

THE URGENCY OF LAW ENFORCEMENT OF LAW NUMBER 41 OF 2004 ABOUT WAKAF IN THE PERSPECTIVE OF ISLAMIC LAW PRINCIPLES

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Abstract:

Islam is present as a mercy to all nature and its contents. Islam is the solution to the problems faced by humanity, primarily as a guide and a blessing to the believers. The solution given by Islam is the mercy of *al-maslahah* (goodness) of life in the world and the hereafter. Muslim Shari'ah scholars can ensure that Islamic law is built for human benefit, preventing harm and realizing the ultimate goodness. The existence of the contribution of the Islamic law principles in organizing the life of the community is indisputable. In recorded history, before Islam came and brought by the Prophet Muhammad SAW., the state of the world is dark that is characterized by the behavior of ignorance at that time. Then the Prophet SAW came with the light of Islam and teachings it until now, it is still felt the purity of teaching and its benefits in private life and society in general. The real contribution in the welfare of the ummah is on the teachings of *shadaqah jariyah* (ceaseless charity) in the form of *waqf*. In the implementation of *waqf* contained several Islamic law principles, among others: *amar maruf nahi munkar* (ordering right and prohibiting wrong) principle, justice and *al-ta'awun* principle.

Keywords: benefit, ignorance, light of Islam, *amar maruf nahi munkar* (ordering right and prohibiting wrong) principle, justice and *al-ta'awun* principle.

A. INTRODUCTION

Shari'ah Islam comes as a bearer of mercy for humanity, as the word of Allah SWT: "*And we have not sent you (O Muhammad), except as a mercy to the universe.*" (QS. Al-Anbiya (21): 107. This is reinforced in another verse which said: "*O mankind, there has to come to you instruction from your Lord and healing for what is in the breasts and the guidance and mercy for the believers*" (QS. Yunus (10): 57) Both verses above explicitly explain that Islam is present as a mercy for all nature and its contents. Islam is the solution of the problems faced by humanity, primarily as a guide and a blessing to the believers. The solution given by Islam is the mercy of *al-mashlahah* (goodness) of life in the world and the hereafter.

Shari'ah scholars can ensure that Islamic law is built for human benefit, preventing harm and realizing the ultimate goodness (Al-Qaradhawi, 2003). As the verse above, that Allah has not sent the Prophet Muhammad SAW except as a mercy to the universe. This is reflected in the main purpose of the existence of Shari'ah Islamiyyah (*Maqasid al-Shari'ah*) (Al-Qaradhawi, 2003), its characteristics (Characteristics of Shari'ah Islamiyyah) and its principles. The existence of the Islamic law principles contribution in organizing the life of the community is indisputable. In recorded history, before Islam came and brought by the

Prophet Muhammad SAW, the state of the dark world that is characterized by the behavior of ignorance at that time. Then the Prophet came with the light of Islam and teachings it until now, we still felt the purity of teaching and its benefits in our lives and society in general. The real contribution in the welfare of the ummah is on the teachings of *shadaqah jariyah* (ceaseless charity) in the form of waqf. In the implementation of waqf contained several Islamic law principles, among others: *amar maruf nahi munkar* (ordering right and prohibiting wrong) principle, justice and *al-ta'awun* principle.

The urgency of law enforcement on waqf is a necessity; the law has no meaning unless it has enforcement in implementing it. According to Soekamto (1983), the core of law enforcement is the existence of a harmonious activity between the theory and practice in the real life, so it will create harmonization in the body of society ideally. Law enforcement on waqf is a necessity. Therefore, it requires a synergy between substance (law, norm or rule), structure (law enforcement) and legal culture are required in realizing these lofty ideals.

The Islamic law principles have relation with the public (the people), we often called *Al-maslahah* (read: goodness) as the basic purpose of the existence of the Islamic shariat. The Islamic theory with the concept of *Maqasid al-Shari'ah* is very concerned with the maintenance of the five components, namely religion, soul, intellectual, descendant and wealth. For example, religion is necessary for humans. With the value of humanity brought by the teachings of religion, human beings become higher degrees from the degree of animals (Al-Ghazali, n.d). Religion is one of the characteristics of a human being.

Al-Qaradhawi (2003) explains about the opinion of al-Shatibi that the benefits of religion and the world are upheld by maintaining of the five components, and human life can be realized through these five components (Zahrah, 2000:548). If these five components are broken, the important matters relating to the human beings and their duties as servants of God will not be accomplished (Zahrah, 2000: 549). For example, if the mind does not work well, the religious will not take place because it will be the one who will accept the religious duties. If the soul does not exist, the human being has no religion. If there is no descendant, life will be extinct. Moreover, if the treasure does not exist, life cannot be continued.

Based on the opinion about benefits above, it can be concluded that the purpose of the Islamic shari'ah is the mutual benefits both in the world and in hereafter. One of the teachings of Islam practiced by the Prophet and his companions since the past fifteen centuries, it aims to mutual benefit is waqf. Based on al-Shatibi's opinion on the division of primary and secondary benefits, the benefits of waqf can be called as the primary. Because it is something that must exist, in order to realize the benefits of the world and the hereafter are for all human beings (Al-Qaradhawi, 2003).

The benefits of waqf help mutual benefit. Although it is a *Sunnah* or voluntary gift, with the existence of the continuous merit, even though the wakif has died, many *muhsinins*/philanthropists are competing to donate their wealth as the saving merit and provisioning in the hereafter helping the economy of the middle class down is. So that the given wealth will help them, especially the needs of Muslims are in terms of religious facilities so that it is primary for its existence. The management of waqf property in accordance with regulated rules, the result will be more felt by human beings especially for those whose level of economy is below the poverty line, which is managed professionally, trustworthy, productive and in accordance with existing regulations.

