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A handwritten signature in blue ink, appearing to read 'L. Buskens'.

Professor Léon Buskens
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A handwritten signature in blue ink, appearing to read 'Noorhaidi Hasan'.

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Empowering Traditional Market Through Waqf Legal Entity in Indonesia

Abstract: This paper is motivated by background fact that marginalized traditional markets in Indonesia due to unbalance business competition with modern market. One of problem that caused marginalized traditional market which is containing 97.24 percent workforce or small and medium-sized business is the market legal entity (market institutionalization). Market legal entity that is regulated by legislation in Indonesia is free to be owned by anyone. Market legal entity should be common ownership (*al-milkiyyah al-'ammah*). One form of legal entity is common ownership (*al-milkiyyah al-ammah*) as in Islamic economic law is called *waqf* institution. Market as a legal entity of public ownership means that the market paradigm is not only as business entity but also a social paradigm which is based on brotherhood (*ukhuwwah*) or mutual respect (*ta'awun*) and mutual responsibility (*takaful*). This paper uses qualitative method with normative law research added by historical approach. This study shows the form of common ownership as waqf institution in accordance with market reform in Indonesia in favor of traditional market existence from market liberalization in Indonesia.

Keyword : Traditional Market, Waqf, Public Ownership

A. Background

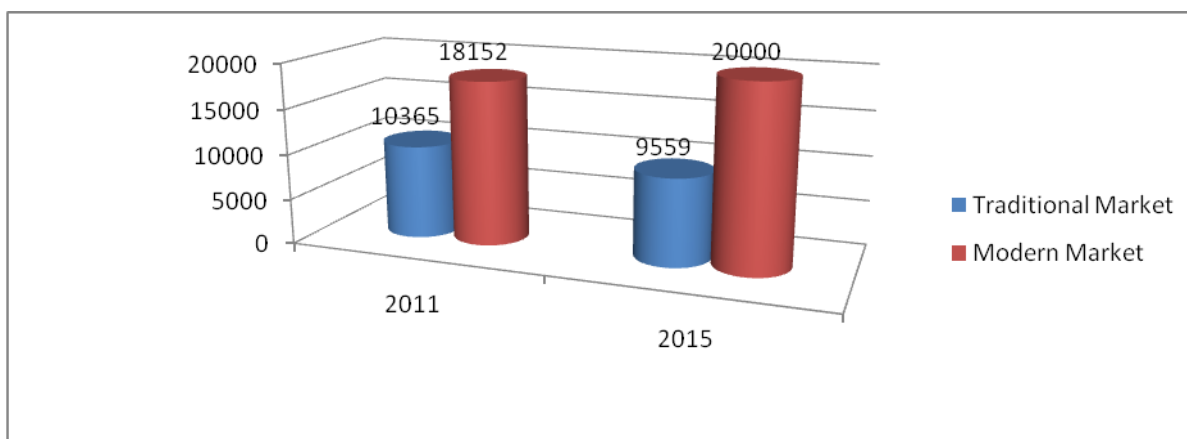
Retail modern market presence has created market problem in Indonesia. The presence of modern markets which led to marginalize of traditional markets into a trade mostly small and medium-sized businesses.¹ This claim can be seen in terms of growth, the expenditure ratio, which show the modern market turnover has increased, otherwise growth, turnover and traditional market expenditure ratio decreased. In fact, most of the traditional market loss and marginalized. This can be seen of the following:

In 2007 the number of outlets modern retail was 10.365 and in 2011 become 18.152 outlets, which it's means that increased eight thousand or four stores per day. The number traditional market in 2007 was 13,450 outlets, in 2011 became 9,959 outlets, which it's

¹ In Indonesia, modern retail market has been in practice since the early sixties. Sarinah on Jalan Thamrin Jakarta is one of the largest department store that was built in 1964, followed by Aldiron Plaza 1979, Duta Merlin, Ratu Plaza, Pasar Raya, Hayam Wuruk Plaza 1980s. In 1998, foreign retailers began to enter the retail business in Indonesia with characterized by Carrefour which offers one stop shopping concept as well as hypermarkets etc. Further followed by Goro, Giant Hypermarket and Makro. M. Udin Silalahi, *Persaingan Di Industri Ritel Ditinjau Dari Aspek Hukum Persaingan Usaha*, Vol. 1, Jurnal Hukum Bisnis, 5 2008), p. 27

means that reduce 3,800 outlets, or 29 percent. In 2012 the number of modern market about 10,000 and the number modern market is 14,000 outlets with details of 358 convenient stores, 11 569 Minimarket, 1,146 supermarkets, 141 hypermarkets and 260 grocery or wholesale.² In Jakarta, growth of Indomaret rose significantly, with details 525 outlets (in 2006), became 1,115 outlets (March 2009), became 1186 (July, 2010) and became 2162 outlets (in 2011),³ while the traditional market rose stagnantly at 153 outlet since 2000.

