment certificates.<sup>9</sup> One of the reasons why the legality aspect of land assets has not been fulfilled is the large number and wide distribution of potential endowment land wealth, both those that existed long before independence and those that existed after Indonesian independence. It is reasonable, then, that up to now the real amounts of assets covered by the laws and regulations in Indonesia cannot yet be obtained and validated.

Furthermore, endowment in Islam is included in the category of *sunnah* worship which adheres to the principles of volunteerism and generosity.<sup>10</sup> This is as confirmed in Article 49 paragraph 3, part Residential Land Ownership. As explained by Muhammad<sup>11</sup>, the recommendation for

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<sup>8</sup> Yusuf al-Qarâdawi, *Malamih al-Mujtama' al-Muslim Allazi Nansyuduhu* (Cairo: Maktabah Wahbah, 1993), p. 212.

<sup>9</sup> Official website of The Directorate of Zakat and Waqf Empowerment, [http://siwak.kemenag.go.id/tabel\\_jumlah\\_tanah\\_wakaf.php](http://siwak.kemenag.go.id/tabel_jumlah_tanah_wakaf.php), accessed on 13 of March 2022.

<sup>10</sup> Ani Yumarni and others, 'The Implementation of Waqf as 'Urf in Indonesia', *Sriwijaya Law Review*, 5.2 (2021): 287 <<https://doi.org/10.28946/slrev.Vol5.Iss2.1126.pp287-299>>.

<sup>11</sup> Nasrul Hisyam Nor Mohamad, Mohd Arafat Jaafar, Muhibbuddin Abdullah, Nurul Atikah Nizaludin, Muslim Salleh, and Muammar Mohd Zin, 'Konsep *Maqâshid Syariah* dalam Pengurusan Wakaf', *International Journal of Islamic and Civilization Studies; UMRAN*, 2.3 (2015): 01-09.

implementing endowment in Islam does not only have the dimension of worship but also has a significant contribution in the aspect of improving and supporting the human economy.

Endowment in Islam is a form of charity that retains the corpus and gives away its usufruct for charitable purposes.<sup>12</sup> The existence of an endowment organizer is one of the uniqueness of this kind of Islamic philanthropic funds, with other philanthropic funds, such as *zakât*, grants, *infâq*, and alms. However, one of the principles applied in this kind of endowment is the permanence of its continuity and long-lasting usefulness. As stipulated in Article 1 paragraph (5) of the Endowment Law, endowment property is a property that has long-lasting durability and/or long-term benefits and has economic value according to sharia represented by the endowment.

Traditionally, the *wâkif* (endowment doer) would act as a *mutawalli* or *nâzhir* (endowment organizer) or choose an individual known for his piety, honesty, and dignity as a *mutawalli nâzhir*.<sup>13</sup> The primary responsibilities of the endowment organizer include putting the property to best productive use, safeguarding the corpus of the endowment, protecting it against any sort of encroachments, and distributing its revenues among beneficiaries.<sup>14</sup>

So, for the sake of fulfilling the mandate of the provisions in Law Number 41 of 2004 concerning Endowment, provisions should be made regarding the ideal concept of professionalism as a manager of endowment assets<sup>15</sup>, to following the expertise and mandate carried out by an individual endowment organizer and/or group. This is in

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<sup>12</sup> Alizaman D. Gamon and Mariam Saidona Tagoranao, 'The Role of Waqf Properties in the Development of the Islamic Institutions in the Philippines: Issues and Challenges', *Journal of Intellectual Discourse, IIUM*, Vol. 26, Special Issue, (2018): 1191-1212.

<sup>13</sup> Anwar Aziz and Jawwad Ali, 'A Comparative Study in Waqf Institutions Governance in India and Malaysia', *Journal of Intellectual Discourse, IIUM*, Vol. 26, Special Issue, (2018): 1229-1246.

<sup>14</sup> Wahbab al-Zuhaili, *al-Wasâyâ Wa al-Endowment Fi al-Fiqh al-Islamî* (Damascus: Darul Fikr, 1996), p. 333.