The Law of Indonesia 2004 No. 41 on Waqf is the embodiment of Islamic legal principles contained in several chapters, article and verse contained in the regulation. One of the examples is in chapter II Articles 4 and 5 about the purpose and function of waqf. The purpose of waqf is “*utilizing the wealth of waqf in accordance with its function,*” while the function of waqf is “*realizing the potential and economic benefits of waqf property for the benefit of worship and to advance the general welfare*” (Law of Indonesia 2004 No. 41 on Waqf). Based on the article, the purpose and function of waqf is for the welfare and prosperity nation (Muslims in particular), and reject all harmful (*mudharat*) arising caused by one of them, namely economic factors that are not adequate. In those articles, it appears that the contribution or thought contribution of Islamic law principles toward the law enforcement of waqf in the management of waqf property in the community.

The statement in the phrase, “utilizing property in accordance with its function.” It shows the principle of *amar ma'ruf nahi munkar* (*ordering right and prohibiting wrong*), that is preventing misuse of waqf property that has done by *nazhir* who is not responsible. Waqf's property, which has been mandated by *wakif* to *nazhir*, should be kept and managed properly according to its function. After *nazhir* receives the trust of waqf's property, the waqf property must be immediately recognized by the PPAIW, then certified and managed correctly (professionally, productively and trustfully), in accordance with the regulations on the law on waqf.

The urgency of Islamic law principles on enforcement law of waqf is on the next contribution of Islamic law principles, that is the principle of *al-ta'awun* (cooperation or helping each other) and the principle of justice. This principle is found in the statement of Article 5 that says: “to realize the potential and benefits of waqf property, for the sake of worship and general welfare.” The principle of *al-ta'awun* is the existence of helping each other in goodness, by seeking all kinds of benefits that can be taken from waqf property for the sake of the public, in the form of worship places or the improvement of the welfare of its society. While the principle of fairness in this part is the improvement of welfare/public facilities, that is not only enjoyed by a group of middle and upper middle societies, but also includes poor economic communities. In this case, a few people do not enjoy the equity in the distribution of waqf property, but it is felt by all circles. In both principles (*al-ta'awun* and justice), waqf is religious social institutions and philanthropic. institutions, that must be distributed fairly and evenly in order to provide general / shared benefits.

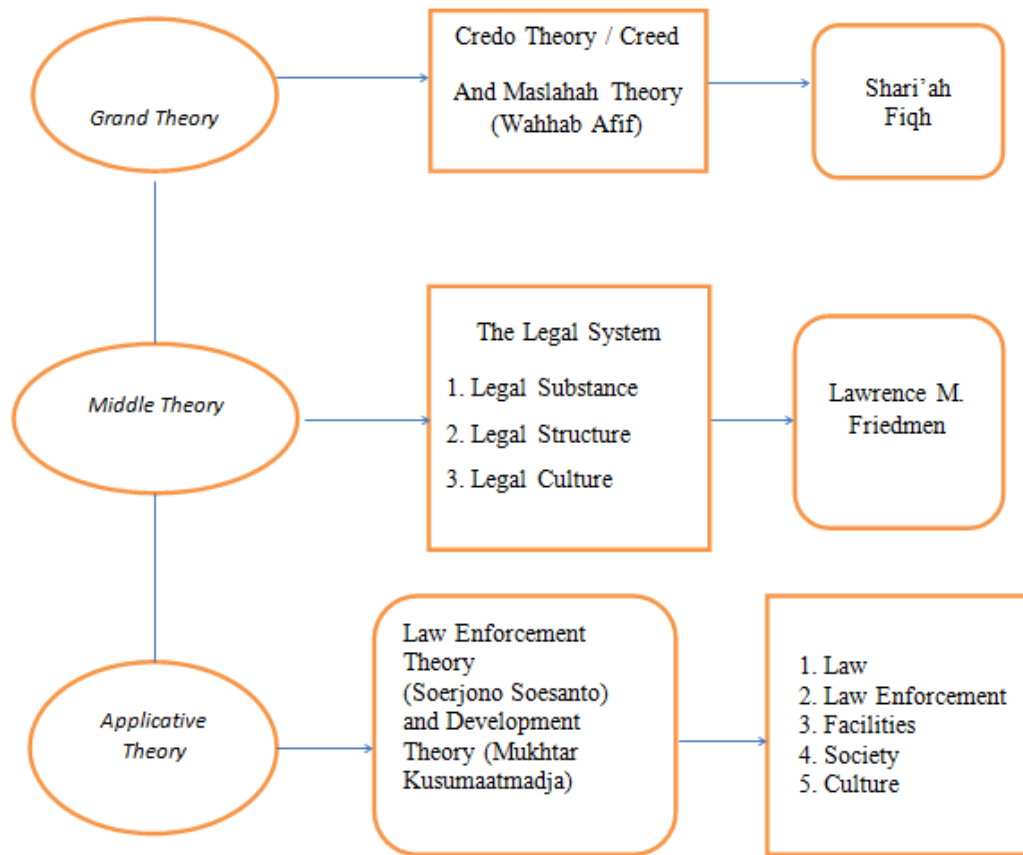
B. METHOD

The methodology used in this research is qualitative method. Qualitative methodology is a methodology of research that is descriptive and tends to use analysis. Process and meaning (subject perspective) are more highlighted. Rationale is used as a guide to focus on the research based on the facts in the field.