Table. 1.1
Comparing Modern and Traditional Market Growth in Indonesia



The above facts indicate there is a problem in the Indonesian market. The problem is the market fairness. This paper will discuss the concept of a fair market in the perspective of Islamic law and propose waqf legal entity as market legal entity in Indonesia. This paper uses qualitative methods (*qualitative method*) with approach to history (*historical approach*). The method used qualitative by digging business norms contained in the jurisprudence *muâmalah* accompanied by historical approach market policies undertaken by the Prophet Muhammad and the heyday of Islam. While the use case is the decision of the Commission which is the authority in Indonesian market. The data collection method used is the literature that is the source of business law of Islam (al-Qurân and al-Hadîs),

² <http://m.bisnis.com/industry/read>

³ *Id*

fatwas, market rules, scientific books written by experts of Islamic business law related to the topic.

B. Discussion

1. Market Ownership Paradigm in Indonesian Regulation

There are two problem related to market regulation in Indonesia, namely, the paradigm of market as economic entities and market can be owned freely. Market regulation from central level by Presidential Regulation Number 112/2007 and the Regulation of the Minister of Trade Number 53/2008 as well as the Regional Market Regulation defines market as economic paradigm. It can be seen from several market definition in those regulation.

Regarding legislation in Indonesia, market is defined as the area where the sale and purchase of goods with more than one vendor such as shopping malls, traditional markets, shops, malls, plazas, trade centers or other designations.⁴ In other definitions mentioned that the market is a meeting place for sellers and buyers to undertake transactions where the process of buying and selling goods and services is established, which is according to class of service quality can be classified into traditional markets and modern markets, or certain places in particular market area provided to merchants either managed by local government as well as by private.⁵

Market paradigm just as economic entities can also be found on some Regional Regulation on market that emphasize understanding of modern market in the management aspects and characteristics. The modern market is a market that was built by the government, private, or cooperatives in the shape of the Mall, Supermarket, Department Store and Shopping Center which implemented modern management and prioritizing of services, convenience shopping with management is in the hands of a relatively strong capital, and is equipped with a definite price tag.⁶

⁴ All definition about market just two definition. See, article 1 angka 1, President Decree Number 112/2007. See also article 1 number 1, Regulation of Ministry of Trade Number 53/2008. See also article 1 number 1, Regulation of Ministry of Trade Number 70/2013

⁵ See, article 1 number 6, Banjarmasin City Market Region Regulation.

⁶ See on Chapter I, General Regulation, Article 1, letter 7, Region Regulation of Banjarmasin City. General Regulation, Article 1, letter 11, Region Regulation of Makasar City..

Other definition stated that market is an area for sales and purchase of good with more than one seller or market is a place of meeting by seller and buyer to execute transaction where the process of sales purchase of good and service has been established, and according to service quality class can be categorized into traditional market and modern market, or any particular places within special market area provided for any trader whether managed by local government as well as by private institution.

Regulation on market in Indonesia gives ownership rights and management of the market is not only to governments but also to private sector in the same position. It can be found from the definition of modern market that does not regulate the aspect of ownership, management and development, therefore modern markets can be held freely. Likewise the traditional market where development and management can be provided to government, private entity, State-Owned Enterprises (Badan Usaha Milik Negara, BUMN) and Regional Owned Enterprise (Badan Usaha Milik Daerah, BUMD) including cooperation with the private sector in the form of shops, kiosks, stalls and tents.⁷

Regional market regulation provides traditional market management rights to the government at provincial level that is called Provincial Market, Regency/City Market, Village Market, Private Market directly managed by local government (provincial, Regency/city, village) and Private. Similar to the shopping centers wether managed by Local Government and private sector and Shopping Centre which is managed by Local Government and Private.⁸ There is even a Regional Market Regulation which confirms the existence of Private Market by defining a market is created, organized and managed by the private sector on land or any land that is owned by the private sector.⁹

The concept of ownership in market in the Indonesia constitution is public ownership. The Indonesian Constitution Article 33 verse 2 stated, "Production branches which are important for the state and which affect the livelihood of the people at large shall be controlled by the state." Ownership of Government for the major markets has become a discussion in the session of *Badan Persiapan Usaha Persiapan Kemerdekaan Indonesia* also. The document meeting stated:

⁷ See also article 1 number 2, Regulation of Ministry of Trade Number 53/2008.