<sup>15</sup> Ani Yumarni, Endeh Suhartini, and Anna Sardiana, "Problems in Managing Endowment Asset in Bogor Regency, West Java, Indonesia." *Jurnal Al'Adalah*, 16.2 (2019): 393-410, DOI: <https://doi.org/10.24042/adalah.v16i2.3876>.

line with the Hadis of the Prophet Muhammad SAW, which means: "If the mandate is no longer held firm, then wait for the moment of destruction, Abû Hurairah asked, how do those who do not hold the mandate O Messenger of Allah? The Prophet replied: if an affair is left to the non-expert, wait for the moment of destruction."

As an effort in the availability and seriousness of the government to allocate facilities, infrastructure, and other resources and budget for social service efforts, also to improve the quality of life of the people, one of the manifestations of the meaning of this point, as contained in the formulation of Article 12 of Law Number 41 of 2004, stipulates that endowment organizer (person or legal entity responsible for property given as endowment) can obtain no more than 10% of net income from managing and developing endowment object. This remuneration comes as a result of the endowment organizer's responsibility in managing the endowment. The concept of remuneration has the potential to reflect financial material in endowments.

### **Embodiment of Trust and *Amânah* in Endowment Organiser**

In general, *amânah* means everything that is entrusted to be protected and carried out. The attitude of *amânah* as an endowment organizer can be viewed from two perspectives, namely '*amânah*' in the perspective of Islamic law and 'trust' in the perspective of civil law. Etymologically, *amânah* means honest or trustworthy, in another sense it is understood as 'something that is entrusted' or 'trust'. *Amânah* is also interpreted as 'entrusted' (*al-wadî'ah*), the opposite of the word *amânah* is *khiyânah*.<sup>16</sup> *Amânah* appears in the form of servitude (obedience), worship, deposit, and trust (*al-tsiqqah*). Someone who prioritizes *amânah* for something imposed on him either in the form of 'the task of looking after something' or 'to maintain something' is called *al-amîn*, so the attitude of *amânah* can take place in a broader context.<sup>17</sup>

<sup>16</sup> Louwis al-Ma'luf, *al-Munjid: Fil Lughah Wa al-A'lâm*, Cet. Ke-44 (Beirût: Dâr al-Masyriq, 2011), p. 18.

<sup>17</sup> Yusni Amru Ghazali, et. el., *Ensiklopedia al-Quran & Hadis Per Tema* (Jakarta: Alita Aksara Media, 2012), p. 997.



Imam al-Qurthubi is of the view that *amânah* means everything that must be borne and carried by humans. Regarding something that is carried out, it also relates to religion, namely the interests of the afterlife (*ukhrâwi*) as well as matters of a worldly nature, including matters relating to human words and actions. The pinnacle of achieving *amânah* appears in the form of servitude (obedience), worship, deposit, and trust (*al-tsiqqah*).<sup>18</sup> Imam al-Qurthubi's view provides an illustration of the implementation of *endowment* which is directly related to the mandate and the nature of the purpose of human life, namely the world and the hereafter. Worldly, the grand concept of the endowment is realized in the form of the implementation of the mandate as the cause of an endowment pledge contract. The purpose of the nature of endowment is as a good practice to get a reward from Allah SWT which is a manifestation of the purpose of the hereafter.

*Amânah* also means *al-wadî'ah* (deposit), the opposite of the word trust is treason (*khiyânah*). *Amânah* occurs above obedience, worship, entrusted, and trust (*al-tsiqqah*). From the perspective of Islam, it means what is given up including property, self-respect, human rights, and religion to be preserved and guarded. People who maintain the mandate and carry out what is proper in the form of care and maintenance are called *al-amîn*. So, the attitude of trust can take place in a broader context. In general, trust means something that is entrusted to be protected, preserved, and carried out.

According to Covey, trust means confidence.<sup>19</sup> According to Shaw, in German is known as 'trust', or 'trust' in English, which means 'comfortable'. Trust is an initial assessment of the ability and character of a person an institution or organization, which is not always formed from experience; but partly formed by trust or faith. Shaw further stated trust means a belief or faith that other people we depend on will meet our expectations.<sup>20</sup>

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<sup>18</sup> Abu 'Abdillah Muhammad bin Ahmad Syams al-Din al-Qurtubi, *al-Jâmi' Li Abkâm al-Qurân*, Juz XII (Kairo: Dâr al-Hadist, 2010), pp. 541-545.

