

## **Need for Establishing Dialysis Centre through Waqf Arrangement: A Brief Case Study of Wakaf An-Nur, Perbadanan Wakaf Negeri Sembilan Sendirian Berhad**

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### **Abstract**

Waqf is one of the most effective instruments for promoting and enhancing the economic, educational, health, religious and social developments of the Muslim ummah whilst sustaining their faith and spiritual strength to face the current challenges. In addition, waqf is an important component of the Islamic economic instruments which is firmly believed, can solve the socio-economic problem especially in helping poor Muslim and as a strategy for poverty alleviation program. This case was written for the purpose of exposing the readers on the benefit of waqf projects for the selected individual and Muslim Ummah. The purpose is not to show any weaknesses nor to exhibit the incompetency of the named officers, but just to provide a basis for discussion.

**Keywords:** Waqf, Cash Waqf, Islamic Social Finance, Wakaf An-Nur, Perbadanan Wakaf Negeri Sembilan Sendirian Berhad.

### **INTRODUCTION**

Puan Aishah, an old lady aged 65 years old was waiting for her turn for a dialysis treatment at Dialysis Centre of Wakaf An-Nur, Perbadanan Wakaf Negeri Sembilan Sendirian Berhad on 25 July 2016. She came to the clinic by bus from her house in Bahau<sup>2</sup>,

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<sup>2</sup>Bahau is the principal town of Jempol District, Negeri Sembilan, Malaysia. The town's name is believed to have been derived from a Chinese phrase. Bahau is literally translated as "Horse's Mouth" while the

Negeri Sembilan. Supposedly, the appointment for her treatment was at 8 a.m., but since she arrived at 10.30 a.m., she needed to wait another two hours before the nurse called her for the dialysis treatment at that day. This was the third time, she arrived late to the clinic. Puan Aishah was diagnosed with kidney disease, three months ago whereby she is required to get dialysis treatment three times a week. Fortunately, she was categorized as asnaf<sup>3</sup> faqir<sup>4</sup>, who was entitled to obtain dialysis treatment free of charge, arranged by Baitulmal Negeri Sembilan<sup>5</sup>.

### CONCEPT OF WAQF

Waqf literally means 'detention', 'withholding' or 'restraint'. In Islamic law, waqf refers to an act of dedicating the usufruct of any property owned for purposes recognized by Islamic laws as pious or religious. The act is achieved by taking the corpus of the property from personal ownership and transferring it to the permanent ownership of Allah. The act has made waqf a system whereby properties are transferred from personal ownership and given to certain beneficiaries. When a property has been bequeathed as waqf, it will become a property owned by Allah alone, which enables the beneficiaries to reap its benefits permanently. Another special feature of waqf is its irrevocability. Once the original owner has bequeathed his property as waqf, he can no longer revoke the contract. Beneficiaries and trustees of waqf also have no right to

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nearby town, Mahsan means "Horse's Body" in Cantonese. The population of Bahau is made up of mainly Chinese, Malays (from the Felda areas in the outskirts of the town) and Indians, who live in town and the estates on the outskirts. The town centre is the commercial centre of the district since shops were built there in pre war. The town centre is known to locals as the 'Main Road' or 'Jalan Besar'. The shops there are mostly run by Chinese traders and suppliers. The shophouses still bear the architecture from the colonial era, when Bahau was a Chinese settlement. Today, more commercial areas are being built outside town as the town grows and "Upwell" is the largest supermarket in town. Locals and visitors alike frequent the many restaurants and coffee shops in town. However, due to the increasing rent rates in the town centre, some old coffee shops have been closed down and some of these shops have moved to other places around and in the outskirts of the town. Eonsave Supermarket was opened in the town in August 2008. Bahau is situated about 58 km from the Dialysis Centre of Wakaf An-Nur at Senawang, Negeri Sembilan.

<sup>3</sup>Recipient category in zakat (Muslim tax) distribution.

<sup>4</sup>One who has neither material possessions nor means of livelihood.

<sup>5</sup>Baitulmal Negeri Sembilan is a subsidiary of Majlis Agama Islam Negeri Sembilan. It is responsible in planning and managing assessment, distribution and collection of zakat for the whole state.

dispose of it (Ibn Qudamah, 1972; Muhammad Ridhwan Ab. Aziz, 2016).

There are four main elements of a waqf endowment. First, al-waqif is any person who donates property as waqf. Someone who wants to establish waqf must be physically and mentally fit and healthy. Such a decision must be made freely without pressure or coercion. Second, the property designated for waqf is known as al-mawquf. Mawquf property must be physical assets the existence of which is clear and durable. Its durability enables the beneficiaries to benefit from the waqf for a long period of time. Cash, although not a physical asset, is accepted for waqf as long as it is used to purchase physical assets which will be bequeathed later as waqf. Third, beneficiaries, known as al-mawquf 'alayhi, are entitled to benefit from the waqf endowment. Finally, the expression or *sighah* or the waqf contract is the way in which the waqif establishes his property as waqf. The expression can be explicitly or implicitly made (Siti Mashitoh Mahamood, 2006; Muhammad Ridhwan Ab. Aziz, 2012).