⁸ See, explanation Region Regulation of Yogyakarta City Number 8/2011, letter (a) until (d).

⁹ Article 1, leter 8, Regional Regulation of Batam City Number 10 tahun 2009

Basically, big companies that dominate many people lives, where thousands of people rely and living their life should be under government. . . . the government should be supervisor, regulator, supervised and accompanied by capital from Government that is the building for the best of large companies. The larger the company, and the more number of people dependent on basic living there, the greater the government should participate.¹⁰

2. Market Ownership in Islamic Law

The market as a place of trade transactions in the view of Islamic law included in the category of public ownership (*al-milkiyyah al-ammah*). The philosophy of the common forms of ownership to the market is that everyone can have an equal opportunity to access the market as an economic resource. In contrast to the concept of state ownership (*al-milkiyyah al-daulah*) in which the state allowed to grant ownership to any individual or private. In the concept of public ownership (*al-milkiyyah al-'ammah*), the state should not provide management rights to anyone whomsoever¹¹ except for the shared and common interests.

As a legal entity of common ownership, market presupposed the principle of equal rights and access for every business people to market. In simple term that anyone who came first then he is entitled to a trading place in such place. It is based on the principle of equal rights and access to markets as exemplified by the Prophet Muhammad and colleges (*Shahabah*) which is constituting a universal principle that applies all the time.¹²

The market institution (legal entity) establishment as common ownership (*al-milkiyyah al-'ammah*) means that the market is not only an institution that deals with economy, however market is part of a social institution where there is an obligation to pay attention to business people including the small business communities. Public interest is a measure of market existence therefore strong business people cannot perform monopolistic practices or monopolizing the market resulting to weak business people to be eliminated.

¹⁰ RM. A. B. Kusuma, *Lahirnya Undang-undang Dasar 1945: Memuat Salinan Dokumen Otentik*, (Jakarta: Fakultas Hukum UI, 2009), p. 436.

¹¹ Ismail Yusanto dan Arif Yunus, *Pengantar Ekonomi Islam*, Cet. Satu, (Bogor: Al-Azhar Press, 2011), p. 146.

¹² Arief Hoetoro, *Ekonomi Islam: Pengantar Analisis Kesejarahan dan Metodologi*, Cet. I, (Surabaya: Kerjasama Bayumedia dengan BPFE Unibraw, 2007), p. 103 on footnote number 8.

Due to the market institution (legal entity) format is common ownership (*al-milkiyyah al-'ammah*), the rules of market institution should impose limit on the authority of market development, management and ownership that is managed by the government as representing the interests and lives of many people. Due to philosophy that market is an important place that everyone needs to meet the necessities of life and for all the people. Without market, people will find difficulty to fulfill their needs (primary needs, *dharuriyyah*). The nature of public ownership of the market has consequence that the market should not be owned privately or group of people because of private ownership can lead to a person or group of people to monopolize the market so as to threaten the many people in fulfilling their needs.

The concept and legality on market ownership as common ownership (*al-milkiyyah al-'ammah*) aims to prevent (*sadd al-dzariah*) any form of activity that can create conditions of monopoly by some people. The reason that market as public ownership (*al-milkiyyah al-'ammah*) in case anyone practicing monopoly or a group of people (oligopoly) controlling or owning market resulting to difficulty and hardship for general society.¹³ Monopolistic practices could occur by giving market freely (liberal) to any business people who have large capital capacity therefore it makes small business were marginalized.

The purpose of limiting wealth concentration by common ownership is to change policy for the capitalist group which sometimes is not fair in terms of distribution of wealth. In contrast to the socialist view that to negate private ownership into collective ownership thus eliminating the creativity of the people in building a work ethic and the spirit of entrepreneurship. In Islam, the limitation of ownership is intended to realize an egalitarian wealth distribution in accordance with the spirit of Islam.¹⁴

From Islamic social history, the concept of market as a form of public ownership (*al-milkiyyah al-'ammah*) can be traced from market history of Islamic civilization.