<sup>19</sup> Steven M. R. Covey, *The Speed of Trust* (London: Free Press, 2006), p. 5.

<sup>20</sup> Robert Bruce Shaw, *Trust in Balance, Building Successful Organizations on Results, Integrity, and Concern* (California: Jossey Basc Inc, San Francisco, 1997), p. 21.

The sense of trust that grows in the community towards the government for the welfare of citizens is an important thing for the process of economic growth in a country. As Fukuyama's opinion states mutual trust or confidence is the foundation or forerunner to the creation of a nation's prosperity. Fukuyama further emphasized that amazing economic success tends to be owned by countries with the category of high trust societies, while countries with low trust societies, just the opposite, tend to be in a slow condition in terms of economic progress and behavior. Fukuyama's explanation regarding the correlation between trust and the interests of the general public is that the key to social capital is trust. With trust people in a community can work well together. Because there is a willingness between them to put common interests above personal interests. Trust is like energy that can make a community group or organization survive. Low trust due to a lot of energy is wasted because it is used to overcome prolonged conflict.<sup>21</sup>

Trust is defined as expectations that arise in a community that promotes morals, honest behavior, and cooperation, based on norms that have been mutually agreed upon, to achieve common interests. Likewise, the placement of trusts is attached to the endowment organizer. The norms that apply in the regulation and management of Islamic endowment assets are more identical to the fundamental 'value' issue, namely God, justice, and trust. Furthermore, at the level of regulation and policy, the realization of trust in the endowment is done through endowment organizer professional standards, management mechanisms, and reporting mechanisms.<sup>22</sup>

From the explanation of some opinions of the legal experts above, the author asserts that the category of 'trust' referred to in the context of the endowment is regarding trust or confidence born from an owner of a property called *wâkif* (endowment giver) to someone or a legal entity

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<sup>21</sup> Francis Fukuyama, *Trust: The Social Virtues and The Creation of Prosperity* (Terj. *Trust Kebajikan Sosial dan Penciptaan Kemakmuran*) [2nd Ed.] (Yogyakarta: Qalam, 2010), p. 36.

<sup>22</sup> Departemen Ekonomi dan Keuangan Syariah (DEKS) Bank Indonesia dan DES-FEB Universitas Airlangga, *Wakaf: Pengaturan dan Tata Kelola Yang Efektif (Seri Ekonomi dan Keuangan Syariah)* (Jakarta: Bank Indonesia, 2016), p. 163.

acting as the manager of the assets referred to as endowment organizer. Trust theory in the study of the philosophy of Law is interpreted by the sincerity of humans to act (*reine praktische vernunft*). This was done by the endowment giver based only on moral capital owned by the endowment organizer and by promoting the principle of trust. The types of endowments developed in Islamic jurisprudence, namely *Waqf ahli* (family endowment) and *Waqf khayri* (charity endowment).<sup>23</sup> This provision allows the wakif to directly appoint an endowment organizer whom he believes to be trustworthy to carry out his function of fulfillment.

Regarding the authority of the state in regulating the management and regulation of economic policies, the emphasis of Islam is not solely on the economy. But it also emphasizes the norms of decency, community life (*muâmalah*), and religious rules. This is because, in the basic rules of Sharia, economics is a problem that is inseparable from reason, community life, and religion. Islam implements rules or systems for the problem of assets mixed between the economy and moral norms.<sup>24</sup> The most real human rights, which are always emphasized by the rules in Islamic law, are rights that relate to the person and his life in society. From a constructive point of view, Islam establishes the social rights of a person that is borne by the government, which is obliged to pay attention to all matters and guarantee a respectable and decent life and livelihood for him.<sup>25</sup>

In the field of Indonesian Civil Law, Kansil<sup>26</sup> classifies it into two groups, namely the realm of private law (civil law) and the realm of public law (state law). Civil Law is a law that regulates the interests of individuals in society. In Indonesia, the main source of individual legal arrangements is Burgerlijk Wetboek (BW). Furthermore, Kencana<sup>27</sup> explained that those who had promised something like that could not

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<sup>23</sup> Ani Yumarni, and others.