Qualitative research method is also a research method based on post-positivism philosophy. It is used to examine the condition of natural objects, (as opposed to experiments) where researcher is as the key of instruments, data collection techniques are inductive/qualitative, and qualitative research results more emphasize to *the meaning* than *the generalization* (Sugiyono, 2015).

C. RESULT AND DISCUSSION

The theory used as a tool of analysis of this paper can be seen in the image flow as follows:



Based on the image above, it can be illustrated as follows:

1. Credo theory and Maslahah Ummah theory are the grand theory.
2. The legal system theory of Lawrence M. Friedmen is the middle theory.
3. Applicative theory used the law enforcement theory of Soerjono Soekanto and the development legal theory of Mochtar Kusumaatmadja.

According to Juhaya, credo/syahadat theory is necessitating the implementation of Islamic law by those who have uttered two creeds sentences, as a logical consequence of the uttering of his credo. (Praja, 2014) This theory is formulated from the Koran, among others; QS. 1 (al-Fatihah): 5 it is "إياك نعبد" means: "We specialize worship only to you; we do not worship other than you. The meaning of *na'budu* in the interpretation of al-Munir is *nuthi'u* (we are obedient). Worship means obedience and submission." In addition, "إياك نستعين" means: "We seek your help, support and success; only to You we ask for help, because You are the source of the help, the gift and the abundance of wisdom; besides You no one has the ability to help us" (Al-Zuhaily, 2013)

Based on the verse above, there is the necessity to be obedient, submissive and obedient to a person who has uttered two sentences of the crede as a consequence of what is spoken. That is the necessity of following the rules set by Allah and His messenger as "*Shari*" (the law-maker) for servants who have proclaimed themselves as Muslims. For example, with his

utterance that must be totally surrendered only to the owner of this universe, namely Allah SWT, in QS. 1: 5 and submission to another law as a benefit to himself and others as the command of shadaqah is in the form of a waqf, even if the order of waqf is *sunnah (tradition)*.

The second *Grand theory* is the *maslahah al-Ummah* theory. Wahab Afif pioneered the theory of contemplation. He was inspired by the *maslahah* theory of Imam al-Ghazali (Interview result with Wahab Afif). The definition of the *maslahah* theory of Imam al-Ghazali is as follows: there is a term “benefiting or rejecting damages/dangers.” It is meant by benefiting and rejecting damages/dangers is keeping the benefit of the ummah to achieve its purpose.

According to al-Ghazali, it is his purpose of the removal of Islamic law, which is to preserve their religion, soul, intellect, heredity and their property. In every maintenance, that covers these five points means *maslahat* (goodness), and vice versa, if they do not cover or maintain those five things, they are damages. (al-Ghazali, n.d.: 482). It related to the use of *maslahah al-ummah*'s thought theory, Juhaya explained that *maslahat* is the main element of Islamic law building which binds other related elements. Welfare is the core or substance of Islamic law. Human life in the world should be based on Islamic teachings and laws for the benefit of Allah's servant. The purpose of *maslahah* is to fulfill the public interests for the Muslim community. The welfare of Allah's servant is the benefit of the ummah. It is efforts to achieve the benefits and refuse the damages. As the following fiqh rules:

“المصلحة العامة مقدمة علي المصلحة الخاصة”

Public welfare (together) takes precedence through personal benefit (group). (Al-Suyuthi, 1429)

As illustrated that the authentic waqf property and clearly its legal status is actually not easy to be repatriated by wakif heirs and removed by irresponsible *nazhir*, for the benefit of the people as intended by the rules. This rule is supported by other rules, namely: *الضرر يزال* which is extracted from the hadith of the Prophet SAW: “لا ضرر ولا ضرار” Hadith hasan (Narrated by Ibn Majah, and Dar al-Quthni), (Rajab, n.d.:415) which means that the harm / damage should be eliminated and should not be preserved.

As the main theory that becomes the foundation of the next theories, both of these theories (the Credo/Creed theory and the theory of *Mashlahat al-Ummah*) can be a great theory in guiding the people to create kindness and peace for everyone and their environment. It is especially for the *maslahah al-ummah* theory initiated by Wahab Afif, the purpose of the theory that guides the people to achieve goodness for the sake of public peaceful. From these two theories became the main theory, it is concluded that every Muslim ummah who had said the two creeds, either to be a descendant of Islam or a *muallaf*, then he must submit to and obey the rules which have been regulated by Islam as a consequence he has to prioritize the interests of the people as a necessity and must be above all for the sake of the public interests.

The mid-theory used to analyze further on this paper is Lawrence M. Friedmen Law System theory. Friedman said that the success of law enforcement depends on the three elements of the legal system: *substance* (norms, laws, rules) *structure* (law enforcement), and *legal*

culture (custom, society), (Friedman, 2011), it is expected that the three of them have to be always integrated and strong, so there will be harmonization in the body of society in its life.

The *applicative theory* used to apply this paper in the ideal life in society, namely law enforcement theory taken from Soerjono Soekanto and the legal theory of development from Mochtar Kusumaatmaja. The theory of law enforcement is essentially, "Law enforcement is an activity of harmonizing the relationships of values that are outlined in solid norms and embodied in the act of acting as a series of the final stages of value translation, create, maintain and defend the peace of life" (Soekanto, 1983). Then in the next application theory is the theory of Development Law of Mochtar Kusumaatmadja. This theory says: "That both change and order are the initial goals of the developing society, the law becomes a tool that cannot be ignored in the development process." (Kusumaatmadja, 2006)

The waqf results that properly managed, productive and professional based on regulated laws, will significantly change people's economic lives. As the result is to create an orderly, arranged, safe and peaceful or in the Koran "*Baldatun thayyibatun wa Rabbun ghafur*". Based on the three theories used in analyzing this paper, it is concluded that the three theories support and fit with the principles of Islamic law in the enforcement of the law on waqf, so that in the implementation and management, it is based on the law and the results can be felt by the *mauquf'alaih* and society in general.