¹³ Abdul Azim Islahi, *Konsep Ekonomi Ibnu Taimiyah*, translated by Anshari Thayib, (Surabaya: PT. Bina Ilmu, 1997), p. 144.

¹⁴ M. Umar Chapra, *Islam and Economics Development*, (New Delhi: Adam Publisher & Distributors, 2007), p. 73-74. See also, Ridwan, *Pemilikan Rakyat dan Negara Atas Tanah Menurut Hukum Pertanahan Indonesia dalam Perspektif Hukum Islam*, (Jakarta: Badan Litbang & Diklat Kemenag RI, 2010), p. 98 in footnote Number. 57.

Discussion on market land as waqf object is discussing the waqf early history discussion. Land or area is the first object to become waqf object. In the history of waqf, the first object for waqf is the land, the land for the establishment of Nabawi Mosque by two orphans upon arrival of the Prophet Muhammad and friends of the Prophet (*Muhajirin*) from Mecca to Medina in the event of *Hijrah*. Therefore, talking about the land as waqf objects shall return to the original concept of waqf object.

Historical trace of market land as waqf object has existed at the period of Umar bin Khattab waqf practice. In history, at the time of Umar bin Khattab intend to donate his land. Rasulullah said: *in syi'ta habbasta ashlaha wa tasaddaqta biha* [if yo want, kee the land, charite the result.¹⁵ Based on the above hadith (and many other hadith) showed some legal principles of waqf, i.e. first, waaqf asset should be permanent. Therefore waqf asset cannot be sold-traded, granted as well as inherited. Secondly, the waqf should be productive. General hadith related to the dialogue of the Prophet Muhammad and Umar bin Khattab showed that the independece of waqf asset to be used as a productive objects (*ashlaha*) and waqf asset is fixed asset or not depreciated (*habs*).

One of the success of market waqf in Islamic history is in Yazd, Iran. Writing of Michael E. Bonine that its titled "*Islam and Commerce: Waqf and the Bazaar of Yazd, Iran (Islam und Handel: Waqf und der Bazar von Yazd, Iran)* explain relation between market and waqf. In his research, Michael explains in detail about Yazd market conditions in Iran influenced by the concept of waqf asset ownership. In a broader scope, he said in waqf is not only affects the attitudes and religious domain but also directly affect the city administration where there are markets, government offices, mosques, schools and so forth.¹⁶

In Yazd, waqf institutions not only built infrastructure that is religious affairs such as mosques, madrasas (school), cemetaries and so on but waqf also by building

¹⁵ Muhammad ibn Ali bin Muhammad Al-Syaukani, *Nail al-Authar*, Vol. II, (Kairo: Mustafa al-Babi, tt), p. 127.

¹⁶ Michael E. Bonine *Islam and Commerce: Waqf and the Bazaar of Yazd, Iran (Islam und Handel: Waqf und der Bazar von Yazd, Iran)*, *Erdkunde*, Bd. 41, H. 3 (Sep., 1987), hlm. 185. Lihat juga, Arang Keshavarzian, *Bazaar and State in Iran: The Politics of The Teheran Market Place*, (UK: Cambridge University Press, 2007), special page. 42-48. About market waqf at Marocco, see Maḥmūd Aḥmad Maḥdī, *Nizhām al-Waqf fī al-Tathbīq al-Mu'āshir*, (Kuawit: al-Bank al-Islamī litanmīyah al-Ma'had al-Islāmī lil Buhūṣ wa al-Tadrīb, 1423 H), p. 18.

infrastructure to meet the needs of many people, especially trading infrastructure, namely market. Treasures in the form of waqf may take the form of ownership in the form of shops, and also connected with what is called the Bazaar where there is the concept of integrated trade and religion.¹⁷

Waqf is specific Islamic economic instrument. The specificity of waqf law is its elastic natures and waqf object sustainability. It is elastic due to waqf asset should not tie exclusively for moslem however it can be used for entire human interest in general and covering all aspect of life as long as not in contravention with Islamic law. On the other hand, waqf also are sustainable because one of its nature that it cannot be depleted (*baqa*). Sustainable due to one of its nature that waqf asset is asset property (*'iqâr*) and fixed (*itshâl*),¹⁸ so the nature of waqf asset according to philosophy requires sustainable productive waqf asset (*Dawam al-Intifâ'*).¹⁹ Therefore, in the golden history of Islam, waqf is a very supportive institution in state development whether physical development as well as spiritual for a long time.