### **CASH WAQF**

The cash waqf (plural *awqaf*) was a trust fund established with money to support services to mankind in the name of God. The Ottoman courts approved these endowments as early as the beginning of the 15<sup>th</sup> century and by the end of the 16<sup>th</sup> century they had reportedly become extremely popular all over Anatolia and the European provinces of the Empire.

The exact extent of the geographical diffusion of these *awqaf* and, specifically, in the Arab provinces is subject to discussion. The gifted capital of the waqf was "transferred" to borrowers who after a certain period, usually a year, returned to the waqf the principal, plus a certain "extra" amount, which was then spent for all sorts of pious and social purposes. Whether the capital of the endowment was lent as credit to the borrowers and the return was in fact nothing, but the ordinary interest constitutes another debate. In a society where health, education and welfare were entirely financed by gifts and endowments, the cash waqf carried serious implications for the very survival of the Ottoman social fabric.

### **ESTABLISHMENT OF A CASH WAQF**

An additional debate in the establishment of Ottoman cash waqf revolved around the question of irrevocability. According to Abu Hanifah, the founder of a waqf or his descendants could revoke the original decision and claim the endowed property back. That is to say, a waqf was revocable. Abu

Hanifah added, that for a waqf to become irrevocable and valid, a court's decision was necessary.

Other great jurists of the Hanafi School did not agree with this opinion. Abu Yusuf, for instance, argued that when Prophet Muhammad endowed his property, his personal property rights became null and void. Moreover, neither the Prophet nor any of the four Caliphs or the followers of the Prophet, *ashab*, ever reversed their decision to endow their properties. These scholars further argued that the establishment of *awaqf* was an irrevocable act, based upon the hadith pertaining to Umar's endowment.

During the Ottoman period, a legal precedent was established which resolved the debate among the great Hanafi scholar, a man wishing to establish a waqf informed the court of his intention thereby creating the waqf. He later revoked his decision and demanded the trustee of the waqf return his capital. When the latter refused to do so, the case was brought before the court where the request was flatly rejected by the judge who declared that a waqf, once established, was irrevocable and definite.

#### AT THE CLINIC

**Dr. Farah:** Puan Aishah, this is the third time you are late for this treatment....

**Puan Aishah:** Sorry, Doctor. I am really sorry...I left my house at 7 a.m. but the bus arrived late...so I arrived late to the clinic. It almost three hour-journey by bus from my house in Bahau...

**Dr. Farah:** I understand that...but, if you come late to the clinic, this will affect other patients as well. If this the case, can I put you in 12 p.m. slot for the next treatment?

**Puan Aishah:** Ooo...sorry Doctor, I need to go home early..before 1 p.m. since my son will back home from school, around 1.25 p.m....and I need to prepare lunch for him before continue with afternoon school.

**Dr. Farah:** I see....If I put you in the afternoon...2.30 p.m. slot? Can you come at that time?

**Puan Aishah:** Sorry Doctor, afternoon session is not suitable for me...since I have to rush to pick up my son in his school...it cannot be certain to arrive in time by bus....I am worry if I let my son alone in the school...he is only 7 years old..

**Dr. Farah:** Can you ask someone to send you to this clinic then?

**Puan Aishah:** I have another son working in factory, near to my house but unfortunately we do not have any transport to come here, bike or car.....I need to depend to the public transport only.

Suddenly, Miss Nina, who is the executive trainee for Perbadanan Wakaf Negeri Sembilan (PWNS)<sup>6</sup> and in-charge for the clinic and dialysis centre came to the clinic. The following conversation was between Dr. Farah and Miss Nina.

**Dr. Farah:** Assalamualaikum, Nina...How are you?

**Nina:** Waalaikumsallam Dr., Alhamdulillah...I got a good news today. We are going to launch a new wakaf clinic in Rembau soon. This project was started since 2012 and the PWNS has spent around RM600,000 to develop this new clinic.

**Dr. Farah:** Oooo...Alhamdulillah...the project is finally success...how about dialysis centre in the clinic...Is it opened as well?

**Nina:** At first, we will only open the wakaf clinic for the public...for the dialysis centre...we are only waiting the approval from the Ministry of Health...the process is quite complicated...we hope we can get the approval soon...Insha-Allah...

**Dr. Farah:** Insyaallah...we hope so...after that all patients from Rembau, Bahau and Tampin no need to come here, but can have the treatment there...

## EPILOGUE

After received her treatment, Puan Aishah walked to the main road for getting a bus to her house in Bahau. The time now was 1.15 p.m. She must hurry by now to arrive at her house for preparing food for her son. While waiting for the bus, Puan Aishah was thinking that she could borrow some of the money from Pusat Zakat Negeri Sembilan to buy a motorbike in order for her to come and back easily to the dialysis clinic in Senawang. Unfortunately, she did not know how to approach the Pusat Zakat and apply for the money.

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<sup>6</sup> Perbadanan Wakaf Negeri Sembilan Sdn Bhd (700214-M) was established on June 10, 2005 and is a subsidiary and owned by MAINS Holdings Sdn Bhd.

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