Waqf is the second oldest Islamic institution in Indonesia after marriage, since the early days has been known waqf mosque, *mushalla* (Islamic prayer room) and waqf land burial in various regions in Indonesia. Then there is waqf land for boarding school, Islamic school and wakaf land for agriculture that used for paying the tuition of Islamic education and other endowments. For example, wakaf land for agriculture used for Islamic education is wakaf land owned by Institute of Attaqwa Boarding School in Bekasi (The result of researcher research in 2002, at Attaqwa Boarding School Bekasi) and Daarussalam Modern Boarding School of Gontor Ponorogo are waqf land that managed by other Islamic organizations such as Nahdlatul Ulama (NU) foundation, Muhammadiyah foundation, PERSIS foundation and others.

Endowment problems in Indonesia have existed since the Dutch colonial era, waqf as an Islamic financial institution has spread across various archipelago homeland (Ka'bah, 2003). With the establishment of Religious Courts based on Staatsblad no. 152 in 1882, in practice, the issue of waqf became one of his authorities in addition to other issues concerning matters relating to Islam. In the era of independence, the issue of waqf increasingly received more attention from the government, through the Ministry of Religious Affairs of the Republic of Indonesia. Such as the Joint Instructions of the Minister of Religious Affairs and Minister of Home Affairs no. 1 in 1978 on the implementation of PP. No. 28 about Ownership of Land in 1977. Then Instructions of Minister of Religious Affairs is no. 15 in 1989 on PAIW and Wakaf Land Certificate.

The decision of the Director General of Islamic Guidance and Hajj Affairs No. 15 in 1990 on the completion of the form and guidelines on the implementation of regulations concerning the representation of Ownership of Waqf Land. The letter is from the Director General of Islamic Guidance and Hajj Affairs No.D 11/5/HK/007/901/1989 on the Status Changes Guidelines / Swap Land Changes. (Ka'bah, 2003). Moreover, many other rules about waqf that became the legal fundamental of its existence.

The existence of waqf that has gained legal legitimacy in Indonesia is becoming larger on quantitative scale. From private waqf land ownership, it has helped the needs of Muslims especially in the socio-economic and religious fields. Most of the waqf land is for the construction of mosques, musolas (Islamic prayer rooms), cemeteries, Islamic schools etc. With the waqf, Muslims' needs are overcome through these things (<https://www.scribd.com/doc/304365253/>). Furthermore, the development of an increasingly modern era, the waqf in Indonesia lately became an interesting conversation. Starting from the monetary crisis in 1997 and the development of Shariah economic issues at that time, the Indonesian people began to realize the importance of developing religious social institutions such as zakat and waqf. In 1999, the Zakat Management Law was published and refined in 2011. Then in 2004, it was published the Law no. 41 on waqf, and in 2006 was published the Government Regulation on the Implementation of Law on Waqf. (Hasanah, 2008)

The argument or reason for the establishment of Law 2004 No. 41 on waqf and its objectives are as follows (Mubarak, 2008:57-58). *First*, promote the general welfare. To achieve these objectives, the potential that exists in religious institutions those have economic benefits need to be explored and developed. Among the measures considered strategic to improve the general welfare is to increase the role of waqf as a religious institution that initially serves only as a medium of worship and social, becoming a pranata that has economic power which is believed to promote the general welfare. Therefore, the excavation of waqf potential and its development in accordance with shariah principles is a necessity.

Second, the practice of waqf in the community nowadays has not fully run orderly and efficient. One of the proofs is that among the waqf possessions are not well maintained, neglected, even turned into the hands of third parties in a way against the law. Subsequently, the abandonment and transfer of waqf objects to third parties arise because of: (1) negligence or inability of *nazhir* is in managing and developing waqf property; (2) attitudes of people who are less concerned or have not understood of the status of waqf property that should be protected as a medium to achieve the general welfare in accordance with the purpose, function and designation of waqf. (Mubarak, 2008).

Further explanation that the birth of waqf legislation is built on the lofty spirit, which is to help government programs in improving the welfare of the community. Before the regulation is implemented, the management paradigm of zakat and waqf focused on the implementation of the doctrine of *mahdhah* worship. However, after the regulation of waqf legislation is implemented, its spirit is built to empower and develop religious social institutions to improve the economic welfare of the ummah. (Sutami, 2012). This development became an important momentum for Indonesian Muslims, the religious social institutions, especially waqf that has a strong tradition in Islam that needs to be developed. As it is known from some Islamic literatures, waqf is a pillar of economics in the history of Islamic civilization in the past, in the time of the Prophet Muhammad and implemented by the companions of Prophet SAW, which followed by Muslims all over the world including in Indonesia.

Based on the historical experience, the development and innovation of the management of waqf especially on productive waqf is potential. It is because the waqf of Indonesian society that exist through Islamic mass organizations that have very wide access to the guidance of its members, it has taken a real role. They still manage waqf in the level of unstable, such as land endowments managed by Nahdhatul Ulama (NU), the assets of waqf are many, such

as the development of boarding school, mosques, and agricultural lands. While in the Muhammadiyah environment has been managed and developed more productively through the role and contribution of business charities in the field of education, health, including economic empowerment of society. (<http://tabungwakaf.com/>)

Therefore, it is concluded that the socio-historical waqf is already deeply embedded in the culture of the predominantly Muslim Indonesian society, it is necessary to gain more appreciation from the government. It is not only providing a legal law, but also it should provide support both physically in the form of financial, pro and support policies, and psychologically that is in the form of other motivations for the development of endowment in Indonesia. The main waqf which is operational easier to be managed to be productive, so that it is be able to empower society to be independent of economic, education and health. This has been regulated in Chapter VIII, concerning in government support in the form of financial, which is fund for socialization requirement of Law 2004 No. 41 on waqf.