<sup>24</sup> Hamka, *Keadilan Sosial dalam Islam (2nd Ed.)* (Jakarta: Gema Insani, 2017), p. 154.

<sup>25</sup> Ahmad al Mursi Husain Jauhar, *Maqâshid Syariah*, Pent. Khikmawati (Kuwais), (Jakarta: Amzah, 2017), p. 14.

<sup>26</sup> C.S.T. Kansil, *Pengantar Ilmu Hukum* (Jakarta: Balai Pustaka, 2002), p. 46.

<sup>27</sup> Ulya Kencana, *Hukum Wakaf Indonesia: Sejarah, Landasan Hukum dan Perbandingan Antara Hukum Barat, Adat, dan Islam* (Malang: Setara Press, 2017), p. 71.

be pulled back if a third party had stated that they intended to use it. An agreement for a third party is an appendage to a principal agreement made by two other people. In trusts, agreements are only made to create trust.

As for endowment law, it is included in the field of Civil law in a broad sense, because its nature encompasses all material private laws, namely regulating personal interests. The main activity in endowment is the transfer of ownership of assets from individuals (endowment givers) to the *mauqûf 'alaihi* (ownership of general/certain people).

In the concept of law in the West, objects submitted and managed in the form of endowments are known as foundations, trusts, and charitable trusts, then known as social endowments.<sup>28</sup> Furthermore, the implementation of endowment in Western law is carried out by a nonprofit legal entity (a non-profit corporation) that has endowment property that is consumptive and productive. Western countries, such as the United States (US) endow by using understanding as an endowment fund by ignoring its Transcendental value, as a characteristic of a secular state. This is certainly different from the basic concept of endowment taught in Islam, which has a horizontal dimension (*hablu bayna al-nâs*) and a transcendental dimension (*hablu ma'a Allah*) until the end of the day.

In general, the word trust is defined as trust. There are at least two things attached to this definition, namely people who give trust, trustors, and people who are given trust are called trustees. Other than that, trust can be seen from the approach of the Civil Code. Widjaja<sup>29</sup> argues that the Implementation of trust in the context of Civil Law in Indonesia is manifested through capital market institutions.

In the history of its development, the trust is a legal institution that is part of the Anglo-Saxon legal tradition that was born from the system (justice) equity, subsequently also found in countries with Continental European legal traditions. Like Scotland and South Africa.

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<sup>28</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam* (Jakarta: Kencana, 2006), p. 244.

<sup>29</sup> Gunawan Widjaja, *Transplantasi Trusts dalam KUH Perdata, KUHD, dan Undang-Undang Pasar Modal di Indonesia* (Jakarta: Raja Grafindo Persada, 2008), p. 433.

Such institution trusts are included as part of the property law field.<sup>30</sup> Furthermore, Badrulzaman<sup>31</sup> emphasized that a draft law on trusts needs to be introduced so that trusts get a more proportional place in the Indonesian legal system.

As for the difference in trust from the concept of the field of property law and endowment law, in property law the owner of the transferred property is called a trustee, in terms of endowment it is called *nâzhir* (recipient and manager of assets). The basic difference is that endowment organizers do not have the right to own, and are only authorized to manage and empower endowment property.

Generally, the endowment organizer is divided into two, namely individual endowment organizer and institution endowment organizer. Individual means that endowment will be handled by individuals, while the institution means that endowment will be handled by an institution (in the Indonesian context, the institution is a nonprofit-oriented foundation legal entity). Provisions in Article 9 of Endowment Law confirms that Endowments include: a) Individuals; b) Organization; or c) Legal entity. Furthermore, factually, the management of endowment assets in the form of land spread over Indonesia is mostly managed by individual endowment organizers. This reasoning is based on the assumption that the large number of endowment assets managed by Individual endowment organizers, however, as a whole, has not shown sustainable benefits, and transparency and accountability have not yet been seen as a form of legal liability to the public (the *ummah*).