3. Practice of Market Waqf in Mandailing Natal, North Sumatera, Indonesia

Market in legal entity endowments have been in Mandailing Natal, North Sumatera, Indonesia. Sheikh Al-Junaid Thola Rangkuti (1886-1948) as waqf founder markets in Mandailing Natal. Endowments market is located in Kampung Lamo, The village of Huta Namale, District Peak Sorik Marapi Mandailing Natal, North Sumatera, Indonesia. Precisely, it is about five kilometers from the Village Market Maga.²⁰

¹⁷ Michael E. Bonine *Islam and Commerce: Waqf and the Bazaar of Yazd, Iran (Islam und Handel: Waqf und der Bazar von Yazd, Iran)*, Erdkunde, Id.

¹⁸ Muḥammad bin Aḥmad bin Shâlih al-Shâlih, *Al-Waqfu fi al-Syariati al-Islâmîyati, wa asâruhu fi tanmiyati al-mujtama'*, Cet. I, (tt. al-mumlikah al-'arabiyah al-su'udiyah 2001 M/1422 H), p. 74

¹⁹ Wahbah Zuḥailî, *al-Fiqh al-Islâmî wa adillatuhu*, Juz 8, (Beirut: Dâr al-Fikr, 1405 H/1985 M), p. 219.

²⁰ Shaykh Junaid Thola was born in 1886 in the village of Tanjung Larangan Sigantang, District Silaping, West Sumatera, Indonesia. He was the fifth of five children. His father was Thola Rangkuti who holds Jurano and his mother is Ronjima. Noted that the Sheikh Junaid had studied in several places both inside and outside the country. In the country, Sheikh Junaid studied from Sheikh Abdul Wahab Rokan in Babussalam (Besilam), Langkat which is led Thariqat Naqshabandiyah Langkat, the largest in Southeast Asia. In abroad, Sheikh Junaid had studied the Sheikh Misri in Kedah, Malaysia, even to Makkah and Al-Azhar University, Cairo, Egypt. Prominent Sheikh Junaid Thola also quite typical. As author discussion with Mr. Ridwan that he was not only involved in political movements and reform religious education as most scholars of the Middle East, but also active in promoting economic entrepreneurship. This can be evidenced traces his

This market development begins by establishing Madrasah Islamiyah in Huta Namale, exactly on February 2, 1929. This Islamic school later known as “Madrasah Islamiah Al-Junaidiyah” are now educational level of kindergarten (TK), Islamic Junior High School (Tsanawiyah) and Islamic Senior High School (Aliyah). Lamo village market has been operating at the time of King Huriah Maga, however, the market is often used as a night market or bazar (pasar malam) etc. Moreover, this market is also used as a place of gambling which is a prohibition in Islam. To stop and prevent this disobedience activities and also strengthen the faith of Muslims, Sheikh Junaid took the initiative to buy the market through endowment (*waqf*) instrument. He always campaign about waqf concept to many people. Many people gave the donate through endowment (*waqf*) instrument to buy the market. After collecting the fund, Sheikh Junaid bring it to the king to buy the land market so that market becomes waqf market.

Waqf movement led by Sheikh Junaid also in the form of agricultural land, which are planted citrus on waqf land revenue be used to support educational activities in Islamic sechool (Madrasah). Shaykh Junaid really take advantage of the breadth and distinctive character waqf property supply movements endowments in various aspects. Recorded until today endowments performed Sheikh Junaid and his follower in the form of: (1). one hectare place of Islamic school (Madrasah) Islamiah Al-Junaidiyah, (2) one hectare market hall and warehouse, (3), one hectare place of laboratory buildings, library, university general, housing, mosques, and fish ponds, (4), four hectares of rice fields in Tarlola region, plus endowment of the disciples and followers of 2.5 hectares in Pidoli and one hectare in Tarlola, (5) one house plus five other houses endowments pilgrims, (6), the gardens of 15 hectares, including 10 hectares for the cultivation of coffee.