This is the condition of Indonesian society before the existence of regulation about waqf (Law 2004 No. 41 on Waqf and PP 2006 No. 42), there are still many who assume that the forms of wealth can be in the endowments must be goods and durable, such as buildings and tools that have more than one year. This is because there are still many people who have an understanding, that one of the requirements of waqf is a durable thing. Though the object is not necessarily in the form of objects that can be durable, but also can be in the form of property traded continuously and changeable (current assets), waqf is also one of the supporters of a country's economy, in order to alleviate poverty, education and health. Thus, it has been done by some Muslim countries in the world, who manage the wealth of waqf successfully with the management of productive, trustworthy and professional. Such as Egypt, Saudi Arabia, Jordan, Kuwait, Bangladesh, Turkey, Singapore and others.

In Article 16 of Law 2014 No. 41 on waqf, it is stated that waqf consists of immovable and moving objects, examples of immovable property waqf, such as land and buildings. While moving property waqf is money, precious metals, important letters, vehicles, intellectual property rights (*Hak Atas Kekayaan Intelektual (HAKI)*) and other moving objects, in accordance with the provisions of the Islamic law and the prevailing laws and regulations.

Syafi'i and Hanabilah sects argue that the endowment must be long-lasting things, (Al-Zuhaly, n.d.:583-587) thus the Indonesian people adopt the majority opinion of Shafi'i sect, and it is a reference to the community that the waqf is using a long-lasting treasure. As we know that, the Indonesian community is the majority followers of the Shafi'i sect. It thus forms an understanding of waqf often done in the form of land, mosque, Islamic school, and other fixed assets. On the other hand, Maliki sect allows about the giftable items, which include moving goods such as waqf of animals that take their energy as riding, food and money. (Al-Zuhaly, n.d.: 185). With the opinion of Maliki sect, it opens wide opportunity to do endowment in any forms as long as there are valuable.

Based on some opinions of the priests' sect mentioned above, it is about the waqf possessions, which are legitimate and capable to be represented, and then the context and form of waqf in Indonesia are slowly changing. The waqf property is not only in the form of immovable objects such as land and buildings, but also many other forms that can be used as waqf property. In addition to the understanding taken from the opinion of Maliki sect, there is also a regulation on endowment, which aims to improve the general welfare through religious institutions in the form of waqf, which institutionally has handled the Islamic economy, namely Law 2004 No. 41 on waqf, which in it is set about money waqf mechanism.

Therefore, to cultivate the management of productive waqf property, enabling the theory of the legal system initiated by L. M. Friedmen used as a medieval theory in this paper, it can be used as one of the solutions and alternatives except Soekamto's theory about the enforcement law factors. The lack of productive factors of waqf property is about the existence of a much-attached traditional culture, both in the culture of donating property, management and administration itself. This is due to the weak of law enforcement on waqf that has been 13 years in the society.

As an illustration of the legal system in enforcing the Law on waqf is as follows. The law on representation is a legal substance/norms (read: rule). All countries, both Muslim and non-Muslim countries impose *norms*. For the case of waqf in Indonesia, the substance / norm means the law of waqf (read: Law 2004 No 41 on waqf).

The norm enforcement (waqf law) depends on the existing waqf structure. The use of the norm/substance of waqf law depends on the structure in upholding the legal norm of waqf. The norm enforcement of waqf law can minimize the problems that occur in endowment that exist in society, especially the Muslim community in Indonesia. Legal culture can also influence the norm enforcement of waqf law. It is attitude about whether to be right or wrong, useful or futile if it is not enforcing regulated norms of waqf. Values in culture will also greatly affect the degree of waqf enforcement. What people will say if the endowments are always problematic, such as land that always disputes waqf, the existence of cases of diversion of waqf land, taking wakaf land that has been vowed by family or heir wakif and others. Then this will affect and become a bad precedent for the next generation. (Friedmen, 2011).

An example illustration of Friedmen's legal system above, it illustrates that successful law enforcement depends on the harmonization of the three mutually reinforcing and integrating legal elements of *substance, structure, and law culture*.

Based on the illustration above, something that affects to the waqf law enforcement is not only in the law on waqf regulated by the government. The waqf structure as the engine driver of the law on waqf, but the culture of community law that must be changed in the attitude and behavior carried out by society when doing waqf, attitudes and awareness of wakaf land, waqf culture and in the management of waqf properties. Therefore, even the regulations that have been provided by the government are good and right. However, if the enforcers and stakeholders about waqf and community culture are not enhanced by their professionalism, ethos and quality of work, they will be mere dreams and fantasies that will never come true.

Regarding the urgency of law enforcement on waqf on the Islamic law principles that must be known in advance is about what the principle in language and terms is. Principle according to the language in the complete Indonesian dictionary is foundation and basic. (El-Santoso and Prianto, n.d.). In the *Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia)* is interpreted as the truth which is the basis of thinking, acting and etc. (KBBI, 2008:1102). Furthermore, in the book "*Filsafat Hukum Antar Madzhab-Madzhab Barat dan Islam*" it is said that principle according to the meaning of language is the beginning, the place of departure, the point of departure, or *al-mabda*. Relating to the issues of Islamic law principles, Juhaya states that, the principle of Islamic law is the universal truth inherent in Islamic law and is a turning point for its coaching; the principle that make up Islamic law and every branch.