In the historical record of the development of endowment in Indonesia, mosques and Islamic boarding schools are the main forms that are important in endowment. During the period of the Islamic kingdom, mosques were established by rulers, religious leaders, or the community. Village reports between 1919 and 1923 mentioned the existence of mosques and mushallas (*langgar*) in the villages. *Langgar* is

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<sup>30</sup> A. Z. U Purba, *Foreword in Book Transplantasi Trusts dalam KUH Perdata, KUHD, dan Undang-Undang Pasar Modal di Indonesia* (Jakarta: Raja Grafindo Persada, 2008), p. xiii.

<sup>31</sup> M. D. Badrulzaman, *Foreword in Book Transplantasi Trusts dalam KUH Perdata, KUHD, dan Undang-Undang Pasar Modal di Indonesia* (Jakarta: Persada, 2008), p. xviii.

owned by individuals, and the mosque is owned by the village (as an endowment) and gets income from the results of endowment in the form of rice fields that are given for various purposes, including maintaining schools and mosques.<sup>32</sup>

At present, in Indonesia, many cultural, social, and/or religious-based institutions work in the field of movement and management of endowment funds as a 'perpetual virtue' fund (Islamic Philanthropy). A good form of organization or association of legal entities. The legal basis for the existence of these institutions is stipulated in Staadblad 1870 Number 64 concerning Legal Entities. Further on this matter, Latief<sup>33</sup> argues that the background to the presence of these social institutions is that many endowment institutions in Indonesia are still focused on asset management, while endowment funds in cash have not been tapped. Thus, according to Latief, the experience of *âmil zakât* institutions managing finances provides space for *zakât* institutions to participate in managing funds and even endowment assets.

The provisions of Article 15 paragraph (3) of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations confirm that 'In the case that the wealth of the Foundation originates from the endowment, the word 'endowment' can be added after the word 'Foundation'. This formula gives the message that from the very beginning of the formation of this statutory regulation, the government has a fundamental view and mission that ideally the assets of the distributed endowment have the opportunity to be managed by social organizations such as the foundation. The establishment of the Foundation Law is intended to further ensure legal certainty and order, as well as provide a correct understanding to the community about the Foundation so that it can restore the function of the Foundation as a legal institution to achieve certain objectives in the social, religious and humanitarian fields.

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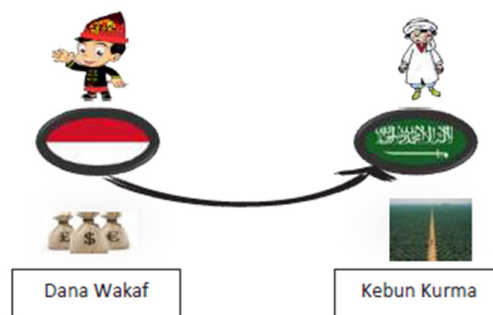
<sup>32</sup> Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia* (Yogyakarta: Gading Publishing, 2016), p. 122.

<sup>33</sup> Hilman Latief, *Epilog: Endowment-Preneurship: Inovasi Untuk Keadilan Agraria (Foreword in Book Wakaf Agraria: Signifikansi Wakaf Bagi Agenda Reforma Agraria)* by Mohamad Shohibuddin, (Yogyakarta dan Bogor: Baitul Hikmah Sajogyo Institute-Magnum Pustaka Utama, Penerbit Bersama, 2019), p. 87.

In terms of managerial professionalism of endowment organizations and/or legal entities, according to the author, this matter has been accommodated in its interests as stipulated in the Foundation Law. In reality, at present, the majority of endowment assets in the form of land scattered in Indonesia are managed by the endowment organizer Foundation. Thus, the aspect of accountability, as a consequence of accountability to the public, has been fulfilled. As confirmed in Article 48 of Law Number 16 of 2001 concerning Foundations and Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations: (1) The Management is obliged to make and keep notes or writings containing information about rights and obligations as well as other matters relating to the Foundation's business activities; (2) In addition to the obligations referred to in paragraph (1), the Management is obliged to prepare and store Foundation financial documents in the form of bookkeeping evidence and supporting data on financial administration.