The remains of waqf market conducted by Sheikh Junaid in Kampung Lamo Mandailing Natal should be maintained and strengthened. The main thing is to be strengthened in terms of legality. The results of author interviews with various speakers

movements in the economy so that there exists a market in Mandailing endowments. Traces of economic activists also recorded properly when he settled in Malaysia. Among the Malay community in Padang Rengas Sheikh Junaid is a pioneer who animate the economy by opening up various businesses and even bring batik (name of cloth fashion) merchant trader and shoemaker to open businesses in Padang Rengas. Shaykh Junaid Thola died in 1948 in Huta Namale. He was buried right on the front page of Madrasah Islamiah in Kampung Junaidiyah Lamo that he founded, an area with endowments market.

including endowment field Ministry of Religion Republic of Indonesia at Mandailing Natal, until today, waqf market in Kampung Lamo has not been registered with the Ministry of Religious Affairs due to various things. One is the soil used as endowments and other markets are in a protected forest area so difficult to be processed.

Waqf legal entity recognized by the Local Government Mandailing Natal. It is evident that this market endowments made by the District Government partners Mandailing Natal. Local Government helped to revitalize the market by building several facilities like gazebo and other markets instrument. The building market in the form of a hall and shops that exist now on the market Hutanamale waqf asset management is now under the Foundation Al-Junaediyah. The market now serves as the location of the district market with market days (weekend) every week. Madina District Government recently provided assistance for the improvement of the market building, and for the assistance partly levies quoted from traders on the day of the week is distributed to the Market Office Madina district. In addition, local governments also participate in managing the market by sharing as much as 65 percent for the management of waqf foundations market and 35 percent for the local government. Thus, that's proved to be a legal entity endowments are recognized as a legal entity in the Indonesian market.

One of the important characteristics of a legal entity such as the waqf endowments at Mandailing Natal, North Sumatera is the existence and serve the market for decades, not going over the functions and acquired rights. The Assets survive as communal assets, and managed for the benefit of mankind, not the individual interests and the managers. The maintain existing endowment assets, it could happen because none of the residents in the area had the courage to take it. Such action violates Islamic law and is believed to be dangerous. No one dared to boldly break. The key point lies in the fact that it is in the waqf asset monitoring of collective (public, community) and its use also clearly in the interests of Islamic education for the younger generation, so it is considered to have a value of religiosity and higher humanity. Control religious beliefs of the individual so that he could

not violate the law of waqf, and it is reinforced by the control or public oversight of the waqf assets.²¹

4. Waqf Legal Entity in Indonesia Market Regulation

In Indonesia, the waqf of market land has been practiced formally as well as in the form of common ownership. The practice of market land waqf in *Mandailing Natal, North Sumatra*, which is triggered by *Ulama* (Moslem scholars) and still survive until now. The practice of market as common ownership is also available on the practice of *pasar kaget* (instant market), bazaar for special occasion etc. However if instant market or bazaar merely momentary or temporary, while the market derived from waqf asset can carry out its market activities permanently so that management can be well planned and professional.

Legal entity of the market in general as waqf institution should be the base argument in issuing regulation of market in Indonesia. Ownership in market as regulated in Presidential Decree Number. 112/2007 and Regulation of Minister of Trade No. 53/2008 should be amended and define the ownership in the form of public ownership of legal entities.

Market land waqf is one form of public ownership that may be included in legislation on the market. The existence of the market in the form of market legal entity will make the market system cannot be monopolized by a group of people who have large access and big capital. The market will be accessible to everyone, and none can monopolize it. Market ownership granted to private sector can lead to monopolistic practices or marginalize small business.

The existence of market waqf can be found by Law No. 41 of 2004 on Waqf. Article 5 and 22 of Law Number 41/2004 stated that the waqf (endowment) serves and realize the potential and economic benefits of waqf aset for the interest of worship and to promote public welfare. Article 22 states that the designation of waqf asset is for economic advancement and improvement of the people and public welfare development. The market

²¹Zulkifli Lubis et al, *Kearifan Lokal Masyarakat Mandailing dalam Tata Kelola Sumebr Daya Alam*, Balai Pelsetarian Nilai Budaya Banda Aceh Direktorat Jenderal Kebudayaan Kementerian Pendidikan dan Kebudayaan Republik Indonesia, 2012), Research Report, P. 91

area in the form of land or buildings are one form of fixed asset acknowledged by the Law Number 41/2004.²²

Besides, market existence that comes from waqf property can be an entry application of the principles of Islamic economics entirely in a particular area. Integration of the mosque as a place of worship and market as a buying and selling place as well as the entire Islamic economic instruments such as bank or *Baitul mal wattamwil*, *Sharia* insurance, alms institutions, *sharia* pawnshop, can be established integrately. Implementation of the value of mutual support (*taawun*), brotherhood (*ukhuwwah*) in the market can be realized significantly within a specific area. The implementation of Islamic economic instruments can be done by trading activities in traditional markets in order to strengthen the traditional markets. First, optimize the role of sharia cooperatives such as *Baitul Mal Wa Tamwil* and the financial transactions in traditional markets run by sharia. For example in the construction of the store or stores payment system in traditional market can use *syirkah* contract or *muharabah* and others.