Based on some definitions mentioned above, the principle means the truth that is the source or starting point of a person establishing a law or doing something. Juhaya stated that the Islamic law principles include general principles and special principles. The general principle is the universal principle of Islamic law. The special principle is the principle of every branch of Islamic law that is also known as the foundation. (Praja, 2014:231)

There are seven principles in Islamic law, namely: the principles of monotheism, justice, *amar maruf nahi munkar* (ordering right and prohibiting wrong), freedom, equality, *al-taawun*, and the principle of tolerance. The seven principles, which will be the focus of this paper, are the principles of *amar maruf nahi munkar* (ordering right and prohibiting wrong), justice and *al-taawun*.

Based on the *grand theory* used in this paper about the theory of credo / creed, every Muslim thinks that the principle of *amar ma'ruf nahi munkar* (ordering right and prohibiting wrong) is a necessity. Because the principle is the command from Allah SWT for His servants. In the Islam teachings, if someone wants to get Allah's mercy (His mercy), prosper in the life of the hereafter, and become a pious servant, he must preach *amar ma'ruf nahi munkar* (ordering right and prohibiting wrong).

The meaning of preaching (*dakwah*) (*amar ma'ruf nahi munkar*) is to change from the period of ignorance (*jahiliyyah*) to the light of Islam, from disobedience to the good deeds, from ignorance to science and so on. In managing the waqf property, the meaning of doing *amar ma'ruf nahi munkar* or preaching means a command to change on waqf field. It is to change on managing waqf property from the traditional culture to the modern culture and manage productively, efficiently and professionally. As the result, it can change and help the society's economy from the middle class into the lower class significantly, such as to provide business financial capital, open up employment and others.

The Word of Allah about the command of *amar ma'ruf nahi munkar* (ordering right and prohibiting wrong) is in the QS. Al-Taubah: 71

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

"The believing men and the believing women are allies of one another. They enjoin what is right, forbid what is wrong, establish prayer, give zakah, and obey Allah and His Messenger. Those – Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise."

QS. Ali Imran (3): 104

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ ١٠٤

"And let there be (arising) from you a nation inviting to (all that is) good, enjoining what is right and forbidding what is wrong, and those will be the successful."

يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُسْرِعُونَ فِي الْخَيْرَاتِ وَأُولَئِكَ مِنَ الصَّالِحِينَ ١١٤

"They believe in Allah and the Last Day, and they enjoin what is right and forbid what is wrong and hasten to good deeds. And those are among the righteous."

The verses above have the following contents (Al-Zuhaily, n.d.:33):

1. Involving people to do *amar maruf nahi munkar* is an individual obligation for every Muslim on QS. Al-Taubah: 71 that *amar maruf nahi munkar* is equated with the obligation of prayer, so its obligations are the same as performing the worship of the prayer.
2. Those who do *amar maruf dan nahi munkar* will be happy in the world and hereafter.

From the two contents mentioned above, it can be concluded that the happiness of the world and the hereafter will be achieved if we do *amar maruf nahi munkar*, by preaching the teachings of Allah that is an obligation for every Muslim, it will bring happiness to life both in the world and in the hereafter. In the case of waqf in Indonesia, as one of the teachings of Islam must be preached or changed is in law enforcement. After 12 years the law on waqf is in the midst of people's lives, but the results of its management have not been felt significantly by the public in general and *mauquf 'alaih* in particular in improving the economy of society. This shows that the law enforcement on waqf becomes something that must be preached massively in order to make a significant change on waqf in Indonesia.

As it is known, waqf is one of the Islamic teachings pertaining to economic problems. It is a teacher of the people's economy if it is managed professionally and productively. Preaching and changing people to the right path through the people economic empowerment is a necessity. Starving people will not be able to think normally and it is not easy to be given the correct understanding. Therefore, the initiative and innovative management of waqf property is an appropriate solution to produce it so that the economy of the people is robust and empowered. This is an effective way of implementing the above verse. Allah will give double profit to those who care each other and pay attention to those who are weak.

Therefore, all the supporting factors for the law enforcement must be optimized. As the application theory derived from Soekanto, the factors that can influence the law enforcement should be used in order to support the implementation of the enforcement of Law 2004 No. 41 on waqf. Among the factors influencing the enforcement of Law on waqf in Soekanto's theory (Soekanto, 1983) are:

1. Laws (read: substance/norms)
2. Law enforcers
3. Tools and facilities
4. Society
5. Culture

According to the Soekanto's theory, these factors have been fulfilled in the waqf issue in Indonesia. For example, the substance / law / norms and rules on waqf are already existed and regulated by the Government of Indonesia and have been implemented by some communities, although their enforcement has not been felt until now. Based on Soekanto's theory, the core of law enforcement is the activity of harmonizing the values of relationships that convert into firm rules and embodies the act of attitudes as a series of final value, to create, maintain, and keep peace of life. (Soekanto, 1983: 5). Based on this theory, the act / norm factor has not been implemented maximally. Tools and facilities factors are already available and adequate in order to support the law enforcement on waqf though it is still not perfect.