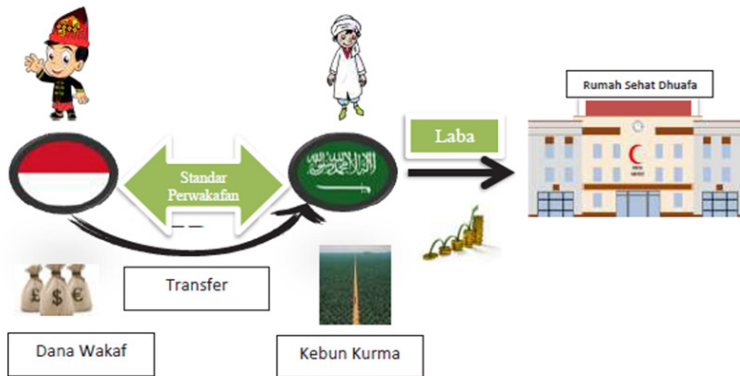
In 2016, one of the research results was on how to manage and utilize them by authorized institutions and/or by endowment organizers, and government policies in each country towards the distribution of endowment assets. One of the schemes/illustrations offered in the research results can be seen in Figures 1. and 2. below:

**Figure 1. Illustration of Management of Agricultural Endowment<sup>34</sup>**



<sup>34</sup> Departemen Ekonomi dan Keuangan Syariah (DEKS) Bank Indonesia dan DES-FEB Universitas Airlangga., *Wakaf: Pengaturan dan Tata Kelola yang Efektif (Seri Ekonomi dan Keuangan Syariah)* (Jakarta: Bank Indonesia, 2016), p. 22.

Figure 2. Illustration of Endowment Management for Health Facilities<sup>35</sup>



The two schemes/illustrations above can be realized if the two countries (Indonesia and Saudi Arabia) have the same basic principles of endowment regulation and governance that can be accepted by both parties. That is, the main points of regulation and management related to endowment (both policies by regulators to endowment organizer and internal management of endowment organizer governance) between Saudi Arabia and Indonesia are the same and with mutual recognition. The endowment (endowment giver - let's call it A) endows the money in Indonesia, by appointing an endowment organizer (call it B) to represent the agricultural sector (for example, date palm plantations) in Saudi Arabia. The endowment giver A requires that profits from the sale of dates be used for health. For this reason, endowment organizer B will find suitable land. The land will be purchased with cash endowment from A. The sales proceeds from dates after deducting the costs will be used for health utilization (for example, for hospital operational needs, etc.). Furthermore, due to these similarities, Endowment organizer B believes in managing endowment organizer A and vice versa endowment organizer A also believes in management by endowment organizer B.

One of the affirmations contained in the research results of the DEKS BI and DES FEB Airlangga University mentioned above is that

<sup>35</sup> Departemen Ekonomi dan Keuangan Syariah (DEKS) Bank Indonesia dan DES-FEB Universitas Airlangga.



when comparing individual scores and institutional scores, the ideal scores are institutions. One of the reasons is for individual *nâzhirs*, when endowment organizers die finding a substitute for endowment organizers is not necessarily easy, especially if the endowment has also died. The same is not true for endowment organizer institutions, if the personnel inside have died, they can be replaced with others, and endowment organizer institutions remain the same.