Secondly, the waqf land asset managed by government, education foundation, boarding schools, mosque foundation or religious organization can establish markets where the market has its own customers. Further, the results of market management by Islamic economic system will be able to support finance of the institutional management such as mosque welfare, religious organizations, as well as the development of other market waqf asset.

Third, the waqf land asset can be developed by cooperation with sharia financial institutions or other companies to develop the markets. Cooperation in the construction and management of waqf land in the form of market can be carried out by sharia financial institutions or companies. Furthermore, revenue from the management is distributed in accordance with the agreed ratio based on the contributions of each party. Part of the ratio of waqf land assets is distributed for the purpose of Islamic community welfare at first.

Fourth, the existing assets of waqf land can be developed with *sukuk mudaraba*, *sukuk murabaha* and *sukuk Ijarah* to build the market. *Sukuk Mudaraba* is ownership of property assets stores, kiosks and other market assets by the investors. Asset manager of

²² Law Number 41/2004 concern Wakaf, (Jakarta: Direktorat Bimas Islam, 2007), p. 11, 14, 15

market waqf land can share gains and losses based on a ratio agreed between the waqf manager with *mudaraba sukuk* investors. Form of joint ownership between *mudaraba sukuk* investors and waqf management. Sukuk Murabahah is a sale of property other than land to investors who paid regularly in within a period time. Property assets such as stores, kiosks and other market assets became entirely owned by waqf asset managers after completion of the murabaha sukuk payment by waqf manager. While *Sukuk Ijarah* is ownership of property assets stores, kiosks and other market assets by investors. While the waqf manager pays rent on the overall market properties other than land. Waqf land asset manager is managing the market by the model of *syirkah* contract or/and *Ijarah* (lease) parallel to the merchant. Revenue from *syirkah* and *Ijarah* less operational cost become the right of waqf land asset manager for the purpose of public welfare according to the intention of whomsoever giving the endowments.

Fifth, cash waqf (endowments), productive waqf to buy a shop or kiosk which then leased to merchant. Cash and productive waqf manager invest to fixed asset such as stores, shops and kiosks. Then rent and or arrange work agreement with with other parties. Revenues from these beneficial activities later developed for the benefit of communities, such as construction and operation of education, development and mosques welfare, development and management of homes and shelters, construction and management of hospitals and other public facilities for public welfare.

In the context of the protection of traditional markets in Indonesia, waqf (endowments) instrument can be one alternative in protecting and empowering traditional markets in Indonesia. The nature of waqf asset as fixed asset still makes all business merchants will be able to access the markets. Small business and large business have no difference treatment in accessing the market. In addition, the market from its market legal entity as non-taxable institution therefore the merchants can sell products at affordable prices to consumers.

C. Conclusion

Market paradigm should not only related to economic institutions but the market as a social institution where every business people or market their own economic and social rights. Social paradigm in the market requires mutual support among businesses people and

mutual respect each other. Due to perspective that market is not only an economic institutions therefore ownership in the market should be in the form of common ownership (*al-milkiyyah al-'ammah*).

In Islamic (sharia) law, market as a place for trading transactions including in the category of public ownership (*al-milkiyyah al-'ammah*) mean that ensuring everyone can have equal opportunity to access market as a source of economy. Public ownership (*al-milkiyyah al-'ammah*) means that the market is an important place that everyone needs to fulfill the needs of all people therefore without market then people will suffer to fulfill their needs. This is evidenced by the history of market land waqf in the golden age of Islam and also for some places in Indonesia region.

Waqf legal entity can be an alternative for market legal entities in Indonesian positive law. Legislation on market can arrange waqf legal entity to become market legal entity in Indonesia. Besides, market presence in the form of waqf institution is an alternative to apply the principles and instruments of Islamic economy integrally in a particular land area such as the application of the principle of mutual support, integration of the mosque as a place of worship and market as a buy and sell area, therefore the application of functionality of Islamic economic institutions like islamic banking, islamic insurance, zakat institution can be implemented integrally.

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