The society factor for Indonesia in this theory has supported the law enforcement on waqf that has been regulated. People in Indonesia is predominantly Muslim, so it is not something amazing with the title of the greatest wealth of waqf in the world, due to the owned area of land compared to other countries in the world, also supported by the majority factor of the Muslim committed to give waqf. The Muslim community in Indonesia is always willing to give their wealth before they pass away. However, they represent waqf not all based on regulated rules. They represented based on the knowledge of the hadith of giving alms after they died, that is as provision of the righteous deeds in the afterlife obtained from the ustads (community leaders), also the habits from their parents. Therefore, they represented waqf based on the information received, even it is not in accordance with the law on waqf and it is still traditional, they continue to do it until now. Therefore, it becomes a necessity for the waqf law enforcers to socialize to the *ustad* and community leaders about the waqf regulation, so the law becomes *life style* and *living law* in the society in realizing directed and efficient of the waqf representation.

Law enforcement and community culture factors in the implementation of waqf law enforcement, both must have rooted and firm in the life of the community. If it is weak, it will affect the law enforcement on waqf in Indonesia. As allegedly, the law enforcement on waqf is called wakaf elements, such as BWI, PPAIW (head of KUA (*Religious Affairs Office*)), and community leaders who handle and take over all representations of waqf in Indonesia. The law enforcer / element of waqf has never been found sentencing them who abuses waqf's property with the law in accordance with law No.41 Year 2004 regarding waqf and stipulated in Chapter X Article 69 paragraph (1, 2 and 3). That is about sanctions to be done to those who do not trust to the waqf property that has been mandated to them in their management.

Furthermore, the society cultural factor on waqf, it is known that the culture on waqf that is run by the society still in the level of traditional culture. Such as the culture/customs on waqf representation with immutable, long-lasting waqf objects, such as land to build mosques, mushallas, boarding schools and cemetery whose development and maintenance costs should be found from other funds. Thus, in the culture of endowing waqf property is in the period of time (*muabbad*). Whereas, if we refer to the waqf regulation, the culture can be changed gradually. Therefore, it is clear that Soekamto's theory of waqf in Indonesia is very suitable and idealistic if it can be fully implemented, but in reality, it still needs improvement, especially in the two factors above that is law enforcement that has not yet functioned optimally and traditional culture of waqf and has not been compatible with the existing law. The main problem of the unregistered law on waqf has been regulated by the government is on the matter of the waqf properties management. The *mauquf 'alaih* and the public have not enjoyed it maximally. The successful management of waqf wealth is as big as the benefits felt by *mauquf 'alaih* and the community in general.

Furthermore, the supporting argument is toward *al-ta'awun* principle and justice, namely in QS. (5) Al-Maidah: 2 and 8, as follows:

...وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

... *And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.*

The verse above suggests that helping one another in goodness and piety is an obligation and piety is obligatory, on the contrary that helping in the wrong thing is forbidden, as the Prophet said:

"العدل علي الخير كفاعله"

The meaning is, "Showing others to the goodness gets merit is just like the one who does the goodness." (Narrated by al-Thabrany).

Powered by another hadith:

((انصُرْ أَخَاكَ ظَالِمًا أَوْ مَظْلُومًا)) ، قَالَ : يَا رَسُولَ اللَّهِ ،
أَنْصُرُهُ مَظْلُومًا ، فَكَيْفَ أَنْصُرُهُ ظَالِمًا ؟ قَالَ : ((مَنْعَهُ عَنِ الظُّلْمِ ، فَذَلِكَ نَصْرُكَ إِيَّاهُ)) . خَرَّجَهُ الْبُخَارِيُّ

The meaning is, "Help / assist your relatives who are cruel or injustice, then the companions ask, "O Messenger of Allah, I can help the people who are injustice, and how to help those who are cruel? The Messenger of Allah replied: "prevent him from doing in justice that is the way to help those who do cruel." (Narrated by Bukhari)

The hadith above reinforces this study, whereas the waqf law enforcers (BWI and other waqf elements) provide intensive waqf explanations and their existing management is adapted from the regulation of waqf law, certainly a wealth of waqf can be utilized. Then the goodness and benefits will be obtained and felt by all circles, not only BWI, but also his staffs. Therefore, with the verses and hadiths above, BWI and the stakeholders of this country should not be bored and despaired to continue to socialize and inflame the spirit of Law 2004 No. 41 on waqf, in order to the waqf property that has been handed over by wakif for the benefit of the people, can be managed optimally. This means that it has shown the way to others. In addition, it is reinforced by the rules of fiqh:

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namely, "refuse damage takes precedence rather than take goodness (*mashlahat*)".

Based on the verse and hadith above, the principle of *al-ta'awun* is helping, it can be material or immaterial. The material that is, in the form of benefits of waqf wealth management which the results can be enjoyed by the layers of society, primarily *mauquf'alaih*. As for the immaterial, it can be to provide training to the *nazhir* and education as well as socialization to the community about Law 2004 No. 41, so that *nazhir* and all the people who give waqf and intend to give the waqf their properties, they have to know how to represent the waqf in the right ways.

Verse about fairness principle is in QS. 5:8:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوِّمِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ ءَلَّا تَعْدِلُوا ءَعْدِلُوا هُوَ أَقْرَبُ
لِلنَّقَوٰى وَأَتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ ۝٨

The meaning is, "O you who believe! Be upright for Allah, bearers of witness with justice, and let not hatred of a people incite you, not to act equitably; act equitably, that is nearer to piety, and he is careful of (your duty to) Allah; surely Allah is aware of what you do."