A trust institution known in the field of civil law is a form of managing trust assets that are invested in the form of investment, which in turn, the authority and obligations of the trustee are contained in a trust instrument. In addition to the differences in the aspects of authority and obligations to the endowment organizer and trustee institutions.<sup>36</sup> The legality aspect of legal actions can also be seen from the deed of establishment of the endowment. The endowment does not regulate the making of the deed of establishment of the endowment, what exists is the deed of endowment pledge. The Endowment Pledge Deed, hereinafter referred to as 'Akta Ikrar Wakaf (AIW) (Endowment Pledge Deed)', is a form of a statement of the will of the endowment in donating his property made before the 'Pejabat Pencatat Akta Ikrar Wakaf (PPAIW) (Endowment Deed Registrar Officer)'. As for trust institutions, the authority of the trustee is contained in the trust instrument (deed of establishment of the trust).<sup>37</sup>

With the occurrence of a contract that specifically refers to the *akad tabarru'* (voluntary contract) category as stated in the endowment pledge,<sup>38</sup> then there is a mandate in it. Trust in the perspective of the contract is also a condition that must be fulfilled for the party receiving the trust (assignment) from the first party in the contract. In the context of the voluntary value of the endowment and the eternal principle of endowment designation, the portion of the trust is the main requirement

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<sup>36</sup> Gunawan Widjaja, *Transplantasi Trusts dalam KUH Perdata dan UU Pasar Modal Indonesia* (Jakarta: RajaGrafindo Persada, 2008), p. 433.

<sup>37</sup> Yulia Qamariyanti, *Pengelolaan Harta Trust* (Bandung: Citra Aditya Bakti, 2004), p. 63.

<sup>38</sup> Mohammad Daud Ali, *Sistem Ekonomi Islam Zakat dan Wakaf* (Jakarta: UI Press, 1988), p. 85.

for an individual endowment organizer. This requirement is also stated in the provisions formulated in Article 10 paragraph (1) letter d concerning individual endowment organizer requirements, namely *amânah*.<sup>39</sup>

## Conclusion

Endowment in Islam is a practice that is not merely externally binding (worldly) but is accompanied by an inner spirit and *'ubûdiyyah* (worship) to Allah SWT, due to this aspect of inner spirit, the term trust in endowment cannot be equated with the term trust in other areas of law. In Islam, the concept of philanthropy which is attached to the moral obligation of humans to help each other can take the form of *Zakât*, *Infâq*, Alms, Gifts, Grants, and the like. Specifically regarding *endowment*, the principle of trust in its implementation pledge is believed to be one of the effective strategies for realizing the principle of *mu'awwanah* (help each other) in Islam.

Trust is a moral value that must exist within endowment administrators and is manifested in the behavior and morals of endowment administrators in carrying out their duties. The manifestation of trust in various Islamic philanthropic activities, including endowment, can be seen in the process of handing over to the community who receive and/or manage the assets. Endowment administrators (individuals, organizations, and/or legal entities) who act as trustees must be able to appreciate 'trust' in the process of management and distribution to the *mauqûf 'alaihi* (beneficiaries). The confirmation in Article 42 of Law Number 41 of 2004 concerning Endowment also states that endowment administrators are obliged to manage and develop endowment assets by their objectives, functions, and designation.

The embodiment of trust in various Islamic philanthropic activities, including endowments, is seen in the process of delegation to people who receive and/or manage the property. An endowment organizer (Individual, Organization, and/or Legal Entity) acting as a trustee is required to be able to appreciate the 'trust' in the process of managing and channeling it

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<sup>39</sup> See Article 10 Law Number 41 of 2004 concerning Endowment.

to the *mauqûf 'alaihi* (beneficiaries). An affirmation in Article 42 of Law Number 41 of 2004 concerning Endowment states that the endowment organizer is obliged to manage and develop endowment property following its purpose, function, and designation. *Amânah* is a moral value that must exist in the endowment organizer and is manifested in the endowment organizer's behavior and morals in carrying out his duties.

### Author Contribution

This research is the result of collaboration between the authors. Ani Yumarni who contribute in compiling the endowment concept framework from the institutional aspect of endowment, both individual endowment and legal entity endowment. Meanwhile, Endeh Suhartini was contributed in compiling and developing the concept of 'trust' in in the civil law approach in the legal system in Indonesia. Aburrahman Haqqi was contributed to compiling and developing the approach to the concept of '*amânah*' in Islamic Law. Furthermore, Hidayat Rumatiga and Siti Maryam contributed to completing data on endowment management in Indonesia as well as the data processing. Each author contributed to this article starting from preparation, give each other views and insights, and perfecting the manuscript.

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