The content of the verse above is:

- a. It is an obligation for believers to uphold the truth fairly, that is, in every trust charged to him sincerely;

- b. To conduct the law fairly and truthfully even to the enemy, as Allah commands is to enforce justice even to a person who is hateful (disliked). (Al-Zuhaily, n.d.: 120)

Based on the content of the verse above, justice is Allah's command that must be upheld by whom and to whoever it is. Therefore, in that verse, the enforcement of the law on waqf is a necessity for this rule to be carried out and ran properly. The meaning of justice on waqf property is on the results distribution of its management. As the word of Allah is in QS. Al-Hashr: 6

..... كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“..... So that the wealth is not only on the rich people around you”

The right management and distribution of waqf property must be undertaken by the main waqf structure of BWI as an extension of the government (Ministry of Religious Affairs/Kemenag), should try to maximize it by socializing the law to the people and especially to the religious leaders. It is hoped with maximum education, will be able to change the traditional waqf culture, and understanding of the importance of waqf in accordance with existing regulations, will minimize dispute on waqf land, which is often done by the wakif, *nazhir* also his family, as one of the causes on waqf property cannot be managed optimally and productively.

Unequal distribution cannot prevent criminal acts earlier, even it triggers internal disputes and quarrels among *wakif*, *nazhir* and *community leaders*. Therefore, the form of waqf distribution of wealth management can be done in various ways, either: a) consumptive/direct, such as giving nine basic materials and food, clothing or making free or cheap medical treatment, and the price is affordable for the middle to lower economic community. b) Productive, such as: creating employment or providing business capital, financing school and college or others that can break the poverty. I hope that in the future he will become *wakif*, it does not only become *mauquf'alaih*.

Therefore, talking about the Law 2004 Number 41 on Waqf is the form of the verse and hadith implementation above. A good, normal and stable people's economy will certainly be followed by good education and health factors. This is called as to help in goodness and pious. With this activity, the anarchist degradation caused by weak and low economic and educational factors will not happen.

As the hadith above, the way of helping people who do cruel is prevented early on trigger crime. Waqf that is managed productively, trustworthy and professional based on the law on Waqf that has been regulated, and as stated in the purpose and function of waqf, will realize the purpose of hadith above. That is to help the fellow citizens from anarchist action. The purpose of waqf is, “utilizing the waqf property in accordance with its function.” While the waqf function is, “realizing the potential and economic benefits of waqf property is for the sake of worship and to promote the general welfare.” (Laws 2004 No.41 about Waqf Chapter II Article 4 and 5). If the purpose and function are realized in waqf, the result can prevent and minimize the doer of cruel. In turn, it will grow and cause attitude of affection, feeling peaceful and comfortable for the *mauquf 'alaih*, which is the attitude and behavior of the correct society. Such as building houses of worship, besides as a place to carry out the routine of prayer, also held a place to learn about Islam for mothers and fathers, recited Koran for children and other positive activities, is as good deeds for wakif who donated his property. This is the way to prevent people from committing the crime, in accordance with

the rules of fiqh mentioned above, namely: “to refuse damage is preferred instead of taking goodness.”

Islam teaches its people to work professionally; it means to work in earnestly, optimally and manageably, as depicted in QS. Al-Isra: 84:

فَلْ كُلُّ يَعْمَلُ عَلَىٰ شَاكِلَتِهِ فَرِيضَتُهُ أَعْلَمُ بِمَنْ هُوَ أَهْدَىٰ سَبِيلًا ٨٤

Say, “Everyone acts according to his manner; but your Lord is most knowing of who is best guided in the path”.

In the verse above, it is argued that everyone does charity and acts according to ability. It means that someone must work with great diligence by devoting all his skills. If a person works according to his ability, it will make to the optimal things. In matters of waqf in Indonesia, the highly competent is BWI (Waqf Indonesia Agency) as a stakeholder in all issues of endowment. He must be professional in carrying out the trust of waqf treasures submitted to him, so that the results can be felt by all levels of society. Because the success of waqf property management is as big as the benefits felt by *mauquf 'alaih* and society in general.

D. CONCLUSION

Based on the findings and explanations above, it was concluded that the Urgency of Islamic Law Principles towards the Enforcement of Law 2004 No. 41 on Waqf in Indonesia. The Islamic law principles on waqf is a necessity. It is against the law enforcement 2004 No 41 that fits to several chapters and articles in Law on waqf, such as in Chapter II Articles 4 and 5 on the objectives and functions of waqf property that are in harmony and in accordance with the *amar maruf nahi munkar* (ordering right and prohibiting wrong) principle, justice and *al-ta'awun* principle. Three of them represent the goal of the deregulation of Islamic law called *Maqasid al-Shari'ah*, that is to maintain religion, soul, intellectual, descendant and wealth.

The action taken before empowering the community in the management of waqf property is the change of waqf culture in terms administration, time or age of waqf and other property. It is because people like to use the traditional ways until now. In the waqf structure is BWI, the official of the deed pledge of waqf (Chairman of KUA (*Religious Affairs Office*)), the community leaders, should be more active and change to the professional work ethic, spirit, serious and earnest. This is defined as clear and directed management, which has a clear purpose with planning on the human's factor. As it is known, the majority of Indonesian people still believe that the waqf must be immovable, consumptive or direct waqf, and within a period of time (*muabbad*). Even though the law on waqf has been around for more than thirteen years in the midst of society, because this culture is still strong and education about regulation still has obstacles, so the Indonesian people do not yet know the regulation. This has an impact on the results of property waqf management, which has not been maximally felt by the community. Therefore, if the community culture about waqf fits with the law on waqf, then the productive waqf that leads to the independence of the people's economy will succeed. For example, empowering waqf culture is with moving objects. As it is known, that is represented by money and other movable objects, it is easier to be empowered and

productive than other immovable objects such as cemetery, places of worship, boarding schools that still require funding in operation and development.

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